



State Water Resources Control Board

May 17, 2024

City of Morro Bay
Attn: Greg Kwolek – Public Works Director
595 Harbor Street
Morro Bay, CA 93442

Agreement Number: SWRCB000000000D2001033-A1
Project Number: C-06-8185-210

Please review, and if appropriate, electronically sign the signature page of the amended Agreement via Adobe Sign no later than thirty (30) calendar days from the date of this letter. Once electronically signed, the Agreement will be routed automatically to the next signer. You will automatically receive a copy of the fully executed Agreement via Adobe Sign once the final signer has signed. This Agreement cannot be considered binding by either party until executed by the State Water Resources Control Board (State Water Board).

For the amended Funding Agreement to be executed by the State Water Board, the signature page **must be signed and returned electronically.**

Be aware that all projects receiving funding must comply with all applicable implementing guidelines and regulations adopted by the California Department of Industrial Relations (DIR), regarding state prevailing wage requirements. You must contact DIR for guidance on how to comply. Information can be found at: <http://www.dir.ca.gov/lcp.asp>.

Additional Compliance Requirements:

Davis Bacon Compliance:
https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/davisbacon.shtml

Disadvantaged Business Enterprise (DBE)
https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/policy0513/dbe_compliance_guidelines_instructions.pdf

We strive to provide superior service to our recipients and would appreciate your feedback on the application process. Please assist us in completing a 5-minute Customer Satisfaction Survey at <https://www.surveymonkey.com/s/DWSRFsatisfaction> so we can continue to improve on our service and process. Your comments are valuable to the success of the DWSRF Program. Thank you for your time and we look forward to continuing to work with you.

Your Agreement may be funded with Federal Capitalization Grants (DW Catalog of Federal Domestic Assistance No. 66.468). If your financing agreement is funded with a Federal Capitalization Grant, you must comply with the rules and regulations in Subpart F of Title 2 U.S. Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. These requirements include the submission of a single or program audit if you expend \$750,000 or more of Federal funds during your fiscal year. The receipt of Federal funds may be directly from the Federal government or via a pass-through entity such as the State Water Resources Control Board. In addition to other reporting requirements, ***your Single Audit Report must be submitted to the***

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

City of Morro Bay

- 2 -

May 17, 2024

State Controller's Office and to the State Water Resources Control Board, Division of Financial Assistance within nine months after the end of your fiscal year.

David Bruglia may be contacted at (916) 449-5640 or David.Bruglia@waterboards.ca.gov.

Enclosures



CLEAN WATER
&
WATER RECYCLING FUNDING PROGRAM

CITY OF MORRO BAY

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



CONSTRUCTION
INSTALLMENT SALE AGREEMENT
AND GRANT

PROJECT NO. C-06-8185-210
MORRO BAY WATER RECLAMATION FACILITY

AGREEMENT NO. SWRCB000000000D2001033

AMENDMENT NO. 1

PROJECT FUNDING AMOUNT: ~~\$66,604,638~~ **\$87,776,638**
GRANT COMPONENT: \$5,000,000
ESTIMATED REASONABLE PROJECT COST: ~~\$138,679,974~~ **\$166,914,230**

ELIGIBLE WORK START DATE: OCTOBER 23, 2018
ELIGIBLE CONSTRUCTION START DATE: OCTOBER 23, 2018
CONSTRUCTION COMPLETION DATE: ~~AUGUST 31, 2023~~ **SEPTEMBER 30, 2026**
FINAL DISBURSEMENT REQUEST DATE: ~~MARCH 1, 2024~~ **MARCH 1, 2027**
FINAL PAYMENT DATE: ~~AUGUST 31, 2053~~ **SEPTEMBER 30, 2056**
RECORDS RETENTION END DATE: ~~AUGUST 31, 2059~~ **SEPTEMBER 30, 2062**

This Agreement executed by the State Water Board on July 1, 2021, is hereby amended and restated, to revise the cover page, the Agreement, and Exhibits A, A-FBA, B, D, and E (deletions shown as stricken and revisions bold and underlined). Except as noted herein all other terms and conditions shall remain the same. Please note, page numbers may have changed.

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TABLE OF CONTENTS

AGREEMENT.....	1
1. AUTHORITY.....	1
2. INTENTION.....	1
3. AGREEMENT, TERM, DOCUMENTS INCORPORATED BY REFERENCE.....	1
4. PARTY CONTACTS.....	2
5. DEFINITIONS.....	3
EXHIBIT A – SCOPE OF WORK	11
A.1. PROJECT DESCRIPTION, USEFUL LIFE, AND SCOPE OF WORK.....	11
A.2. STANDARD PROJECT REQUIREMENTS.....	11
A.2.1 Acknowledgements.....	11
A.2.2 Reports.....	12
A.2.2.1 Progress Reports.....	12
A.2.2.2 Project Completion Report.....	12
A.2.2.3 As Needed Reports.....	12
A.2.2.4 Recycled water reports.....	13
A.2.2.5 DBE Reports for SRF Projects.....	13
A.2.3 Signage.....	13
A.2.4 Commencement of Operations.....	14
A.3 DATES & DELIVERABLES.....	14
EXHIBIT A-FBA	15
EXHIBIT B – FUNDING TERMS	20
B.1. FUNDING AMOUNTS AND DISBURSEMENTS.....	21
B.1.1 Funding Contingency and Other Sources.....	20
B.1.2 Estimated Reasonable Cost.....	20
B.1.3 Project Funding Amount.....	20
B.1.4 Grant Component.....	20
B. 1.5 Budget Costs.....	20
B.1.6 Contingent Disbursement.....	21
B.1.7 Disbursement Procedure.....	21
B.1.8 Withholding of Disbursements.....	22
B.1.9 Fraud and Misuse of Public Funds.....	23
B.2 RECIPIENT’S PAYMENT OBLIGATION, PLEDGE, AND RESERVE.....	23
B.2.1 Project Costs.....	23
B.2.2 Estimated Principal Payment Due.....	23
B.2.3 Interest Rate and In-Lieu of Interest Charges.....	23
B.2.4 [Reserved.].....	24
B.2.5 Obligation Absolute.....	24
B.2.6 Payment Timing.....	24
B.2.7 Pledged Revenues.....	25

- B.2.7.1 Establishment of Wastewater Fund and Accounts Therein..... 25
- B.2.7.2 Pledge of Net Revenues, Wastewater Fund, SRF Payment Account and Reserve Account...25
- B.2.7.3 Application and Purpose of Net Revenues and the Wastewater Fund. 25
- B.2.7.4 No Preference or Priority. 28
- B.2.7.5 Other Uses of Net Revenues Permitted. 28
- B.2.7.6 Budget and Appropriation of Installment Payments. 28
- B.2.8 No Prepayment..... 28
- B.2.9 Reserve Account 28

- B.3 RATES, FEES AND CHARGES..... 28

- B.4 ADDITIONAL DEBT..... 29

- B.5 NO LIENS..... 29

- EXHIBIT C – GENERAL & PROGRAMMATIC TERMS & CONDITIONS 30

- C.1 REPRESENTATIONS & WARRANTIES..... 30
 - C.1.1 Application and General Recipient Commitments 30
 - C.1.2 Authorization and Validity 30
 - C.1.3 No Violations 30
 - C.1.4 No Litigation..... 30
 - C.1.5 Property Rights..... 30
 - C.1.6 Solvency and Insurance. 31
 - C.1.7 Legal Status and Eligibility..... 31
 - C.1.8 Financial Statements and Continuing Disclosure. 31
 - C.1.9 System Obligations..... 31
 - C.1.10 No Other Material Debt..... 31
 - C.1.11 Compliance with State Water Board Funding Agreements 31

- C.2 DEFAULTS AND REMEDIES 31
 - C.2.1 Return of Funds; Acceleration; and Additional Payments 31
 - C.2.2 [Reserved.] 32
 - C.2.3 Judicial remedies 32
 - C.2.4 Termination..... 32
 - C.2.5 Damages for Breach of Tax-Exempt Status 32
 - C.2.6 Damages for Breach of Federal Conditions 32
 - C.2.7 Remedies and Limitations 32
 - C.2.8 Non-Waiver..... 33
 - C.2.9 Status Quo..... 33

- C.3 STANDARD CONDITIONS..... 33
 - C.3.1 Access, Inspection, and Public Records 33
 - C.3.2 Accounting and Auditing Standards; Financial Management Systems; Records Retention 33
 - C.3.3 Amendment 34
 - C.3.4 Assignability..... 34
 - C.3.5 Audit 34
 - C.3.6 Bonding. 34
 - C.3.7 Competitive Bidding..... 35
 - C.3.8 Compliance with Applicable Laws, Rules, and Requirements..... 35
 - C.3.9 Computer Software..... 35
 - C.3.10 Conflict of Interest..... 35
 - C.3.11 Continuous Use of Project; No Lease, Sale, Transfer of Ownership, or Disposal of Project 35
 - C.3.12 Data Management 35
 - C.3.13 Disputes..... 35
 - C.3.14 Drug-Free Workplace. 36
 - C.3.15 Environmental Clearance. 36

C.3.16	Governing Law	36
C.3.17	Income Restrictions	37
C.3.18	Indemnification and State Reviews	37
C.3.19	Independent Actor	37
C.3.20	Integration.....	37
C.3.21	Leveraging Covenants.....	38
C.3.22	No Discrimination.....	38
C.3.23	No Third Party Rights	39
C.3.24	No Obligation of the State.	39
C.3.25	Notice.	39
C.3.26	Operation and Maintenance; Insurance.	41
C.3.27	Permits, Subcontracting, and Remedies	41
C.3.28	Professionals	42
C.3.29	Prevailing Wages.....	42
C.3.30	Public Funding.....	42
C.3.31	Recipient's Responsibility for Work	42
C.3.32	Related Litigation.....	42
C.3.33	Rights in Data.....	43
C.3.34	State Water Board Action; Costs and Attorney Fees	43
C.3.35	Timeliness	43
C.3.36	Unenforceable Provision.	43
C.3.37	Venue.	43
C.3.38	Waiver and Rights of the State Water Board.	43
C.4	MISCELLANEOUS STATE AND FEDERAL REQUIREMENTS.....	43
C.4.1	[Reserved.]	43
C.4.2	State Cross-Cutters	43
C.4.3	Federal Requirements and Cross-Cutters for SRF Funding.	44
EXHIBIT D	– SPECIAL CONDITIONS	50
EXHIBIT E	– PAYMENT SCHEDULE	52
EXHIBIT F	– TAX CERTIFICATE.....	53
F.1	Purpose.	53
F.2	Tax Covenant	53
F.3	Governmental Unit.....	53
F.4	Financing of a Capital Project.....	53
F.5	Ownership and Operation of Project.....	53
F.6	Temporary Period.....	53
F.7	Working Capital	53
F.8	Expenditure of Proceeds	53
F.9	Private Use and Private Payments	54
F.10	No Sale, Lease or Private Operation of the Project.....	54

F.11	No Disproportionate or Unrelated Use.....	54
F.12	Management and Service Contracts.....	54
F.13	No Disposition of Financed Property.....	55
F.14	Useful Life of Project.....	55
F.15	Installment Payments.....	55
F.16	No Other Replacement Proceeds	55
F.17	No Sinking or Pledged Fund.....	56
F.18	Reserve Amount	56
F.19	Reimbursement Resolution.....	56
F.20	Reimbursement Expenditures.....	56
F.21	Change in Use of the Project.....	56
F.22	Rebate Obligations.....	56
F.23	No Federal Guarantee.....	57
F.24	No Notices or Inquiries from IRS.....	57
F.25	Amendments	57
F.26	Reasonable Expectations	57
F.27	Assignment	57

AGREEMENT

1. AUTHORITY.

(a) The State Water Resources Control Board (State Water Board) is authorized, and implements its authority, to provide financial assistance under this Agreement pursuant to Section 13475 et seq. and Section 79765 et. seq. of the Water Code, Section 80147 of the Public Resources Code, and Resolution Nos. 2019-0064 and 2020-0023.

(b) The Recipient is authorized to enter into this ISA Agreement (Agreement) pursuant to Authorized Rep Resolution No. 75-18.

2. INTENTION.

(a) The Recipient desires to receive financial assistance for and undertake work required for the recycled water construction Project according to the terms and conditions set forth in this Agreement.

(b) The State Water Board proposes to assist in providing financial assistance for eligible costs of the Project in the amount set forth in Exhibit B, according to the terms and conditions set forth in this Agreement, with the expectation that the Recipient shall repay a portion of the financial assistance to the State Water Board.

(c) The Recipient intends to evidence its obligation to submit Installment Payments to the State Water Board and secure its obligation with Net Revenues of its wastewater enterprise, as set forth in Exhibit B, according to the terms and conditions set forth in this Agreement.

(d) The Recipient intends to certify and evidence its compliance with the Tax Covenants set forth in Exhibit F.

3. AGREEMENT, TERM, DOCUMENTS INCORPORATED BY REFERENCE.

In consideration 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 to the terms, provisions, and conditions of this Agreement.

(a) 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 by both parties without further action on the part of the Recipient or the State Water Board.

(b) Subject to the satisfaction of any condition precedent to this Agreement, this Agreement shall become effective upon the signature of both the Recipient and the State Water Board. Conditions precedent are not limited to the following:

- i. The Recipient must deliver to the Division a resolution authorizing this Agreement.
- ii. The Recipient must deliver an opinion of bond counsel and general counsel satisfactory to the State Water Board's counsel dated on or after the date that the Recipient signs this Agreement.

(c) Upon execution, the term of the Agreement shall begin on the Eligible Work Start Date and extend through the Final Payment Date.

(d) This Agreement includes the following exhibits and attachments thereto:

- i. EXHIBIT A – SCOPE OF WORK
- ii. EXHIBIT B – FUNDING TERMS
- iii. EXHIBIT C – GENERAL & PROGRAMMATIC TERMS & CONDITIONS
- iv. EXHIBIT D – SPECIAL CONDITIONS
- v. EXHIBIT E – PAYMENT SCHEDULE
- vi. EXHIBIT F – TAX CERTIFICATE

(e) This Agreement includes the following documents incorporated by reference:

- i. the Final Plans & Specifications, dated January 24, 2018, which are the basis for the construction contract to be awarded by the Recipient to Filanc / Black & Veatch ;
- ii. **the Final Plans & Specifications, dated June 2020 and May 2020 which are the basis for the construction contract to be awarded by the Recipient to Anvil Builders, Inc.**
- iii. ~~iii.~~ the Waste Discharge Requirement Order No. R3-2017-0050 and National Pollutant Discharge Elimination System Permit No. CA0047881);
- iiii. ~~iv.~~ the Water Recycling Requirement Order No. CA0047881;
- v. ~~v.~~ the Recipient's Reimbursement Resolution No. 76-18 dated September 25, 2018;
- vi. ~~vi.~~ the Recipient's Tax Questionnaire dated October 9, 2018.
- vii. ~~vii.~~ the Davis-Bacon requirements found at:

https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/davisbacon/davis-bacon_2020_cwsrf-governmental_entities_public.pdf;
https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/2023/davis-bacon-2023-cwsrf-governmental-entities-public.pdf

(f) **This Agreement, and any amendments hereto, may be executed and delivered in any number of counterparts, each of which when delivered shall be deemed to be an original, but such counterparts shall together constitute one document. The parties may sign this Agreement, and any amendments hereto, either by an electronic signature using a method approved by the State Water Board or by a physical, handwritten signature. The parties mutually agree that an electronic signature using a method approved by the State Water Board is the same as a physical, handwritten signature for the purposes of validity, enforceability, and admissibility.**

4. PARTY CONTACTS

State Water Board		City of Morro Bay	
Section:	Division of Financial Assistance	Name:	Rob Livick Title: City Engineer
Name:	Ashley Zellmer, Elnaz Nasaei, Project Manager	Name:	Greg Kwolek Public Works Director
Address:	1001 I Street, 16 Floor	Address:	955 Shasta Avenue 595 Harbor St.
City, State, Zip:	Sacramento, CA 95814	City, State, Zip:	Morro Bay, CA 93442
Phone:	(916) 341-5415 (916) 319-9283	Phone:	(805) 772-6264 (805) 772-6564
Email:	Ashley.Zellmer@waterboards.ca.gov elnaz.nasaei@waterboards.ca.gov	Email:	rlivick@morrobayca.gov gkwolek@morrobayca.gov

The Recipient may change its contact upon written notice to the Division, which notice shall be accompanied by authorization from the Recipient's Authorized Representative. The State Water Board will notify the Recipient of any changes to its contact.

While the foregoing are contacts for day-to-day communications regarding Project work, the Recipient shall provide official communications and events of Notice as set forth in Exhibit C to the Division's Deputy Director.

5. DEFINITIONS.

Unless otherwise specified, each capitalized term used in this Agreement has the following meaning:

"Additional Payments" means 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, staff, contractors, consultants, costs, insurance premiums and all other extraordinary costs reasonably incurred by the State Water Board or assignee of the State Water Board.

"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.

"Agreement" means this agreement, including all exhibits and attachments hereto.

"Authorized Representative" means the duly appointed representative of the Recipient as set forth in the certified original of the Recipient's authorizing resolution that designates the authorized representative by title.

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

"Bond Funded Portion of the Project Funds" means any portion of the Project Funds which was or will be funded with Bond Proceeds.

"Bond Proceeds" means original proceeds, investment proceeds, and replacement proceeds of Bonds.

"Bonds" means any series of bonds issued by the Bank, the interest on which is excluded from gross income for federal tax purposes, all or a portion of the proceeds of which have been, are, or will be applied by the State Water Board to fund all or any portion of the Project Costs or that are secured in whole or in part by Installment Payments paid hereunder.

"Cayucos Joint Powers Agreement" means the Joint Powers Agreement for the Ownership, Operation and Maintenance of Wastewater Treatment Facilities, entered into October 25, 1982, by and between the Recipient and the Cayucos Sanitary District, as amended, with respect to the operation of the Cayucos Joint Powers Agreement Wastewater Treatment Plant.

"Charge In Lieu of Interest" means any fee or charge in lieu of some or all of, but not to exceed, the interest that would otherwise be owed under this Agreement, as set forth in Exhibit E.

"Code" as used in Exhibit F of this Agreement 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, and is identified in Exhibit A of this Agreement.

"Cover Page" means the front page of this Agreement.

"Days" means calendar days unless otherwise expressly indicated.

"Debt Service" means, as of any date, with respect to outstanding System Obligations and, in the case of the additional debt tests in Exhibit B of this Agreement, any System Obligations that are proposed to be outstanding, the aggregate amount of principal and interest scheduled to become due (either at maturity or by mandatory redemption), together with any Charge In Lieu of Interest on this Obligation or other System Obligations to the State Water Board, calculated with the following assumptions:

a. Principal payments (unless a different subdivision of this definition applies for purposes of determining principal maturities or amortization) are made in accordance with any amortization schedule published for such principal, including any minimum sinking fund payments;

b. Interest on a variable rate System Obligation that is not subject to a swap agreement and that is issued or will be issued as a tax-exempt obligation under federal law, is the average of the SIFMA

Municipal Swap Index, or its successor index, during the 24 months preceding the date of such calculation;

c. Interest on a variable rate System Obligation that is not subject to a swap agreement and that is issued or will be issued as a taxable obligation under federal law, is the average of LIBOR, or its successor index, during the 24 months preceding the date of such calculation;

d. Interest on a variable rate System Obligation that is subject to a swap agreement is the fixed swap rate or cap strike rate, as appropriate, if the variable rate has been swapped to a fixed rate or capped pursuant to an interest rate cap agreement or similar agreement;

e. Interest on a fixed rate System Obligation that is subject to a swap agreement such that all or a portion of the interest has been swapped to a variable rate shall be treated as variable rate debt under subdivisions (b) or (c) of this definition of Debt Service;

f. Payments of principal and interest on a System Obligation are excluded from the calculation of Debt Service to the extent such payments are to be paid from amounts then currently on deposit with a trustee or other fiduciary and restricted for the defeasance of such System Obligations;

g. If 25% or more of the principal of a System Obligation is not due until its final stated maturity, then principal and interest on that System Obligation may be projected to amortize over the lesser of 30 years or the Useful Life of the financed asset, and interest may be calculated according to subdivisions (b)-(e) of this definition of Debt Service, as appropriate.

"Deputy Director" means the Deputy Director of the Division.

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

"Eligible Construction Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which construction costs may be incurred and eligible for reimbursement hereunder.

"Eligible Work Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which any non-construction costs may be incurred and eligible for reimbursement hereunder.

"Event of Default" means the occurrence of any of the following events:

a) Failure by the Recipient to make any payment required to be paid pursuant to this Agreement, including Installment Payments;

b) A representation or warranty made by or on behalf of the Recipient in this Agreement or in any document furnished by or on behalf of the Recipient to the State Water Board pursuant to this Agreement shall prove to have been inaccurate, misleading or incomplete in any material respect;

c) A material adverse change in the condition of the Recipient, the Revenues, or the System, which the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement.

d) Failure by the Recipient to comply with the additional debt test or reserve account requirement, if any, in Exhibit B or Exhibit D of this Agreement;

- e) Failure to operate the System or the Project without the Division's approval;
- f) Failure by the Recipient to observe and perform any covenant, condition, or provision in this Agreement, which failure shall continue for a period of time, to be determined by the Division;
- g) The occurrence of a material breach or event of default under any System Obligation that results in the acceleration of principal or interest or otherwise requires immediate prepayment, repurchase or redemption;
- h) Initiation of proceedings seeking arrangement, reorganization, or any other relief under any applicable bankruptcy, insolvency, or other similar law; the appointment of or taking possession of the Recipient's property by a receiver, liquidator, assignee, trustee, custodian, conservator, or similar official; the Recipient's entering into a general assignment for the benefit of creditors; the initiation of resolutions or proceedings to terminate the Recipient's existence, or any action in furtherance of any of the foregoing;
- i) A determination pursuant to Gov. Code section 11137 that the Recipient has violated any provision in Article 9.5 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code; or
- j) Loss of the Recipient's rights, licenses, permits, or privileges necessary for the operation of the System or the Project, or the occurrence of any material restraint on the Recipient's enterprise by a government agency or court order.

"Final Budget Approval (FBA)" means the Division-approved final budget for the Project.

"Final Disbursement Request Date" means the date set forth as such on the Cover Page of this Agreement, after which date, no further Project Funds disbursements may be requested.

"Final Payment Date" is the date by which all principal and accrued interest due under this Agreement is to be paid in full to the State Water Board and is specified on the Cover Page of this Agreement.

"Fiscal Year" means the period of twelve (12) months terminating on June 30 of any year, or any other annual period 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, equipment, or resources for the Project.

"GAAP" means generally accepted accounting principles, the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor, or the Uniform System of Accounts, as adopted by the California Public Utilities Commission for water utilities.

"Guidelines" means the State Water Board's "Water Recycling Funding Program guidelines," in effect as of the execution date of this Agreement.

"Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Project (i.e., costs that are not directly related to the Project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Recipient; non-project-specific accounting and personnel services performed within the Recipient organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; generic overhead or markup; and taxes.

"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.

"Installment Payment" individually, means with respect to any installment payment date occurring following the commencement date, the sum of the principal component and interest component (including interest at the default rate if applicable) due and payable on each installment date as set forth in Exhibit

E. "Installment Payments" collectively, means all payments required to be paid by the Recipient on any date, including any adjustments for the default rate.

"Listed Event" means, so long as the Recipient has outstanding any System Obligation subject to Rule 15c2-12, any of the events required to be reported with respect to such System Obligation pursuant to Rule 15c2-12(b)(5).

"Material Obligation" means an obligation of the Recipient that is material to this transaction, including System Obligations.

"Maximum Annual Debt Service" means the maximum amount of Debt Service due on System Obligations in a Fiscal Year during the period commencing with the Fiscal Year for which such calculation is made and within the next five years in which Debt Service for any System Obligations will become due.

"Net Revenues" means, for any period, an amount equal to all of the Revenues received during such period minus the Operations and Maintenance Costs for such period.

"Obligation" means the obligation of the Recipient to make Installment Payments (including 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 in Exhibit A and Exhibit B and in the documents thereby incorporated by reference.

"Operation and Maintenance Costs" means all actual maintenance and operation costs (excluding major maintenance costs and capital expenditures) incurred and paid from Revenues (or, if applicable, forecasted to be incurred and paid from Revenues) in connection with the operation and maintenance of the System in any particular time period to which said term is applicable, including payments for taxes (excluding income taxes), insurance, consumables, advertising, marketing, payments pursuant to any agreements for the management, operation or maintenance of the System, reasonable legal fees and expenses paid by the Recipient in connection with the management, maintenance or operation of the System, fees paid in connection with obtaining, transferring, maintaining or amending any authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions or declarations of or with any Governmental Authority, fees of the paying agent, Technical and Rate Consultant and other entities relating to administration of the Financing Documents, costs incurred in connection with the performance of environmental mitigation work to be carried out by the Recipient (but only to the extent such work has a useful life of less than twelve (12) months), amounts required for reasonable general and administrative expenses (including employee salaries and benefits, but excluding unbudgeted extraordinary payments to pension funds and post-employment benefit funds), but exclusive in all cases of rebates or grants, debt payments, noncash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature.

"Parity Obligation" means the Senior Obligations. The Recipient's Parity Obligations are these:

- The Planning Loan Agreement by and between the City of Morro Bay and the California State Water Resources Control Board, executed on January 20, 2017 (Agreement No. D16-01016, Project No. C-06-8185-110).
- WIFIA Wastewater Installment Sale Agreement dated as of March 9, 2020, by and between the City of Morro Bay and the United States Environmental Protection Agency for the Morro Bay Water Reclamation Facility (WIFIA – Project No.N17108CA).

"Pledged Collateral" means collectively (a) the Net Revenues, (b) the SRF ISA Payment Account and all proceeds deposited therein from time to time, (c) the SRF ISA Reserve Account and all proceeds deposited therein from time to time, (d) available amounts in the Subordinate Obligation Payment Accounts, the

Subordinate Obligation Reserve Accounts and the general reserve account from which the Recipient shall make the required deposits of Revenues as set forth in Exhibit B.2.7.3(e) of this Agreement.

"Policy" means the State Water Board's "Policy for Implementing the Clean Water State Revolving Fund," as amended from time to time, including the Intended Use Plan in effect as of the execution date of this Agreement.

"Project" means the Project financed by this Agreement as described in Exhibits A and B and in the documents incorporated by reference herein.

"Project Completion" 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.

"Project Costs" means the incurred costs of the Recipient which are eligible for financial assistance under this Agreement, which are allowable costs as defined under the Policy and Guidelines, and which are reasonable, necessary and allocable by the Recipient to the Project under GAAP, and may include capitalized interest.

"Project Funds" means all moneys disbursed to the Recipient by the State Water Board for eligible Project Costs pursuant to this Agreement.

"Recipient" means the City of Morro Bay.

"Records Retention End Date" means the last date that the Recipient is obligated to maintain records and is set forth on the Cover Page of this Agreement.

"Regional Water Quality Control Board" or "Regional Water Board" means the appropriate Regional Water Quality Control Board.

"Reimbursement Resolution" means the Recipient's reimbursement resolution identified and incorporated by reference in this Agreement.

"Reserve Account" means the reserve fund required pursuant to Exhibit B of this Agreement. The Reserve Account may be referred to as the SRF ISA Reserve Account or such other name as may be convenient for the Recipient to discern the source of security.

"Revenue Account" means the account so designated and established within the Wastewater Fund pursuant to Exhibit B of this Agreement.

"Revenues" means (a) all rates, fees, charges, rents, taxes or assessments dedicated to pay costs of the System, and other income and receipts received by the Recipient from the ownership or operation of the System, (b) loss proceeds from business interruption insurance, (c) interest received on any moneys or securities held in System accounts, and (d) the moneys and securities of any entity that is acquired by the Recipient and that is deposited in the Revenue Account to the extent such moneys are applied to pay liabilities incurred by the acquired company prior to the date of acquisition.

Revenues shall not include (i) proceeds of the issuance of Obligations, (ii) the proceeds for any insurance pertaining to loss or damage to persons and the property of others or to loss or damage to the System, or the proceeds of condemnation or the sale or other disposition of any part of the System, except to the extent any such proceeds are applied by the Recipient to pay Operation and Maintenance Costs, (iii) transfers to the Revenue Account from any other fund or account, unless approved by the State Water Board, (iv) any amount received or receivable from the United States or the State (or any agency of either thereof) or from any other sources as or on account of a grant or contribution for or with respect

to the construction, acquisition, improvement, extension, renewal or other development of any part of the System, (v) customers' deposits or any other deposits subject to refund until such deposits have become the property of the Recipient, (vi) any proceeds of ad valorem property taxes, or (vii) any proceeds of taxes or assessments restricted by law to be used by the Recipient to pay bonds or other obligations heretofore or hereafter issued. "Revenues" shall not include any amounts on deposit in the general fund of the Recipient except to the extent such amounts constitute payment for fees and charges for the services and facilities furnished by the System to the Recipient

"Rule 15c2-12(b)(5)" means Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended.

"Senior Obligation" means a debt obligation of the Recipient on parity with this Obligation.

"Senior Obligation Documents" means, (i) this Agreement, (ii) WIFIA Wastewater Agreement and other documents related thereto; the (iii) the SRF Planning Loan Agreement, and (iv) the indenture of trust, trust agreement, supplemental installment sale agreement, installment sale agreement, lease, loan agreement or other document (including resolutions or ordinances) authorizing the issuance of any Parity Obligations or any securities which evidence Senior Obligations.

"Senior Obligation Payment Account" means the payment accounts within the Wastewater Fund established pursuant to the Senior Obligation Documents for purposes of making payments of principal of and interest on Parity Obligations.

"Senior Obligation Reserve Accounts" means the reserve accounts within the Wastewater Fund established pursuant to the Senior Obligation Documents.

"Senior Obligation Payment Period" shall mean, for any Senior Obligation, (i) with respect to interest payments (or interest components of an installment payment), the number of months between the applicable Senior Obligation interest payment dates and (ii) with respect to principal payments, including sinking fund installment redemptions (or the principal components of an installment payment or capital lease payment), the number of months between the applicable Senior Obligation principal payment dates. With respect to the first interest payment and principal payment for any Senior Obligation, the applicable number of months determined as set forth above before the initial interest payment or principal payment, as applicable, shall also be a Senior Obligation Payment Period.

"SRF ISA Payment Account" means the account of that name created by the Recipient pursuant to this Agreement.

"SRF Planning Loan" and "SRF Planning Loan Agreement" means the existing Wastewater Planning Loan, Water Reclamation Facilities Project-Phase I Clean Water State Revolving Project No. C-06-8185-110, Agreement No. D-16-01016, dated January 20, 2017, in the initial amount of \$10,300,000, by and between the Recipient and the State Water Board.

"State" means State of California.

"State Water Board" means the State Water Resources Control Board.

"Subordinate Obligation" means a debt obligation of the Recipient that is subordinate to this Obligation. There are currently no Subordinate Obligations.

"Subordinate Obligation Documents" means the indenture of trust, trust agreement, supplemental installment sale agreement, installment sale agreement, lease, loan agreement or other document

(including resolutions or ordinances) authorizing the issuance of any Subordinate Obligations or any securities which evidence Subordinate Obligations.

“Subordinate Obligation Payment Accounts” means the payment accounts within the Wastewater Fund established pursuant to the Subordinate Obligation Documents for purposes of making payments of principal of and interest on Subordinate Obligations

“Subordinate Obligation Reserve Accounts” means the reserve accounts within the Wastewater Fund established pursuant to the Subordinate Obligation Documents.

“System” means any and all properties and assets, real and personal, tangible and intangible, of the Recipient, now or hereafter existing, used or pertaining to the disposal or reuse of wastewater, including the Project, sewage treatment plants, intercepting and collecting sewers, outfall sewers, force mains, pumping stations, ejector stations, pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, treatment, purification or disposal of sewage, and any necessary lands, rights of way and other real or personal property useful in connection therewith, and all additions, extensions, expansions, improvements and betterments thereto and equipping thereof, including the Project.

“System Obligation” means any obligation of the Recipient payable from the Revenues, including but not limited to this Obligation, any Parity Obligation, any Subordinate Obligation, and such additional obligations as may hereafter be issued in accordance with the provisions of such obligations and this Agreement.

“Useful Life” means the economically useful life of the Project beginning at Completion of Construction and is set forth in Exhibit A.

“Wastewater Fund” means the wastewater fund of the Recipient in which Revenues are deposited.

“WIFIA Credit Provider” means the United States Environmental Protection Agency, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency or any direct or indirect assignee of the original WIFIA Credit Provider’s interest in this Agreement.

“WIFIA Assignment Agreement” means the Assignment Agreement, dated March 9, 2020, by and between the Recipient and the WIFIA Credit Provider related to the wastewater system portion of the project.

“WIFIA Credit Agreement” means the Credit Agreement, dated March 9, 2020, by and between the Recipient and the WIFIA Credit Provider related to the wastewater system portion of the Project. “WIFIA Wastewater Agreement” means WIFIA Wastewater Installment Sale Agreement, dated March 6, 2020, by and between the City of Morro Bay and the Morro Bay Public Facilities Corporation, as assigned to WIFIA pursuant to the WIFIA Assignment Agreement.

“WIFIA Reserve Account” means the reserve account created by the Recipient pursuant to the WIFIA Wastewater Agreement.

“WIFIA Payment Account” means the account of that name created by the Recipient pursuant to the WIFIA Wastewater Agreement.

“Year” means calendar year unless otherwise expressly indicated.

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

CITY OF MORROW BAY:

By: _____
Name: Greg Kwolek
Title: Public Works Director

Date: _____

STATE WATER RESOURCES CONTROL BOARD:

By: _____
Name: Joe Karkoski
Title: Deputy Director
Division of Financial Assistance

Date: _____

EXHIBIT A – SCOPE OF WORK

A.1. PROJECT DESCRIPTION, USEFUL LIFE, AND SCOPE OF WORK.

- (a) The Project is the project set forth on the Cover Page of this Agreement.
- (b) The Useful Life of this Project is at least thirty (30) years.
- (c) Project Purpose and Description.

The Project is for the benefit of the Recipient and has a Useful Life of at least 30 years. The funding under this Agreement shall be used to construct a new Water Reclamation Facility (WRF) at an inland location to comply with new final effluent limitation requirements prescribed in Regional Water Quality Control Board (RWQCB) Waste Discharge Requirement (WDR) Order No. R3-2017-0050 and RWQCB Time Schedule Order (TSO) No. R3-2018-0019. The Project will construct the new facility at an inland location due to a California Coastal Commission directive to remove critical infrastructure from coastal hazard and sensitive view areas. The WRF will meet treatment requirements and implement advanced treatment for indirect potable reuse (IPR) to allow the Recipient to replenish the groundwater basin, increase water supply reliability, and offset potable water use.

(d) Scope of Work.

The Recipient will complete all planning, design, and procurement necessary to construct a new Water Reclamation Facility (WRF) to meet final effluent limitations prescribed in Regional Water Board Order No. R3-2017-0050. The Recipient must complete the following construction elements:

1. Water Reclamation Facility infrastructure, including:
 - a. Primary treatment screening and grit removal;
 - b. Activated sludge biological nutrient removal (BNR);
 - c. Membrane Bioreactor (MBR);
 - d. Tertiary treatment reverse osmosis and ultraviolet disinfection/advance oxidation process (UV/AOP);
 - e. IPR product water storage tank;
 - f. Solids handling sludge holding tanks and filter press;
2. Conveyance pipelines and pump stations along 3.6 mile route from existing collection system to new WRF location:
 - a. Two pump stations to convey raw wastewater to WRF site;
 - b. Two force mains to convey raw wastewater from existing collection system to lift station at the WRF;
 - c. One waste discharge pipeline to convey effluent, brine, and treated wet weather flows to ocean outfall;
3. Indirection Potable Reuse facilities, including:
 - a. Recycled water pipeline to convey treated water from WRF to injection location
 - b. Injection well
- ~~4. Outfall modifications including cleaning and installation of new valves on outfall diffusers~~
- ~~5. Decommission of existing wastewater treatment facility~~
- ~~6. Demolition of existing wastewater treatment facility infrastructure~~

A.2. STANDARD PROJECT REQUIREMENTS.

A.2.1 Acknowledgements.

The Recipient shall include the following acknowledgement 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. California's Clean Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."

A.2.2 Reports

A.2.2.1 Progress Reports.

(a) The Recipient must provide a progress report to the Division each quarter, beginning no later than 90 days after execution of this Agreement.

(b) The Recipient must provide a progress report with each disbursement request. Failure to provide a complete and accurate progress report may result in the withholding of Project Funds, as set forth in Exhibit B.

(c) A progress report must contain the following information:

- i. 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;
- ii. A description of compliance with environmental requirements;
- iii. A listing of change orders including amount, description of work, and change in contract amount and schedule; and
- iv. Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.

A.2.2.2 Project Completion Report.

(a) The Recipient must submit a Project Completion Report to the Division with a copy to the appropriate Regional Water Board on or before the due date established by the Division and the Recipient at the time of final project inspection. The Project Completion Report must include the following:

- i. Description of the Project,
- ii. Description of the water quality problem the Project sought to address,
- iii. Discussion of the Project's likelihood of successfully addressing that water quality problem in the future, and
- iv. Summary of compliance with applicable environmental conditions.

(b) If the Recipient fails to submit a timely Project Completion Report, the State Water Board may stop processing pending or future applications for new financial assistance, withhold disbursements under this Agreement or other agreements, and begin administrative proceedings.

A.2.2.3 As Needed Reports.

The Recipient must provide expeditiously, during the term of this Agreement, any reports, data, and information reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the funding program or to fulfill any reporting requirements of the state or federal government.

A.2.2.4 Recycled water reports.

- (a) Commencing with the date of Project Completion, the Recipient must submit annual reports for five (5) consecutive calendar years or until the Project's actual total annual recycled water deliveries equal the Project's planned total recycled water deliveries.
- (b) The Recipient must submit annual reports in hard copy and/or electronically.
- (c) The first annual report is due on February 28th following the first full calendar year of operation and shall cover the period from the Project Completion through the end of the first full calendar year thereafter. Subsequent annual reports are due by February 28th following the calendar year covered. The annual reports shall be prepared in accordance with the "Water Recycling Funding Program Guidelines."
- (d) The annual reports must include the following:
 - i. The planned total recycled water deliveries from the Recipient's funding application/user-connection schedule;
 - ii. A breakdown of the actual total annual recycled water deliveries by month and type of use, presented in a table showing month vs. type of use. If the Recipient supplements recycled water deliveries with potable or fresh water, the annual report must include the monthly and total amounts;
 - iii. The Project's operation and maintenance costs for the year;
 - iv. The costs to Recipient's end users of recycled water vs. potable/fresh water during the year; and
 - v. If the Project's actual total recycled water deliveries are less than the planned total recycled water deliveries, the Recipient must provide a brief discussion on its progress toward achieving the remaining system capacity.

A.2.2.5 DBE Reports for SRF Projects.

The Recipient must report Disadvantaged Business Enterprise (DBE) utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334. The Recipient must submit such reports to the Division annually within ten (10) calendar days following October 1 until such time as the "Notice of Completion" is issued. The Recipient must comply with 40 CFR § 33.301 and require its contractors and subcontractors on the Project to comply.

A.2.3 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 and shall maintain the sign in good condition for the duration of the construction period. The sign must include the following disclosure statement and color logos (available from the Division):



b. "Funding for this Morro Bay Water Reclamation Facility Project has been provided in full or in part by Proposition 1 – the Water Quality, Supply, and Infrastructure Improvement Act of 2014, Proposition 68, and the Clean Water State Revolving Fund through an agreement with the State Water Resources Control Board. California's Clean Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States

Environmental Protection Agency and state bond proceeds.

c. 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.

A.2.4 Commencement of Operations.

Upon Completion of Construction of the Project, the Recipient must expeditiously initiate Project operations.

A.3 DATES & DELIVERABLES.

- (a) Time is of the essence.
- (b) The Recipient must expeditiously proceed with and complete construction of the Project.
- (c) The following dates are established as on the Cover Page of this Agreement:
 - i. Eligible Work Start Date
 - ii. Eligible Construction Start Date
 - iii. Completion of Construction Date
 - iv. Final Disbursement Request Date
 - v. Records Retention End Date
 - vi. Final Payment Date
- (d) The Recipient must award the prime construction contract timely.
- (e) The Recipient agrees to start construction no later than October 23, 2018.
- (f) The Recipient must deliver any request for extension of the Completion of Construction date no less than 90 days prior to the Completion of Construction date.
- (g) The undisbursed balance of this Agreement will be deobligated if the Recipient does not provide its final Disbursement Request to the Division on or before the Final Disbursement Request Date, unless prior approval has been granted by the Division.

Upon request by the Division, the Recipient shall submit verifiable data to support deliverables specified in the Scope of Work. The Recipient's failure to comply with this requirement may be construed as a material breach of this Agreement.

EXHIBIT A-FBA – FINAL BUDGET APPROVAL

Table 1: Approved Construction Bid Amount

CONTRACTOR	AMOUNT BID	APPROVED COSTS
Phase 1: Filanc/Black & Veatch	\$75,761,824 \$78,015,298	\$34,988,249 ¹ \$41,044,734¹
Phase 2: To Be Determined <u>Anvil Builders, Inc.</u>	N/A \$31,493,675	N/A \$34,196,581
Phase 3: To Be Determined	N/A \$9,424,174	N/A \$4,781,372
Phase 4: To Be Determined	\$9,200,000	\$4,543,212

¹ Approved construction budget for Filanc / Black & Veatch reduced by \$40,773,575 **\$36,970,564** due to co-funding with WIFIA and a separate State Water Board Agreement (Agreement No. D16-01016).

1 - BUDGET

Table 2: Approved Final Project Budget

PROJECT COST TABLE			
TYPE OF WORK	APPROVED BUDGET PHASE 1 & 2	ESTIMATED COSTS ¹ PHASE 2 & 3 & 4	TOTAL COSTS ²
A. Construction			
Phase 1: Filanc/Black & Veatch	\$34,988,249 \$41,044,734	\$0	\$34,988,249 \$41,044,734
Phase 2: TBD <u>Anvil Builders, Inc.</u> (Conveyance Facilities)	\$0 \$31,493,675	\$31,493,675 \$0	\$31,493,675
Phase 3: TBD (Recycled Water Facilities) ³	\$0	\$0 \$4,781,372	\$0 \$4,781,372
Phase 4: Decommissioning	\$0	\$4,543,212	\$4,543,212
B. Pre-Purchased Material/Equipment			
	\$0	\$0	\$0
C. Land Purchase			
	\$0	\$0	\$0
D. Change Order Contingency			
	\$122,714 \$5,913,645	\$0	\$122,714 \$5,913,645
E. Force Account			
	\$0	\$0	\$0
F. Allowances			
	\$0	\$0	\$0
Planning			
	\$0	\$0	\$0
Design			
	\$0	\$0	\$0
Construction Management			
	\$0	\$0	\$0
Administration			
	\$0	\$0	\$0
Value Engineering			
	\$0	\$0	\$0
Subtotal – E			
	\$0	\$0	\$0
TOTAL (Subtotal A+B+C+D+E)⁴			
	\$35,110,963 \$78,452,054	\$31,493,675 \$9,324,584	\$66,604,638 \$87,776,638

Note:

- The Division will issue a Final Budget Approval with eligibility determinations and a related Form 259 for the Phases 2 and 3 **and 4** upon receipt of a Final Budget Approval Package from

- the Recipient. Upon written request by the Recipient, the Division may adjust the line items of the Approved Final Project Budget at the time of this Final Budget Approval, so long as the adjusted line items do not exceed the Project Funding Amount. Project Costs for Phases ~~2 and 3~~ **and 4** are not available for reimbursement until such time as the Division has issued a Final Budget Approval with eligibility determinations for Phases ~~2 and 3~~ **and 4**.
2. \$5,000,000 of the total costs is anticipated to be funded using Proposition 68 Grant through the WRFPP. \$16,114,152 of the total costs is anticipated to be funded using Proposition 1 loan through the WRFPP. ~~\$45,490,486~~ **\$66,662,486** of the total costs is anticipated to be funded using a CWSRF loan.
 3. Construction Contract for **Phases 3 and 4**, Recycled Water Facilities **and Decommissioning, respectively**, will be part of overall project but is **are** anticipated to be paid fully **partially** through WIFIA **or City cash**.
 4. The Division may also adjust the line items of the Approved Final Project Budget at the time of Recipient's submittal of its final request for disbursement.

2 - PROJECT ELIGIBILITY DETERMINATION (PHASE 1)

The eligibility determinations and conditions of approval for Phase 1 identified below are based on the review of:

- Stamped and Signed Request for Proposals (RFP) for the Project received December 18, 2018, dated January 24, 2018;
- Addenda Nos. 1, 2, 3, 4, 5, and 6, issued February 28, 2018, March 27, 2018, March 29, 2018, April 6, 2018, April 20, 2018, and April 27, 2018, respectively;
- Stamped and Signed Plans & Specs (P&S) Issued for Construction (IFC) for the Project received October 7, 2020, dated May 19, 2020 and May 20, 2020, respectively.

The eligibility determination for the bid items shown in the schedule of values provided by the Recipient are as follows:

Table 3A: Eligibility Determination Phase 1 Agreement: Water Reclamation Facility Design-Build:

Bid Item	Description	Percent Eligibility
1	Management, Design, Preconstruction	0% 100%
2	Mobilization, Bonds, Insurance, As-Built Drawings, Deliverables, Start-up, Demobilization	100%
3	Erosion & Sediment Control Measures	100%
4	Excavation Safety Measures and Dewatering	100%
5	Areas 10-17: Sitework, Earthwork, Mass Excavation, Slabs, Grading/Paving, Yard Piping, Misc. Site Buildings	100%
6	Areas 20-24: Headworks, SAFE Box, Coarse/Fine Screens, Odor Control, Flow Equalization	100%
7	Areas 31-34: Treatment Area, BNR Basins, MBR System, RO Feed Tank, R.W.P.S.	100%
8	Areas 50-53: RO/UV Building, RO System, UV/AOP System, RO/UV Electrical Room	100%
9	Areas 60-65: Calcite Contactor, Product Water Storage Tank, IPR/Outfall Pump Station/Disinfection Facilities	100%
10	Areas 70-73: Sludge Holding Tank, SAFE Settle Tank, Dewatering Facility, SAFE Filter	100%
11	Areas 80-81: Electrical Building Structure	100%

Bid Item	Description	Percent Eligibility
12	Area 90: Chemical Facility	100%
13	Area 95: Operations Building	100%
14	Area 96: Maintenance Building and Laboratory	100%
15	Electrical and Instrumentation	100%
16	Amendments/Change Orders	100%

Note:

- Bid Items 2-16 are 100% eligible for reimbursement but different eligibility percentages may appear on Form 259 for SRF/WIFIA cost share.
- Bid item 16 will be invoiced via change orders and must be reviewed/approved by the Division prior to reimbursement.

The eligibility determinations and conditions of approval for Phase 2 identified below are based on the review of:

- **Stamped and Signed Plans & Specs for the Project received August 6, 2021, dated June 2020 (Volume 1) and May 2020 (Volumes 2 and 3);**
- **Addenda Nos. 1, 2, 3, 4, and 5, issued June 18, 2020, July 2, 2020, July 9, 2020, July 22, 2020, and August 5, 2020, respectively;**

Table 3B: Eligibility Determination Phase 2: Conveyance Facilities

<u>Bid Item</u>	<u>Description</u>	<u>Percent Eligibility</u>
<u>1</u>	<u>General Conditions, Mobilization, Demobilization, Submittals, Work Plans, Permits, Special Inspection, SWPPP Prep and Implementation</u>	<u>100%</u>
<u>2</u>	<u>Traffic Control, Outreach, Signage, and Additional Signage Allowance</u>	<u>100%</u>
<u>3</u>	<u>Excavation Safety Measures and Temporary Facilities Management</u>	<u>100%</u>
<u>4</u>	<u>Landscaping, Surface Feature Restoration and Replacement</u>	<u>100%</u>
<u>5</u>	<u>Existing Utility Location Verification and Replacement</u>	<u>100%</u>
<u>6</u>	<u>Pump Station A and Appurtenances</u>	<u>100%</u>
<u>7</u>	<u>Pump Station B and Appurtenances</u>	<u>100%</u>
<u>8</u>	<u>Utility Bridge Crossing Morro Creek</u>	<u>100%</u>
<u>9</u>	<u>Trenchless Installations</u>	<u>100%</u>
<u>10</u>	<u>Fiber Optic and Tracer Wire Installation</u>	<u>100%</u>
<u>11</u>	<u>Brine Pipeline Installation</u>	<u>100%</u>
<u>12</u>	<u>IPR Pipeline Installation</u>	<u>100%</u>
<u>13</u>	<u>FM1 And FM2 Pipelines from Pump Station A</u>	<u>100%</u>
<u>14</u>	<u>FM1 And FM2 Pipelines from Pump Station B</u>	<u>100%</u>

Eligibility Determination Conditions of Approval

1. 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.
2. Earthquake insurance and "Act of God" insurance are ineligible for funding.
3. The cost of local permits and licenses other than those issued by the Recipient are eligible for CWSRF financing.
4. The approved change order contingency may not be increased above the approved contingency shown in Table 2. Any unclaimed construction or allowance costs may also be used towards construction change orders. The change order approval may 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.
5. Review of the P&S by the Division is conducted to determine eligibility and administrative compliance with the Policy. Issuance of the FBA does not relieve the Recipient and the design engineer of their legal liability for the adequacy of the design.

3 – PROJECT COMPLETION

Project Completion Report

The Project completion report shall contain the following:

1. A description of the final constructed Project.
2. A description of the water quality problem the Project sought to address.
3. A discussion of the Project's likelihood of successfully addressing that water quality problem in the future, and
4. Summarize compliance with environmental conditions, if applicable.

Project Completion Reporting

1. The Recipient must notify the appropriate Regional Water Board and the Division that its Project was completed by submitting a Project Completion Report to the Division with a copy to the Regional Water Board. The Project Completion Report must be submitted on or before the due date established per section XIII(B)(2) of the CWSRF Policy.
2. The State Water Board expects the Recipient to prepare and send a timely and complete report. The State Water Board may avail itself of any legal means to obtain this report. (See Water Code §13267.)

Annual Reporting for Water Recycling Projects

The Water Recycling Funding Program requires submittal of an Annual Progress Report for a period of five years following completion of construction. The due date of the report is the 28th day of February following the end of each calendar year after completion of construction. At minimum, the reports should cover the following topics:

1. Restate the original objective/goal of the Project.
2. Provide the total monthly and annual recycled water deliveries, and a list of recycled water users and their type of use for the approved Project by calendar year. Please present data in a table showing

users vs. month. If the recycled water deliveries are supplemented with potable or fresh water by the Recipient (as opposed to the user), provide the monthly and total amounts.

3. Describe Project operation including problems encountered and any physical or operational modifications made to the Project during the year or proposed for the coming year. Describe any particular successes or problems experienced by the users.
4. Provide operation and maintenance costs of the Project for the past year. Any other cost allocated to the recycled water system should also be reported.
5. Provide the water rate structure and total revenue received during the year. For comparison purposes, include the price the users would have paid for potable or fresh water.
6. Review the progress of any activities required in the special conditions set forth in Exhibit D of the financing agreement and, if appropriate, the progress toward adding users to the recycled water system to use the remaining system capacity.

EXHIBIT B – FUNDING TERMS

B.1. FUNDING AMOUNTS AND DISBURSEMENTS

B.1.1 Funding Contingency and Other Sources.

(a) If this Agreement's funding for any fiscal year expires due to reversion or is reduced, substantially delayed, or deleted by the Budget Act, by Executive Order, or by order or action of the Department of Finance, the State Water Board has the option to either cancel this Agreement with no liability accruing to the State Water Board or offer an amendment to the Recipient to reflect the reduced amount.

(b) If funding for Project Costs is made available to the Recipient from sources other than this Agreement, the Recipient must notify the Division. The Recipient may retain such funding up to an amount which equals the Recipient's share of Project Costs. To the extent allowed by requirements of other funding sources, excess funding must be remitted to the State Water Board to be applied to Installment Payments due hereunder, if any.

B.1.2 Estimated Reasonable Cost.

The estimated reasonable cost of the total Project, including associated planning and design costs is ~~one hundred thirty-eight million six hundred seventy-nine thousand nine hundred seventy-four~~ **one hundred sixty six million nine hundred fourteen thousand two hundred thirty** dollars and no cents (~~\$138,679,974.00~~ **\$166,914,230.00**).

B.1.3 Project Funding Amount.

Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds not to exceed the amount of the Project Funding Amount set forth on the Cover Page of this Agreement.

B.1.4 Grant Component.

(a) Contingent on the Recipient's performance of its obligations under this Agreement, the State Water Board will make a grant of not to exceed the amount of the Grant Component set forth on the Cover Page of this Agreement.

(b) Upon Completion of Construction, the State Water Board will prepare an alternate payment schedule reflecting this this grant.

B. 1.5 Budget Costs.

Upon written request by the Recipient, the Division may adjust the line items of the Approved Final Project Budget table at the time of Division's Final Budget Approval for Phases ~~2 and 3~~ **and 4**. Upon written request by the Recipient, the Division may also adjust the line items of the Approved Final Project Budget table as well as the detailed budget at the time of Recipient's submittal of its final claim. Any line item adjustments to the Approved Final Project Budget table that are due to a change in scope of work will require an Agreement amendment. The sum of adjusted line items in both the Approved Final Project Budget table and the detailed budget must not exceed the Project Funding Amount. The Division may also propose budget adjustments.

(c) Under no circumstances may the sum of line items in the budget approved through the Final Budget Approval process exceed the Project Funding Amount. Any increase in the Project Funding Amount will require an Agreement amendment.

B.1.6 Contingent Disbursement.

- (a) The State Water Board's disbursement of funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement.
- (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 entity. If any disbursements due the Recipient under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the State Water Board that such disbursement will be made to the Recipient when sufficient funds do become available, but this intention is not binding.
- (c) Construction costs and disbursements for Phases 2 and 3 and 4 are not available until after the Division has approved the final budget form submitted by the Recipient and issued a Final Budget Approval for Phases 2 and 3 and 4 of this Project.
- (d) No costs incurred prior to the Eligible Work Start Date are eligible for reimbursement.
- (e) Construction costs incurred prior to the Eligible Construction Start Date are not eligible for reimbursement.
- (f) Failure to proceed according to the timelines set forth in this Agreement may require the Recipient to repay to the State Water Board all disbursed Project Funds.
- (g) The Recipient agrees to ensure that its final Disbursement Request is received by the Division no later than the Final Disbursement Request Date, unless prior approval has been granted by the Division. If the final Disbursement Request is not received timely, the undisbursed balance of this Agreement will be deobligated.
- (h) The Recipient is not entitled to interest earned on undisbursed funds.

B.1.7 Disbursement Procedure.

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 by both parties, the Recipient may request immediate disbursement of any eligible incurred planning and design allowance costs through submission to the State Water Board of the Disbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed.
2. The Recipient must submit a disbursement request for costs incurred prior to the date this Agreement is executed by the State Water Board no later than ninety (90) days after this Agreement is executed by the State Water Board. Late disbursement requests may not be honored.
3. The Recipient may request disbursement of eligible construction and equipment costs consistent with budget amounts approved by the Division in the Final Budget Approval.
4. Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Disbursement Request Form 260 and Form 261, or any amendment thereto, duly

completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of progress reports due under Exhibit A.

5. The Recipient must 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. Supporting documentation (e.g., receipts) must be submitted with each Disbursement Request. The amount requested for administration costs must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Disbursement of Project Funds will be made only after receipt of a complete, adequately supported, properly documented, and accurately addressed Disbursement Request. Upon request by the Division, supporting documents for professional and administrative services must include the employees' names, classifications, labor rates, hours worked, and descriptions of the tasks performed. Disbursement Requests submitted without supporting documents may be wholly or partially withheld at the discretion of the Division.
6. The Recipient must spend Project Funds within 30 days of receipt. If the Recipient earns interest earned on Project Funds, it must report that interest immediately to the State Water Board. The State Water Board may deduct earned interest from future disbursements.
7. The Recipient shall not request a disbursement unless that Project Cost is allowable, reasonable, and allocable.
8. 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.
9. No work or travel outside the State of California is permitted under this Agreement unless the Division provides prior written authorization. Failure to comply with this restriction may result in termination this Agreement, pursuant to Exhibit C. Any reimbursement for necessary travel and per diem shall be at rates not to exceed those set by the California Department of Human Resources at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>, as of the date costs are incurred by the Recipient.

B.1.8 Withholding of Disbursements.

Notwithstanding any other provision of this Agreement, the State Water Board may withhold all or any portion of the Project Funds upon the occurrence of any of the following events:

- (a) The Recipient's failure to maintain reasonable progress on the Project as determined by the Division;
- (b) Placement on the ballot or passage of an initiative or referendum to repeal or reduce the Recipient's taxes, assessments, fees, or charges levied for operation of the System or payment of debt service on System Obligations;
- (c) Commencement of litigation or a judicial or administrative proceeding related to the Project, System, or Revenues that the State Water Board determines may impair the timely satisfaction of Recipient's obligations under this Agreement;
- (d) Any investigation by the District Attorney, California State Auditor, Bureau of State Audits, United States Environmental Protection Agency's Office of Inspector General, the Internal Revenue Service, Securities and Exchange Commission, a grand jury, or any other state or federal agency, relating to the Recipient's financial management, accounting procedures, or internal fiscal controls;
- (e) A material adverse change in the condition of the Recipient, the Revenues, or the System, that the Division reasonably determines would materially impair the Recipient's ability to

- satisfy its obligations under this Agreement, or any other event that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement;
- (f) The Recipient's material violation of, or threat to materially violate, any term of this Agreement;
 - (g) Suspicion of fraud, forgery, embezzlement, theft, or any other misuse of public funds by the Recipient or its employees, or by its contractors or agents regarding the Project or the System;
 - (h) An event requiring Notice as set forth in Exhibit C;
 - (i) An Event of Default or an event that the Division determines may become an Event of Default.

B.1.9 Fraud and Misuse of Public Funds.

All requests for disbursement submitted must be accurate and signed by the Recipient's Authorized Representative under penalty of perjury. All costs submitted pursuant to this Agreement must only be for the work or tasks set forth in this Agreement. The Recipient must not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any eligible costs for which the Recipient is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other eligible cost is improper and will not be compensated. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements and, notwithstanding any other section in this Agreement, the termination of this Agreement requiring the repayment of all Project Funds disbursed hereunder. Additionally, the Deputy Director of the Division may request an audit and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability.

B.2 RECIPIENT'S PAYMENT OBLIGATION, PLEDGE, AND RESERVE

B.2.1 Project Costs.

The Recipient must pay any and all costs connected with the Project including, without limitation, any and all Project Costs and Additional Payments. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient must 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.

B.2.2 Estimated Principal Payment Due.

The estimated amount of principal that will be due to the State Water Board from the Recipient under this Agreement is ~~sixty-one million six hundred four thousand six hundred thirty-eight dollars and no cents (\$61,604,638.00)~~ **eighty-two million seven hundred seventy-six thousand six hundred thirty-eight dollars and no cents (\$82,776,638.00)**.

B.2.3 Interest Rate and In-Lieu of Interest Charges.

- (a) The Recipient agrees to make all Installment Payments according to the schedule in Exhibit E, and as otherwise set forth herein, at an interest rate of nine tenths (0.90%) per annum.
- (b) Interest will accrue beginning with each disbursement.
- (c) In lieu of, and not to exceed, interest otherwise due under this Agreement, the Recipient agrees to pay the following charge(s), as further set forth in Exhibit E:
 - an Administrative Service Charge
 - a Small Community Grant Fund Charge

B.2.4 [Reserved.]

B.2.5 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 the 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 must not discontinue or suspend any Installment Payments or other payments required to be made by it hereunder when due, whether or not the Project, or any related 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.

B.2.6 Payment Timing.

(a) Beginning one year after Completion of Construction, the Recipient must submit an annual Installment Payment of the principal of the Project Funds, together with all interest accruing thereon. The Recipient must make Installment Payments fully amortizing the total principal of the Project by the Final Payment Date. Installment Payments are based on a standard fully amortized assistance amount with equal annual payments.

(b) The remaining balance is the previous balance, plus the disbursements, plus the accrued interest on both, plus any Charge In Lieu of Interest, less the Installment Payment. Payment calculations will be made beginning one (1) year after Completion of Construction. Exhibit E is a payment schedule based on the provisions of this Exhibit and an estimated disbursement schedule. Actual payments will be based on actual disbursements.

(c) Upon Completion of Construction and submission of necessary reports by the Recipient, the Division will prepare an appropriate payment schedule and supply the same to the Recipient. The Division may amend this schedule as necessary to accurately reflect amounts due under this Agreement. The Division will prepare any necessary amendments to the payment schedule and send them to the Recipient. The Recipient must 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 by 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 related costs. For purposes of penalty assessment, payment will be deemed to have been made if payment 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 payment due date.

(d) The Recipient 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 must 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, on parity with all Parity Obligations. 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.

(e) Each Installment Payment must be paid in lawful money of the United States of America by check or other acceptable form of payment set forth at www.waterboards.ca.gov/make_a_payment. The Recipient must pay Installment Payments and Additional Payments from Net Revenues and/or other amounts legally available to the Recipient therefor.

B.2.7 Pledged Revenues.

B.2.7.1 Establishment of Wastewater Fund and Accounts Therein.

In order to carry out its System Obligations, the Recipient covenants that it shall establish and maintain or shall have established and maintained the Wastewater Fund. As provided below, within the Wastewater Fund, the Recipient has established the Revenue Account and certain other funds related to this Obligation, the Senior Obligations and the Subordinate Obligations. All Revenues received shall be deposited when and as received in trust in the Wastewater Fund. As required in this Exhibit, the Recipient must establish and maintain a Senior Obligation Payment Account and a Reserve Account related to this Obligation in the Wastewater Fund.

B.2.7.2 Pledge of Net Revenues, Wastewater Fund, SRF Payment Account and Reserve Account.

(a) As security for this Obligation, and concurrently with the issuance and delivery of this Agreement, the Recipient hereby irrevocably grants, pledges and assigns to the State Water Board, a lien on and security interest in the Pledged Collateral. Such lien and security interest hereby granted shall constitute a first and prior lien and security interest in the Pledged Collateral and such lien and security interest shall attach, be perfected and be valid and binding immediately without the need for any physical delivery, recordation, filing, or further act. All organizational, regulatory or other necessary action on the part of the Recipient and the State Water Board with respect to the foregoing has been duly and validly taken. The Pledged Collateral shall not be used for any other purpose while any of the Installment Payments remain unpaid, except that out of the Revenues there may be apportioned such sums, for such purposes, as are expressly permitted by this Agreement and the Senior Obligation Documents.

(b) Priority of Liens. The lien on and security interest in the Pledged Collateral granted hereunder is in full force and effect and is not subordinate or junior to any other lien on or security interest in the Pledged Collateral. The lien on and security interest in the Net Revenues and the collateral described in clause (d) of the definition of "Pledged Collateral" granted hereby is on a parity with the pledge and lien which secures the payment of the Senior Obligations. The lien on and security interest in the SRF ISA Payment Account and all proceeds deposited therein from time to time and the SRF ISA Reserve Account and all proceeds deposited therein from time to time is not subject to any other lien or security interest. In addition, with respect to the lien on and security interest in amounts in the SRF ISA Payment Account and the SRF ISA Reserve Account, such lien and security interest is solely for the benefit of the State Water Board (and its assignees) and the holders of other Senior Obligations shall have no lien on or claim to funds in the SRF ISA Payment Account or the SRF ISA Reserve Account following deposit therein. The State Water Board has no lien or claim on funds in the WIFIA Payment Account and the WIFIA Reserve Account.

B.2.7.3 Application and Purpose of Net Revenues and the Wastewater Fund.

(a) Establishment of Funds and Accounts. The Recipient has previously established the Wastewater Fund on its books of account and records, which the Recipient shall continue to hold and maintain for the purposes and uses set forth herein. Within the Wastewater Fund the Recipient has established the Revenue Account, the WIFIA Payment Account, the WIFIA Reserve Account, and a Senior Obligation Payment Account for the SRF Planning Loan. Within the Wastewater Fund, the Recipient shall establish as provided herein a Senior Obligation Payment Account entitled the "SRF ISA Payment Account" and the Senior Obligation Reserve Account, entitled "SRF ISA Reserve Account" herein.

(b) SRF ISA Payment Account. The Recipient hereby establishes for the purposes of making the Installment Payments, the SRF ISA Payment Account within the Wastewater Fund. On or before each Installment Payment Date, moneys in the SRF Payment ISA Account shall be applied to pay the Installment Payment due on each Installment Payment date.

(c) SRF ISA Reserve Account. The Recipient hereby establishes for the purposes of ensuring the timely payment of the Installment Payments in the event of an insufficiency in Revenues, the SRF ISA Reserve Account within the Wastewater Fund, which will be funded from time to time as provided herein and in this Agreement. If on any Installment Payment Date amounts in the SRF ISA Payment Account are insufficient to pay the Installment Payment due on such Installment Payment Date, amounts in the SRF ISA Reserve Account shall be transferred to the SRF ISA Payment Account in the amount of such insufficiency.

The SRF ISA Reserve Account shall be funded at the times and in the amounts described in Exhibit B.2.9 hereto.

(d) Deposit of Revenues into Revenue Account; Flow of Funds. Immediately upon receipt thereof by the Recipient, the Recipient shall deposit all Revenues into the Revenue Account. The Recipient shall apply amounts in the Wastewater Fund, and the Revenue Account, the Senior Obligation Payment Accounts and the Senior Obligation Reserve Accounts only as permitted by this Agreement and the WIFIA Wastewater Agreement. Amounts on deposit in the Revenue Account shall be applied by the Recipient on the first Business Day of each month to pay the following amounts in the following order of priority:

(1) first, to pay Operation and Maintenance Costs in amounts reasonably projected to be necessary during the applicable month for the payment of Operation and Maintenance Costs; provided, that for Operation and Maintenance Costs comprising an allocable share of operation and maintenance costs of the Cayucos Joint Powers Agreement Wastewater Treatment Plant pursuant to the Cayucos Joint Powers Agreement paid by the Recipient less frequently than monthly, the amount of any payment accruing during the applicable month shall assume equal monthly accruals over the number of months in the Cayucos Joint Powers Agreement Payment Period, plus an amount equal to any transfer shortfalls that remain unfunded from prior months;

(2) second, on a prorated basis, into each Senior Obligation Payment Account (including the SRF ISA Payment Account), the amount of interest (or interest component of an installment payment or capital lease payment) and principal (or principal component of an installment payment or capital lease payment) accruing during the applicable month, assuming equal monthly accruals over the applicable number of months in the applicable Senior Obligation Payment Period, plus an amount equal to any transfer shortfalls that remain unfunded from prior months; provided, however, in the last month of a Senior Obligation Payment Period, the amount transferred shall be that amount needed to pay the amount due on the applicable Senior Obligation interest payment date or Senior Obligation principal payment date, and further provided, with respect to a Senior Obligation, no transfer with respect to interest on such Senior Obligation shall be made to the extent amounts have been pre-funded and are otherwise available to make the applicable interest payment;

(3) third, on a prorated basis, into the respective Senior Obligation Reserve Accounts (including the SRF ISA Reserve Account) as required by the Senior Obligation Documents, in an amount equal to the amount required to be deposited therein to restore the balance in each Senior Obligation Reserve Account to the applicable reserve requirement pursuant to the terms of the Senior Obligation Documents;

(4) fourth, any other payments required to comply with the provisions of the Senior Obligation Documents (including this Agreement); and

(5) fifth, to the respective Subordinate Obligation Payment Accounts as required by the applicable Subordinate Obligation Documents to pay interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an

installment payment or capital lease payment comprising), the Subordinate Obligations during the applicable month; and

(6) sixth, to the respective Subordinate Obligation Reserve Accounts as required by the Subordinate Obligation Documents, in an amount equal to the amount required to be deposited therein to restore the balance in each Subordinate Obligation Reserve Account to the applicable reserve requirement pursuant to the terms of the Subordinate Obligation Documents; and

(7) seventh, to a general reserve account, to be used for any other lawful purposes of the System.

(e) Deposits in the Event of Deficiency. After the Recipient has made any required payments described in clauses (A) through (D) above, any remaining Net Revenues in the Wastewater Fund shall be available for any lawful purpose of the Recipient relating to the System; provided, however, if there shall be a deficiency at any time in Revenues required to make the deposits required pursuant to clauses (A), (B), (C) or (D) above, the Recipient shall make the required deposits from available amounts in the Subordinate Obligation Payment Accounts or the Subordinate Obligation Reserve Accounts or the general reserve account, in reverse order, with transfers going first to fund requirements of clause (A), second to fund requirements of clause (B), third to fund requirements of clause (C) and fourth to fund requirements of clause (D).

(f) Application of Wastewater Fund Generally. All Revenues received shall be deposited into the Revenue Account when and as received and applied only as set forth above. The Recipient shall not permit Revenues or other assets of the System, or any funds in the Fund or any other system account (including those listed above) held by or on behalf of the Recipient, to be paid or transferred or otherwise applied for purposes other than ownership, operation or maintenance of, or capital improvements to, the System.

(g) Application of Senior Obligation Payment Accounts. Amounts on deposit in each Senior Obligation Payment Account (including the WIFIA Payment Account and the SRF ISA Payment Account) shall be applied only to the payment of interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Senior Obligation. Amounts on deposit in any Senior Obligation Payment Account (including the WIFIA Payment Account and the SRF ISA Payment Account) are not available for deposits to, and may not be transferred to, any other Senior Obligation Payment Account.

(h) Application of Senior Obligation Reserve Accounts. Amounts on deposit in each Senior Obligation Reserve Account (including the WIFIA Reserve Account and the SRF ISA Reserve Account) shall be applied only as set forth in the following sentence. If on any Senior Obligation interest payment date or Senior Obligation principal payment date amounts in the related applicable Senior Obligation Payment Account are insufficient to pay interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Senior Obligation due on such Senior Obligation interest payment date or Senior Obligation principal payment date, as applicable, amounts in the applicable Senior Obligation Reserve Account shall be transferred to the applicable Senior Obligation Payment Account in the amount of such insufficiency. Amounts on deposit in any Senior Obligation Reserve Account (including the SRF ISA Reserve Account) are not available for deposits to, and may not be transferred to, any other Senior Obligation Payment Account or any other Senior Obligation Reserve Account.

(i) Application of Subordinate Obligation Payment Accounts. Amounts on deposit in each Subordinate Obligation Payment Account shall be applied to the payment of interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Subordinate Obligation, but only as and to the extent due and payable. Amounts on deposit in any Subordinate Obligation Payment Account may not be transferred out of such Subordinate Obligation Payment Account to pay any such amounts more than five (5) days prior to the date any such payment is due. Amounts on deposit in any Subordinate Obligation Payment Account are also available to be applied as set forth in Exhibit B.2.7.3(e) of this Agreement.

(j) Application of Subordinate Obligation Reserve Account. Amounts on deposit in each Subordinate Obligation Reserve Account shall be applied only as set forth in the following two sentences. If on any date on which interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Subordinate Obligation, amounts in the related applicable Subordinate Obligation Payment Account are insufficient to pay interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Senior Obligation due on such date, amounts in the applicable Subordinate Obligation Reserve Account shall be transferred to the applicable Subordinate Obligation Payment Account in the amount of such insufficiency. Amounts on deposit in any Subordinate Obligation Reserve Account are also available to be applied as set forth in Exhibit B.2.7.3(e) of this Agreement.

(k) Application of General Reserve Account. Amounts on deposit in the general reserve account may be applied to any other lawful purposes of the System. Amounts on deposit in the general reserve account are available to be applied as set forth in Exhibit B.2.7.3(e) of this Agreement.

B.2.7.4 No Preference or Priority.

Payment of the Installment Payments and the principal of and interest on any Senior Obligations shall be made without preference or priority. If the amount of Net Revenues on deposit in the Wastewater Fund are at any time insufficient to enable the Recipient to pay when due the Installment Payments and the principal of and interest on any Senior Obligations, such payments will be made on a pro rata basis.

B.2.7.5 Other Uses of Net Revenues Permitted.

The Recipient shall not use Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of the Senior Obligation Documents. The Recipient shall manage, conserve and apply the Net Revenues on deposit in the Wastewater Fund in such a manner that all deposits required to be made at the times and in the amounts so required.

B.2.7.6 Budget and Appropriation of Installment Payments.

The Recipient shall adopt all necessary budgets and make all necessary appropriations of the Installment Payments and Senior Obligations from the Net Revenues. If any Installment Payment requires the adoption by the Recipient of a supplemental budget or appropriation, the Recipient shall promptly adopt the same. The covenants on the part of the Recipient contained in this subsection are non-cancellable obligations and duties imposed by law, and it is the duty of each and every public official of the Recipient to take such actions and do such things as are required by law in the performance of the official duty of such officials to enable the Recipient to carry out and perform the covenants and agreements in this subsection.

B.2.8 No Prepayment.

The Recipient may not prepay any portion of the principal and interest due under this Agreement without the written consent of the Deputy Director of the Division.

B.2.9 Reserve Account.

Prior to Completion of Construction, the Recipient must establish a restricted Reserve Account, held in its Wastewater Fund, equal to one year's Debt Service on this Obligation. The Recipient must maintain the Reserve Account throughout the term of this Agreement. The Reserve Account is subject to lien and pledged as security for this Obligation, and its use is restricted to payment of this Obligation during the term of this Agreement.

B.3 RATES, FEES AND CHARGES.

(a) The Recipient must, to the extent permitted by law, fix, prescribe and collect rates, fees and charges
Exhibit B

for the System during each Fiscal Year which are reasonable, fair, and nondiscriminatory and which will be sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs, and must ensure that Net Revenues are equal to the sum of (i) at least 120% of the Maximum Annual Debt Service with respect to all outstanding System Obligations senior to and on parity with the Obligation and (ii) at least 110% of the Maximum Annual Debt Service with respect to all outstanding System Obligations subordinate to the Obligation, so long as System Obligations other than this Obligation are outstanding. Upon defeasance of all System Obligations other than this Obligation, this ratio must be at least 120%, except where System Obligations are defeased pursuant to refunding obligations.

(b) 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.

(c) Upon consideration of a voter initiative to reduce Revenues, the Recipient must make a finding regarding the effect of such a reduction on the Recipient's ability to satisfy the rate covenant set forth in this Section. The Recipient must make its findings available to the public. The Recipient's Authorized Representative must request, if necessary, the authorization of the Recipient's decision-maker or decision-making body to file litigation to challenge any such initiative that it finds will render it unable to satisfy the rate covenant set forth in this Agreement and its obligation to operate and maintain the Project for its Useful Life. The Recipient must diligently pursue and bear any and all costs related to such challenge. The Recipient must notify and regularly update the State Water Board regarding the status of any such challenge.

B.4 ADDITIONAL DEBT.

(a) The Recipient's future debt that is secured by Revenues pledged herein may not be senior to this Obligation, except where the new senior obligation refunds or refinances a senior obligation with the same lien position as the existing senior obligation, the new senior obligation has the same or earlier repayment term as the refunded senior debt, the new senior debt service is the same or lower than the existing debt service, and the new senior debt will not diminish the Recipient's ability to satisfy its SRF obligation(s).

(b) The Recipient may issue additional parity or subordinate debt only if all of the following conditions are met:

- i. Net Revenues in the most recent Fiscal Year, excluding transfers from a rate stabilization fund, if any, meet the ratio for rate covenants set forth in this Exhibit with respect to any outstanding and proposed additional obligations;
- ii. The Recipient is in compliance with any reserve account requirement of this Obligation;
- iii. Provisions for additional debt in Senior Obligation Documents have been met.

B.5 NO LIENS.

The Recipient must not make any pledge of or place any lien on the Project, System, or Revenues except as otherwise provided or permitted by this Agreement.

EXHIBIT C – GENERAL & PROGRAMMATIC TERMS & CONDITIONS

C.1 REPRESENTATIONS & WARRANTIES.

The Recipient represents, warrants, and commits to the following as of the Eligible Work Start Date and continuing thereafter for the term of this Agreement.

C.1.1 Application and General Recipient Commitments.

The Recipient has not made any untrue statement of a material fact in its application for this financial assistance, or omitted to state in its application a material fact that makes the statements in its application not misleading.

The Recipient agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents.

The Recipient agrees to fulfill all assurances, declarations, representations, and commitments in its application, accompanying documents, and communications filed in support of its request for funding under this Agreement.

C.1.2 Authorization and Validity.

The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized by the Recipient. Upon execution by both parties, this Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.

C.1.3 No Violations.

The execution, delivery, and performance by Recipient of this Agreement, including all incorporated documents, do not violate any provision of any law or regulation in effect as of the date set forth on the first page hereof, or result in any breach or default under any contract, obligation, indenture, or other instrument to which Recipient is a party or by which Recipient is bound as of the date set forth on the Cover Page.

C.1.4 No Litigation.

There are, as of the date of execution of this Agreement by the Recipient, no pending or, to Recipient's knowledge, threatened actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency which materially affect the financial condition or operations of the Recipient, the System, the Revenues, and/or the Project.

There are no proceedings, actions, or offers by a public entity to acquire by purchase or the power of eminent domain the System or any of the real or personal property related to or necessary for the Project.

C.1.5 Property Rights.

The Recipient owns or has sufficient property rights in the Project property for the longer of the Useful Life or the term of this Agreement, either in fee simple or for a term of years that is not subject to third-party revocation during the Useful Life of the Project.

C.1.6 Solvency and Insurance.

None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of Recipient. The Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. The Recipient is able to pay its debts as they become due. The Recipient maintains sufficient insurance coverage considering the scope of this Agreement, including, for example but not necessarily limited to, general liability, automobile liability, workers compensation and employer liability, professional liability.

C.1.7 Legal Status and Eligibility.

The Recipient is duly organized and existing and in good standing under the laws of the State of California. Recipient must at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. The Recipient acknowledges that changes to its legal or financial status may affect its eligibility for funding under this Agreement and commits to maintaining its eligibility. Within the preceding ten years, the Recipient has not failed to demonstrate compliance with state or federal audit disallowances.

C.1.8 Financial Statements and Continuing Disclosure.

The financial statements of Recipient previously delivered to the State Water Board as of the date(s) set forth in such financial statements: (a) are materially complete and correct; (b) present fairly the financial condition of the Recipient; and (c) have been prepared in accordance with GAAP. Since the date(s) of such financial statements, there has been no material adverse change in the financial condition of the Recipient, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged, pledged or encumbered, except as previously disclosed in writing by Recipient and approved in writing by the State Water Board.

The Recipient is current in its continuing disclosure obligations associated with its material debt, if any.

C.1.9 System Obligations

The Recipient has no System Obligations other than those defined in this Agreement.

C.1.10 No Other Material Debt.

The Recipient has no Material Obligations other than System Obligations

C.1.11 Compliance with State Water Board Funding Agreements.

The Recipient represents that it is in compliance with all State Water Board funding agreements to which it is a party.

C.2 DEFAULTS AND REMEDIES

In addition to any other remedy set forth in this Agreement, the following remedies are available under this Agreement.

C.2.1 Return of Funds; Acceleration; and Additional Payments.

Notwithstanding any other provision of this Agreement, if the Division determines that an Event of Default has occurred, the Recipient may be required, upon demand, immediately to do each of the following:

- i. return to the State Water Board any grant or principal forgiveness amounts received pursuant to this Agreement;
- ii. subject to the requirements of the Senior Obligation Documents, accelerate the payment of any principal owed under this Agreement, all of which shall be immediately due and payable;
- iii. pay interest at the highest legal rate on all of the foregoing; and
- iv. pay any Additional Payments.

C.2.2 [Reserved.]

C.2.3 Judicial remedies.

Whenever the State Water Board determines that an Event of Default shall have occurred, the State Water Board may enforce its rights under this Agreement by any judicial proceeding, whether at law or in equity. Without limiting the generality of the foregoing, the State Water Board may:

- i. by suit in equity, require the Recipient to account for amounts relating to this Agreement as if the Recipient were the trustee of an express trust;
- ii. by mandamus or other proceeding, compel the performance by the Recipient and any of its officers, agents, and employees of any duty under the law or of any obligation or covenant under this Agreement, including but not limited to the imposition and collection of rates for the services of the System sufficient to meet all requirements of this Agreement; and
- iii. take whatever action at law or in equity as may appear necessary or desirable to the State Water Board to collect the Installment Payments then due or thereafter to become due, or to enforce performance of any obligation or covenant of the Recipient under this Agreement.

C.2.4 Termination.

Upon an Event of Default, the State Water Board may terminate this Agreement. Interest shall accrue on all amounts due at the highest legal rate of interest from the date that the State Water Board delivers notice of termination to the Recipient.

C.2.5 Damages for Breach of Tax-Exempt Status.

In the event that any breach of any of the provisions of this Agreement by the Recipient results in the loss of tax-exempt status for any bonds of the State or any subdivision or agency thereof, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government by reason of any arbitrage profits, the Recipient must immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

C.2.6 Damages for Breach of Federal Conditions.

In the event that any breach of any of the provisions of this Agreement by the Recipient results in the failure of Project Funds to be used pursuant to the provisions of this Agreement, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government, the Recipient must immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

C.2.7 Remedies and Limitations.

None of the remedies available to the State Water Board shall be exclusive of any other remedy, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. The State Water Board may exercise any remedy, now or hereafter existing, without exhausting and without regard to any other remedy.

Any claim of the Recipient is limited to the rights and remedies provided to the Recipient under this Agreement and is subject to the claims procedures provided to the Recipient under this Agreement.

C.2.8 Non-Waiver.

Nothing in this Agreement shall affect or impair the Recipient's Obligation to pay Installment Payments as provided herein or shall affect or impair the right of the State Water Board to bring suit to enforce such payment. No delay or omission of the State Water Board in the exercise of any right arising upon an Event of Default shall impair any such right or be construed to be a waiver of any such Event of Default. The State Water Board may exercise from time to time and as often as shall be deemed expedient by the State Water Board, any remedy or right provided by law or pursuant to this Agreement.

C.2.9 Status Quo.

If any action to enforce any right or exercise any remedy shall be brought and either discontinued or determined adversely to the State Water Board, then the State Water Board shall be restored to its former position, rights and remedies as if no such action had been brought.

C.3 STANDARD CONDITIONS

C.3.1 Access, Inspection, and Public Records.

The Recipient must ensure 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, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of the Agreement. The Recipient acknowledges that, except for a subset of information regarding archaeological records, the Project records and locations are public records, including but not limited to all of the submissions accompanying the application, all of the documents incorporated into this Agreement by reference, and all reports, disbursement requests, and supporting documentation submitted hereunder.

C.3.2 Accounting and Auditing Standards; Financial Management Systems; Records Retention.

(a) The Recipient must maintain project accounts according to GAAP as issued by the Governmental Accounting Standards Board (GASB) or its successor. The Recipient must maintain GAAP-compliant project accounts, including GAAP requirements relating to the reporting of infrastructure assets.

(b) The Recipient must 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 is bound by, and must comply with, the provisions and requirements of the federal Single Audit Act of 1984 and 2 CFR Part 200, subpart F, and updates or revisions, thereto.

(c) Without limitation of the requirement to maintain Project accounts in accordance with GAAP, the Recipient must:

- i. Establish an official file for the Project which adequately documents all significant actions relative to the Project;
- ii. 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;
- iii. 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;
- iv. Establish an accounting system which will accurately depict final total costs of the Project, including both direct and Indirect Costs;
 - v. 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
 - vi. 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 Costs from Force Account are not eligible for funding.

(d) The Recipient must maintain separate books, records and other material relative to the Project. The Recipient must also retain such books, records, and other material for itself and for each contractor or subcontractor who performed or performs work on this project for a minimum of thirty-six (36) years after Completion of Construction. The Recipient must require that such books, records, and other material are subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the California State Auditor, the Bureau of State Audits, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned. The Recipient must allow and must require its contractors to 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 duty regarding audit, interviews, and records retention in any contract or subcontract related to the performance of this Agreement. The provisions of this section survive the term of this Agreement.

C.3.3 Amendment.

No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by both the Recipient and the Deputy Director or designee.

Requests for amendments must be in writing and directed to the contact listed in Section 4 and to the Division's Chief of Loans and Grants Administration Section.

C.3.4 Assignability.

This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State Water Board in the form of a formal written amendment to this Agreement.

C.3.5 Audit.

(a) The Division may call for an audit of financial information relative to the Project if the Division determines that an audit is desirable to assure program integrity or if an audit becomes necessary because of state or federal requirements. If an audit is called for, the audit must be performed by a certified public accountant independent of the Recipient and at the cost of the Recipient. The audit must be in the form required by the Division.

(b) Audit disallowances must be returned to the State Water Board.

C.3.6 Bonding.

Where contractors are used, the Recipient must 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 \$25,000.00.

C.3.7 Competitive Bidding

Recipient must adhere to any applicable state law or local ordinance for competitive bidding and applicable labor laws.

C.3.8 Compliance with Applicable Laws, Rules, and Requirements.

The Recipient must, 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, to the extent applicable, the Recipient must:

- (a) Comply with the provisions of the adopted environmental mitigation plan, if any, for the term of this Agreement;
- (b) Comply with the Policy and Guidelines; and
- (c) Comply with and require compliance with the state and federal requirements set forth elsewhere in this Agreement.

C.3.9 Computer Software.

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

C.3.10 Conflict of Interest.

The Recipient certifies that its owners, officers, directors, agents, representatives, and employees are in compliance with applicable state and federal conflict of interest laws.

C.3.11 Continuous Use of Project; No Lease, Sale, Transfer of Ownership, or Disposal of Project.

The Recipient agrees that, except as provided in this Agreement, it will not abandon, substantially discontinue use of, lease, sell, transfer ownership of, or dispose of all or a significant part or portion of the Project 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 disbursed Project Funds or all or any portion of all remaining funds covered by this Agreement together with accrued interest and any penalty assessments that may be due.

C.3.12 Data Management.

The Recipient will undertake appropriate data management activities so that Project data can be incorporated into statewide data systems.

C.3.13 Disputes.

- (a) The Recipient may appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the

State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute.

- (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 must continue with the responsibilities under this Agreement during any dispute.
- (d) This section relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.

C.3.14 Drug-Free Workplace.

The Recipient certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act (Gov. Code, §§ 8350-8357). The Recipient shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Recipient's workplace and specifying the actions to be taken against employees for violations of the prohibition. The Recipient shall establish a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the Recipient's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs, and penalties that may be imposed upon employees for drug abuse violations. The Recipient shall provide that every employee who works on the Project receives a copy of the Recipient's drug-free workplace policy statement and agrees to abide by the terms of the statement as a condition of employment on the Project.

C.3.15 Environmental Clearance.

(a) Notwithstanding any other provision, the State Water Board has no binding obligation to provide funding under this Agreement except for activities excluded from, not subject to, or exempt under the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). No work that is subject to CEQA or NEPA may proceed under this Agreement until the State Water Board has provided approval to proceed. Upon receipt and review of the Recipient's environmental documents, the State Water Board shall make the appropriate environmental findings before determining whether to approve construction or implementation funding for the Project under this Agreement. Providing approval for such construction or implementation funding is fully discretionary. The State Water Board may require changes in the scope of work or additional mitigation as a condition to providing construction or implementation funding under this Agreement. Recipient shall not perform any work subject to CEQA and/or NEPA before the State Water Board completes its environmental review and specifies any changes in scope or additional mitigation that may be required. Proceeding with work subject to CEQA and/or NEPA without approval by the State Water Board shall constitute a breach of a material provision of this Agreement.

(b) If this Project includes modification of a river or stream channel, the Recipient must fully mitigate environmental impacts resulting from the modification. The Recipient must provide documentation that the environmental impacts resulting from such modification will be fully mitigated considering all of the impacts of the modification and any mitigation, environmental enhancement, and environmental benefit resulting from the Project, and whether, on balance, any environmental enhancement or benefit equals or exceeds any negative environmental impacts of the Project.

C.3.16 Governing Law.

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

C.3.17 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 must be paid by the Recipient to the State Water Board, to the extent that they are properly allocable to costs for which the Recipient has been reimbursed by the State Water Board under this Agreement.

C.3.18 Indemnification and State Reviews.

The parties agree that review or approval of Project plans and specifications by the State Water Board is for administrative purposes only, including conformity with application and eligibility criteria, and expressly not for the purposes of design defect review or construction feasibility, 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 Toxic Substances Control Act, the Occupational Safety and Health Act, the Safe Drinking Water 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 the Project; 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, except those arising from the gross negligence or willful misconduct of the Indemnified Persons. The Recipient must also provide for the defense and indemnification of the Indemnified Persons in any contractual provision extending indemnity to the Recipient in any contract let for the performance of any work under this Agreement, and must cause the Indemnified Persons to be included within the scope of any provision for the indemnification and defense of the Recipient in any contract or subcontract. 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 survive the term of this Agreement.

C.3.19 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.

C.3.20 Integration.

This Agreement constitutes the complete and final agreement between the parties. No oral or written understanding or agreement not incorporated in this Agreement shall be binding on either party.

C.3.21 Leveraging Covenants.

(a) Notwithstanding any other provision hereof, the Recipient covenants and agrees that it will comply with the Tax Covenants set forth in Exhibit F of this Agreement.

(b) The Recipient covenants to furnish such financial, operating and other data pertaining to the Recipient as may be requested by the State Water Board to: (i) enable the State Water Board to cause the issuance of Bonds and provide for security therefor; or (ii) enable any underwriter of Bonds issued for the benefit of the State Water Board to comply with Rule 15c2-12(b)(5). The Recipient further covenants to provide the State Water Board with copies of all continuing disclosure documents or reports that are disclosed pursuant to (i) the Recipient's continuing disclosure undertaking or undertakings made in connection with any outstanding System Obligation, (ii) the terms of any outstanding System Obligation, or (iii) a voluntary disclosure of information related to an outstanding System Obligation. The Recipient must disclose such documents or reports to the State Water Board at the same time such documents or reports are submitted to any dissemination agent, trustee, nationally recognized municipal securities information repository, the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (EMMA) website or other person or entity.

C.3.22 No Discrimination.

(a) The Recipient must comply with Government Code section 11135 and the implementing regulations (Cal. Code Regs, tit. 2, § 11140 et seq.), including, but not limited to, ensuring that no person is unlawfully denied full and equal access to the benefits of, or unlawfully subjected to discrimination in the operation of, the Project or System on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation as such terms are defined under California law, for as long as the Recipient retains ownership or possession of the Project.

(b) If Project Funds are used to acquire or improve real property, the Recipient must include a covenant of nondiscrimination running with the land in the instrument effecting or recording the transfer of such real property.

(c) The Recipient must comply with the federal American with Disabilities Act of 1990 and implementing regulations as required by Government Code section 11135(b).

(d) The Recipient's obligations under this section shall survive the term of this Agreement.

(e) During the performance of this Agreement, Recipient and its contractors and subcontractors must 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, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status.

(f) The Recipient, its contractors, and subcontractors must ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

(g) The Recipient, its contractors, and subcontractors must comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subds. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

(h) The Recipient, its contractors, and subcontractors must comply with all applicable federal civil rights regulations, including statutory and national policy requirements. (2 CFR § 200.300). This includes, to the

greatest extent practicable and to the extent permitted by law, the requirement to respect and protect the freedom of persons and organizations to engage in political and religious speech. (Executive Order 13798).

- (i) The Recipient, its contractors, and subcontractors must give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- (j) The Recipient must include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

C.3.23 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.

C.3.24 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 encumbered pursuant to this Agreement.

C.3.25 Notice.

Upon the occurrence of any of the following events, the Recipient must provide notice as set forth below.

- (a) Within 24 hours of the following, the Recipient must notify the Division by phone at (916) 327-9978 and by email to Ashley.Zellmer@waterboards.ca.gov and Sandeep.Kals@waterboards.ca.gov and CleanWaterSRF@waterboards.ca.gov:
 - i. The seizure of, or levy on, any Revenues securing this Agreement;
 - ii. Any discovery of any potential tribal cultural resource and/or archaeological or historical resource. Should a potential tribal cultural resource and/or archaeological or historical resource be discovered during construction or Project implementation, the Recipient must ensure that all work in the area of the find will cease until a qualified archaeologist 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 must implement appropriate actions as directed by the Division.
- (b) Within five (5) business days, the Recipient must notify the Division by phone at (916) 327-9978; by email to Lance.Reese@waterboards.ca.gov Ashley.Zellmer@waterboards.ca.gov and Sandeep.Kals@waterboards.ca.gov and CleanWaterSRF@waterboards.ca.gov; and by mail to the contact address set forth in Section 4 of this Agreement of the occurrence of any of the following events:
 - i. Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
 - ii. Change of ownership of the Project or the System or change of management or service contracts, if any, for operation of the System;
 - iii. Loss, theft, damage, or impairment to Project, the Revenues or the System;
 - iv. Failure to meet any debt service coverage test in Exhibit B of this Agreement;
 - v. Draws on the Reserve Account;
 - vi. Listed Events and Events of Default, except as otherwise set forth in this section;
 - vii. Failure to observe or perform any covenant or comply with any condition in this Agreement;
 - viii. An offer from a public entity to purchase the Project or the System or any portion

- thereof, or any of the real or personal property related to or necessary for the Project;
- ix. A proceeding or action by a public entity to acquire the Project or the System by power of eminent domain;
 - x. Incurrence of a System Obligation or other Material Obligation by the Recipient; or
 - xi. A default, event of acceleration, termination event, modification of terms, or other similar event under the terms of a System Obligation or other Material Obligation of the Recipient, any of which reflect financial difficulties.
- (c) Within ten (10) business days, the Recipient must notify the Division by phone at (916) 327-9978, by email to Ashley.Zellmer@waterboards.ca.gov and Sandeep.Kals@waterboards.ca.gov and CleanWaterSRF@waterboards.ca.gov, and by mail to the contact address set forth in Section 4 of this Agreement of the following events:
- i. Material defaults on Material Obligations, other than this Obligation;
 - ii. Unscheduled draws on material debt service reserves or credit enhancements, reflecting financial difficulties;
 - iii. Substitution of credit or liquidity providers, if any or their failure to perform;
 - iv. Any litigation pending or threatened with respect to the Project or the Recipient's technical, managerial or financial capacity to operate the System or the Recipient's continued existence;
 - v. Circulation of a petition to repeal, reduce, or otherwise challenge the Recipient's rates for services of the System;
 - vi. Consideration of dissolution, or disincorporation, or any other event that could materially impair the Revenues;
 - vii. Adverse tax opinions, the issuance by the Internal Revenue Service or proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701- TEB) or other material notices of determinations with respect to the tax status of any tax-exempt bonds;
 - viii. Rating changes on outstanding System Obligations, if any;
 - ix. Issuance of additional Parity Obligations;
 - x. Enforcement actions by or brought on behalf of the State Water Board or Regional Water Board; or
 - xi. Any investigation by the District Attorney, California State Auditor, Bureau of State Audits, United States Environmental Protection Agency's Office of Inspector General, the Internal Revenue Service, Securities and Exchange Commission, a grand jury, or any other state or federal agency, relating to the Recipient's financial management, accounting procedures, or internal fiscal controls;
- (d) The Recipient must notify the Division promptly by phone at (916) 327-9978, by email to Ashley.Zellmer@waterboards.ca.gov and Sandeep.Kals@waterboards.ca.gov and CleanWaterSRF@waterboards.ca.gov, and by mail to the contact address set forth in Section 4 of this Agreement of any of the following events:
- i. The discovery of a false statement of fact or representation made in this Agreement or in the application to the Division for this financial assistance, or in any certification, report, or request for disbursement made pursuant to this Agreement, by the Recipient, its employees, agents, or contractors;
 - ii. Any substantial change in scope of the Project. The Recipient must undertake no substantial change in the scope of the Project until prompt written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;
 - iii. 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;
 - iv. 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;
- v. 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;
 - vi. Any Project monitoring, demonstration, or other implementation activities required in Exhibit A or Exhibit D of this Agreement, if any;
 - vii. Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division;
 - viii. Any allegation of research misconduct involving research activities that are supported in whole or in part with EPA funds under this Project, as required by Exhibit C.4.3(xxvii);
 - ix. Any events requiring notice to the Division pursuant to the provisions of this Agreement;
 - x. Completion of Construction of the Project, and actual Project Completion;
 - xi. The award of the prime construction contract for the Project;
 - xii. Initiation of construction of the Project.

C.3.26 Operation and Maintenance; Insurance.

The Recipient agrees to sufficiently and properly staff, operate and maintain all portions of the System during the Useful Life of the Project 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 a self-insurance plan so long as such plan provides for (i) the establishment by the Recipient of a separate segregated self-insurance fund 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 must begin such reconstruction, repair or replacement as expeditiously as possible, and must pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same must be completed and the System must be free and clear of all claims and liens. If such net proceeds are insufficient to reconstruct, repair, or restore the System to the extent necessary to enable the Recipient to pay all remaining unpaid principal portions of the Installment Payments, if any, in accordance with the terms of this Agreement, the Recipient must provide additional funds to restore or replace the damaged portions of the System.

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

C.3.27 Permits, Subcontracting, and Remedies.

Recipient must procure all permits, licenses and other authorizations 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 must be submitted to the Division before any construction begins.

The Recipient must not contract or allow subcontracting with excluded parties. The Recipient must not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized. For any work related to this Agreement, the Recipient must not contract with any individual or organization on the State Water Board's List of Disqualified Businesses and Persons that is identified as debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which funding under this Agreement is authorized. The State Water Board's List of Disqualified Businesses and Persons is located at http://www.waterboards.ca.gov/water_issues/programs/enforcement/fwa/dbp.shtml

C.3.28 Professionals.

The Recipient agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for. All technical reports required pursuant to this Agreement that involve planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, architectural, or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to Business and Professions Code, sections 5536.1, 6735, 7835, and 7835.1. To demonstrate compliance with California Code of Regulations, title 16, sections 415 and 3065, all technical reports must contain a statement of the qualifications of the responsible registered professional(s). As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.

C.3.29 Prevailing Wages.

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

In addition, the Recipient agrees to comply with the Davis-Bacon provisions incorporated by reference in Section 3 of this Agreement.

C.3.30 Public Funding.

This Project is publicly funded. Any service provider or contractor with which the Recipient contracts 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.

C.3.31 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 responding to 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.

C.3.32 Related Litigation.

Under no circumstances may the 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 Quality Control Board. Regardless of the outcome of any such litigation, and notwithstanding any

conflicting language in this Agreement, the Recipient agrees to repay all of the disbursed funds plus interest in the event that Recipient does not complete the project.

C.3.33 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 to the maximum extent allowable given the rights of the Recipient. 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.

C.3.34 State Water Board Action; Costs and Attorney Fees.

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 costs and attorney fees.

C.3.35 Timeliness.

Time is of the essence in this Agreement.

C.3.36 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.

C.3.37 Venue.

Any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California.

C.3.38 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 this 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.

C.4 MISCELLANEOUS STATE AND FEDERAL REQUIREMENTS

C.4.1 [Reserved.]

C.4.2 State Cross-Cutters.

Recipient represents that, as applicable, it complies and covenants to maintain compliance with the following

Exhibit C

for the term of the Agreement:

- i. The California Environmental Quality Act (CEQA), as set forth in Public Resources Code 21000 et seq. and in the CEQA Guidelines at Title 14, Division 6, Chapter 3, Section 15000 et seq.
- ii. Water Conservation requirements, including regulations in Division 3 of Title 23 of the California Code of Regulations.
- iii. Monthly Water Diversion Reporting requirements, including requirements set forth in Water Code section 5103.
- iv. Public Works Contractor Registration with Department of Industrial Relations requirements, including requirements set forth in Sections 1725.5 and 1771.1 of the Labor Code.
- v. Volumetric Pricing & Water Meters requirements, including the requirements of Water Code sections 526 and 527.
- vi. Urban Water Management Plan requirements, including the Urban Water Management Planning Act (Water Code, § 10610 et seq.).
- vii. Urban Water Demand Management requirements, including the requirements of Section 10608.56 of the Water Code.
- viii. Delta Plan Consistency Findings requirements, including the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.
- ix. Agricultural Water Management Plan Consistency requirements, including the requirements of Water Code section 10852.
- x. Charter City Project Labor Requirements, including the requirements of Labor Code section 1782 and Public Contract Code section 2503.

C.4.3 Federal Requirements and Cross-Cutters for SRF Funding.

The Recipient acknowledges, warrants compliance with, and covenants to continuing compliance with the following federal terms and conditions for the Useful Life of the Project:

- i. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient shall not purchase "iron and steel products" produced outside of the United States on this Project. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient hereby certifies that all "iron and steel products" used in the Project were or will be produced in the United States. For purposes of this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.
- ii. The Recipient must include in full the Wage Rate Requirements (Davis-Bacon) language incorporated by reference in Section 3 of this Agreement in all construction contracts and subcontracts.

- iii. The Recipient must comply with the signage requirements set forth in Exhibit A.
- iv. The Recipient shall notify the State Water Board and the USEPA contact of public or media events publicizing the accomplishment of significant events related to this Project and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
- v. The Recipient shall comply with applicable EPA general terms and conditions found at <http://www.epa.gov/ogd>.
- vi. No Recipient may receive funding under this Agreement unless it has provided its DUNS number to the State Water Board.
- vii. [Reserved.]
- viii. The Recipient represents and warrants that it and its principals are not excluded or disqualified from participating in this transaction as such terms are defined in Parts 180 and 1532 of Title 2 of the Code of Federal Regulations (2 CFR). If the Recipient is excluded after execution of this Agreement, the Recipient shall notify the Division within ten (10) days and shall inform the Division of the Recipient's exclusion in any request for amendment of this Agreement. The Recipient shall comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR. Such compliance is a condition precedent to the State Water Board's performance of its obligations under this Agreement. When entering into a covered transaction as defined in Parts 180 and 1532 of 2 CFR, the Recipient shall require the other party to the covered transaction to comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR.
- ix. To the extent applicable, the Recipient shall disclose to the State Water Board any potential conflict of interest consistent with USEPA's Final Financial Assistance Conflict of Interest Policy at <https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy>. A conflict of interest may result in disallowance of costs.
- x. USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement.
- xi. Where an invention is made with Project Funds, USEPA and the State Water Board retain the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the Recipient. The Recipient must utilize the Interagency Edison extramural invention reporting system at <http://iEdison.gov> and shall notify the Division when an invention report, patent report, or utilization report is filed.
- xii. The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the Disclosure statement set forth in Exhibit A.
- xiii. The Recipient acknowledges that it is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Project.
- xiv. The Recipient, its employees, contractors and subcontractors and their employees warrants that it will not engage in severe forms of trafficking in persons, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient

must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands that failure to comply with this provision may subject the State Water Board to loss of federal funds. The Recipient agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement if the Recipient that is a private entity is determined to have violated the foregoing.

- xv. The Recipient certifies to the best of its knowledge and belief that:
- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and notify the State Water Board.

The Recipient shall require this certification from all parties to any contract or agreement that the Recipient enters into and under which the Recipient incurs costs for which it seeks disbursements under this Agreement.

- xvi. The Recipient must comply with the following federal non-discrimination requirements:
- a. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
 - b. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
 - c. The Age Discrimination Act of 1975, which prohibits age discrimination.
 - d. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
 - e. 40 CFR Part 7, as it relates to the foregoing.
- xvii. If the Project relates to construction of a publicly owned treatment works, where the Recipient contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services, the Recipient shall ensure that any such contract is negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based requirement as determined by the State Water Board.
- xviii. If the Project relates to construction of a publicly owned treatment works, the Recipient certifies that it has developed and is implementing a fiscal sustainability plan for the Project that includes an inventory of critical assets that are a part of the Project, an evaluation of the condition and performance of inventoried assets or asset groupings, a certification that the Recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan, and a plan for maintaining, repairing, and, as necessary, replacing the Project and a plan for funding such activities.
- xix. Executive Order No. 11246. The Recipient shall include in its contracts and subcontracts related to the Project the following provisions:

"During the performance of this contract, the contractor agrees as follows:"(a) The contractor will not

discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(d) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(e) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(g) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

- xx. The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises.
- xxi. 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. Except where the purpose of this Agreement is to remedy the cause of the violation, the

Recipient may not procure goods, services, or materials from suppliers excluded under the federal System for Award Management: <http://www.sam.gov/> .

- xxii. Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655. The Recipient must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105.
- xxiii. The Recipient agrees that if its network or information system is connected to USEPA networks to transfer data using systems other than the Environmental Information Exchange Network or USEPA's Central Data Exchange, it will ensure that any connections are secure.
- xxiv. All geospatial data created pursuant to this Agreement that is submitted to the State Water Board for use by USEPA or that is submitted directly to USEPA must be consistent with Federal Geographic Data Committee endorsed standards. Information on these standards may be found at www.fgdc.gov.
- xxv. If the Recipient is a water system that serves 500 or fewer persons, the Recipient represents that it has considered publicly-owned wells as an alternative drinking water supply.
- xxvi. The Recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.
- xxvii. The Recipient agrees to immediately notify the Project Manager in writing about any allegation of research misconduct involving research activities that are supported in whole or in part with EPA funds under this Project, including fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, or ordering, advising, or suggesting that subordinates engage in research misconduct.
- xxviii. The Recipient agrees to comply with, and require all contractors and subcontractors to comply with, EPA's Scientific Integrity Policy, available at <https://www.epa.gov/osa/policy-epa-scientific-integrity>, when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue.

The Recipient shall not suppress, alter, or otherwise impede the timely release of scientific findings or conclusions; intimidate or coerce scientists to alter scientific data, findings, or professional opinions or exert non-scientific influence on scientific advisory boards; knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty; or otherwise violate the EPA's Scientific Integrity Policy. The Recipient must refrain from acts of research misconduct, including publication or reporting, as described in EPA's Policy and Procedures for Addressing Research Misconduct, Section 9.C, and must ensure scientific findings are generated and disseminated in a timely and transparent manner, including scientific research performed by contractors and subcontractors.
- xxix. The Recipient agrees to comply with the Animal Welfare Act of 1966 (7 USC 2131-2156). Recipient also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training," available at <http://grants.nih.gov/grants/olaw/references/phspol.htm#USGovPrinciples>.

- xxx. The Recipient certifies that no Project Funds will be used on:
- a. Video surveillance or telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
 - b. Telecommunications or video surveillance services produced by such entities;
 - c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country; or
 - d. Other telecommunications or video surveillance services or equipment in violation of 2 CFR 200.216.

EXHIBIT D – SPECIAL CONDITIONS

Environmental:

1. The documents identified below are incorporated by reference and the Recipient shall comply with the conditions and recommendations therein:
 - a. The Biological Opinion (08EVEN00-2020-F-0010) dated February 20, 2020, from Stephen P. Henry of the United States Fish and Wildlife Service, Ventura Ecological Services (USFWS) to Alaina McCurdy of the United States Environmental Protection Agency (USEPA), including, but not limited to, the following:
 - i. Measures 1 through 6 for the tidewater goby (*Eucyclogobius newberryi*),
 - ii. Measures 1 through 3 for the Morro shoulderband snail (*Helminthoglypta walkeriana*),
 - iii. Avoidance and Minimization Measures 1 through 20 for the California red-legged frog (*Rana draytonii* [CRLF]), and
 - iv. Terms and Conditions 1 through 3, including Reporting Requirements, for the CRLF.
 - b. The Coastal Development Permit (3-19-0463) dated November 8, 2019, issued by the California Coastal Commission (CCC) for the Project.
 - c. The Programmatic Agreement dated December 13, 2019, between the USEPA and the California State Historic Preservation Officer at the Office of Historic Preservation (OHP) regarding the Project. The Recipient must comply with all measures identified therein.
 - c. The Mitigation Monitoring and Reporting Program (MMRP) adopted on August 14, 2018 for the Project. The Recipient must implement all Mitigation Measures therein.
2. The Recipient shall make no changes in the Project, construction area, or special conditions, without obtaining the appropriate and necessary prior approval(s) from the State Water Board, CCC, USFWS, and the OHP.

REPORTING TO THE STATE WATER BOARD

1. In the Recipient's Progress Reports/Quarterly Reports and the Project Completion Report, submitted pursuant to this Agreement, the Recipient shall include a discussion of the status of its compliance with all environmental measures identified in this Exhibit D, with separate sections clearly labeled with section titles, discussing the status of Recipients compliance with:
 - a. Measures 1 through 6 for the tidewater goby,
 - b. Measures 1 through 3 for the Morro shoulderband snail,
 - c. Avoidance and Minimization Measures 1 through 20 for the California red-legged frog (CRLF),
 - d. Terms and Conditions 1 through 3 for the CRLF,
 - e. Reporting Requirements for the CRLF,
 - f. Coastal Development Permit (3-19-0463),
 - g. Programmatic Agreement with OHP, dated December 13, 2019,
 - h. Mitigation Measures AQ-1 for air quality in the MMRP,
 - i. Mitigation Measures BIO-1 through BIO-10 for biological resources in the MMRP,
 - j. Mitigation Measures CUL-1 through CUL-14 for cultural resources in the MMRP, and
 - k. Mitigation Measures GEO-2 for geology, soils, and seismicity in the MMRP.

Technical:

- A. The Recipient must submit a copy of the National Pollutant Discharge Elimination System (NPDES) permit and Waste Discharge Requirements including reclamation and reuse requirements with the Project Completion Report. Final disbursement of the Project will not be processed until the notice is received by Division of Financial Assistance.
- B. Upon completion of the Project, the Recipient must update the treatment plant classification with the new treatment process with the State Water Board's Office of Certification.

EXECUTIVE ORDER N-6-22 — RUSSIAN SANCTIONS:

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State Water Board determine Recipient is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement. The State Water Board shall provide Recipient advance written notice of such termination, allowing Recipient at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State Water Board.

The Recipient represents that the Recipient is not a target of economic sanctions imposed in response to Russia's actions in Ukraine imposed by the United States government or the State of California. The Recipient is required to comply with the economic sanctions imposed in response to Russia's actions in Ukraine, including with respect to, but not limited to, the federal executive orders identified in California Executive Order N-6-22, located at <https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf> and the sanctions identified on the United States Department of the Treasury website (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>). The Recipient is required to comply with all applicable reporting requirements regarding compliance with the economic sanctions, including, but not limited to, those reporting requirements set forth in California Executive Order N-6-22 for all Recipients with one or more agreements with the State of California with an aggregated value of Five Million Dollars (\$5,000,000) or more. Notwithstanding any other provision in this Agreement, failure to comply with the economic sanctions and all applicable reporting requirements may result in termination of this Agreement.

For Recipients with an aggregated agreement value of Five Million Dollars (\$5,000,000) or more with the State of California, reporting requirements include, but are not limited to, information related to steps taken in response to Russia's actions in Ukraine, including but not limited to:

- A. Desisting from making any new investments or engaging in financial transactions with Russian institutions or companies that are headquartered or have their principal place of business in Russia;
- B. Not transferring technology to Russia or companies that are headquartered or have their principal place of business in Russia; and
- C. Direct support to the government and people of Ukraine.

EXHIBIT E – PAYMENT SCHEDULE

See the attached preliminary Payment Schedule. The final Payment Schedule, **representing Proposition 1 and Clean Water State Revolving Fund installment payments**, will be forwarded to the Recipient after all disbursements have been paid and construction of the Project has been completed.

California CWSRF Payment Schedule

Project No. 8185-210 - Morro Bay, City of
 Agreement: D2001033 - based on Projected Disbursements

Principal is paid over: **30 Years**
 Interest rate: **0.90000%**

Morro Bay Water Reclamation Facility

Ref Num	Due Date	Date Received	Principal Payment	Interest Rate%	Interest Payment	Total P and I Payment	Total Payment	Ending Balance	CPI Interest
1	9/30/2027		1,955,652.20	0.900	603,090.45	2,558,742.65	2,558,742.65	65,054,397.70	10,143.47
2	9/30/2028		1,973,253.07	0.900	585,489.58	2,558,742.65	2,558,742.65	63,081,144.63	10,234.76
3	9/30/2029		1,991,012.35	0.900	567,730.30	2,558,742.65	2,558,742.65	61,090,132.28	10,326.87
4	9/30/2030		2,008,931.46	0.900	549,811.19	2,558,742.65	2,558,742.65	59,081,200.82	10,419.81
5	9/30/2031		2,027,011.84	0.900	531,730.81	2,558,742.65	2,558,742.65	57,054,188.98	10,513.59
6	9/30/2032		2,045,254.95	0.900	513,487.70	2,558,742.65	2,558,742.65	55,008,934.03	10,608.21
7	9/30/2033		2,063,662.24	0.900	495,080.41	2,558,742.65	2,558,742.65	52,945,271.79	10,703.69
8	9/30/2034		2,082,235.20	0.900	476,507.45	2,558,742.65	2,558,742.65	50,863,036.59	10,800.02
9	9/30/2035		2,100,975.32	0.900	457,767.33	2,558,742.65	2,558,742.65	48,762,061.27	10,897.22
10	9/30/2036		2,119,884.10	0.900	438,858.55	2,558,742.65	2,558,742.65	46,642,177.17	10,995.29
11	9/30/2037		2,138,963.06	0.900	419,779.59	2,558,742.65	2,558,742.65	44,503,214.11	11,094.25
12	9/30/2038		2,158,213.72	0.900	400,528.93	2,558,742.65	2,558,742.65	42,345,000.39	11,194.10
13	9/30/2039		2,177,637.65	0.900	381,105.00	2,558,742.65	2,558,742.65	40,167,362.74	11,294.85
14	9/30/2040		2,197,236.39	0.900	361,506.26	2,558,742.65	2,558,742.65	37,970,126.35	11,396.50
15	9/30/2041		2,217,011.51	0.900	341,731.14	2,558,742.65	2,558,742.65	35,753,114.84	11,499.07
16	9/30/2042		2,236,964.62	0.900	321,778.03	2,558,742.65	2,558,742.65	33,516,150.22	11,602.56
17	9/30/2043		2,257,097.30	0.900	301,645.35	2,558,742.65	2,558,742.65	31,259,052.92	11,706.98
18	9/30/2044		2,277,411.17	0.900	281,331.48	2,558,742.65	2,558,742.65	28,981,641.75	11,812.35
19	9/30/2045		2,297,907.87	0.900	260,834.78	2,558,742.65	2,558,742.65	26,683,733.88	11,918.66
20	9/30/2046		2,318,589.05	0.900	240,153.60	2,558,742.65	2,558,742.65	24,365,144.83	12,025.92
21	9/30/2047		2,339,456.35	0.900	219,286.30	2,558,742.65	2,558,742.65	22,025,688.48	12,134.16
22	9/30/2048		2,360,511.45	0.900	198,231.20	2,558,742.65	2,558,742.65	19,665,177.03	12,243.36
23	9/30/2049		2,381,756.06	0.900	176,986.59	2,558,742.65	2,558,742.65	17,283,420.97	12,353.56
24	9/30/2050		2,403,191.86	0.900	155,550.79	2,558,742.65	2,558,742.65	14,880,229.11	12,464.74
25	9/30/2051		2,424,820.59	0.900	133,922.06	2,558,742.65	2,558,742.65	12,455,408.52	12,576.92
26	9/30/2052		2,446,643.97	0.900	112,098.68	2,558,742.65	2,558,742.65	10,008,764.55	12,690.11
27	9/30/2053		2,468,663.77	0.900	90,078.88	2,558,742.65	2,558,742.65	7,540,100.78	12,804.32
28	9/30/2054		2,490,881.74	0.900	67,860.91	2,558,742.65	2,558,742.65	5,049,219.04	12,919.56
29	9/30/2055		2,513,299.68	0.900	45,442.97	2,558,742.65	2,558,742.65	2,535,919.36	13,035.84
30	9/30/2056		2,535,919.36	0.900	22,823.27	2,558,742.63	2,558,742.63	0.00	13,153.16
			67,010,049.90		9,752,229.58	76,762,279.48	76,762,279.48		347,563.90

California Water Recycling Bonds Payment Schedule

Principal is paid over: **30 Years**
 Interest rate: **0.90000%**

Project No. 8185-210 - Morro Bay, City of
 Agreement: D2001033 - based on Projected Disbursements

Morro Bay Water Reclamation Facility

Ref Num	Due Date	Date Received	Principal Payment	Interest Rate%	Interest Payment	Total P and I Payment	Total Payment	Ending Balance	CPI Interest
1	9/30/2027		475,258.30	0.900	146,561.72	621,820.02	621,820.02	15,809,376.80	4,975.46
2	9/30/2028		479,535.63	0.900	142,284.39	621,820.02	621,820.02	15,329,841.17	5,020.24
3	9/30/2029		483,851.45	0.900	137,968.57	621,820.02	621,820.02	14,845,989.72	5,065.42
4	9/30/2030		488,206.11	0.900	133,613.91	621,820.02	621,820.02	14,357,783.61	5,111.01
5	9/30/2031		492,599.97	0.900	129,220.05	621,820.02	621,820.02	13,865,183.64	5,157.01
6	9/30/2032		497,033.37	0.900	124,786.65	621,820.02	621,820.02	13,368,150.27	5,203.42
7	9/30/2033		501,506.67	0.900	120,313.35	621,820.02	621,820.02	12,866,643.60	5,250.25
8	9/30/2034		506,020.23	0.900	115,799.79	621,820.02	621,820.02	12,360,623.37	5,297.50
9	9/30/2035		510,574.41	0.900	111,245.61	621,820.02	621,820.02	11,850,048.96	5,345.18
10	9/30/2036		515,169.58	0.900	106,650.44	621,820.02	621,820.02	11,334,879.38	5,393.29
11	9/30/2037		519,806.11	0.900	102,013.91	621,820.02	621,820.02	10,815,073.27	5,441.83
12	9/30/2038		524,484.36	0.900	97,335.66	621,820.02	621,820.02	10,290,588.91	5,490.80
13	9/30/2039		529,204.72	0.900	92,615.30	621,820.02	621,820.02	9,761,384.19	5,540.22
14	9/30/2040		533,967.56	0.900	87,852.46	621,820.02	621,820.02	9,227,416.63	5,590.08
15	9/30/2041		538,773.27	0.900	83,046.75	621,820.02	621,820.02	8,688,643.36	5,640.39
16	9/30/2042		543,622.23	0.900	78,197.79	621,820.02	621,820.02	8,145,021.13	5,691.16
17	9/30/2043		548,514.83	0.900	73,305.19	621,820.02	621,820.02	7,596,506.30	5,742.38
18	9/30/2044		553,451.46	0.900	68,368.56	621,820.02	621,820.02	7,043,054.84	5,794.06
19	9/30/2045		558,432.53	0.900	63,387.49	621,820.02	621,820.02	6,484,622.31	5,846.20
20	9/30/2046		563,458.42	0.900	58,361.60	621,820.02	621,820.02	5,921,163.89	5,898.82
21	9/30/2047		568,529.54	0.900	53,290.48	621,820.02	621,820.02	5,352,634.35	5,951.91
22	9/30/2048		573,646.31	0.900	48,173.71	621,820.02	621,820.02	4,778,988.04	6,005.48
23	9/30/2049		578,809.13	0.900	43,010.89	621,820.02	621,820.02	4,200,178.91	6,059.52
24	9/30/2050		584,018.41	0.900	37,801.61	621,820.02	621,820.02	3,616,160.50	6,114.06
25	9/30/2051		589,274.58	0.900	32,545.44	621,820.02	621,820.02	3,026,885.92	6,169.09
26	9/30/2052		594,578.05	0.900	27,241.97	621,820.02	621,820.02	2,432,307.87	6,224.61
27	9/30/2053		599,929.25	0.900	21,890.77	621,820.02	621,820.02	1,832,378.62	6,280.63
28	9/30/2054		605,328.61	0.900	16,491.41	621,820.02	621,820.02	1,227,050.01	6,337.15
29	9/30/2055		610,776.57	0.900	11,043.45	621,820.02	621,820.02	616,273.44	6,394.19
30	9/30/2056		616,273.44	0.900	5,546.46	621,819.90	621,819.90	0.00	6,451.74
			16,284,635.10		2,369,965.38	18,654,600.48	18,654,600.48		170,483.10

EXHIBIT F – TAX CERTIFICATE

F.1 Purpose.

The purpose of this Exhibit F is to establish the reasonable expectations of the Recipient regarding the Project and the Project Funds, and is intended to be and may be relied upon for purposes of Sections 103, 141 and 148 of the Code and as a certification described in Section 1.148-2(b)(2) of the Treasury Regulations. This Exhibit F sets forth certain facts, estimates and circumstances which form the basis for the Recipient's expectation that neither the Project nor the Bond Funded Portion of the Project Funds is to be used in a manner that would cause the Obligation to be classified as "arbitrage bonds" under Section 148 of the Code or "private activity bonds" under Section 141 of the Code.

F.2 Tax Covenant.

The Recipient agrees that it will not take or authorize any action or permit any action within its reasonable control to be taken, or fail to take any action within its reasonable control, with respect to the Project which would result in the loss of the exclusion of interest on the Bonds from gross income for federal income tax purposes under Section 103 of the Code.

F.3 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.

F.4 Financing of a Capital Project.

The Recipient will use the Project Funds to finance costs it has incurred or will incur for the construction, reconstruction, installation or acquisition of the Project. Such costs shall not have previously been financed with the proceeds of any other issue of tax-exempt obligations.

F.5 Ownership and Operation of Project.

The Recipient exclusively owns and, except as provided in Section F.12 hereof, operates the Project.

F.6 Temporary Period.

The Recipient reasonably expects that at least eighty-five percent (85%) of the Bond Funded Portion 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 Bond Funded Portion of the Project Funds on Project Costs. The completion of acquisition, construction, improvement and equipping of the Project and the allocation of the Bond Funded Portion of the Project Funds to Project Costs will proceed with due diligence.

F.7 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.

F.8 Expenditure of Proceeds.

The Bond Funded Portion of the Project Funds shall be used exclusively for the following purposes: (i) Reimbursement Expenditures (as defined in Section F.20 below), (ii) Preliminary Expenditures (as defined in

Section F.20 below) in an aggregate amount not exceeding twenty percent (20%) of the Bond Funded Portion of the Project Funds, (iii) capital expenditures relating to the Project originally paid by the Recipient on or after the date hereof, (iv) 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 (v) initial operating expenses directly associated with the Project in the aggregate amount not more than five percent (5%) of the Bond Funded Portion of the Project Funds.

F.9 Private Use and Private Payments.

No portion of the Project Funds or the Project is being, has been or will be used in the aggregate for any activities that constitute a Private Use (as defined below). No portion 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 the Project by 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. Use by or on behalf of the State of California or any of its agencies, instrumentalities or subdivisions or by any local Governmental Unit and use as a member of the general public will be disregarded in determining whether a Private Use exists. Use under an arrangement that conveys priority rights or other preferential benefits is generally not use on the same basis as the general public. Arrangements providing for use that is available to the general public at no charge or on the basis of rates that are generally applicable and uniformly applied do not convey priority rights or other preferential benefits. For this purpose, rates may be treated as generally applicable and uniformly applied even if (i) different rates apply to different classes of users, such as volume purchasers, if the differences in rates are customary and reasonable; or (ii) a specially negotiated rate arrangement is entered into, but only if the user is prohibited by federal law from paying the generally applicable rates, and the rates established are as comparable as reasonably possible to the generally applicable rates. An arrangement that does not otherwise convey priority rights or other preferential benefits is not treated, nevertheless, as general public use if the term of the use under the arrangement, including all renewal options, is greater than 200 days. For this purpose, a right of first refusal to renew use under the arrangement is not treated as a renewal option if (i) the compensation for the use under the arrangement is redetermined at generally applicable, fair market value rates that are in effect at the time of renewal; and (ii) the use of the financed property under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business.

F.10 No Sale, Lease or Private Operation of the Project.

The Project (or any portion thereof) will not be sold or otherwise disposed of, in whole or in part, to any person who is not a Governmental Unit prior to the final maturity date of the Obligation. The Project will not be leased to any person or entity that is not a Governmental Unit prior to the final maturity date of the Obligation. Except as permitted under Section F.12 hereof, the Recipient will not enter any contract or arrangement or cause or permit any contract or arrangement to be entered with persons or entities that are not Governmental Units if that contract or arrangement would confer on such persons or entities any right to use the Project on a basis different from the right of members of the general public. The contracts or arrangements contemplated by the preceding sentence include but are not limited to management contracts, take or pay contracts or put or pay contracts, and capacity guarantee contracts.

F.11 No Disproportionate or Unrelated Use.

No portion of the Project Funds or the Project is being, has been, or will be used for a Private Use that is unrelated or disproportionate to the governmental use of the Project Funds.

F.12 Management and Service Contracts.

The Recipient represents that, as of the date hereof, it is not a party to any contract, agreement or other

arrangement with any persons or entities engaged in a trade or business (other than Governmental Units) that involve the management or operation of property or the provision of services at or with respect to the Project that does not comply with the standards of the Treasury Regulations, Revenue Procedure 97-13, as modified by

Revenue Procedure 2001-39 and IRS Notice 2014-67, or Revenue Procedure 2017-13, as applicable. The Recipient represents that it will not be party to any such contract, agreement or arrangement with any person or entity that is not a Governmental Unit for the management of property or the provision of services at or with respect to the Project, while the Obligation (including any obligation or series thereof issued to refund the Obligation, as the case may be) is outstanding, except: (a) with respect to any contract, agreement or arrangement that does not constitute "private business use" of the Project under Code §141(b), or (b) with respect to any contract, agreement or arrangement that complies with (i) Revenue Procedure 97-13, 1997-1 C.B. 632, as amended by Revenue Procedure 2001-39, 2001-2 C.B. 38, and as amplified by Notice 2014-67, with respect to contracts entered into before August 18, 2017 and not materially modified or extended after August 18, 2017, or (ii) Revenue Procedure 2017-13, with respect to contracts entered into or materially modified or extended on or after August 18, 2017, or (c) with respect to any contract, agreement or arrangement that does not give rise to use of the Bond Funded Portion of the Project Funds or the Project by a non-Governmental Unit of more than the amount of such non-qualified use permitted by the Code, or (d) in the event that the Recipient receives an opinion of counsel, satisfactory to the State Water Board and the Bank and 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"), that such contract, agreement or arrangement will not adversely affect the exclusion of the interest on the Obligation from gross income for federal income taxation purposes.

F.13 No Disposition of Financed Property.

As of the date hereof, 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.

F.14 Useful Life of Project.

As of the date hereof, the Recipient reasonably expects that the economic useful life of the Project, commencing at Project Completion, will be at least equal to the term of this Agreement, as set forth in Exhibit A hereto.

F.15 Installment Payments.

Installment Payments generally are expected to be derived from assessments, taxes, fees, charges or other current Revenues of the Recipient in each year, and such current Revenues are expected to equal or exceed the Installment Payments during each payment period. Any amounts accumulated in a sinking fund or bona fide debt service fund to pay Installment Payments (whether or not deposited to a fund or account established by the Recipient) will be disbursed to pay Installment Payments within thirteen months of the initial date of accumulation or deposit. Any such fund used for the payment of Installment Payments will be depleted once a year except for a reasonable carryover amount not exceeding the greater of earnings on such fund or one-twelfth of the Installment Payments in either case for the immediately preceding year.

F.16 No Other Replacement Proceeds.

The Recipient will not use any of the Bond Funded Portion of the Project Funds to replace or substitute other funds of the Recipient that were otherwise to be used to finance the Project or which are or will be used to acquire securities, obligations or other investment property reasonably expected to produce a yield that is materially higher than the yield on the Bonds.

F.17 No Sinking or Pledged Fund.

Except as set forth in Section F.18 below, the Recipient will not create or establish any sinking fund or pledged fund which will be used to pay Installment Payments on the Obligation within the meaning of Section 1.148-1(c) of the Treasury Regulations. If any sinking fund or pledged fund comes into being with respect to the Obligation before the Obligation has been fully retired which may be used to pay the Installment Payments, the Recipient will invest such sinking fund and pledged fund moneys at a yield that does not exceed the yield on the Bonds.

F.18 Reserve Amount.

The State Water Board requires that the Recipient maintain and fund a separate account in an amount equal to one (1) year of debt service with respect to the Obligation (the "Reserve Amount") as set forth in Exhibit B. The Recipient represents that the Reserve Amount is and will be available to pay debt service with respect to the Obligation, if and when needed. The Reserve Amount consists solely of revenues of the Recipient and does not include any proceeds of any obligations the interest on which is excluded from gross income for federal income tax purposes or investment earnings thereon. The aggregate of the Reserve Amount, up to an amount not exceeding the lesser of (i) ten percent of the aggregate principal amount of the Obligation, (ii) the maximum annual debt service with respect to the Obligation, or (iii) 125 percent of the average annual debt service with respect to the Obligation, will be treated as a reasonably required reserve fund.

F.19 Reimbursement Resolution.

The "reimbursement resolution" adopted by the Recipient is incorporated herein by reference.

F.20 Reimbursement Expenditures.

Reimbursements are disallowed, except as specifically authorized in Exhibit B or Exhibit D of this Agreement. To the extent so authorized, a portion of the Bond Funded Portion of the Project Funds may be applied to reimburse the Recipient for Project Costs paid before the date hereof, so long as the Project Cost was (i) not paid prior to sixty (60) days before the Recipient's adoption of a declaration of official intent to finance the Project, (ii) not paid more than eighteen (18) months prior to the date hereof or the date the Project was placed-in-service, whichever is later, and (iii) not paid more than three (3) years prior to the date hereof (collectively, "Reimbursement Expenditures"), unless such cost is attributable to a "preliminary expenditure." Preliminary expenditure for this purpose means architectural, engineering, surveying, soil testing and similar costs incurred prior to the commencement of construction or rehabilitation of the Project, but does not include land acquisition, site preparation and similar costs incident to the commencement of acquisition, construction or rehabilitation of the Project. Preliminary expenditures may not exceed 20% of the Bond Funded Portion of the Project Funds.

F.21 Change in Use of the Project.

The Recipient reasonably expects to use all of the Bond Funded Portion of the 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 the Bond Funded Portion of the 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 Bond Funded Portion of the Project Funds and the Project solely as set forth in this Agreement.

F.22 Rebate Obligations.

If the Recipient satisfies the requirements of one of the spending exceptions to rebate specified in Section 1.148-7 of the Treasury Regulations, amounts earned from investments, if any, acquired with the Bond Funded Portion of the Project Funds will not be subject to the rebate requirements imposed under Section 148(f) of the Code. If the Recipient fails to satisfy such requirements for any period, it will notify the State Water Board and the Bank immediately and will comply with the provisions of the Code and the Treasury Regulations at such time, including the payment of any rebate amount calculated by the State Water Board or the Bank.

F.23 No Federal Guarantee.

The Recipient will not directly or indirectly use any of the Bond Funded Portion of the Project Funds in any manner that would cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code, taking into account various exceptions including any guarantee related to investments during an initial temporary period until needed for the governmental purpose of the Bonds, investments as part of a bona fide debt service fund, investments of a reasonably required reserve or replacement fund, investments in bonds issued by the United States Treasury, investments in refunding escrow funds or certain other investments permitted under the Treasury Regulations.

F.24 No Notices or Inquiries from IRS.

Within the last 10 years, the Recipient has not received any notice of a final action of the Internal Revenue Service that determines that interest paid or payable on any debt obligation of the Recipient is or was includable in the gross income of an owner or beneficial owner thereof for federal income tax purposes under the Code.

F.25 Amendments.

The provisions in this Exhibit may be amended, modified or supplemented at any time to reflect changes in the Code upon obtaining written approval of the State Water Board and the Bank and an opinion of Nationally-Recognized Bond Counsel to the effect that such amendment, modification or supplement will not adversely affect the exclusion from federal gross income of interest on the Bonds pursuant to Section 103 of the Code.

F.26 Reasonable Expectations.

The Recipient warrants that, to the best of its knowledge, information and belief, and based on the facts and estimates as set forth in the tax covenants in this Exhibit, the expectations of the Recipient as set forth in this Exhibit 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 Exhibit.

F.27 Assignment.

The Recipient 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).

