

#### AGENDA REGULAR WORKSHOP/MEETING OF THE BOARD OF DIRECTORS

#### WEDNESDAY, APRIL 6, 2022 10:00 A.M.

#### INLAND EMPIRE UTILITIES AGENCY\* VIEW THE MEETING LIVE ONLINE AT IEUA.ORG TELEPHONE ACCESS: (415) 856-9169 / Conf Code: 811 003 35#

PURSUANT TO AB361 AND RESOLUTION NO. 2022-3-1, ADOPTED BY THE IEUA BOARD OF DIRECTORS ON MARCH 2, 2022, IEUA BOARD AND COMMITTEE MEETINGS WILL CONTINUE TO BE CONDUCTED THROUGH TELECONFERENCE IN AN EFFORT TO PROTECT PUBLIC HEALTH AND PREVENT THE SPREAD OF COVID-19. THERE WILL BE NO PUBLIC LOCATION AVAILABLE FOR ATTENDING THE MEETING IN PERSON.

The public may participate and provide public comment during the meeting by dialing the number provided above. Comments may also be submitted by email to the Board Secretary/Office Manager Denise Garzaro at <u>dgarzaro@ieua.org</u> prior to the completion of the Public Comment section of the meeting. Comments will be distributed to the Board of Directors.

#### CALL TO ORDER OF THE INLAND EMPIRE UTILITIES AGENCY BOARD OF DIRECTORS WORKSHOP/MEETING

#### FLAG SALUTE

#### PUBLIC COMMENT

Members of the public may address the Board on any item that is within the jurisdiction of the Board; however, no action may be taken on any item not appearing on the agenda unless the action is otherwise authorized by Subdivision (b) of Section 54954.2 of the Government Code. Those persons wishing to address the Board on any matter, whether or not it appears on the agenda, are requested to email the Board Secretary prior to the scheduled meeting time or address the Board during the public comments section of the meeting. <u>Comments will be limited to three minutes per speaker.</u> Thank you.

#### ADDITIONS TO THE AGENDA

In accordance with Section 54954.2 of the Government Code (Brown Act), additions to the agenda require two-thirds vote of the legislative body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted.

\*A Municipal Water District

#### 1. PUBLIC HEARING

#### A. <u>ADOPTION OF RESOLUTION NO. 2022-4-1, AUTHORIZING AND</u> <u>APPROVING RELOCATION OF DIVISION BOUNDARIES</u> Staff recommends that the Board:

- 1. Conduct a public hearing to receive input from the community regarding proposed maps for the redrawing of election division boundaries;
- 2. Select a preferred map for adoption from map options D, G or H3; and
- 3. Adopt Resolution No. 2022-4-1, authorizing and approving Relocation of Division Boundaries.

#### 2. ACTION ITEMS

- A. <u>ADOPTION OF RESOLUTION NO. 2022-4-7, MAKING CERTAIN</u> <u>FINDINGS AND DETERMINATIONS REGARDING SPECIAL RULES</u> <u>FOR CONDUCTING MEETINGS THROUGH TELECONFERENCE</u> Staff recommends that the Board adopt Resolution No. 2022-4-7, making certain findings and determinations regarding special rules for conducting meetings through teleconference.
- B. <u>ELECTION FOR REGULAR AND ALTERNATE SPECIAL DISTRICT</u> <u>MEMBERS OF THE LOCAL AGENCY FORMATION COMMISSION</u> Staff recommends that the Board determine the Agency's vote for the Special Districts Election for the Local Agency Formation Commission by selecting one candidate for Regular Special District Member and one candidate for Alternate Special District Member of LAFCO.
- C. <u>ADOPTION OF RESOLUTION NOS. 2022-4-2 THROUGH 2022-4-4,</u> <u>AUTHORIZING IEUA TO EXECUTE INSTALLMENT SALE</u> <u>AGREEMENTS UNDER THE CLEAN WATER STATE REVOLVING</u> <u>FUND PROGRAM</u>

Staff recommends that the Board adopt Resolution Nos. 2022-4-2, 2022-4-3, and 2022-4-4, authorizing IEUA to enter into Installment Sale Agreements with the State Water Resources Control Board and designate the General Manager to sign, for and on behalf of IEUA, the funding agreements for the Projects and any non-substantive amendments. D. ADOPTION OF RESOLUTION 2022-4-5 AND 2022-4-6 IN SUPPORT OF THE APPLICATIONS FOR COMMUNITY PROJECT FUNDING AND CONGRESSIONALLY DIRECTED SPENDING FOR THE RP-1 DISINFECTION IMPROVEMENTS PROJECT AND CITY OF RIALTO RECYCLED WATER INTERTIE Staff recommends that the Board:

1. Adopt Resolution No. 2022-4-5, supporting the application of the RP-1 Disinfection Improvements Project for Congressionally Directed

2. Adopt Resolution No. 2022-4-6, supporting the application of the City of Rialto Recycled Water Intertie Project for Community Project Funding.

#### 3. WORKSHOP ITEM

#### A. <u>HISTORICAL BACKGROUND ON IMPORTED WATER SUPPLIES</u> (POWERPOINT)

#### 4. **INFORMATION ITEM**

#### A. <u>IE WORKS/WORKFORCE DEVELOPMENT (ORAL)</u>

#### 5. GENERAL MANAGER'S COMMENTS

Spending; and

#### 6. BOARD OF DIRECTORS' REQUESTED FUTURE AGENDA ITEMS

7. DIRECTORS' COMMENTS

#### **ADJOURN**

#### **Declaration of Posting**

I, Denise Garzaro, CMC, Board Secretary/Office Manager of the Inland Empire Utilities Agency\*, a Municipal Water District, hereby certify that, per Government Code Section 54954.2, a copy of this agenda has been posted at the Agency's main office, 6075 Kimball Avenue, Building A, Chino, CA and on the Agency's website at <u>www.ieua.org</u> at least seventy-two (72) hours prior to the meeting date and time above.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Board Secretary at (909) 993-1736 or <u>dgarzaro@ieua.org</u>, 48 hours prior to the scheduled meeting so that IEUA can make reasonable arrangements to ensure accessibility.

# **PUBLIC HEARING**

# **1A**



Date: April 6, 2022To: The Honorable Board of DirectorsCommittee:

From: Shivaji Deshmukh, General Manager

Executive Contact: Denise Garzaro, Board Secretary/Office Manager

Subject: Adoption of Resolution No. 2022-4-1, Authorizing and Approving Relocation of Division Boundaries

#### **Executive Summary:**

Following the decennial census, the Agency is required to adjust the lines of voting districts to reflect how local populations may have changed. The public is invited to provide input about criteria for the consideration of drawing draft maps and boundaries. As required by CA Elections Code section 22000, the Agency must update and adjust the boundaries of electoral districts to ensure the population of the community is as equally represented as possible. Special districts with a November 8, 2022 election must adopt and send the new division boundary map to the San Bernardino County Registrar of Voters no later than April 17, 2022.

The Agency has been engaged in the redistricting process for the past several months. IEUA's consultant, Redistricting Partners, and Agency staff created a total of eight map options. At the March 16, 2022 Board meeting, the Directors eliminated Map options A, B, C, E, and F from further consideration. Map options D and G are still under consideration and staff has prepared a new map option H3 for consideration. The purpose of this Adoption Public Hearing is to allow for continued public input on the redistricting process and for the Board of Directors to select a preferred map option.

#### **Staff's Recommendation:**

1. Conduct a public hearing to receive input from the community regarding proposed maps for the redrawing of election division boundaries;

2. Select a preferred map for adoption from map options D, G, or H3; and

3. Adopt Resolution No. 2022-4-1 Authorizing and Approving Relocation of Division Boundaries.

**Budget Impact** Budgeted (Y/N):  $\mathbb{N}$  Amendment (Y/N):  $\mathbb{N}$  Amount for Requested Approval: Account/Project Name:

Fiscal Impact (explain if not budgeted):

**Environmental Determination:** Not Applicable

#### **Business Goal:**

Redrawing of Election Division Boundaries is in line with the Business Practices Business Goal of Efficiency and Effectiveness by applying best industry practices in all processes to maintain or improve the quality and value of the services we provide to our member agencies and the public.

#### Attachments:

- 1. Background
- 2. 2020 Census Population Totals by Current Division Boundaries
- 3. Proposed Revised Division Boundary Maps Option D, Option G and Option H3
- 4. Resolution No. 2022-4-1, Authorizing and Approving Relocation of Division Boundaries



## Background

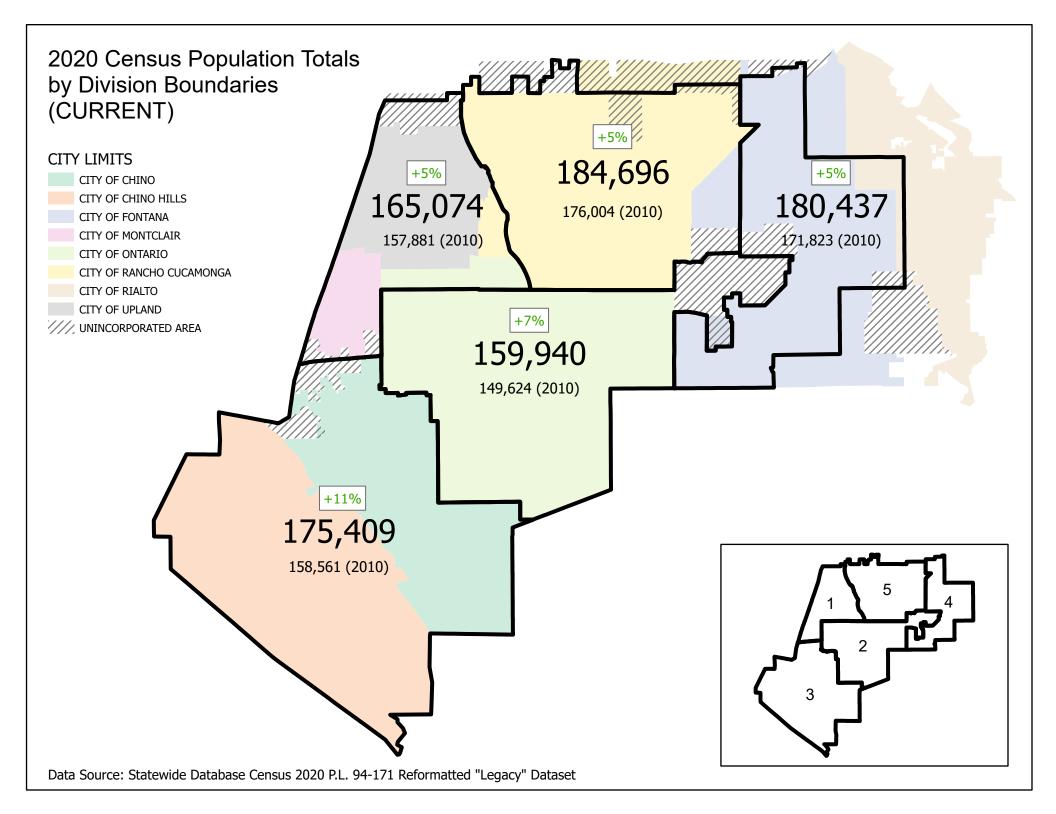
Subject: Public Hearing to Adopt Resolution Authorizing and Approving Relocation of Division Boundaries

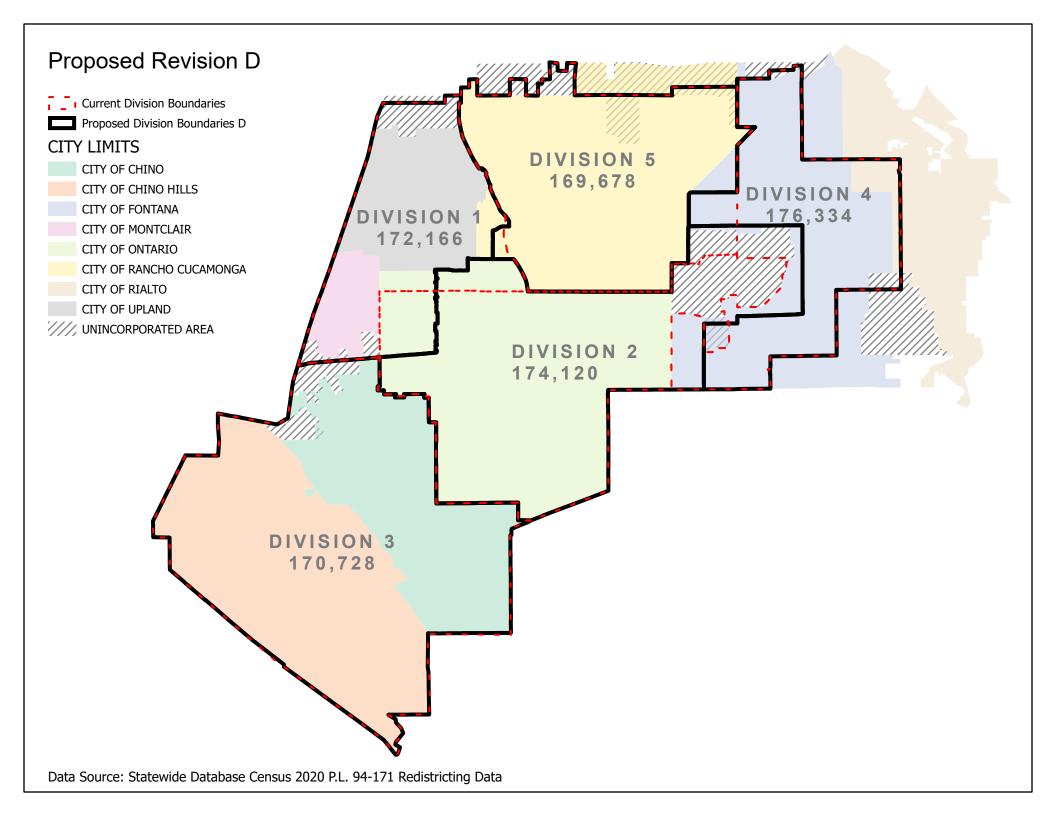
Following each decennial census, the Agency is required to adjust the lines of voting districts to reflect how local populations may have changed and to keep populations as equal as possible. It is mandatory when adjusting boundaries that any existing Board divisions that, according to the 2020 census, have a majority of minority residents, newly drawn divisions must retain the same majority-minority status. The 2020 census showed that IEUA Divisions 2 and 4 had majority-minority districts in 2010 and are retained in all iterations of the proposed maps. Based on the 2020 census, the population within IEUA's service area is approximately 865,556. According to census numbers, population growth between 2010 and 2020 was just over 50,000 residents and was heavily concentrated in the central and eastern portions of the IEUA service area (Divisions 2 and 4). The average population in each of the five divisions is approximately 173,000. Under the new boundaries, the deviation between the division with the highest population and the lowest population cannot exceed 10 percent.

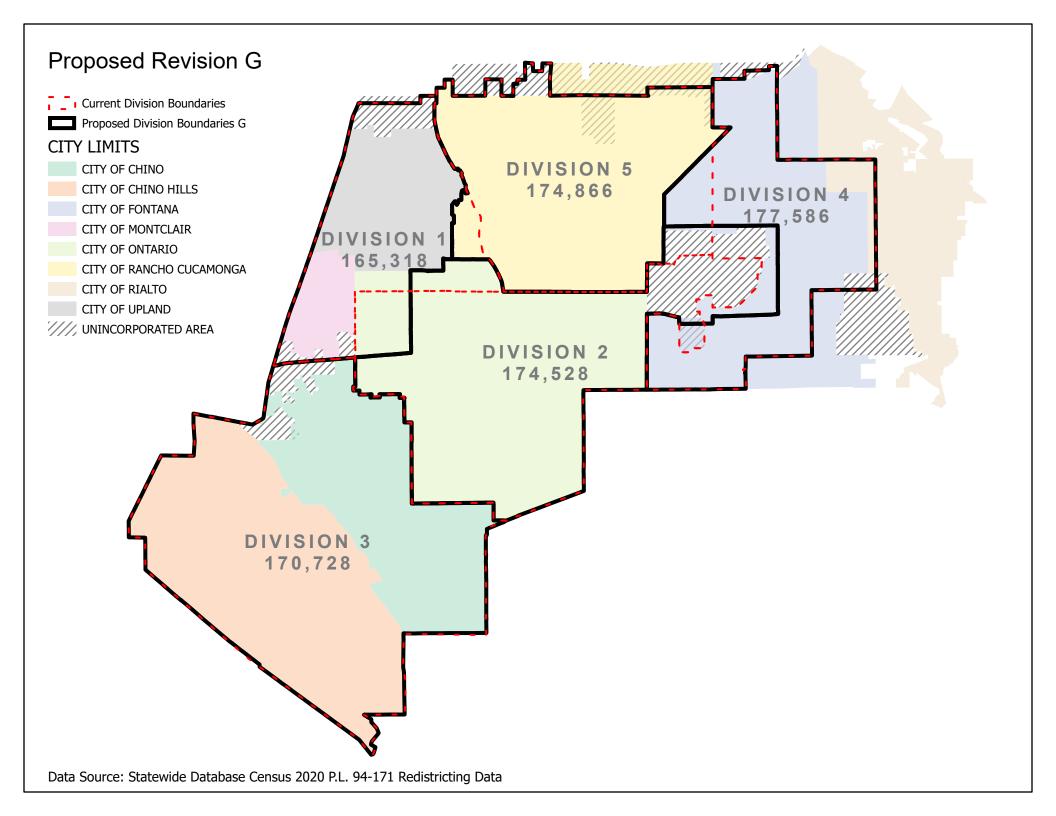
A landing page on the Agency's website was created to share information on IEUA's current division boundaries, meeting dates and allow residents to submit comments via an online submission form. A dedicated redistricting email address was established to provide residents with an additional means of communication on the redistricting process. To date, there was one email received regarding community meetings on January 12, 2022, but no other emails or online submissions have been received.

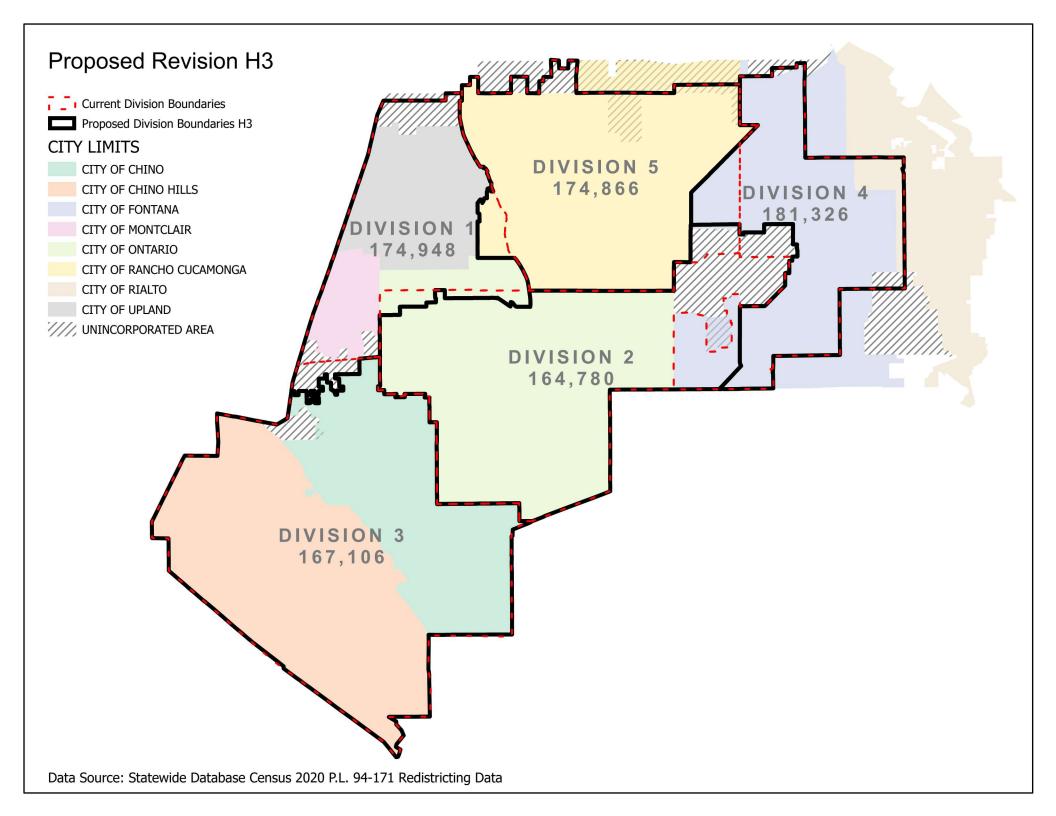
Residents were also invited to join virtual community workshops to learn more about the redistricting process, options and information available to them. An email blast inviting residents to each workshop was sent to two IEUA distribution lists comprised of more than 2,000 contacts including stakeholders and interested residents. Meeting dates, times and links were shared to the redistricting landing page and a recording of each community workshop was published following its conclusion. The first of two virtual community meetings was held on Tuesday, January 18 with one participant in attendance. The second meeting was held on Saturday, February 5. There were no members of the public present at this workshop.

The Agency is required to conduct a total of two public hearings. The initial public hearing was held on February 16, 2022 and the second public hearing was held on March 16, 2022. There were no public comments received during either meeting. The purpose of this Adoption Public Hearing is to allow for continued public input on the redistricting process and for the Board of Directors to select a preferred map option. Criteria when adjusting the boundaries of the divisions that the Board may consider include: (1) topography, (2) geography, (3) cohesiveness, integrity, and compactness of territory, and (4) communities of interests. The Federal Voting Rights Act also requires that any majority-minority district be kept intact. Following any comments received during the April 6, 2022 Public Hearing, the Board will choose a map to adopt new division boundaries through resolution. The newly approved boundaries must then be forwarded to the San Bernardino County Registrar of Voters no later than April 17, 2022.









#### **RESOLUTION NO. 2022-4-1**

#### RESOLUTION OF THE BOARD OF DIRECTORS OF THE INLAND EMPIRE UTILITIES AGENCY\*, SAN BERNARDINO COUNTY, CALIFORNIA, AUTHORIZING AND APPROVING RELOCATION OF DIVISION BOUNDARIES

**WHEREAS**, as a result of a change in the population figures of the Directors' divisions, it has become desirable to relocate the boundaries of the divisions of the Inland Empire Utilities Agency (IEUA); and

WHEREAS, this Board of Directors has reviewed a plan to relocate the boundaries of said divisions to equalize, as near as may be practicable, the population in the respective divisions; and

**WHEREAS**, the descriptions of the boundaries of said divisions as relocated are set forth on Attachment "A" attached hereto and made a part thereof:

**NOW THEREFORE**, the Board of Directors of the IEUA, a Municipal Water District, does hereby RESOLVE, DETERMINE AND ORDER as follows:

**Section 1.** That this Board of Directors finds and determines that a relocation of the boundaries of Division 1 through 5, inclusive, in the manner set forth on Attachment "A", shall equalize, as nearly as may be practicable, the population of the respective divisions.

**Section 2.** That said relocation of the boundaries of Division 1 through 5 inclusive was established in accordance with Section 71540 of the California Water Code.

**Section 3.** That the relocation of the boundaries of Division 1 through 5, inclusive, as set forth in Attachment "A", is hereby authorized and approved.

**Section 4.** That the secretary is hereby authorized and directed to forward a certified copy of this resolution to the Registrar of Voters for the County of San Bernardino.

**ADOPTED** this 6<sup>th</sup> day of April 2022.

Steven J. Elie, President of the Inland Empire Utilities Agency\* and of the Board of Directors thereof

ATTEST:

Marco Tule, Secretary/Treasurer of the Inland Empire Utilities Agency\* and of the Board of Directors thereof Resolution No. 2022-4-1 Page 2 of 3

STATE OF CALIFORNIA	)
	)SS
COUNTY OF SAN BERNARDINO	)

I, Marco Tule, Secretary/Treasurer of the Inland Empire Utilities Agency\*, DO HEREBY CERTIFY that the foregoing Resolution being No. 2022-4-1, was adopted at a regular meeting on April 6, 2022, of said Agency\* by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marco Tule, Secretary/Treasurer of the Inland Empire Utilities Agency\* and of the Board of Directors thereof

(SEAL)

\* A Municipal Water District

Resolution No. 2022-4-1 Page 3 of 3

#### ATTACHMENT A

To Be Determined

ACTION ITEM

# **2A**



Date: April 6, 2022 To: The Honorable Board of Directors Committee:

From: Shivaji Deshmukh, General Manager

Staff Contact: Shivaji Deshmukh, General Manager

Subject: Adoption of Resolution No. 2022-4-7, Making Certain Findings and Determinations Regarding Special Rules for Conducting Meetings through Teleconference

#### **Executive Summary:**

On March 4, 2020, Governor Newsom declared a state of emergency pursuant to Government Code 8625 due to the COVID-19 pandemic and recommended, together with local officials, measures for social distancing to assist in abating the spread of COVID-19; and on March 17, 2020, the Governor issued Executive Order N-29-20 which, among other things, suspended certain Brown Act rules governing the use of teleconferencing for local agency board meetings. Executive Order N-29-20 expired on September 30, 2021. In response to the ongoing COVID-19 pandemic, the California legislature enacted, and the Governor signed into law, AB 361 amending portions of Government Code 54953, allowing for the continued use of teleconferencing for local agency board meetings while suspending the conditions and restrictions of Government Code 54953(b)(3) if the legislative body of the local agency makes certain findings. The legislative body must make these findings every 30 days to continue the use of teleconferencing.

Staff is recommending that the Board of Directors makes the necessary findings and determinations and Adopt Resolution No. 2022-4-7 to continue to conduct meetings through teleconference for a period of 30 days.

#### **Staff's Recommendation:**

Adopt Resolution No. 2022-4-7, making certain findings and determinations regarding special rules for conducting meetings through teleconference.

**Budget Impact** Budgeted (Y/N): Y Amendment (Y/N): N Amount for Requested Approval: Account/Project Name:

Project No .:

*Fiscal Impact (explain if not budgeted):* None.

#### **Prior Board Action:**

The Board adopted Resolution No. 2021-10-1, making certain findings and determinations regarding special rules for conducting meetings through teleconference on October 6, 2021. On Oct. 2, 2021, Nov. 3, 2021, Nov. 17, 2021, Dec. 8, 2021, Jan. 5, 2022, Feb. 2, 2022, and March 2, 2022 the Board adopted Resolution Nos. 2021-10-1, 2021-11-6, 2021-11-1, 2021-12-1, 2022-1-1, 2022-2-1, and 2022-3-1, respectively, making continued findings and determinations regarding special rules for conducting meetings through teleconference.

#### **Environmental Determination:**

Not Applicable

#### **Business Goal:**

The Adoption of a Resolution to make findings for conducting meetings through teleconference is consistent with the IEUA's commitment to applying ethical, fiscally responsible, transparent and environmentally sustainable principles to all aspects of business and organizational conduct.

#### Attachments:

Attachment 1 - Resolution No. 2022-4-7

#### **RESOLUTION NO. 2022-4-7**

#### A RESOLUTION OF THE BOARD OF DIRECTORS OF THE INLAND EMPIRE UTILITIES AGENCY\*, SAN BERNARDINO COUNTY, CALIFORNIA, MAKING CERTAIN FINDINGS AND DETERMINATIONS REGARDING SPECIAL RULES FOR CONDUCTING MEETINGS THROUGH TELECONFERENCE

**WHEREAS**, Inland Empire Utilities Agency ("IEUA") is a municipal water district established pursuant to Section 71000 et seq. of the California Water Code; and

WHEREAS, all meetings of the Board of Directors of IEUA are conducted in open and public settings in compliance with the Ralph M. Brown Act (Brown Act) so that any member of the public may attend, participate and watch the Agency's Board of Directors conduct their business; and

**WHEREAS**, on March 4, 2020, the Governor declared a state of emergency pursuant to Government Code 8625 due to the COVID-19 pandemic and has recommended, together with local officials, measures for social distancing to assist in abating the spread of COVID-19; and

**WHEREAS**, on March 17, 2020, the Governor issued Executive Order N-29-20 which, among other things, suspended certain Brown Act rules governing the use of teleconferencing of local agency board meetings; and

**WHEREAS**, the California legislature has enacted, and the Governor has signed into law, AB 361 amending portions of Government Code 54953, allowing for the continued use of teleconferencing for local agency board meetings while suspending the conditions and restrictions of Government Code 54953(b)(3) if the legislative body of the local agency makes certain findings; and

**WHEREAS,** On October 6, 2021 the Board of Directors of the Inland Empire Utilities Agency approved Resolution 2021-10-1 making certain factual findings, and authorizing the continued use of teleconferencing for IEUA Board meetings for an effective period of 30 days; and

**WHEREAS,** On November 3, 2021 the Board of Directors of the Inland Empire Utilities Agency approved Resolution 2021-11-6 again making certain factual findings, and authorizing the continued use of teleconferencing for IEUA Board meetings for an effective period of 30 days; and

**WHEREAS,** On November 17, 2021 the Board of Directors of the Inland Empire Utilities Agency approved Resolution 2021-11-1 again making certain factual findings, and authorizing the continued use of teleconferencing for IEUA Board meetings for an effective period of 30 days; and

**WHEREAS,** On December 8, 2021 the Board of Directors of the Inland Empire Utilities Agency approved Resolution 2021-12-1 again making certain factual findings, and authorizing the continued use of teleconferencing for IEUA Board meetings for an effective period of 30 days; and

**WHEREAS,** On January 5, 2022 the Board of Directors of the Inland Empire Utilities Agency approved Resolution 2022-1-1 again making certain factual findings, and authorizing the continued use of teleconferencing for IEUA Board meetings for an effective period of 30 days; and

**WHEREAS,** On February 2, 2022 the Board of Directors of the Inland Empire Utilities Agency approved Resolution 2022-2-1 again making certain factual findings, and authorizing the continued use of teleconferencing for IEUA Board meetings for an effective period of 30 days; and

**WHEREAS,** On March 2, 2022 the Board of Directors of the Inland Empire Utilities Agency approved Resolution 2022-3-1 again making certain factual findings, and authorizing the continued use of teleconferencing for IEUA Board meetings for an effective period of 30 days; and

**WHEREAS**, the Board of Directors must now determine whether to extend the effective period of Resolution 2022-4-7 for an additional 30 days, making the appropriate factual findings in support thereof;

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Directors of the Inland Empire Utilities Agency hereby make the following findings and determinations:

**SECTION 1.** The Governor has proclaimed a state of emergency on March 4, 2020 which continues.

**SECTION 2.** The Governor and local officials have promoted the use of social distancing as a method to abate the spread of COVID-19 within the community. The Board of Directors finds that conducting in person meetings of the IEUA Board of Directors would be inimical to social distancing and would present imminent risks to the health or

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safety of the attendees and conducting meetings by teleconference would diminish that risk.

**SECTION 3**. The Board of Directors will continue to conduct Board meetings by teleconference in compliance with Government Code 54953(e) until such time as the Governor has terminated the state of emergency and the risk to health and safety of meeting attendees is sufficiently diminished or as otherwise required by law. Notice of meetings and posted agendas will contain information which allows members of the public to access the meeting and address the Board of Directors and offer public comment including an opportunity for all persons to attend via a call-in option or an internet-based service option.

**SECTION 4.** This Resolution shall take effect immediately upon its adoption and shall be effective for 30 days or until such time as the Board of Directors adopts a subsequent resolution in accordance with Government Code 54953(e)(3) to extend the time during which meetings of the Board of Directors may be conducted by teleconference without compliance with Government Code 54953(3)(b).

**ADOPTED** this 6<sup>th</sup> day of April, 2022.

Steven J. Elie, President of the Inland Empire Utilities Agency\* and of the Board of Directors thereof

ATTEST:

Marco Tule, Secretary/Treasurer of the Inland Empire Utilities Agency\* and of the Board of Directors thereof

Resolution No. 2022-4-7 Page 4 of 4

> STATE OF CALIFORNIA ) ) COUNTY OF SAN BERNARDINO )

I, Marco Tule, Secretary/Treasurer of the Inland Empire Utilities Agency\*, DO HEREBY CERTIFY that the foregoing Resolution being No. 2022-4-7, was adopted at a regular meeting on April 6, 2022, of said Agency by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marco Tule, Secretary/Treasurer of the Inland Empire Utilities Agency\* and of the Board of Directors thereof

(SEAL)

\*A Municipal Water District



# **2B**



Date: April 6, 2022To: The Honorable Board of DirectorsCommittee:

From: Shivaji Deshmukh, General Manager

Staff Contact: Shivaji Deshmukh, General Manager

Subject: Election for Regular and Alternate Special District Members of the Local Agency Formation Commission

#### **Executive Summary:**

On March 2, 2022 the Agency received ballots for the Local Agency Formation Commission (LAFCO) Regular Special District Member and Alternate Special District Member. Each District may vote for one candidate to serve a four-year term for each position. Materials received from the candidates are included as attachments.

Candidates for Regular Special District Member: Steven Farrell (Board of Directors of the Crestline Village Water District) Kelly Gregg (Board of Directors Hesperia Recreation and Park District)

Candidates for Alternate Special District Member: Craig Dicht (Board of Directors of the Bighorn-Desert View Water Agency) Kevin Kenley (Board of Directors of the Cucamonga Valley Water District) David Raley (Board of Directors of the San Bernardino Valley Water Conservation District) James Roberts (Board of Directors Hesperia Recreation and Park District)

#### **Staff's Recommendation:**

Determine the Agency's vote for the Special Districts Election for the Local Agency Formation Commission by selecting one candidate for Regular Special District Member and one candidate for Alternate Special District Member of LAFCO.

**Budget Impact** Budgeted (Y/N): Y Amendment (Y/N): Y Amount for Requested Approval: Account/Project Name:

Fiscal Impact (explain if not budgeted):

**Prior Board Action:** 

**Environmental Determination:** Not Applicable

**Business Goal:** 

#### Attachments:

Attachment 1 - Official Voting Process Communication from LAFCO dated February 28, 2022 Attachment 2 - Letter of Support for Alternate Member candidate Kevin Kenley from James Curatalo

ATTACHMENT 1





Local Agency Formation Commission for San Bernardino County

1170 West 3rd Street, Unit 150 San Bernardino, CA 92415-0490 909-388-0480 | Fax 909-388-0481 lafco@lafco.sbcounty.gov www.sbclafco.org

#### COMMISSIONERS

JOE BACA, Jr Board of Supervisors

JIM BAGLEY, Chair Public Member

DR. KIMBERLY COX Special District

JAMES V. CURATALO Special District

CURT HAGMAN Board of Supervisors

LARRY McCALLON City Member

ACQUANETTA WARREN, Vice Chair City Member

#### ALTERNATES

DIETER C. DAMMEIER Public Member

> RICK DENISON City Member

STEVEN FARRELL Special District

DAWN ROWE Board of Supervisors

#### EXECUTIVE OFFICER

SAMUEL MARTINEZ

#### LEGAL COUNSEL

PAULA DE SOUSA

February 28, 2022

# TO: Presidents of the Boards of Directors of the Independent Special Districts in San Bernardino County

#### SUBJECT: Special Districts Election for Regular LAFCO Member and Alternate LAFCO Member

The nomination period for the Regular and Alternate Special District Members of the Local Agency Formation Commission (LAFCO or Commission) ended on February 14, 2022. During the nomination period, LAFCO received the following nominations for the Regular Special District Member position:

- Jim Curatalo, Cucamonga Valley Water District (Incumbent) (*Mr. Curatalo received a nomination for the regular member position but has declined to seek another term on the Commission; therefore, his nomination for the Regular Special District member position has been revoked and his name will be removed from the list of nominees for the regular member ballot*)
- Steven Farrell, Crestline Village Water District
- Kelly Gregg, Hesperia Recreation and Park District

Likewise, during the nomination period, LAFCO received the following nominations for the Alternate Special District Member position:

- Craig Dicht, Bighorn-Desert View Water Agency
- Steven Farrell, Crestline Village Water District (Incumbent) (*Mr. Farrell received nominations not only for the alternate member position but also for the regular member position. Mr. Farrell has opted to run for the Regular Special District position instead; therefore, his nomination for the Alternate Special District member position has been revoked and his name will be removed from the list of nominees for the alternate member ballot*)
- Kevin Kenley, Cucamonga Valley Water District
- David Raley, San Bernardino Valley Water Conservation District
- James Roberts, Hesperia Recreation and Park District

By distribution of this letter, the official voting process for the Regular Special District Member and Alternate Special District Member of LAFCO shall commence. Pursuant to the provisions of Government Code Section 56332, the voting period will commence as of today's date and ending on Monday, **April 18, 2022.**  The voting instructions for these selections are as follows:

- 1. Each District may vote for one candidate for each position. A copy of the information provided by the candidates is included for your information.
- 2. The original ballot for each position:
  - Requires a board vote, with the name of each voting Board Member outlined;
  - Must be signed by either the Board President, General Manager, or Designee; and,
  - Must be received in the LAFCO office by 5:00 p.m. on April 18, 2022, via mail, fax, or email scan.
    - If a copy of the ballot is provided by fax or email by the April 18 deadline, LAFCO must receive the <u>original</u> signed copy by 5:00 p.m. on April 25, or the ballot will be declared invalid.
- 3. Twenty-six (26) ballots are required to be received to establish a quorum for selection of either the Regular or Alternate Special District Member position.

The completed ballot(s) is/are to be mailed to:

Samuel Martinez, Executive Officer Local Agency Formation Commission 1170 West Third Street, Unit 150 San Bernardino, CA 92415-0490

Please let me know if you have any questions concerning this selection process. You may contact me at the address listed above, by e-mail at smartinez@lafco.sbcounty.gov, or by phone at (909) 388-0480.

Sincerely,

Executive Officer

Enclosures: Regular Member Ballot Information on Regular Member Candidates Alternate Member Ballot Information on Alternate Member Candidates

### 2022 BALLOT

## REGULAR SPECIAL DISTRICT MEMBER OF THE LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

The				
	(Name of District)			
hereby votes for th	e marked candidate as indicated below:			
REGULAR SPECIAL DISTRICT MEMBER OF LAFCO:				
	STEVEN FARRELL (Member of the Board of Directors of the Crestline Village Water District)			
KELLY GREGG (Member of the Board of Directors of the Hesperia Recreation and Park District)				
I,	, do hereby certify that at its scheduled meeting			
of	, the Board of Directors voted to elect the			
above-marked can	didate as the Regular Special District Member of the Local Agency			
Formation Commis	ssion for San Bernardino County, by the following vote:			
AYES:				
NOES:				
ABSENT:				
ABSTAIN:				
	Board President, General Manager or Designee			
	Dated:			



PO Box 3347, 777 Cottonwood Drive, Crestline, CA 92325-3347 Telephone: (909) 338-1727 «» FAX: (909) 338-4080

Special District Members,

Feb 21, 2022

I ask for your vote for Regular Special District Commissioner; for your support of my continuing service on LAFCO; for my ongoing interest and commitment to effective, functioning governance in our County; and for the importance of having geographic and size diversity on the Commission.

When I was elected Alternate Special District to the Commission eight years ago, I was pleased to be one of the rare Commissioners from the County's mountain region, in conformity with LAFCO's policy of encouraging balanced geographic representation. I've seen LAFCO decisions and policies affect all kinds of districts, big and small, rural and urban, in ways that are often not obvious or anticipated. Mountain districts, all districts, are wise to be actively engaged and knowledgeable about LAFCO.

Commissioner James Curatalo's decision this term to "retire" from LAFCO, after 20 years of exemplary leadership, knowledge, and energy is a significant loss to all local governments here in the County; and he will certainly be missed. I will miss him. Yet, with his encouragement, and the endorsement of his board at Cucamonga Valley Water District, I now have the opportunity to run for his Regular District seat.

I also appreciate my nomination by the Mojave Water Agency, and in particular, Special District Commissioner Kimberly Cox's support. I'm proud to have their confidence.

I've been participating in local government service issues now for well over 15 years.

As a 12-year director at Crestline Village Water District (currently President), I've attended ACWA (the Association of California Water Districts) twice each year. There, among other subject tracks, I consistently attend the Local Government Committee meetings and seminars paying close attention to state and local topics that pertain to Special Districts. For ten years I've also been my district's ACWA/JPIA (insurance) director. I've also been an ACWA Region 9 board member.

I've completed the Special District Leadership Foundation curriculum.

I serve on the County's Regional Parks Advisory Commission.

Eight years ago, as a new Commissioner, I was offered some sobering advice, "Steve, it takes about 5 years or more being on the Commission before one really begins to understand or appreciate what LAFCO's all about." Though that could be an understatement, I'm confident today I can serve capably.

If elected, I recommit to the best interests of the entire County and its residents. I will consider and respect the special concerns and perspectives of all, using the analytical skills I practiced in my 25-year career in IT (UCLA, the Pacific Stock exchange, and international management and consulting for private software firms.) I ask questions when I don't understand an issue, and I speak out when I perceive an incongruity or problem.

I strive for excellence and will always act and represent Special Districts fairly, thoughtfully and honorably.

Thank you,

C Ermel

Steven Farrell President, Crestline Village Water District



Kelly J Gregg, Director Hesperia Recreation and Park District

February 11, 2021

Letter of interest for: LAFCO, Special District Commissioner; Regular Member

Committee Members,

It has come to my attention that there is an open vacancy for LAFCO, Special District Commissioner; Regular Member.

After speaking with our Board President and General Manager, I would like to be considered as a candidate and team member for this opportunity to serve our area. Below is a brief summary of my current and past political contributions.

I have been a lifelong resident of Hesperia since 1971. I served/serve as the voice of the community, and taxpayers on the HRPD Governing Board from 2010-2014 and 2016-current.

- Serves as Director of the Hesperia Recreation and Park District and on several committees: Finance (chair), Tri-Agency (chair), Personnel (v-chair), City Ad Hoc (chair).
- Served as President of the Hesperia Recreation and Park District and on several committees: Budget (chair), Safety and Security (chair), Foundation, and Golf Course.
- Serves on Hesperia City Council Safety Committee (chair).
- Serves as Director of the ASBCSD special districts board.
- Fiscal responsibility and transparency are two main platform goals that take priority when making decisions for any agency or civic organization.

Kelly J Gregg is available to you at (760)985.1193 or by emaildirectorgregg@hesperiaparks.com

Thank you for your consideration,

Kelly (

Kelly J Gregg District Director Hesperia Recreation and Park District

### **2022 BALLOT**

### ALTERNATE SPECIAL DISTRICT MEMBER OF THE LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

The \_\_\_\_\_(Name of District)

hereby votes for the marked candidate as indicated below:

#### **ALTERNATE SPECIAL DISTRICT MEMBER OF LAFCO:**

**CRAIG DICHT (Member of the Board of Directors** of the Bighorn-Desert View Water Agency) **KEVIN KENLEY (Member of the Board of Directors** of the Cucamonga Valley Water District) **DAVID RALEY (Member of the Board of Directors** of the San Bernardino Valley Water Conservation District)

> **JAMES ROBERTS (Member of the Board of Directors** of the Hesperia Recreation and Park District)

I, \_\_\_\_\_, do hereby certify that at its scheduled meeting

of \_\_\_\_\_, the Board of Directors voted to elect the

above-marked candidate as the Alternate Special District Member of the Local Agency

Formation Commission for San Bernardino County, by the following vote:

AYES:

NOES:

ABSENT:

**ABSTAIN:** 

Board President, General Manager or Designee

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

## **CRAIG DICHT**

	(760) 368-5441 craig.dicht@gmail.com http://www.linkedin.com/	in/craigdicht	
Provide compete	SAN BERNARDINO COUNTY LAFCO - COMMISSIONI at judgment and support on planning, regulation, and special studies with		
	and gauge and support on praiming, regulation, and special statics with	in the commission's purview	
EDUCATION	WEATHERHEAD SCHOOL OF MANAGEMENT	Cleveland, OH	
	Case Western Reserve University Master of Business Administration, May 2015		
	• Focus on overlap in business issues and public policy		
	• Concentrated coursework in accounting, finance, operations, and r	narketing	
	UNIVERSITY OF PITTSBURGH	Pittsburgh, PA	
	Bachelor of Arts, Religious Studies & English Writing, 2004	i nisouign, i A	
EXPERIENCE	<b>BIGHORN-DESERT VIEW WATER AGENCY</b>	Landers, CA	
02/2021-Present	Member, Board of Directors		
	• Serve on Finance/Public Relations committee		
	• Chair of Water Consumption Trends/Cannabis and Legal Counsel	Search committees	
07/2020 - 10/2020		High Desert Areas, CA	
	• Top 3 in region at engaging previous non-respondents to complete the decennial census		
	• High success rate navigating rough roads to remote desert locations	s to meet reluctant residents	
06/2007 - 6/2019	STUDENT CONSERVATION ASSOCIATION		
	Work Skills Instructor, 06/2010 – 06/2019 (occasional/seasonal)	Various Locations	
	• Trained over 150 adults to lead crews of high school students in con		
	<ul> <li>Project Leader, 06/2007 - 8/2010; 08/2016 - 11/2016</li> <li>Leader for 40+ sustainability and natural resource conservation pro-</li> </ul>	NJ, CA Desert, OH	
	community outreach, wilderness monitoring, trail work, and invasiv	ve plant management	
	• On the ground lead for pilot tree-planting program in Cleveland parks, coordinating with		
	multiple project partners	-	
	• Successfully advocated adjusting tree project budget to pay crew m	embers a living wage	
08/2013 - 5/2015	FOWLER CENTER FOR SUSTAINABLE VALUE	Cleveland, OH	
	<ul><li>Fowler Fellow</li><li>Authored "Food Donation Connection: Profitably Scaling Food Wa</li></ul>	ate De duction?	
	<ul> <li>Coordinated logistics for CEO sessions at the Flourish &amp; Prosper G</li> </ul>		
	• Served on editorial board for the Business as an Agent of World Be		
05/2014 - 08/2014	ENTREPRENEUR'S EDGE	Cleveland, OH	
	Consulting Fellow	· · · · · · · · · · · · · · · · · · ·	
	• Conducted market feasibility studies for a new water monitoring tec		
	• Proved client's initial market focus lacked potential and identified more attractive segments		
	• Created report and presentation with an action plan and valuable con pursue development in a \$200 million segment	itacts for the client to	
10/2010 - 12/2010	UNITED STATES BUREAU OF LAND MANAGEMENT	Moreno Valley, CA	
	Park Ranger Tech GS-7	8	
	• Provided support to Americorps conservation crews: organized orientation; advised on		
	<ul><li>projects; instructed in proper data collection and management</li><li>Recorded, organized, and catalogued reports, maps, and equipment a</li></ul>	associated with PI M	
	wilderness management efforts	abboolation with DEMI	

# CRAIG DICHT

ч.

18-15- CA 92.38

	760) 368-5441 craig.dicht@gmail.com http://www.linkedin.com/in/	craigdicht	
MBA PROJECTS	<ul> <li>DESIGN IN MANAGEMENT: RITTMAN ORCHARDS</li> <li>Developed strategy for a local orchard to identify the best distributor for its new hard cider</li> </ul>		
	<ul> <li>Created decision-making resources based on market research, interview</li> </ul>		
	and retailers, and synthesis of knowledge from other management dis		
		1	
	URBAN LAND INSTITUTE HINES CASE COMPETITION		
	• Designed proposal for development in an economically disadvantage		
	• Planned financing strategy for development including pro forma finar	icial statements	
	POLITICS, POLICY & THE GLOBAL ENVIRONMENT		
	• Term paper for Political Science elective focused on regulation, finan	erm paper for Political Science elective focused on regulation, financing, and effectiveness	
	of various payments for environment services (PES) initiatives		
SERVICE			
EXPERIENCE	THE LIVINGSCHOOL LEARNING COOPERATIVE	Joshua Tree, CA	
08/2010 - 12/2012	Treasurer/ Administrative Facilitator/ Educator	······, ···	
	• Oversaw budget and fulfilled school accounting, contracting, and pays	ment responsibilities	
	Created and implemented decision-making model for cooperative meet		
	• Established definitions of roles and increased accountability in school	administration	
	• Planned and taught outdoor education and hands-on science classes		
11/2011 - 04/2012	THRIVING IN A CHANGING WORLD SUMMIT	Joshua Tree, CA	
	Planning Committee Chairperson / Event Facilitator		
	• Led 15 person committee to organize and execute a community-buildi	ng event focused on	
	the creation of new sustainable community groups		
	• Served as summit facilitator using Open Space principles		
08/2006 - 12/2006	UNITED STATES FISH AND WILDLIFE SERVICE	Fremont, CA	
	Environmental Education Intern		
	• Created, revised, and presented interactive lessons on wetland habitat and coastal marine		
	<ul> <li>environments to over 1000 K-6 students</li> <li>Administered and supported educator-led on-site field trips for large st</li> </ul>	udent groups	
	······································	amerre Broabs	
09/2005 - 07/2006	WEST VIRGINIA SUSTAINABLE COMMUNITIES PROJECT	Summersville, WV	
	AmeriCorps Member		
	<ul> <li>One of six founding members of the sustainable communities project</li> <li>Built relationships with local government, non-profits, radio stations, no</li> </ul>	arrananan harringanan	
	<ul> <li>Built relationships with local government, non-profits, radio stations, newspapers, businesses schools, and families to promote our initiatives and leverage resources</li> </ul>		
	• Created pollution prevention education materials including interactive	games, press releases,	
	pamphlets, and Powerpoint presentations		
	• Conducted over 30 free home energy audits and provided basic weathe	rization for families	
	enrolled in the Low Income Housing Energy Assistance Program		
	TRAININGS AND CERTIFICATIONS		
08/2011	Emergency Medical Technician-Basic (expired 04/2013)		
04/2011	Wilderness First Responder - National Outdoor Leadership School (expired	d 04/2013)	

09/2007 Leave No Trace Trainer

#### **Kevin Kenley**

Local Agency Formation Commission for San Bernardino County 2022-2026 Alternate Special District Member

Dear San Bernardino County Special District Members:

My name is Kevin Kenley and I am currently seeking to serve as your Alternate Special District Member for the San Bernardino LAFCO. I was elected to the Cucamonga Valley Water District (CVWD) Board of Directors in November 2019 to represent Division I, which covers portions of southern Rancho Cucamonga and northeastern Ontario. I have lived in southern Rancho Cucamonga since 2001, with my wife and children, where I am also an active member of my community through



church activities, and serving as an Assistant Scout Master for my son's Boy Scout troop. I have worked at UPS for over nineteen years, fifteen years of which have been in management, and am currently appointed to represent the company in their government outreach program.

Since being elected to the CVWD Board of Directors, I have worked hard to learn as much as possible about the workings and dynamics of the local and regional water systems, and the unique role that Special Districts play in local governance. I currently serve on CVWD's Engineering and Government & Public Affairs Committees where I oversee the investments in our infrastructure, as well as our legislative and government engagement. In my ongoing endeavor to learn more about local government, special districts and the critical services they provide, I completed the Special District Leadership Academy Governance Foundations course through the California Special Districts Association last year, which provided me with even greater insight into what my responsibilities as an elected Special District representative are.

I am excited at the prospect of representing special districts and being an effective voice for all of our agencies on critical issues facing us in the region and state. My drive for serving my community and ensuring its ability to flourish has been a long-standing passion that has kept me engaged at the local and regional government levels. I have witnessed the importance and need for effective representation of special districts not only in the Inland Empire but also throughout California. I ask that you entrust me with the opportunity to be that effective voice for you and the special districts in San Bernardino County. Please feel free to reach out to me at (909) 489-1202 should you have questions or concerns.

K/

## David E. Raley



Phone: 909.437.9003 Fax: 909.798.9248 E-mail: mustangder@aol.com

#### **Objective**

# To become the alternate Local Agency Formation Commission for San Bernardino County LAFCO Special Districts Representative

#### **Qualifications**

I have a keen interest in ensuring the fair and equitable treatment of Special District interests and concerns are handled by the Local Agency Formation Commission for San Bernardino County (LAFCO) at functions, meetings and activities. I believe I clearly understand the needs and interests of a significant number of the Special Districts and it will be my mission to learn of others. When elected I plan to attend all of the LAFCO meetings, as the alternate, and provide ALL Special Districts with summaries of events and/or decisions which directly or indirectly affect Special Districts.

#### Work History

**Director, San Bernardino Valley Water Conservation District** — **2010 to Present.** I am Chairman of the Finance and Administration Committee and through the efforts of a superior Board lead by President McDonald and a truly outstanding General Manager, Mr. Daniel Cozad the District has developed and maintained an outstanding financial status while keeping our rates at or below the economic growth rates.

**Director, Crafton Hills College Foundation — 2000 to Present.** I have severed several terms as President and through the work of the Board and Foundation Staff the number of Scholarships and Other Student Support increased by 25 fold or more.

**CEO** and Manager of the Norton (now Alta Vista) Credit Union — 1984 to 1998. When I joined this military Credit Union assets were \$25 million and when I left they were over \$125 million. Our mission was to help and support both the military and civilian population. I was honored by the California Credit Union League for my outstanding support of Small Credit Unions.

Vice President of Bierly and Associates Worker's Compensation Administrators. — 1980 to 1984. As a Safety Consultant I assisted several Special Districts with Loss Prevention and Workers Compensation Issues.

Officer and Pilot in the United States Air Force — 1955 to 1980 — Enlisted as an Aviation Cadet and Retired as a Full Colonel.

#### **Education**

Masters Degree in Business Administration, Arizona State University Bachelor of Science Degree, University of Maryland

#### **References**

Richard Corneille, 834 Eastwood Street, Redlands, CA 92374

Donald Singer, 15585 Mallory Drive, Redlands, CA 92373

February 16, 2022 Letter of Interest

Dear Special District Agency Representatives,

I appreciate the opportunity in placing my name in the hat of well qualified candidates for the Local Agency Formation Commission (LAFCO) as an Alternate. I have received the support from the Hesperia Recreation and Park Districts' Board of Directors to submit my name for your consideration.

My background includes currently holding the position of Hesperia Recreation and Park District Board of Director, an elected position. In addition to more than 20 years of combined service in the public service arena. Ranging areas include Law Enforcement, business development and Hesperia City appointed committees to name a few.

Please feel free to contact me at 760-486-1914 should you have any questions about this letter of interest.

Thank you for your consideration.

Kind regards,

James W Roberts III Board Member Cell: 760-486-1914 Email: Jroberts@hesperiaparks.com



John Bosler Secretary/General Manager/CEO 10440 Ashford Street, Rancho Cucamonga, CA 91730-2799 P.O. Box 638, Rancho Cucamonga, CA 91729-0638 (909) 987-2591 Fax (909) 476-8032

February 9, 2022

INLAND EMPIRE UTILITIES AGENCY P.O. Box 9020 Chino Hills, CA 91709

My Fellow San Bernardino County Special District Members:

It is my pleasure to inform you that the Cucamonga Valley Water District took action at our February 8, 2022 board meeting to nominate Director Kevin Kenley as the Alternate Special District Member for the Local Agency Formation Commission for San Bernardino County. I have had the opportunity to work alongside Director Kenley for several years. His passion and commitment to special districts is tireless and admirable. Director Kenley is an active member of his community and is a devoted advocate for its direction and purpose. I know that as a member of the Commission he will contribute constructively and represent our special district perspective diligently.

I am contacting you to request your agency's support of Director Kenley in his endeavor for election to LAFCO. A statement of his experience and qualifications is attached for your reference. Thank you for your consideration. Should you have any questions, please feel free to reach out to me at (909) 987-2591.

Sincerely,

ames V. Curatalo, Jr. Regular Special District Member, LAFCO

ACTION ITEM

# **2C**



**Date:** April 6, 2022 **To:** The Honorable Board of Directors **Committee:** 

From: Shivaji Deshmukh, General Manager

Staff Contact: Javier Chagoyen-Lazaro, Acting Assistant General Manager

Subject: Adoption of Resolution Nos. 2022-4-2 through 2022-4-4, Authorizing IEUA to Execute Installment Sale Agreements under the Clean Water State Revolving Fund Program

# **Executive Summary:**

In March 2022, IEUA received Clean Water State Revolving Fund (CWSRF) Loan agreements from the State Water Resources Control Board (SWRCB) for the following Projects: Montclair Basin Improvements Project No. C-06-8415-110 (Montclair), the Distrbution System/Wineville/Jurupa/RP-3 Recharge Improvements Project No. C-06-8260-110 (Wineville) and the RP-5 Expansion Construction Project No. C-06-8173-210 (RP-5). These agreements are included in the SWRCB's Fiscal Year 21-22 Intended Use Plan to receive funding through low-interest loans.

The CWSRF Policy requires SRF loan agreements to be authorized at closing through Board resolutions. The attached resolutions have been drafted by IEUA's bond counsel and authorize IEUA's General Manager to enter into the loan agreements. The Montclair and Wineville agreements, with loan amounts of \$2,062,000 and \$11,742,550, respectively, carry 20-year terms with a 0.55 percent interest rate. Consistent with the provisions of the Recharge Master Plan Update (RMPU), these repayment costs will be passed through to the Chino Basin Watermaster. The RP-5 loan agreement will finance \$101,530,000 of the project costs and will be repaid at a 0.8 percent interest rate over a 30-year term.

# **Staff's Recommendation:**

Adopt Resolution Nos. 2022-4-2, 2022-4-3, 2022-4-4, authorizing IEUA to enter into Installment Sale Agreements with the State Water Resources Control Board and designate the General Manager to sign, for and on behalf of IEUA, the funding agreements for the Projects and any non-substantive amendments.

**Budget Impact** Budgeted (Y/N): Y Amendment (Y/N): N Amount for Requested Approval:

Account/Project Name:

RW15003.03 Montclair Basin Improvements

RW15003.06 – Wineville Basin/Jurupa Basin/ Distribution System Improvement Project EN19001 RP-5 Liquids Expansion and EN19006 RP-5 Solids Treatment Facility

Project No .:

Fiscal Impact (explain if not budgeted):

None.

# **Prior Board Action:**

On March, 16, 2022, the Board approved Resolution 2022-3-4 authorizing the Agency to enter into an SRF Installment Sale Agreement for the Lower Day Basin Improvements project.

On December 19, 2018, the Board approved Resolutions 2018-2-1 and 2018-12-2 authorizing the Agency to enter into SRF loan agreements for the RP-5, Wineville, and Montclair projects.

## **Environmental Determination:**

Negative Declaration

The Montclair project was determined to be consistent with the Initial Study/Mitigated Negative Declaration that was approved in 2015 for compliance with CEQA. The Wineville and RP-5 projects were determined to be consistent with IEUA's Program Environmental Impact Report.

# **Business Goal:**

Leveraging low-interest borrowing is consistent with the IEUA Business Goal of Fiscal Responsibility to ensure capital projects are completed at the lowest cost to ratepayers.

# Attachments:

Attachment 1 - Resolution 2022-4-2

Attachment 2 - Installment Sale Agreement (ISA) No. D2101014 - RP-5 Expansion Project

Attachment 3 - Resolution 2022-4-3

Attachment 4 - ISA No. D2101013 - Montclair Basin Improvements Project

Attachment 5 - Resolution 2022-4-4

Attachment 6 - ISA No. D2101012 - Distribution System/Wineville/Jurupa/RP-3 Recharge Improvements Project

## **RESOLUTION NO. 2022-4-2**

RESOLUTION OF THE INLAND EMPIRE UTILITIES AGENCY<sup>\*</sup> AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT SALE AGREEMENT BETWEEN THE INLAND EMPIRE UTILITIES AGENCY<sup>\*</sup> AND THE STATE WATER RESOURCES CONTROL BOARD RELATING TO THE RP-5 EXPANSION CONSTRUCTION PROJECT AND APPROVING OTHER MATTERS IN CONNECTION THEREWITH

**WHEREAS**, the Inland Empire Utilities Agency<sup>\*</sup> (the "Agency"), a municipal water district duly organized and existing under and pursuant to the Constitution and laws of the State of California, proposes to undertake the financing of certain improvements to the Agency's wastewater system known as the RP-5 Expansion Construction Project (the "Project"); and

**WHEREAS**, the State of California has established its Clean Water State Revolving Fund (the "CWSRF") pursuant to Chapter 6.5 of Division 7 of the California Water Code, as required by Title VI of the federal Water Pollution Control Act; and

**WHEREAS**, this Board has determined that it is in the best interest of the Agency to obtain a loan (the "SRF Loan") from the CWSRF for the purpose of financing all or a portion of the Project; and

**WHEREAS**, the SRF Loan will be evidenced by an Installment Sale Agreement (the "Financing Agreement") between the Agency and the California State Water Resources Control Board (the "CSWRCB"); and

**WHEREAS**, this Board has determined to authorize the execution and delivery of the Financing Agreement for the purpose of financing all or a portion of the Project and to approve certain matters in connection therewith;

**NOW, THEREFORE**, the Board of Directors (the "Board") of the Inland Empire Utilities Agency\* hereby finds, determines, declares and resolves as follows:

1. The incurrence of the SRF Loan in the principal amount not to exceed \$101,530,000 to finance all or a portion of the Project is hereby approved. The incurrence of the SRF Loan is determined to be consistent with the Agency's debt policy and to the extent the incurrence of the SRF Loan is not in compliance with the Agency's debt policy, such noncompliance is waived in accordance with the terms of the Agency's debt policy.

2. The Financing Agreement in substantially the form on file with the Agency is hereby approved. Each of the President, the Vice President, the General Manager or the written designee thereof (each an "Authorized Officer") is hereby individually authorized and directed to execute and deliver the Financing Agreement with such changes, insertions and omissions as may be recommended by General Counsel or Stradling Yocca Carlson & Rauth, A Professional Corporation ("Bond

<sup>&</sup>lt;sup>\*</sup> A Municipal Water District.

Counsel") and approved by the Authorized Officer executing the same, said execution being conclusive evidence of such approval.

3. The Board of Directors acknowledges that the good faith estimates required by Section 5852.1 of the California Government Code are disclosed in Exhibit A to this resolution and are available to the public at the meeting at which this resolution is approved.

4. Each Authorized Officer, the General Manager, Assistant General Manager, the Director of Finance or the written designee thereof and any other proper officer of the Agency, acting singly, is authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by the Financing Agreement and this resolution.

5. Unless otherwise defined herein, all terms used herein and not otherwise defined shall have the meanings given such terms in the Financing Agreement unless the context otherwise clearly requires.

6. This Resolution shall take effect immediately.

ADOPTED this 6<sup>th</sup> day of April, 2022.

Steven J. Elie President of the Inland Empire Utilities Agency<sup>\*</sup> and the Board of Directors thereof

ATTEST:

Marco Tule Secretary/Treasurer of the Inland Empire Utilities Agency<sup>\*</sup> and the Board of Directors thereof

(SEAL)

\* A Municipal Water District

#### EXHIBIT A

## GOOD FAITH COST ESTIMATES

The good faith estimates set forth herein are provided with respect to the SRF Loan in accordance with California Government Code Section 5852.1. Such good faith estimates have been provided to the Inland Empire Utilities Agency by the Municipal Advisor.

*Principal Amount.* The Municipal Advisor has informed the Agency that, based on the Agency's financing plan and current market conditions, its good faith estimate of the aggregate amount of the Installment Sale Agreement for the Lower Day Basin Improvements Project to be sold is \$101,530,000, (the "Estimated Principal Amount").

*True Interest Cost of the SRF Loan.* The Municipal Advisor has informed the Agency that, assuming that the Estimated Principal Amount of the SRF Loan is executed and based on the expected interest rates prevailing at the time of preparation of such estimate, their good faith estimate of the true interest cost of the SRF Loan, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the SRF Loan, is 0.80%.

*Finance Charge of the SRF Loan*. The Municipal Advisor has informed the Agency that, assuming that the SRF Loan is executed, their good faith estimate of the finance charge for the SRF Loan, which means the sum of all fees and charges paid to third parties (or costs associated with the SRF Loan), is \$15,000.

Amount of Proceeds to be Received. The Municipal Advisor has informed the Agency that, assuming that the Estimated Principal Amount of the SRF Loan is executed, and based on estimated interest rates prevailing at the time of preparation of such estimate, their good faith estimate of the amount of proceeds expected to be received by the Agency for sale of the SRF Loan, less the finance charge of the SRF Loan, as estimated above, and any reserves or capitalized interest paid or funded with proceeds of the SRF Loan, is \$101,530,000.

*Total Payment Amount.* The Municipal Advisor has informed the Agency that, assuming that the Estimated Principal Amount of the SRF Loan is executed, and based on interest rates prevailing at the time of preparation of such estimate, their good faith estimate of the total payment amount, which means the sum total of all payments the Agency will make to pay debt service on the SRF Loan, plus the finance charge for the SRF Loan, as described above, not paid with the proceeds of the SRF Loan, calculated to the final maturity of the SRF Loan, is \$114,540,756, which excludes any reserves or capitalized interest paid or funded with proceeds of the SRF Loan (which may offset such total payment amount).

The foregoing estimates constitute good faith estimates only as of March 21, 2022 and are based on information provided in the draft SRF Loan agreement at the time of preparation of such estimates. The actual principal amount of the SRF Loan issued and sold, the true interest cost thereof, the finance charges thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to (a) the actual date of the entering into the SRF Loan being different than the date assumed for purposes of such estimates, (b) the actual principal amount of SRF Loan sold being different from the Estimated Principal Amount, (c) the actual amortization of the SRF Loan being different than the amortization assumed for purposes of such

estimates, (d) the actual interest rates at the time of sale of the SRF Loan being different than those estimated for purposes of such estimates, (e) other market conditions, or (f) alterations in the Agency's financing plan, or a combination of such factors. The actual date of execution of the SRF Loan and the actual principal amount of the SRF Loan sold will be determined by the Agency based on the timing of the need for proceeds of the SRF Loan and other factors. Factors such as the final loan repayment schedule, any changes to the interest rate on the SRF Loan, timing of the execution of the SRF loan may be affected by factors beyond the control of the Agency, or the Municipal Advisor.

# STATE OF CALIFORNIA ) ) ss. COUNTY OF SAN BERNARDINO )

I, Marco Tule, Secretary of the Inland Empire Utilities Agency<sup>\*</sup>, DO HEREBY CERTIFY that the foregoing Resolution being No. 2022-4-2, was adopted at a regular Board Meeting on April 6, 2022, of said Agency by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marco Tule Secretary/Treasurer of the Inland Empire Utilities Agency<sup>\*</sup> and the Board of Directors thereof

\* A Municipal Water District



GAVIN NEWSOM GOVERNOR JARED BLUMENFELD SECRETARY FOR ENVIRONMENTAL PROTECTION

State Water Resources Control Board

March 8, 2022

Inland Empire Utilities Agency Attn: Shivaji Deshmukh, General Manager PO Box 9020 Chino Hills, CA 91709

Agreement Number: D2101014 Project Number: C-06-8173-210

Enclosed is your Agreement for your approval and signature. This Agreement cannot be considered binding by either party until executed by the State Water Resources Control Board (State Water Board).

If you are in agreement with all terms and conditions of the Agreement, please sign and date **two (2) signature** pages; return only the two (2) signature pages – it is not necessary to send the entire Agreement - <u>no later than thirty (30) calendar days from the date of this letter to:</u>

### **Overnight Mail**

Koreenia Harmon State Water Resources Control Board Division of Financial Assistance 1001 I Street, 16<sup>th</sup> Floor Sacramento, CA 95814

# <u>US Mail</u>

Koreenia Harmon State Water Resources Control Board Division of Financial Assistance P. O. Box 944212 Sacramento, CA 94244-2120

In order for the Funding Agreement to be executed by the State Water Board, the following items <u>must also be returned with the signed signature pages:</u>

- 1. Opinion of General Counsel.
- 2. Bond Counsel Letter.
- 3. Closing Resolution.

Be aware that all projects receiving funding must comply with all applicable implementing guidelines and regulations adopted by 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: <u>http://www.dir.ca.gov/lcp.asp</u>.

Additional Compliance Requirements:

Davis Bacon Compliance: https://www.waterboards.ca.gov/water\_issues/programs/grants\_loans/srf/davisbacon.shtml

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

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

Disadvantaged Business Enterprise (DBE) https://www.waterboards.ca.gov/water\_issues/programs/grants\_loans/srf/docs/policy0513/dbe compliance guidelines instructions.pdf

Ms. Harmon may be contacted at (916) 319-0807 or koreenia.harmon@waterboards.ca.gov

Once the Agreement is signed by both parties, we will forward an executed copy to you for your records.

Enclosures



## INLAND EMPIRE UTILITIES AGENCY

AND

# CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



INSTALLMENT SALE AGREEMENT

**RP-5 EXPANSION CONSTRUCTION PROJECT** 

PROJECT NO. C-06-8173-210

AGREEMENT NO. D2101014

PROJECT FUNDING AMOUNT: \$101,530,000

ELIGIBLE START DATE: JANUARY 20, 2016 ELIGIBLE WORK START DATE: JULY 15, 2020 START OF CONSTRUCTION DATE: JULY 15, 2020 COMPLETION OF CONSTRUCTION DATE: JANUARY 10, 2025 FINAL DISBURSEMENT REQUEST DATE: JULY 10, 2025 FINAL REPAYMENT DATE: JANUARY 10, 2055 RECORDS RETENTION END DATE: JANUARY 10, 2061 THIS PAGE INTENTIONALLY LEFT BLANK

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EXHIBIT A - SCOPE OF WORK & INCORPORATED DOCUMENTS EXHIBIT B - FUNDING AMOUNT EXHIBIT C - PAYMENT SCHEDULE EXHIBIT D - SPECIAL CONDITIONS EXHIBIT E - PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

EXHIBIT F – [RESERVED]

EXHIBIT G - COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES

### WHEREAS,

- 1. The State Water Board is authorized to provide financial assistance under this Agreement pursuant to the following:
  - Chapter 6.5 of Division 7 of the California Water Code (State Act) and Resolutions Nos. 2019-0064 and 2021-021
- 2. The State Water Board determines eligibility for financial assistance, determines a reasonable schedule for providing financial assistance, establishes compliance with the Federal Act and State Act and establishes the terms and conditions of a financial assistance agreement.
- 3. The Recipient has applied to the State Water Board for financial assistance for the Project described in Exhibit A of this Agreement and the State Water Board has selected the application for financial assistance.
- 4. The State Water Board proposes to assist in providing financial assistance for eligible costs of the Project, and the Recipient desires to participate as a recipient of financial assistance from the State Water Board and evidence its obligation to pay Payments, which obligation will be secured by Net Revenues as defined herein, upon the terms and conditions set forth in this Agreement, all pursuant to the Federal Act and the State Act.

NOW, THEREFORE, 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 as follows:

Subject to the satisfaction of any conditions 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.

Upon execution, the term of the Agreement shall begin on the Eligible Start Date and extend through the Final Repayment Date.

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.

## ARTICLE I DEFINITIONS

## 1.1 Definitions.

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

"Additional Payments" means the 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.

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

"Allowance" means an amount based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the Project.

"Authorized Representative" means the 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.

"Bankruptcy Related Event" means, with respect to the Recipient, (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Recipient or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Recipient or for a substantial part of the assets thereof and, in ay case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; (b) the Recipient shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial portion of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due; (iii) fail to make a Payment in accordance with the provisions of this Agreement and such failure is not cured within thirty (30) days following notification by the State Water Board of failure to make such payment, (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief, in each case under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing; (c) (i) any Person shall commence a process pursuant to which all or a substantial part of the Revenues may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the System Obligations, or (ii) any Person shall commence a process pursuant to which all or a substantial part of the Revenues may be sold or otherwise disposed of pursuant to a sale or disposition in lieu of foreclosure; or (d) any receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official shall transfer, pursuant to directions issued by the holders of the Senior Obligations, funds on deposit in any of the System funds or accounts upon the occurrence and during the continuation of an Event of Default under this Agreement or an event of default under any Obligation Document for application to the prepayment or repayment of any principal amount of the Obligations ther than in accordance with the provisions of this Agreement.

"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 Payments paid hereunder.

"Business Day" means any day other than a Saturday, a Sunday or a day on which offices of the Government or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York or Los Angeles, California.

"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 C.

"Chino Basin Watermaster" means Chino Basin Watermaster and any assignee of or successor-ininterest to its payment obligations to Recipient under the agreements identified in subsection (j) of the Event of Default definition given below.

"Co-Funding Agency" means any entity, of any corporate type, with which the Recipient has entered into or intends or reasonably expects to enter into, any agreement providing for payments to the Recipient for the payment of Debt Service, and any assignee of or successor-in-interest to such entity. Chino Basin Watermaster is a Co-Funding Agency under this Agreement.

"Code" as used in Article V 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 on the Cover Page of this Agreement.

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

"CWSRF" means the Clean Water State Revolving Fund.

"Days" means calendar days unless otherwise expressly indicated.

"Debt Service" means, for any Fiscal Year, the sum of:

- (a) The interest payable during such Fiscal Year on all outstanding System Obligations, assuming that all outstanding serial System Obligations are retired as scheduled and that all outstanding term System Obligations are prepaid or paid from sinking fund payments as scheduled (except to the extent that such interest is capitalized or is reasonably anticipated to be reimbursed to the Recipient by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111 5, 23 Stat. 115 (2009), enacted February 17, 2009), or any future similar program);
- (b) Those portions of the principal amount of all outstanding serial System Obligations maturing in such Fiscal Year (but excluding Excluded Principal);
- (c) Those portions of the principal amount of all outstanding term System Obligations required to be prepaid or paid in such Fiscal Year (but excluding Excluded Principal); and
- (d) Those portions of any other payments under System Obligations required to be made during such Fiscal Year (except to the extent the interest evidenced and represented thereby is capitalized or is reasonably anticipated to be reimbursed to the Recipient by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111 5, 23 Stat. 115 (2009), enacted February 17, 2009), or any future similar program); provided that, as to any such System Obligations bearing or comprising interest at other than a fixed rate, the rate of interest used to calculate Debt Service shall, for all purposes, be assumed to bear interest at a fixed rate equal to

the higher of 1) the actual rate on the date of calculation, or if such System Obligation is not yet outstanding, the initial rate (if established and binding), and 2) the highest average variable rate borne over a six month period during the preceding 24 months by outstanding variable rate debt issued by the Recipient or, if no such variable rate debt is at the time outstanding, by variable rate debt of which the interest rate is computed by reference to an index comparable to that to be utilized in determining the interest rate for the debt then proposed to be issued;

And provided further that if any series or issue of such System Obligation has twenty-five percent (25%) or more of the aggregate principal amount of such series or issue due in any one year (and such principal is not Excluded Principal), Debt Service shall be determined for the Fiscal Year of determination as if the principal of and interest on such series or issue of such System Obligation were being paid from the date of incurrence thereof in substantially equal annual amounts over a period of forty (40) years from the date of calculation;

And provided further that, as to any such System Obligation or portions thereof bearing no interest but which are sold at a discount and which discount accretes with respect to such System Obligations or portions thereof, such accreted discount shall be treated as interest in the calculation of Debt Service in the Fiscal Year when due;

And provided further that if the System Obligations constitute Paired Obligations, the interest rate on such System Obligations shall be the resulting linked rate or the effective fixed interest rate to be paid by the Recipient with respect to such Paired Obligations;

And provided further that for System Obligations which are interest rate swap agreements which do not constitute Paired Obligations but for which an Independent Financial Consultant certifies that such System Obligation has a fixed spread component payable to the Recipient, Debt Service shall be credited by an amount equal to the lesser of (a) the average of the actual payment received by the Recipient over the last three Fiscal Years (or if outstanding less than three years, over the period outstanding) and (b) the fixed spread component.

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

"Enterprise Fund" means (i) all revenue accounts maintained by the Recipient as of the date of this Agreement other than the Water Resources Fund and (ii) any revenue account created after the date of this Agreement and designated by the Chief Financial Officer of the Recipient as a part of the Enterprise Fund.

"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 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 fund requirement, if any, in Section 3.7 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, or any other Bankruptcy Related Event;
- 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;
- j) The occurrence of a material breach or event of default under any agreement providing for payments to the Recipient for the payment of Debt Service;
- k) 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.

"Excluded Principal" means each payment of principal of System Obligations with a maturity of less than 42 months and which the Recipient specifies in a certificate signed by the General Manager of the Recipient and filed with the trustee for the System Obligation that the Recipient intends to pay from the proceeds of System Obligations, other bonds, notes or other obligations of the Recipient or moneys other than Revenues or Net Revenues. No such determination shall affect the security for such System Obligations of the Recipient to pay such System Obligations from Net Revenues.

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

"Final Repayment 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 beginning on July 1 of each year and ending on the last day of June of the next succeeding year, or any other twelve-month period selected and designated as the official Fiscal Year of the Recipient.

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

"Generally Accepted Accounting Principles" or "GAAP" means 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.

"Governmental Authority" means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory) of or

within the United States of America or its territories or possessions, including the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts "on behalf of" any of the foregoing, whether as an agency or authority of such body.

"Independent Financial Consultant" means a financial consultant or firm of such consultants appointed by the Recipient, and who, or each of whom: (1) is in fact independent and not under domination of the Recipient; (2) does not have any substantial interest, direct or indirect, with the Recipient; and (3) is not connected with the Recipient as an officer or employee thereof, but who may be regularly retained to make reports thereto.

"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.

"Insolvency Laws" means the United States Bankruptcy Code, 11 U.S.C. 101 *et seq.*, as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.

"Lien" means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

"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 pursuant to Rule 15c2-12(b)(5) with respect to such System Obligation.

"Maximum Annual Debt Service" means the maximum amount of Debt Service that is 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 Fiscal Year, the Revenues for such Fiscal Year less the Operations and Maintenance Costs for such Fiscal Year.

"Obligation" means the obligation of the Recipient to make 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 in the documents thereby incorporated by reference.

"Obligation Document means any indenture, bond, credit agreement, note, reimbursement agreement, letter of credit, guarantee or any other agreement, instrument or document pursuant to which any System Obligation is incurred by the Recipient.

"Operations and Maintenance Costs" means (1) costs spent or incurred for maintenance and operation of the System calculated in accordance with Generally Accepted Accounting Principles, including (among other things) the reasonable expenses of management and repair and other expenses necessary to

maintain and preserve the System in good repair and working order, and including administrative costs of the Recipient that are charged directly or apportioned to the System, including but not limited to salaries and wages of employees, payments to the Public Employees Retirement System, overhead, insurance, taxes (if any), fees of auditors, accountants, attorneys, consultants or engineers and insurance premiums, and including all other reasonable and necessary costs of the Recipient or charges required to be paid by it to comply with the terms of this Agreement or any other Parity Contract or Senior Contract or of any resolution or indenture authorizing the issuance of any Parity Bonds or Senior Bonds or of such Parity Bonds or Senior Bonds, and (2) all payments under Operation and Maintenance Obligations, but excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles, including amortization of water rights, unrealized losses on investments, write offs of the value of any impaired assets or other bookkeeping entries of a similar nature.

"Operation and Maintenance Obligation" means any contractual obligation with respect to any facilities, properties, structures, works, services, water or rights to receive water, or any loan of credit to or guaranty of debts, claims or liabilities of any other person (including a joint powers agency of which the Recipient is a member) with respect to any facilities, properties, structures, works, services, water or rights to receive water, so long as in each case the payments thereunder are designated as Operation and Maintenance Costs by the Board of Directors of the Recipient; provided however System Obligations shall not constitute Operation and Maintenance Obligations, and in no instance will an Operation and Maintenance Obligation include provisions for the financing of construction or acquisition of any of the Recipient's facilities, structures, or works. There are currently no outstanding Operation and Maintenance Obligations.

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

• The Reimbursement Agreement for the Design and Build Costs for the Gravity Sewer System, Area 1 Sewer Lift Station and Force Main between the Recipient and the City of Fontana, executed October 18, 2005.

"Paired Obligations" means any System Obligation (or portion thereof) designated as Paired Obligations in the resolution, indenture or other document authorizing the issuance or execution and delivery thereof, which are simultaneously issued or executed and delivered (i) the principal of which is of equal amount maturing and to be redeemed or prepaid (or cancelled after acquisition thereof) on the same dates and in the same amounts, and (ii) the interest rates which, taken together, are reasonably expected to result in a fixed interest rate obligation of the Recipient for the term of such System Obligation, as determined by an Independent Financial Consultant in writing. There are currently no outstanding Paired Obligations.

"Parity Bonds" means all revenue bonds or notes of the Recipient authorized, executed, issued and delivered by the Recipient, the payments of which are payable from Net Revenues on a parity with the Installment Payments.

"Parity Contracts" means this Agreement and any amendments and supplements hereto, and all contracts of the Recipient previously or hereafter authorized and executed by the Recipient, the Parity Installment Payments under which are payable from Net Revenues on a parity with the Installment Payments, but excluding contracts entered into for operation and maintenance of the System.

"Parity Debt Service" means, for any Fiscal Year, the sum of:

(a) The interest payable during such Fiscal Year on all outstanding Parity Bonds, assuming that all outstanding serial Parity Bonds are retired as scheduled and that all outstanding term Parity Bonds are prepaid or paid from sinking fund payments as scheduled (except to the extent that such interest is capitalized or is reasonably anticipated to be reimbursed to the Recipient by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111 5, 23 Stat. 115 (2009), enacted February 17, 2009), or any future similar program);

- (b) Those portions of the principal amount of all outstanding serial Parity Bonds maturing in such Fiscal Year (but excluding Excluded Principal);
- (c) Those portions of the principal amount of all outstanding term Parity Bonds required to be prepaid or paid in such Fiscal Year (but excluding Excluded Principal); and
- (d) Those portions of the Parity Installment Payments required to be made during such Fiscal Year (except to the extent the interest evidenced and represented thereby is capitalized or is reasonably anticipated to be reimbursed to the Recipient by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111 5, 23 Stat. 115 (2009), enacted February 17, 2009), or any future similar program); provided that, as to any such Parity Bonds or Parity Installment Payments bearing or comprising interest at other than a fixed rate, the rate of interest used to calculate Parity Debt Service shall, for all purposes, be assumed to bear interest at a fixed rate equal to the higher of 1) the actual rate on the date of calculation, or if such Parity Contract or Parity Bond is not yet outstanding, the initial rate (if established and binding), and 2) the highest average variable rate borne over a six month period during the preceding 24 months by outstanding variable rate debt issued by the Recipient or, if no such variable rate debt is at the time outstanding, by variable rate debt of which the interest rate is computed by reference to an index comparable to that to be utilized in determining the interest rate for the debt then proposed to be issued;

And provided further that if any series or issue of such Parity Bonds or Parity Installment Payments have twenty-five percent (25%) or more of the aggregate principal amount of such series or issue due in any one year (and such principal is not Excluded Principal), Parity Debt Service shall be determined for the Fiscal Year of determination as if the principal of and interest on such series or issue of such Parity Bonds or Parity Installment Payments were being paid from the date of incurrence thereof in substantially equal annual amounts over a period of forty (40) years from the date of calculation;

And provided further that, as to any such Parity Bonds or Parity Installment Payments or portions thereof bearing no interest but which are sold at a discount and which discount accretes with respect to such Parity Bonds or Parity Installment Payments or portions thereof, such accreted discount shall be treated as interest in the calculation of Parity Debt Service in the Fiscal Year when due;

And provided further that if the Parity Bonds or Parity Contracts constitute Paired Obligations, the interest rate on such Parity Bonds or Parity Contracts shall be the resulting linked rate or the effective fixed interest rate to be paid by the Recipient with respect to such Paired Obligations;

And provided further that for Parity Contracts which are interest rate swap agreements which do not constitute Paired Obligations but for which an Independent Financial Consultant certifies that such Parity Contracts has a fixed spread component payable to the Recipient, Parity Debt Service shall be credited by an amount equal to the lesser of (a) the average of the actual payment received by the Recipient over the last three Fiscal Years (or if outstanding less than three years, over the period outstanding) and (b) the fixed spread component.

"Parity Installment Payments" means the payments of interest and principal or other scheduled payments scheduled to be paid by the Recipient under and pursuant to the Parity Contracts.

"Parity Obligation" means a debt obligation of the Recipient on parity with this Obligation, including the Obligation and all Parity Bonds and Parity Contracts. The Recipient's currently outstanding Parity Obligations are these:

- The Installment Purchase Agreement by and between Inland Empire Utilities Agency and Chino Basin Regional Financing Authority, dated May 27, 2020 (relating to the WIFIA Loan Agreement by and between Inland Empire Utilities Agency, Chino Basin Regional Financing Authority and the United States Environmental Protection Agency, dated May 27, 2020 [WIFIA N18124A]).
- The Installment Purchase Agreement by and between Inland Empire Utilities Agency and Chino Basin Regional Financing Authority, dated June 1, 2020 (relating to the Chino Basin Regional Financing Authority Refunding Revenue Bonds (Inland Empire Utilities Agency), Series 2020A).
- The Installment Purchase Agreement by and between Inland Empire Utilities Agency and Chino Basin Regional Financing Authority, dated June 15, 2020 (relating to the Chino Basin Regional Financing Authority Revenue Notes (Inland Empire Utilities Agency), Series 2020B).
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated June 12, 2008 [Project No. C-06-4900-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated June 26, 2008 [Project No. C-06-4900-120]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated June 12, 2008 [Project No. C-06-4900-130]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated July 1, 2009 [Project No. C-06-5176-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated July 1, 2009 [Project No. C-06-5176-120]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated July 1, 2009 [Project No. C-06-5176-130]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated July 1, 2009 [Project No. C-06-5176-140]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated June 26, 2014 [Project No. C-06-5318-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated August 25, 2009 [Project No. C-06-5327-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated June 19, 2009 [Project No. C-06-5332-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated April 29, 2014 [Project No. C-06-7885-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated November 15, 2017 [Project No. C-06-8105-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated November 15, 2017 [Project No. C-06-8105-120]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated October 29, 2020 [Project No. C-06-8235-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated December 21, 2020 [Project No. C-06-8235-120]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated June 24, 2020 [Project No. C-06-8235-150]

"Parity Project" means any additions, betterments, extensions or improvements to the System designated by the Board of Directors of the Recipient as a Parity Project, the acquisition and construction of which is to be paid for with the proceeds of any Parity Contracts or Parity Bonds.

"Party Contact" means, for the Recipient, the Authorized Representative of the Recipient or any designee of the Authorized Representative, and, for the State Water Board, the Grant Manager, or the Program Analyst. "Payment" means any payment due to the State Water Board from the Recipient pursuant to Section 3.2 of this Agreement, as set forth in Exhibit C.

"Payment Date" means the date on which any Payment is or becomes due and payable.

"Person" means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

"Policy" means the State Water Board's "Policy for Implementing the Clean Water State Revolving Fund," as amended from time to time, and 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 Exhibit A 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 which are reasonable, necessary and allocable by the Recipient to the Project under GAAP, including 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 Inland Empire Utilities Agency.

"Records Retention End Date" means the last date that the Recipient is obligated to maintain records pursuant to Section 2.17 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 Fund" means the reserve fund required pursuant to Section 3.7 of this Agreement.

"Revenues" means all income, rents, rates, fees, charges and other moneys derived from the ownership or operation of the System, including, without limiting the generality of the foregoing,

- (a) All income, rents, rates, fees, charges, business interruption insurance proceeds or other moneys derived by the Recipient from the sale, furnishing and supplying of sewer services, composting services or other services, facilities, and commodities sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the System, including the Recipient's share of the County of San Bernardino's 1% ad valorem property tax (to the extent allocated to the Enterprise Fund), determined in accordance with Generally Accepted Accounting Principles, plus
- (b) The earnings on and income derived from the investment of the amounts described in clauses (1) hereof, including the Recipient's share of the County of San Bernardino's 1% ad valorem property tax (to the extent allocated to the Enterprise Fund), and the general unrestricted funds of the Recipient,

But excluding in all cases revenues derived from ownership or operation of the Water System, customer deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the Recipient, and excluding any proceeds of taxes restricted by law to be used by the Recipient to pay bonds hereafter issued.

"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 Bonds" means all revenue bonds or notes of the Recipient authorized, executed, issued and delivered by the Recipient, the payments of which are payable from Net Revenues on a basis senior to the Installment Payments.

"Senior Contracts" means this Agreement and any amendments and supplements hereto, and all contracts of the Recipient previously or hereafter authorized and executed by the Recipient, the Senior Installment Payments under which are payable from Net Revenues on a basis senior to the Installment Payments, but excluding contracts entered into for operation and maintenance of the System.

"Senior Debt Service" means, for any Fiscal Year, the sum of:

- (a) The interest payable during such Fiscal Year on all outstanding Senior Bonds, assuming that all outstanding serial Senior Bonds are retired as scheduled and that all outstanding term Senior Bonds are prepaid or paid from sinking fund payments as scheduled (except to the extent that such interest is capitalized or is reasonably anticipated to be reimbursed to the Recipient by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111 5, 23 Stat. 115 (2009), enacted February 17, 2009), or any future similar program);
- (b) Those portions of the principal amount of all outstanding serial Senior Bonds maturing in such Fiscal Year (but excluding Excluded Principal);
- (c) Those portions of the principal amount of all outstanding term Senior Bonds required to be prepaid or paid in such Fiscal Year (but excluding Excluded Principal); and
- (d) Those portions of the Senior Installment Payments required to be made during such Fiscal Year (except to the extent the interest evidenced and represented thereby is capitalized or is reasonably anticipated to be reimbursed to the Recipient by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111 5, 23 Stat. 115 (2009), enacted February 17, 2009), or any future similar program);

Provided that, as to any such Senior Bonds or Senior Installment Payments bearing or comprising interest at other than a fixed rate, the rate of interest used to calculate Senior Debt Service shall, for all purposes, be assumed to bear interest at a fixed rate equal to the higher of 1) the actual rate on the date of calculation, or if such Senior Contract or Senior Bond is not yet outstanding, the initial rate (if established and binding), and 2) the highest average variable rate borne over a six month period during the preceding 24 months by outstanding variable rate debt issued by the Recipient or, if no such variable rate debt is at the time outstanding, by variable rate debt of which the interest rate is computed by reference to an index comparable to that to be utilized in determining the interest rate for the debt then proposed to be issued.

"Senior Installment Payments" means the payments of interest and principal or other scheduled payments scheduled to be paid by the Recipient under and pursuant to the Senior Contracts.

"Senior Obligation" means a debt obligation of the Recipient that is senior to this Obligation. The Senior Obligations are these:

• The 2017A Installment Purchase Agreement dated February 2, 2017 between Inland Empire Utilities Agency and Chino Basin Regional Financing Authority.

"SRF" means the Clean Water State Revolving Fund.

"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 no Subordinate Obligations.

"System" means all facilities, land, and property rights of the Recipient, including the Project, and including all properties, structures or works hereafter acquired or constructed by the Recipient and determined to be part of the System, together with all additions, betterments, extensions and improvements to such facilities, properties, structures or works, or any part thereof hereafter acquired or constructed, other than the Water System.

"System Obligation" means any obligation of the Recipient secured by or payable from Revenues or Net Revenues, including this Obligation and obligations listed in this Section 1.1 or Exhibit J, and including without limitation Senior Bonds, Senior Contracts, Senior Obligations, Parity Bonds, Parity Contracts, Parity Obligations and such obligations that are payable on a subordinate basis to this Obligation, Parity Bonds, or Parity Contracts, and additional such 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 B.

"Water System" means the whole and each and every part of the imported water system of the Recipient, including the portion thereof existing on the date hereof, and including all additions, betterments, extensions and improvements to such imported water system or any part thereof hereafter acquired or constructed.

"Year" means calendar year unless otherwise expressly indicated.

1.2 Exhibits Incorporated.

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

# 1.3 Party Contacts.

State Wa	iter Board	Inland Empire Utilities Agency	
Section:	Division of Financial Assistance		
Name:	Elisabeth Brown	Name: Shivaji Deshmukh	Title: General Manager
Address:	1001 I Street, 16th Floor	Address:	P.O. Box 9020
City, State, Zip:	Sacramento, CA 95814	City, State, Zip:	Chino Hills, CA 91709
Phone:	(916) 341-5375	Phone:	(909) 993-1600
Email:	Elisabeth.Brown@waterboards.ca.gov	Email:	sdeshmukh@ieua.org

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

## ARTICLE II REPRESENTATIONS, WARRANTIES, AND COMMITMENTS

The Recipient represents, warrants, and commits to the following as of the Eligible Start Date set forth on the first page hereof and continuing thereafter for the term of this Agreement.

2.1 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 financial assistance.

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

2.2 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.

2.3 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 first page hereof.

# 2.4 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.

2.5 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 and all Co-Funding Agencies are solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. The Recipient and all Co-Funding Agencies are able to pay their 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 employers liability, professional liability.

2.6 Legal Status and Eligibility.

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 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.

2.7 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.

2.8 Completion of Project.

The Recipient shall expeditiously proceed with and complete construction of the Project in substantial accordance with Exhibit A and Exhibit A-FBA. The following dates are established as on the Cover Page of this Agreement:

- i. Eligible Work Start Date
- ii. Eligible Start Date
- iii. Start of Construction Date
- iii. Completion of Construction Date
- iv. Final Disbursement Request Date
- v. Records Retention End Date

## vi. Final Repayment Date

- 2.9 Award of Construction Contracts.
- (a) The Recipient shall award the prime construction contract timely in order to meet the start of construction date specified on the Cover Page of this Agreement.
- (b) The Recipient shall promptly notify the Division in writing both of the award of the prime construction contract for the Project and of Initiation of Construction of the Project. The Recipient shall make all reasonable efforts to complete construction in substantial conformance with the terms of the contract by the Completion of Construction date established on the Cover Page of this Agreement.
  - 2.10 Notice.

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

- Within 24 hours of the following, the Recipient must notify the Division by phone at (916) 327-9978 and by email to Elisabeth.Brown@waterboards.ca.gov and Robert.Pontureri@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) [Reserved].
- 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
   Elisabeth.Brown@waterboards.ca.gov and Robert.Pontureri@waterboards.ca.gov and CleanWaterSRF@waterboards.ca.gov; and by mail to the contact address set forth in Section 1.3 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 the Project, the Revenues or the System;
  - iv. Failure to meet any debt service coverage test in section 3.7 of this Agreement;
  - v. Draws on the Reserve Fund;
  - vi. Listed Events and Events of Default, except as set forth in this section;
  - vii. Failure to observe or perform any covenant or comply with any condition in this Agreement;
  - viii. Action taken by the Recipient to initiate formal consideration of 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.
- Within ten (10) business days, the Recipient must notify the Division by phone at (916) 327-9978, by email to Elisabeth.Brown@waterboards.ca.gov and Robert.Pontureri@waterboards.ca.gov and CleanWaterSRF@waterboards.ca.gov, and by mail to the contact address set forth in Section 1.3 of this Agreement of the following events:
  - i. Material defaults on Other 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;
  - 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. [reserved]
  - 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;
- (e) The Recipient must notify the Division promptly by phone at (916) 327-9978, by email to Elisabeth.Brown@waterboards.ca.gov and Robert.Pontureri@waterboards.ca.gov and CleanWaterSRF@waterboards.ca.gov, and by mail to the contact address set forth in Section 1.3 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;
  - 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.
- 2.11 Findings and Challenge

Upon consideration of a voter initiative to reduce Revenues, the Recipient shall make a finding regarding the effect of such a reduction on the Recipient's ability to satisfy the rate covenant set forth in Section 3.7 of this Agreement. The Recipient shall make its findings available to the public and shall 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 Section 3.7 and its obligation to operate and maintain the Project for its useful life. The Recipient shall diligently pursue and bear any and all costs related to such challenge. The Recipient shall notify and regularly update the State Water Board regarding the status of any such challenge.

## 2.12 Project Access.

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.

2.13 Project Completion; Initiation of Operations.

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

2.14 Continuous Use of Project; 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.

## 2.15 Project Reports.

- (a) Progress Reports. The Recipient must provide a progress report to the Division each quarter, beginning no later than 90 days after execution of this Agreement. A status report must accompany any disbursement request and is a condition precedent to any disbursement. At a minimum the reports will contain the following information:
  - A summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed;
  - (2) A description of compliance with environmental requirements;
  - (3) A listing of change orders including amount, description of work, and change in contract amount and schedule; and
  - (4) Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.
- (b) Project Completion Report. The Recipient shall submit a Project Completion Report to the Division with a copy to the appropriate Regional Water Quality Control 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 address the following:
  - (1) Description of the Project,
  - (2) Description of the water quality problem the Project sought to address,
  - (3) Discussion of the Project's likelihood of successfully addressing that water quality problem in the future, and
  - (4) Summarize compliance with applicable environmental conditions.

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.

- (c) As Needed Reports. The Recipient shall 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.
- (d) [Reserved].
  - 2.16 Federal Disadvantaged Business Enterprise (DBE) Reporting.

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.

## 2.17 Records.

- (a) Without limitation of the requirement to maintain Project accounts in accordance with GAAP, the Recipient must:
  - (1) Establish an official file for the Project which adequately documents all significant actions relative to the Project;
  - (2) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;
  - (3) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;
  - (4) Establish an accounting system which will accurately depict final total costs of the Project, including both direct and Indirect Costs;
  - (5) Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
  - (6) If Force Account is used by the Recipient for any phase of the Project, other than for planning, design, and construction engineering and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee.
- (b) 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 shall allow and shall 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.

## 2.18 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 shall 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

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

### 2.19 Data Management.

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

- 2.20 Environmental Clearance.
- (a) No work that is subject to CEQA or NEPA may proceed under this Agreement unless the State Water Board has provided environmental clearance. 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.
  - 2.21 Property Rights.

The Recipient represents that it 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.

2.22 Use of Licensed 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.

2.23 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.

ARTICLE III FINANCING PROVISIONS

# 3.1 Purchase and Sale of Project.

The Recipient hereby sells to the State Water Board and the State Water Board hereby purchases from the Recipient the Project. Simultaneously therewith, the Recipient hereby purchases from the State Water Board, and the State Water Board hereby sells to the Recipient, the Project in accordance with the provisions of this Agreement. All right, title, and interest in the Project shall immediately vest in the Recipient on the date of execution and delivery of this Agreement by both parties without further action on the part of the Recipient or the State Water Board. The State Water Board's disbursement of funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement.

- 3.2 Amounts Payable by the Recipient.
- (a) Interest will accrue beginning with each disbursement. Interest on any funds disbursed to the Recipient shall begin to accrue as of the date of each disbursement. Beginning one year after Completion of Construction, the Recipient must submit an annual Payment of the principal of the Project Funds, together with all interest accruing thereon. The Recipient must make Payments fully amortizing the total principal of the Project by the Final Repayment Date.

The Payments are based on a standard fully amortized assistance amount with equal annual payments. 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 Payment. Payment calculations will be made beginning one (1) year after Completion of Construction. Exhibit C is a payment schedule based on the provisions of this article and an estimated disbursement schedule. Actual payments will be based on actual disbursements.

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. Payments shall be made according to the following procedure:

(i) At a time reasonably anticipated to cause the Division to receive each Payment on or before each Payment Date, the Recipient shall pay (A) annual payments of principal and all interest accruing thereon, and (B) payments of any other amounts on each other date which payment thereof is required to be made hereunder; <u>provided</u> that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. The Recipient shall pay Payments and Additional Payments from Net Revenues and/or other amounts legally available to the Recipient therefor. Each Payment must be paid in lawful money of the United States of America by check or other acceptable form of payment set forth at

<u>www.waterboards.ca.gov/make a payment</u>. 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.

(ii) Notwithstanding anything herein to the contrary, the outstanding balance of the Obligation and any accrued interest thereon shall be due and payable in full on the Final Payment Date (or on any earlier date on which the Obligation is subject to mandatory redemption or prepayment prior to the maturity thereof).

(iii) 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. 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.

- (b) 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.
- (c) Additional Payments. In addition to the Payments required to be made by the Recipient, the Recipient shall also pay to the State Water Board the reasonable extraordinary fees and expenses of the State Water Board, and of any assignee of the State Water Board's right, title, and interest in and to this Agreement, in connection with this Agreement, including all expenses and fees of accountants, trustees, 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. Additional Payments may be billed to the Recipient by the State Water Board from time to time, together with a statement executed by a duly authorized representative of the State Water Board, stating that the amounts billed pursuant to this section have been incurred by the State Water Board or its assignee for one or more of the above items and a copy of the invoice or statement for the amount so incurred or paid. Amounts so billed shall be paid by the Recipient within thirty (30) days after receipt of the bill by the Recipient.
- (d) The Recipient may not prepay any portion of the principal and interest due under this Agreement without the written consent of the Deputy Director of the Division.
  - 3.3 Obligation Absolute.

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

3.4 No Obligation of the State.

Any obligation of the State Water Board herein contained shall not be an obligation, debt, or liability of the State and any such obligation shall be payable solely out of the moneys encumbered pursuant to this Agreement. 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 to the State, or offer an amendment to the Recipient to reflect the reduced amount.

- 3.5 Disbursement of Project Funds; Availability of Funds.
- (a) Except as may be otherwise provided in this Agreement, disbursement of Project Funds will be made as follows:
  - 1. Upon execution and delivery of this Agreement 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. 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. 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 <a href="http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx">http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx</a>. as of the date costs are incurred by the Recipient.

- 10. The Recipient is not entitled to interest earned on undisbursed funds.
- (b) The State Water Board's obligation to disburse Project Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Project Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other agency. If any disbursements due the Recipient under this 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) <u>Fraud and Misuse of Public Funds</u>. 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 shall only be for the 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 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.
  - 3.6 Withholding of Disbursements and Material Violations.

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 System, Project, or Revenues that the State Water Board determines may impair the timely completion of the Project or the repayment of the Obligation;
- 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, or any other event 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 Section 2.10;
- i. An Event of Default or an event that the Division determines may become an Event of Default;
  - 3.7 Pledge; Rates, Fees and Charges; Additional Debt.
- (a) <u>Establishment of Enterprise Fund and Reserve Fund</u>. In order to carry out its System Obligations, the Recipient agrees and covenants that it shall establish and maintain or shall have established and maintained the Enterprise Fund. All Revenues received shall be deposited when and as received in trust in the Enterprise Fund. As required in paragraph (f) of this Section, the Recipient shall establish and maintain a Reserve Fund.
- (b) <u>Pledge of Revenues, Enterprise Fund and Reserve Fund</u>. The Obligation hereunder shall be secured by a lien on and pledge of the Enterprise Fund, Revenues, and any Reserve Fund specified in Section 3.7(f) of this Agreement on a junior and subordinate basis to the Senior Bonds and Senior Contracts, on parity with the Parity Bonds and Parity Contracts, and senior to the Subordinate Obligations. The Recipient hereby pledges and grants such subordinate lien on and pledge of the Enterprise Fund and Revenues, and such lien on and pledge of any Reserve Fund specified in Section 3.7(f) of this Agreement, to secure the Obligations, including payment of Payments and Additional Payments hereunder. The Revenues in the Enterprise Fund shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Recipient.
- (c) <u>Application and Purpose of the Enterprise Fund</u>. The Recipient shall, from the moneys in the Enterprise Fund, pay all Operation and Maintenance Costs (including amounts reasonably required to be set aside in contingency reserves for Operation and Maintenance Costs, the payment of which is not then immediately required) as such Operation and Maintenance Costs become due and payable. All remaining moneys in the Enterprise Fund shall thereafter be applied by the Recipient for the following purposes, in the following order of priority:
  - (i) <u>Senior Bonds and Senior Installment Payments</u>. The Recipient shall, from the moneys in the Enterprise Fund, transfer to the applicable (i) trustee for deposit in the respective payment fund, or (ii) payee, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, any Senior Debt Service in accordance with the provisions of any Senior Bond or Senior Contract.
  - (ii) <u>Senior Bonds and Senior Contracts Reserve Accounts</u>. The Recipient shall, from the remaining moneys in the Enterprise Fund, on or before the date required by the applicable Senior Bond or Senior Contract, without preference or priority and in the event of any insufficiency of such moneys ratably without any discrimination or preference, transfer to the applicable trustee for reserve funds and/or accounts, if any, as may have been established in connection with Senior Bonds or Senior Contracts, that sum, if any, necessary to restore such reserve funds and/or accounts to an amount equal to the required balance.
  - (iii) <u>Surplus</u>. Moneys on deposit in the Enterprise Fund on any date when the Recipient reasonably expects such moneys will not be necessary to make any of the payments required above shall be expended by the Recipient for the following purposes, in the following priority:

- (A) The Recipient shall, from the moneys in the Enterprise Fund, transfer to the applicable (i) trustee for deposit in the respective payment fund, or (ii) payee, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, any Parity Debt Service, including the Obligation, in accordance with the provisions of any Parity Bond or Parity Contract.
- (B) The Recipient shall from the remaining moneys in the Enterprise Fund, on or before the date required by the applicable Parity Bond or Parity Contract, without preference or priority and in the event of any insufficiency of such moneys ratably without any discrimination or preference, transfer to the applicable trustee for reserve funds and/or accounts, if any, as may have been established in connection with Parity Bonds or Parity Contracts, that sum, if any, necessary to restore such reserve funds and/or accounts to an amount equal to the required balance, including any Reserve Fund specified in Exhibit D or elsewhere in this Agreement.
- (C) Moneys on deposit in the Enterprise Fund on any date when the Recipient reasonably expects such moneys will not be necessary to make any of the payments required above may be expended by the Recipient at any time for any purpose permitted by law, subject to compliance with the other provisions of this Agreement.
- (d) Amounts of Rates, Fees and Charges.
  - (i) The Recipient must, to the fullest extent permitted by law, fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonably expected to be at least sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs and Net Revenues equal to the sum of (i) at least one hundred twenty percent (120%) of Maximum Annual Debt Service with respect to all outstanding System Obligations senior to and on parity with the Obligation, and (ii) at least one hundred percent (100%) of 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 are defeased pursuant to refunding obligations.
  - (ii) The Recipient may make adjustments from time to time in such rates and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates and charges then in effect unless the Net Revenues from such reduced rates and charges are reasonably expected to be sufficient to meet the requirements of this section.
  - (iii) For the avoidance of doubt, so long as the Recipient has complied with its obligations set forth in subdivisions (i) and (ii) of this Section 3.7(d) above, the failure of Net Revenues to meet the threshold set forth in subdivision (i) of this Section 3.7(d), above at the end of a Fiscal Year shall not constitute a default or an Event of Default so long has the Recipient has complied with subdivision (i) of this Section 4.4 at the commencement of the succeeding Fiscal Year.
- (e) Additional Debt Test.
  - (i) <u>Issuance of Additional Senior Obligations</u>. The Recipient may not execute any Senior Contract, issue any Senior Bonds, or otherwise incur, permit the incurrence of, or suffer to exist any additional Senior Obligation except as follows. Notwithstanding anything to the contrary set forth in this Agreement, the Recipient may execute Senior Contracts or issue Senior Bonds, as the case may be, solely for the purpose of refunding outstanding Senior Bonds and Senior Contracts if, after giving effect to the application of the proceeds thereof, total Senior Debt Service will not be increased in any Fiscal Year in which any CWSRF loan

to the Recipient that is secured by Revenues (outstanding on the date of issuance or incurrence of such refunding Senior Bonds and Senior Contracts) is outstanding, thereby not diminishing the Recipient's ability to repay its CWSRF Obligations, and if the refunding obligation has the same or earlier repayment term as the refunded Senior Contract or Senior Bond.

(ii) <u>Issuance of Additional Parity or Subordinate Obligations</u>. The Recipient may execute System Obligations on a parity or subordinate basis to this Obligation if Net Revenues in the most recent Fiscal Year, excluding transfers from a rate stabilization fund, if any, meet the applicable ratio specified in 3.7(d), above, with respect to all outstanding and proposed System Obligations, and if the Recipient is in compliance with any reserve fund requirement of this Obligation.

Parity Bonds or Parity Contracts may be issued or incurred, as the case may be, to refund outstanding Parity Bonds or Parity Contracts if such refunding Parity Bonds or Parity Contracts have the same or earlier repayment term as the refunded Parity Bonds or Parity Contracts, and if, after giving effect to the application of the proceeds thereof, Debt Service will not be increased in any Fiscal Year in which any CWSRF loan to the Recipient that is secured by Revenues (outstanding on the date of issuance or incurrence of such refunding Parity Bonds or Parity Contracts) is outstanding.

(f) Reserve Fund.

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

- (g) The Recipient may issue or incur subordinate obligations or otherwise issue or incur obligations payable from a lien on Net Revenues that is subordinate to the lien of Net Revenues securing the Obligation.
- (h) 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.
- (i) Application and Purpose of the Enterprise Fund Upon Acceleration.

Upon the date of the declaration of (or automatic, as applicable) acceleration as provided in Section 4.25, all Revenues thereafter received shall be applied in the following order:

<u>First</u>, to the payment, without preference or priority, and in the event of any insufficiency of such Revenues ratably without any discrimination or preference, of the reasonable fees, costs and expenses of the State Water Board and any agents and assignees of the State Water Board, if any, including reasonable compensation to their accountants and counsel incurred in connection with the enforcement of its duties under this Agreement;

Second, to the payment of the Operation and Maintenance Costs;

<u>Third</u>, to the payment without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, of the entire unpaid installment payments with respect to all Senior Obligations and the accrued interest thereon, with interest on the overdue installments at the rate or rates of interest applicable to such Senior Contracts if paid in accordance with their respective terms; and

<u>Fourth</u>, to the payment without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, of the entire principal amount of the unpaid Payments and the unpaid principal amount of all Parity Obligations and the accrued interest thereon, with interest on the overdue installments at the rate or rates of interest applicable to the Payments and such Parity Obligations if paid in accordance with their respective terms.

3.8 Financial Management System and Standards.

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 shall be bound by, and to comply with, the provisions and requirements of the federal Single Audit Act of 1984, Office of Management and Budget (OMB) Circular No. A-133 and 2 CFR Part 200, subpart F, and updates or revisions, thereto.

3.9 Accounting and Auditing Standards.

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.

3.10 Other Assistance.

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

ARTICLE IV MISCELLANEOUS PROVISIONS

4.1 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 made in writing and directed to the contact listed in Section 1.3 of this Agreement and to the Division's Chief of Loans and Grants Administration Section.

4.2 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.

## 4.3 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.

4.4 Competitive Bidding

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

4.5 Compliance with Law, Regulations, etc.

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 shall:

- (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
- (c) Comply with and require compliance with the state and federal requirements set forth elsewhere in this Agreement.
  - 4.6 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.

4.7 Damages for Breach Affecting Tax-Exempt Status or Federal Compliance

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

- 4.8 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 4.8 relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.

## 4.9 Governing Law.

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

## 4.10 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.

## 4.11 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 (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 shall 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.

## 4.12 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.

# 4.13 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.

- 4.14 Leveraging Covenants.
- (a) Notwithstanding any other provision hereof, the Recipient covenants and agrees that it will comply with the Tax Covenants set forth in Article V of this Agreement.
- (b) Disclosure of Financial Information, Operating Data, and Other Information. 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).
- (c) 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 shall 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.
  - 4.15 Non-Discrimination Clause.
  - (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 shall 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 shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.
  - 4.16 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.

4.17 Operation and Maintenance; Insurance.

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

The Recipient will procure and maintain or cause to be maintained insurance on the System with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System) as are usually covered in connection with systems similar to the System. Such insurance may be maintained by 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 shall begin such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the System shall be free and clear of all claims and liens. If such net proceeds are insufficient to reconstruct, repair, or restore the System to the extent necessary to enable the Recipient to pay all remaining unpaid principal portions of the Payments, if any, in accordance with the terms of this Agreement, the Recipient shall 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 shall provide the Division with a copy of all such certificates prior to the commencement of construction of the Project.

4.18 Permits, Subcontracting, and Remedies.

The 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 shall be submitted to the Division before construction begins.

The Recipient must not contract or allow subcontracting with excluded parties. The Recipient shall 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 shall 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

## 4.19 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 Exhibit A of this Agreement.

4.20 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.

4.21 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.

## 4.22 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.

# 4.23 Rights in Data.

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

## 4.24 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.

## 4.25 Termination and Other Remedies Upon Event of Default.

In addition to any other remedy set forth in this Agreement, the following remedies are available under this Agreement. For purposes of this section, the term "State Water Board" shall mean the State Water Board and its assignees.

- (a) <u>Return of Funds; Acceleration; and Additional Payments</u>. 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 do each of the following:
  - (a) return to the State Water Board the grant or principal forgiveness amounts received pursuant to this Agreement;
  - (b) accelerate the payment of all principal owed under this Agreement, if any, which shall be immediately due and payable;
  - (c) pay interest at the highest legal rate on of the foregoing; and
  - (d) pay any Additional Payments;

<u>provided</u>, that on the occurrence of any Bankruptcy Related Event, the outstanding principal, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts owed under this Agreement shall automatically accelerate and become immediately due and payable without action of the State Water Board or any other person.

- (b) <u>Judicial remedies</u>. 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 Payments then due or thereafter to become due, or to enforce performance of any obligation or covenant of the Recipient under this Agreement.
- (c) <u>Termination</u>. 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.
- (d) <u>Remedies Not Exclusive</u>. 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.

- (e) <u>Non-waiver</u>. Nothing in this section or any other section of this Agreement shall affect or impair the Recipient's Obligation to pay 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.
- (f) <u>Status Quo</u>. 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.
  - 4.26 Timeliness.

Time is of the essence in this Agreement.

4.27 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.

4.28 Useful Life.

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

4.29 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.

## 4.30 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.

# ARTICLE V TAX COVENANTS

## 5.1 Purpose.

The purpose of this Article V 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 Article V 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.

# 5.2 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.

5.3 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.

5.4 Financing of a Capital Project.

The Recipient will use the Project Funds to finance capital expenditures it has incurred or will incur for the construction, reconstruction, installation or acquisition of the Project in accordance with the terms of this Agreement. Such expenditures shall not have previously been financed with the proceeds of any other issue of indebtedness except for interim financing by the Recipient, the date of maturity, prepayment or redemption of which is within thirty (30) days of the date of disbursement of Project Funds under this Agreement. All Project Funds shall be allocated to expenditures by the Recipient within thirty (30) days of the date of disbursement, including (if at all) Project Funds allocated to repay interim financing of the Recipient. For purposes of this Section F.4, "interim financing" means notes, commercial paper, loans, liens of credit and other forms of short-term borrowing.

5.5 Ownership and Operation of Project.

The Recipient exclusively owns and, except as provided in Section 5.12 hereof, operates the Project.

5.6 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.

# 5.7 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.

## 5.8 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 5.20 below), (ii) Preliminary Expenditures (as defined in Section 5.20 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.

# 5.9 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 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.

# 5.10 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 5.12 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.

# 5.11 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.

5.12 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.

## 5.13 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.

5.14 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 B hereto.

# 5.15 Payments.

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 Payments during each payment period. Any amounts accumulated in a sinking fund or bona fide debt service fund to pay Payments (whether or not deposited to a fund or account established by the Recipient) will be disbursed to pay Payments within thirteen months of the initial date of accumulation or deposit. Any such fund used for the payment of 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 Payments in either case for the immediately preceding year.

# 5.16 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.

# 5.17 No Sinking or Pledged Fund.

Except as set forth in Section 5.18 below, the Recipient will not create or establish any sinking fund or pledged fund which will be used to pay 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 Payments, the Recipient will invest such sinking fund and pledged fund moneys at a yield that does not exceed the yield on the Bonds.

# 5.18 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 Section 3.7. 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, will be treated as a reasonably required reserve fund.

# 5.19 Reimbursement Resolution.

The "reimbursement resolution" adopted by the Recipient is incorporated herein by reference, pursuant to Exhibit A.

# 5.20 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.

# 5.21 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.

5.22 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.

5.23 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.

5.24 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.

5.25 Amendments.

The provisions in this Article 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.

5.26 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 Article, the expectations of the Recipient as set forth in this Article are reasonable. The Recipient is not aware of any facts or circumstances that would

cause it to question the accuracy or reasonableness of any representation made in the provisions in this Article V.

#### 5.27 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 Payments (but excluding the State Water Board's rights to Additional Payments and to notices, opinions and indemnification under each Obligation).

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

#### INLAND EMPIRE UTILITIES AGENCY

By: \_\_\_\_\_ Name: Shivaji Deshmukh Title: General Manager

Date: \_\_\_\_\_

## STATE WATER RESOURCES CONTROL BOARD:

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

Date: \_\_\_\_\_

## EXHIBIT A – SCOPE OF WORK

- 1. Eligible Work Start Date. The Eligible Work Start Date is set forth on the Cover Page of this Agreement.
- 2. Eligible Start Date. The Eligible Start Date is set forth on the Cover Page of this Agreement.
- 3. Start of Construction Date. The Recipient agrees to start construction no later than the estimated date set forth on the Cover Page of this Agreement.
- 4. Completion of Construction Date. The Completion of Construction date is set forth on the Cover Page of this Agreement. The Recipient shall deliver any request for extension of the Completion of Construction date no less than 90 days prior to the Completion of Construction date.
- 5. Final Disbursement Request Date. The Final Disbursement Request Date is set forth on the Cover Page of this Agreement. 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 Deputy Director of the Division.
- 6. Records Retention End Date is set forth on the Cover Page of this Agreement.
- 7. Incorporated Documents. Incorporated by reference into this Agreement are the following documents:
  - a. the Final Plans & Specifications, which are the basis for the construction contract to be awarded by the Recipient (Agreement will be amended to incorporate such document);
  - b. the Waste Discharge Requirement Order No. R8-2015-0036 and National Pollutant Discharge Elimination System Permit No. CA8000409;
  - c. the Recipient's Reimbursement Resolution No. 2018-05-6 dated 5/16/2018;
  - d. the Recipient's Tax Questionnaire dated May 1, 2018;
  - e. the Davis-Bacon requirements found at <a href="https://www.waterboards.ca.gov/water\_issues/programs/grants\_loans/srf/docs/davisbacon/da">https://www.waterboards.ca.gov/water\_issues/programs/grants\_loans/srf/docs/davisbacon/da</a> <a href="https://www.waterboards.ca.gov/water\_issues/programs/grants\_loans/srf/docs/davisbacon/da">https://www.waterboards.ca.gov/water\_issues/programs/grants\_loans/srf/docs/davisbacon/da</a> <a href="https://www.waterboards.ca.gov/water\_issues/programs/grants\_loans/srf/docs/davisbacon/da">https://www.waterboards.ca.gov/water\_issues/programs/grants\_loans/srf/docs/davisbacon/da</a> <a href="https://www.waterboards.ca.gov/water\_issues/programs/grants\_loans/srf/docs/davisbacon/da">https://www.waterboards.ca.gov/water\_issues/programs/grants\_loans/srf/docs/davisbacon/da</a>
- 8. Reporting. Status Reports due at least quarterly.
- 9. Project Purpose and Description.

The Project is the for benefit of the Recipient and has a Useful Life of at least 30 years. The funding under this Agreement shall be used to expand Regional Water Recycling Plant No. 5 (RP-5) capacity from 15-30 million gallons per day (mgd) including expanding the RP-5 Solids Treatment Facility to

treat all solids generated from Regional Water Recycling Plant No. 2 (Rp-2) and Carbon Canyon Water Reclamation Facility (CCWRF).

10. Scope of Work

The Recipient agrees to do the following:

Construct improvements to RP-5 consisting of a Liquids Treatment Expansion and a Solids Treatment Facility

The RP-5 Liquids Treatment Expansion will consist of the following major components:

- Expand the Influent Pump Station
- Install Headworks improvements including bar screens, vortex grit chamber, fine screens for MBR and a screenings/grit handling system.
- Construct two primary clarifiers and new primary clarifier covers
- Install improvements to the existing aeration basin including new aeration diffusers, mixed liquor pumps and air headers.
- Demolish two secondary clarifiers and construct a 30 MGD MBR system for improved water quality.
- Construction a centralized odor control system for Liquids and part of Solids treatment systems and construct a second odor control system specifically for the Solids dewatering building to meet the objectives of the Recipient's Business Goals.
- Construct an emergency overflow and storm water system.
- Construct the new Mountain Avenue Lift Station, modify the City of Chino Hills Butterfield Ranch Pump Station and construct the El Prado Golf Course Lift Station.

The RP-5 Solids Treatment Facility will consist of the following major components:

- Construction a rotary drum thickening building for primary and secondary solids thickening.
- Install phased digestion including acid phase digesters and methane digesters.
- Construct digested sludge storage.
- Construct a centrifuge dewatering building, biosolids cake storage, and centrate equalization.
- Install digester gas treatment, digester gas flaring and emissions control system for the existing Renewable Energy Efficiency Project (REEP) engines.
- Construct a food waste receiving station and transfer station at RP-5

#### 11. Signage.

The Recipient shall place a sign at least four feet tall by eight feet wide made of <sup>3</sup>/<sub>4</sub> 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):



"Funding for this RP-5 Expansion Construction Project has been provided in full or in part by the Clean Water State Revolving Fund through an agreement with the State Water Resources Control Board. 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 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.

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

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

# EXHIBIT B – FUNDING AMOUNT

- 1. Estimated Reasonable Cost. The estimated reasonable cost of the total Project, including associated planning and design costs is four hundred fifty million dollars and no cents (\$450,000,000.00).
- 2. Project Financing. 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. The estimated amount of principal that will be due to the State Water Board under this Agreement is one hundred one million five hundred thirty thousand dollars and no cents (\$101,530,000.00).
- 3. Payment, Interest Rate, and Charges. The Recipient agrees to make all Payments according to the schedule in Exhibit C at an interest rate of eight tenths (.80%) per annum. 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 C:
  - an Administrative Service Charge
  - a Small Community Grant Fund Charge
- 4. [Reserved].
- 5. Useful Life. The useful life of this Project is at least thirty (30) years.
- 6. The Final Repayment Date is set forth on the Cover Page.
- 7. Budget costs are contained in the Project Cost Table below.

LINE ITEM	TOTAL ESTIMATED COST	PROJECT FUNDING AMOUNT	
Construction	\$341,982,900	\$77,953,755	
Pre-Purchased Material/Equipment	\$0	\$0	
Purchase of Land	\$0	\$0	
Contingency	\$38,248,631	\$7,820,603	
Allowances (Soft Costs)	\$69,768,469	\$15,755,642	
TOTAL	\$450,000,000	\$101,530,000	

The Division's Final Budget Approval and related Form 259 and Form 260 will document a more detailed budget of eligible Project Costs and Project funding amounts.

Upon written request by the Recipient, the Division may adjust the line items of the Summary Project Cost Table at the time of Division's Final Budget Approval. Upon written request by the Recipient, the Division may also adjust the line items of the Summary Project Cost Table as well as the detailed budget at the time of Recipient's submittal of its final claim. Any line item adjustments to the Summary Project Cost 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 Summary Project Cost Table and the detailed budget must not exceed the Project Funding Amount. The Division may also propose budget adjustments.

(b) 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.

8. Preliminary budget costs are as follows:

Planning and design Allowances: \$6,493,274

Construction costs and disbursements are not available until the Division has approved the final budget form submitted by the Recipient. No costs incurred prior to the Eligible Work Start Date are eligible for reimbursement. Construction costs incurred prior to the Eligible Start Date are not eligible for reimbursement. 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, including planning and design allowances.

# EXHIBIT C – PAYMENT SCHEDULE

See the attached preliminary Payment Schedule. The final Payment Schedule 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. 8173-210 - Inland Empire Utilities Agency Agreement: D2101014 - based on Actual + Projected Disbursements

RP-5 Expansion Construction Project

Ref Num	Due Date	Date Received	Principal Payment	Interest Rate%	Interest Payment	Total P and I Payment	Total Payment	Ending Balance	CPI Interest
1	1/10/2026	<u>.</u>	3,062,373.17	0.800	755,652.03	3,818,025.20	3,818,025.20	98,467,626.83	0.00
2	1/10/2027	1	3,030,284.19	0.800	787,741.01	3,818,025.20	3,818,025.20	95,437,342.64	0.00
3	1/10/2028	3	3,054,526.46	0.800	763,498.74	3,818,025.20	3,818,025.20	92,382,816.18	0.00
4	1/10/2029	)	3,078,962.67	0.800	739,062.53	3,818,025.20	3,818,025.20	89,303,853.51	0.00
5	1/10/2030	)	3,103,594.37	0.800	714,430.83	3,818,025.20	3,818,025.20	86,200,259.14	0.00
6	1/10/2031		3,128,423.13	0.800	689,602.07	3,818,025.20	3,818,025.20	83,071,836.01	0.00
7	1/10/2032	2	3,153,450.51	0.800	664,574.69	3,818,025.20	3,818,025.20	79,918,385.50	0.00
8	1/10/2033	3	3,178,678.12	0.800	639,347.08	3,818,025.20	3,818,025.20	76,739,707.38	0.00
9	1/10/2034	Ļ	3,204,107.54	0.800	613,917.66	3,818,025.20	3,818,025.20	73,535,599.84	0.00
10	1/10/2035	5	3,229,740.40	0.800	588,284.80	3,818,025.20	3,818,025.20	70,305,859.44	0.00
11	1/10/2036	ő	3,255,578.32	0.800	562,446.88	3,818,025.20	3,818,025.20	67,050,281.12	0.00
12	1/10/2037	7	3,281,622.95	0.800	536,402.25	3,818,025.20	3,818,025.20	63,768,658.17	0.00
13	1/10/2038	3	3,307,875.93	0.800	510,149.27	3,818,025.20	3,818,025.20	60,460,782.24	0.00
14	1/10/2039	)	3,334,338.94	0.800	483,686.26	3,818,025.20	3,818,025.20	57,126,443.30	0.00
15	1/10/2040	)	3,361,013.65	0.800	457,011.55	3,818,025.20	3,818,025.20	53,765,429.65	0.00
16	1/10/2041		3,387,901.76	0.800	430,123.44	3,818,025.20	3,818,025.20	50,377,527.89	0.00
17	1/10/2042	2	3,415,004.98	0.800	403,020.22	3,818,025.20	3,818,025.20	46,962,522.91	0.00
18	1/10/2043	3	3,442,325.02	0.800	375,700.18	3,818,025.20	3,818,025.20	43,520,197.89	0.00
19	1/10/2044	Ļ	3,469,863.62	0.800	348,161.58	3,818,025.20	3,818,025.20	40,050,334.27	0.00
20	1/10/2045	5	3,497,622.53	0.800	320,402.67	3,818,025.20	3,818,025.20	36,552,711.74	0.00
21	1/10/2046	5	3,525,603.51	0.800	292,421.69	3,818,025.20	3,818,025.20	33,027,108.23	0.00
22	1/10/2047	1	3,553,808.33	0.800	264,216.87	3,818,025.20	3,818,025.20	29,473,299.90	0.00
23	1/10/2048	3	3,582,238.80	0.800	235,786.40	3,818,025.20	3,818,025.20	25,891,061.10	0.00
24	1/10/2049	)	3,610,896.71	0.800	207,128.49	3,818,025.20	3,818,025.20	22,280,164.39	0.00
25	1/10/2050	)	3,639,783.88	0.800	178,241.32	3,818,025.20	3,818,025.20	18,640,380.51	0.00
26	1/10/2051		3,668,902.16	0.800	149,123.04	3,818,025.20	3,818,025.20	14,971,478.35	0.00
27	1/10/2052	2	3,698,253.37	0.800	119,771.83	3,818,025.20	3,818,025.20	11,273,224.98	0.00
28	1/10/2053	3	3,727,839.40	0.800	90,185.80	3,818,025.20	3,818,025.20	7,545,385.58	0.00
29	1/10/2054	Ļ	3,757,662.12	0.800	60,363.08	3,818,025.20	3,818,025.20	3,787,723.46	0.00
30	1/10/2055	5	3,787,723.46	0.800	30,301.79	3,818,025.25	3,818,025.25	0.00	0.00
			101,530,000.00		13,010,756.05	114,540,756.05	114,540,756.05		0.00

#### EXHIBIT D – SPECIAL CONDITIONS

#### Financial:

1. Recipient shall maintain separate financial statements in its annual CAFR for the following funds: Regional Wastewater, Recycled Water, Water Resources and Non-Major funds. Revenues and expenses should be recorded in their appropriate fund.

#### Environmental:

- 1. The documents identified below are incorporated by reference and the Recipient shall comply with the conditions and recommendations therein:]
  - a. The Mitigation Monitoring and Reporting Program adopted on March 15, 2017 for the Project. The Recipient must implement all mitigation measures therein

The Recipient shall make no changes in the Project, construction area, or special conditions, without obtaining the appropriate and necessary prior approval from the State Water Board.

#### REPORTING TO THE STATE WATER BOARD

- 1. In the Recipient's Project Reports and the Project Completion Report, submitted pursuant to this Agreement, the Recipient shall include and 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. AQ-1 through AQ-4 for Air Quality,
  - b. BIO-1, BIO-3a, BIO-4, BIO-5, BIO-6 for Biological Resources,
  - c. CUL-1 for Cultural Resources,
  - d. HAZ-1 and HAZ-2 for Hazards and Hazardous Materials,
  - e. HYDRO-2, HYDRO-3 and HYDRO-6 for Hydrology and Water Quality, and
  - f. U-1 for Utlities

## EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

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 https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-november-12-2020-or-later.
- vi. No Recipient may receive funding under this Agreement unless it has provided its Unique Entity Identifier 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 <a href="https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy">https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy</a>. 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 <u>http://iEdison.gov</u> 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 as set forth in Exhibit A.
- 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: <a href="http://www.sam.gov/">http://www.sam.gov/</a>.
- 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 <u>www.fgdc.gov</u>.
- 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 <u>https://www.epa.gov/osa/policy-epa-scientific-integrity</u>, 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:
  - 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 <u>2</u> <u>CFR 200.216</u>.

Inland Empire Utilities Agency Agreement No.: D2101014 Project No.: C-06-8173-210

# EXHIBIT F – [RESERVED] [

# EXHIBIT G – COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES

#### 1. CALIFORNIA DEBT INVESTMENT ADVISORY COMMISSION (CDIAC)

Where Recipient is a public entity, Recipient acknowledges its responsibility to file debt obligations with the CDIAC. Recipient understands that CDIAC has waived filing fees for State Water Board SRF debt.

#### 2. COMPLIANCE WITH STATE REQUIREMENTS

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

# **RESOLUTION NO. 2022-4-3**

RESOLUTION OF THE INLAND EMPIRE UTILITIES AGENCY<sup>\*</sup> AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT SALE AGREEMENT BETWEEN THE INLAND EMPIRE UTILITIES AGENCY<sup>\*</sup> AND THE STATE WATER RESOURCES CONTROL BOARD RELATING TO THE MONTCLAIR BASIN IMPROVEMENTS PROJECT AND APPROVING OTHER MATTERS IN CONNECTION THEREWITH

**WHEREAS**, the Inland Empire Utilities Agency<sup>\*</sup> (the "Agency"), a municipal water district duly organized and existing under and pursuant to the Constitution and laws of the State of California, proposes to undertake the financing of certain improvements to the Agency's wastewater system known as the Montclair Basin Improvements Project (the "Project"); and

**WHEREAS**, the State of California has established its Clean Water State Revolving Fund (the "CWSRF") pursuant to Chapter 6.5 of Division 7 of the California Water Code, as required by Title VI of the federal Water Pollution Control Act; and

**WHEREAS**, this Board has determined that it is in the best interest of the Agency to obtain a loan (the "SRF Loan") from the CWSRF for the purpose of financing all or a portion of the Project; and

**WHEREAS**, the SRF Loan will be evidenced by an Installment Sale Agreement (the "Financing Agreement") between the Agency and the California State Water Resources Control Board (the "CSWRCB"); and

**WHEREAS**, this Board has determined to authorize the execution and delivery of the Financing Agreement for the purpose of financing all or a portion of the Project and to approve certain matters in connection therewith;

**NOW, THEREFORE**, the Board of Directors (the "Board") of the Inland Empire Utilities Agency\* hereby finds, determines, declares and resolves as follows:

1. The incurrence of the SRF Loan in the principal amount not to exceed \$2,062,000 to finance all or a portion of the Project is hereby approved. The incurrence of the SRF Loan is determined to be consistent with the Agency's debt policy and to the extent the incurrence of the SRF Loan is not in compliance with the Agency's debt policy, such noncompliance is waived in accordance with the terms of the Agency's debt policy.

2. The Financing Agreement in substantially the form on file with the Agency is hereby approved. Each of the President, the Vice President, the General Manager or the written designee thereof (each an "Authorized Officer") is hereby individually authorized and directed to execute and deliver the Financing Agreement with such changes, insertions and omissions as may be recommended by General Counsel or Stradling Yocca Carlson & Rauth, A Professional Corporation ("Bond

<sup>&</sup>lt;sup>\*</sup> A Municipal Water District.

Counsel") and approved by the Authorized Officer executing the same, said execution being conclusive evidence of such approval.

3. The Board of Directors acknowledges that the good faith estimates required by Section 5852.1 of the California Government Code are disclosed in Exhibit A to this resolution and are available to the public at the meeting at which this resolution is approved.

4. Each Authorized Officer, the General Manager, Assistant General Manager, Director of Finance, or the written designee thereof and any other proper officer of the Agency, acting singly, is authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by the Financing Agreement and this resolution.

5. Unless otherwise defined herein, all terms used herein and not otherwise defined shall have the meanings given such terms in the Financing Agreement unless the context otherwise clearly requires.

6. This Resolution shall take effect immediately.

ADOPTED this 6<sup>th</sup> day of April, 2022.

Steven J. Elie President of the Inland Empire Utilities Agency<sup>\*</sup> and the Board of Directors thereof

ATTEST:

Marco Tule Secretary/Treasurer of the Inland Empire Utilities Agency<sup>\*</sup> and the Board of Directors thereof

(SEAL)

\* A Municipal Water District

#### EXHIBIT A

### GOOD FAITH COST ESTIMATES

The good faith estimates set forth herein are provided with respect to the SRF Loan in accordance with California Government Code Section 5852.1. Such good faith estimates have been provided to the Inland Empire Utilities Agency by the Municipal Advisor.

*Principal Amount.* The Municipal Advisor has informed the Agency that, based on the Agency's financing plan and current market conditions, its good faith estimate of the aggregate amount of the Installment Sale Agreement for the Montclair Basin Improvements Project to be sold is \$2,062,000, (the "Estimated Principal Amount").

*True Interest Cost of the SRF Loan.* The Municipal Advisor has informed the Agency that, assuming that the Estimated Principal Amount of the SRF Loan is executed, and based on the expected interest rates prevailing at the time of preparation of such estimate, their good faith estimate of the true interest cost of the SRF Loan, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the SRF Loan, is 0.550%.

*Finance Charge of the SRF Loan*. The Municipal Advisor has informed the Agency that, assuming that the SRF Loan is executed, their good faith estimate of the finance charge for the SRF Loan, which means the sum of all fees and charges paid to third parties (or costs associated with the SRF Loan), is \$0.00.

Amount of Proceeds to be Received. The Municipal Advisor has informed the Agency that, assuming that the Estimated Principal Amount of the SRF Loan is executed, and based on estimated interest rates prevailing at the time of preparation of such estimate, their good faith estimate of the amount of proceeds expected to be received by the Agency for sale of the SRF Loan, less the finance charge of the SRF Loan, as estimated above, and any reserves or capitalized interest paid or funded with proceeds of the SRF Loan, is \$2,062,000.

*Total Payment Amount*. The Municipal Advisor has informed the Agency that, assuming that the Estimated Principal Amount of the SRF Loan is executed, and based on interest rates prevailing at the time of preparation of such estimate, their good faith estimate of the total payment amount, which means the sum total of all payments the Agency will make to pay debt service on the SRF Loan, plus the finance charge for the SRF Loan, as described above, not paid with the proceeds of the SRF Loan, calculated to the final maturity of the SRF Loan, is \$2,178,964, which excludes any reserves or capitalized interest paid or funded with proceeds of the SRF Loan (which may offset such total payment amount).

The foregoing estimates constitute good faith estimates only as of March 21, 2022 and are based on information provided in the draft SRF Loan agreement at the time of preparation of such estimates. The actual principal amount of the SRF Loan issued and sold, the true interest cost thereof, the finance charges thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to (a) the actual date of the entering into the SRF Loan being different than the date assumed for purposes of such estimates, (b) the actual principal amount of SRF Loan sold being different from the Estimated Principal Amount, (c) the actual amortization of the SRF Loan being different than the amortization assumed for purposes of such

estimates, (d) the actual interest rates at the time of sale of the SRF Loan being different than those estimated for purposes of such estimates, (e) other market conditions, or (f) alterations in the Agency's financing plan, or a combination of such factors. The actual date of execution of the SRF Loan and the actual principal amount of the SRF Loan sold will be determined by the Agency based on the timing of the need for proceeds of the SRF Loan and other factors. Factors such as the final loan repayment schedule, any changes to the interest rate on the SRF Loan, timing of the execution of the SRF loan may be affected by factors beyond the control of the Agency, or the Municipal Advisor.

# STATE OF CALIFORNIA ) ) ss. COUNTY OF SAN BERNARDINO )

I, Marco Tule, Secretary of the Inland Empire Utilities Agency<sup>\*</sup>, DO HEREBY CERTIFY that the foregoing Resolution being No. 2022-4-3, was adopted at a regular Board Meeting on April 6, 2022, of said Agency by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marco Tule Secretary/Treasurer of the Inland Empire Utilities Agency<sup>\*</sup> and the Board of Directors thereof

\* A Municipal Water District



GAVIN NEWSOM GOVERNOR JARED BLUMENFELD SECRETARY FOR ENVIRONMENTAL PROTECTION

State Water Resources Control Board

March 4, 2022

Inland Empire Utilities Agency Attn: Shivaji Deshmukh, General Manager P.O. Box 9020 Chino Hills, CA 91709

Agreement Number: D2101013 Project Number: C-06-8415-110

Enclosed is your Agreement for your approval and signature. This Agreement cannot be considered binding by either party until executed by the State Water Resources Control Board (State Water Board).

If you are in agreement with all terms and conditions of the Agreement, please sign and date **two (2) signature** pages; return only the two (2) signature pages – it is not necessary to send the entire Agreement - **no later than thirty (30) calendar days from the date of this letter to:** 

### **Overnight Mail**

## US Mail

State Water Resources Control Board Attention: Amor Moskaira Division of Financial Assistance 1001 I Street, 16<sup>th</sup> Floor Sacramento, CA 95814 State Water Resources Control Board Attention: Amor Moskaira Division of Financial Assistance P. O. Box 944212 Sacramento, CA 94244-2120

In order for the Funding Agreement to be executed by the State Water Board, the following items <u>must also be returned with the signed signature pages:</u>

- 1. Opinion of General Counsel.
- 2. Bond Counsel Letter.
- 3. Closing Resolution.

Be aware that all projects receiving funding must comply with all applicable implementing guidelines and regulations adopted by 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: <u>http://www.dir.ca.gov/lcp.asp</u>.

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

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

Additional Compliance Requirements:

Davis Bacon Compliance: https://www.waterboards.ca.gov/water\_issues/programs/grants\_loans/srf/davisbacon.shtml

Disadvantaged Business Enterprise (DBE) <u>https://www.waterboards.ca.gov/water\_issues/programs/grants\_loans/srf/docs/policy0513/dbe\_</u> <u>compliance\_guidelines\_instructions.pdf</u>

Ms. Moskaira may be contacted at (916) 449-5627 or <u>Amor.Moskaira@waterboards.ca.gov</u>

Once the Agreement is signed by both parties, we will forward an executed copy to you for your records.

Enclosures



# INLAND EMPIRE UTILITIES AGENCY

AND

# CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



INSTALLMENT SALE AGREEMENT

MONTCLAIR BASIN IMPROVEMENT PROJECT

PROJECT NO. C-06-8415-110

AGREEMENT NO. D2101013

PROJECT FUNDING AMOUNT: \$2,062,000

ELIGIBLE START DATE: JULY 1, 2017 ELIGIBLE START WORK DATE: DECEMBER 3, 2021 START OF CONSTRUCTION DATE: DECEMBER 3, 2021 COMPLETION OF CONSTRUCTION DATE: FEBRUARY 22, 2023 FINAL DISBURSEMENT REQUEST DATE: AUGUST 22, 2023 FINAL REPAYMENT DATE: FEBRUARY 22, 2043 RECORDS RETENTION END DATE: FEBRUARY 22, 2059 THIS PAGE INTENTIONALLY LEFT BLANK

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#### WHEREAS,

- 1. The State Water Board is authorized to provide financial assistance under this Agreement pursuant to the following:
  - Chapter 6.5 of Division 7 of the California Water Code (State Act) and Resolutions Nos. 2019-0064 and 2021-021.
- 2. The State Water Board determines eligibility for financial assistance, determines a reasonable schedule for providing financial assistance, establishes compliance with the Federal Act and State Act and establishes the terms and conditions of a financial assistance agreement.
- 3. The Recipient has applied to the State Water Board for financial assistance for the Project described in Exhibit A of this Agreement and the State Water Board has selected the application for financial assistance.
- 4. The State Water Board proposes to assist in providing financial assistance for eligible costs of the Project, and the Recipient desires to participate as a recipient of financial assistance from the State Water Board and evidence its obligation to pay Payments, which obligation will be secured by Net Revenues as defined herein, upon the terms and conditions set forth in this Agreement, all pursuant to the Federal Act and the State Act.

NOW, THEREFORE, 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 as follows:

Subject to the satisfaction of any conditions 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.

Upon execution, the term of the Agreement shall begin on the Eligible Start Date and extend through the Final Repayment Date.

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.

# ARTICLE I DEFINITIONS

#### 1.1 Definitions.

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

"Additional Payments" means the 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.

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

"Allowance" means an amount based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the Project.

"Authorized Representative" means the 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.

"Bankruptcy Related Event" means, with respect to the Recipient, (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Recipient or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Recipient or for a substantial part of the assets thereof and, in ay case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; (b) the Recipient shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial portion of the assets thereof. (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due; (iii) fail to make a Payment in accordance with the provisions of this Agreement and such failure is not cured within thirty (30) days following notification by the State Water Board of failure to make such payment. (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief, in each case under any Insolvency Law. (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing; (c) (i) any Person shall commence a process pursuant to which all or a substantial part of the Revenues may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the System Obligations, or (ii) any Person shall commence a process pursuant to which all or a substantial part of the Revenues may be sold or otherwise disposed of pursuant to a sale or disposition in lieu of foreclosure; or (d) any receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official shall transfer, pursuant to directions issued by the holders of the Senior Obligations, funds on deposit in any of the System funds or accounts upon the occurrence and during the continuation of an Event of Default under this Agreement or an event of default under any Obligation Document for application to the

prepayment or repayment of any principal amount of the Obligations other than in accordance with the provisions of this Agreement.

"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 Payments paid hereunder.

"Business Day" means any day other than a Saturday, a Sunday or a day on which offices of the Government or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York or Los Angeles, California.

"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 C.

"Chino Basin Watermaster" means Chino Basin Watermaster and any assignee of or successor-ininterest to its payment obligations to Recipient under the agreements identified in subsection (j) of the Event of Default definition given below.

"Co-Funding Agency" means any entity, of any corporate type, with which the Recipient has entered into or intends or reasonably expects to enter into, any agreement providing for payments to the Recipient for the payment of Debt Service, and any assignee of or successor-in-interest to such entity. Chino Basin Watermaster is a Co-Funding Agency under this Agreement.

"Code" as used in Article V 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 on the Cover Page of this Agreement.

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

"CWSRF" means the Clean Water State Revolving Fund.

"Days" means calendar days unless otherwise expressly indicated.

"Debt Service" means, for any Fiscal Year, the sum of:

(a) The interest payable during such Fiscal Year on all outstanding System Obligations, assuming that all outstanding serial System Obligations are retired as scheduled and that all outstanding term System Obligations are prepaid or paid from sinking fund payments as scheduled (except to the extent that such interest is capitalized or is reasonably anticipated to be reimbursed to the Recipient by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111 5, 23 Stat. 115 (2009), enacted February 17, 2009), or any future similar program);

- (b) Those portions of the principal amount of all outstanding serial System Obligations maturing in such Fiscal Year (but excluding Excluded Principal);
- (c) Those portions of the principal amount of all outstanding term System Obligations required to be prepaid or paid in such Fiscal Year (but excluding Excluded Principal); and
- (d) Those portions of any other payments under System Obligations required to be made during such Fiscal Year (except to the extent the interest evidenced and represented thereby is capitalized or is reasonably anticipated to be reimbursed to the Recipient by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111 5, 23 Stat. 115 (2009), enacted February 17, 2009), or any future similar program); provided that, as to any such System Obligations bearing or comprising interest at other than a fixed rate, the rate of interest used to calculate Debt Service shall, for all purposes, be assumed to bear interest at a fixed rate equal to the higher of 1) the actual rate on the date of calculation, or if such System Obligation is not yet outstanding, the initial rate (if established and binding), and 2) the highest average variable rate borne over a six month period during the preceding 24 months by outstanding variable rate debt issued by the Recipient or, if no such variable rate debt is at the time outstanding, by variable rate debt of which the interest rate is computed by reference to an index comparable to that to be utilized in determining the interest rate for the debt then proposed to be issued;

And provided further that if any series or issue of such System Obligation has twenty-five percent (25%) or more of the aggregate principal amount of such series or issue due in any one year (and such principal is not Excluded Principal), Debt Service shall be determined for the Fiscal Year of determination as if the principal of and interest on such series or issue of such System Obligation were being paid from the date of incurrence thereof in substantially equal annual amounts over a period of forty (40) years from the date of calculation;

And provided further that, as to any such System Obligation or portions thereof bearing no interest but which are sold at a discount and which discount accretes with respect to such System Obligations or portions thereof, such accreted discount shall be treated as interest in the calculation of Debt Service in the Fiscal Year when due;

And provided further that if the System Obligations constitute Paired Obligations, the interest rate on such System Obligations shall be the resulting linked rate or the effective fixed interest rate to be paid by the Recipient with respect to such Paired Obligations;

And provided further that for System Obligations which are interest rate swap agreements which do not constitute Paired Obligations but for which an Independent Financial Consultant certifies that such System Obligation has a fixed spread component payable to the Recipient, Debt Service shall be credited by an amount equal to the lesser of (a) the average of the actual payment received by the Recipient over the last three Fiscal Years (or if outstanding less than three years, over the period outstanding) and (b) the fixed spread component.

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

"Enterprise Fund" means (i) all revenue accounts maintained by the Recipient as of the date of this Agreement other than the Water Resources Fund and (ii) any revenue account created after the date of this Agreement and designated by the Chief Financial Officer of the Recipient as a part of the Enterprise Fund.

"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 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 fund requirement, if any, in Section 3.7 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, or any other Bankruptcy Related Event;
- 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;
- j) The occurrence of a material breach or event of default under any agreement providing for payments to the Recipient for the payment of Debt Service;
- k) 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.

"Excluded Principal" means each payment of principal of System Obligations with a maturity of less than 42 months and which the Recipient specifies in a certificate signed by the General Manager of the Recipient and filed with the trustee for the System Obligation that the Recipient intends to pay from the proceeds of System Obligations, other bonds, notes or other obligations of the Recipient or moneys other than Revenues or Net Revenues. No such determination shall affect the security for such System Obligations or the obligation of the Recipient to pay such System Obligations from Net Revenues.

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

"Final Repayment 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 beginning on July 1 of each year and ending on the last day of June of the next succeeding year, or any other twelve-month period selected and designated as the official Fiscal Year of the Recipient.

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

"Generally Accepted Accounting Principles" or "GAAP" means 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.

"Governmental Authority" means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory) of or within the United States of America or its territories or possessions, including the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts "on behalf of" any of the foregoing, whether as an agency or authority of such body.

"Independent Financial Consultant" means a financial consultant or firm of such consultants appointed by the Recipient, and who, or each of whom: (1) is in fact independent and not under domination of the Recipient; (2) does not have any substantial interest, direct or indirect, with the Recipient; and (3) is not connected with the Recipient as an officer or employee thereof, but who may be regularly retained to make reports thereto.

"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.

"Insolvency Laws" means the United States Bankruptcy Code, 11 U.S.C. 101 *et seq.*, as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.

"Lien" means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law. "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 pursuant to Rule 15c2-12(b)(5) with respect to such System Obligation.

"Maximum Annual Debt Service" means the maximum amount of Debt Service that is 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 Fiscal Year, the Revenues for such Fiscal Year less the Operations and Maintenance Costs for such Fiscal Year.

"Obligation" means the obligation of the Recipient to make 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 in the documents thereby incorporated by reference.

"Obligation Document means any indenture, bond, credit agreement, note, reimbursement agreement, letter of credit, guarantee or any other agreement, instrument or document pursuant to which any System Obligation is incurred by the Recipient.

"Operations and Maintenance Costs" means (1) costs spent or incurred for maintenance and operation of the System calculated in accordance with Generally Accepted Accounting Principles, including (among other things) the reasonable expenses of management and repair and other expenses necessary to maintain and preserve the System in good repair and working order, and including administrative costs of the Recipient that are charged directly or apportioned to the System, including but not limited to salaries and wages of employees, payments to the Public Employees Retirement System, overhead, insurance, taxes (if any), fees of auditors, accountants, attorneys, consultants or engineers and insurance premiums, and including all other reasonable and necessary costs of the Recipient or charges required to be paid by it to comply with the terms of this Agreement or any other Parity Contract or Senior Contract or of any resolution or indenture authorizing the issuance of any Parity Bonds or Senior Bonds or of such Parity Bonds or Senior Bonds, and (2) all payments under Operation and Maintenance Obligations, but excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles, including amortization of water rights, unrealized losses on investments, write offs of the value of any impaired assets or other bookkeeping entries of a similar nature.

"Operation and Maintenance Obligation" means any contractual obligation with respect to any facilities, properties, structures, works, services, water or rights to receive water, or any loan of credit to or guaranty of debts, claims or liabilities of any other person (including a joint powers agency of which the Recipient is a member) with respect to any facilities, properties, structures, works, services, water or rights to receive water, so long as in each case the payments thereunder are designated as Operation and Maintenance Costs by the Board of Directors of the Recipient; provided however System Obligations shall not constitute Operation and Maintenance Obligations, and in no instance will an Operation and Maintenance Obligation include provisions for the financing of construction or acquisition of any of the Recipient's facilities, structures, or works. There are currently no outstanding Operation and Maintenance Obligations.

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

• The Reimbursement Agreement for the Design and Build Costs for the Gravity Sewer System, Area 1 Sewer Lift Station and Force Main between the Recipient and the City of Fontana, executed October 18, 2005. "Paired Obligations" means any System Obligation (or portion thereof) designated as Paired Obligations in the resolution, indenture or other document authorizing the issuance or execution and delivery thereof, which are simultaneously issued or executed and delivered (i) the principal of which is of equal amount maturing and to be redeemed or prepaid (or cancelled after acquisition thereof) on the same dates and in the same amounts, and (ii) the interest rates which, taken together, are reasonably expected to result in a fixed interest rate obligation of the Recipient for the term of such System Obligation, as determined by an Independent Financial Consultant in writing. There are currently no outstanding Paired Obligations.

"Parity Bonds" means all revenue bonds or notes of the Recipient authorized, executed, issued and delivered by the Recipient, the payments of which are payable from Net Revenues on a parity with the Installment Payments.

"Parity Contracts" means this Agreement and any amendments and supplements hereto, and all contracts of the Recipient previously or hereafter authorized and executed by the Recipient, the Parity Installment Payments under which are payable from Net Revenues on a parity with the Installment Payments, but excluding contracts entered into for operation and maintenance of the System.

"Parity Debt Service" means, for any Fiscal Year, the sum of:

- (a) The interest payable during such Fiscal Year on all outstanding Parity Bonds, assuming that all outstanding serial Parity Bonds are retired as scheduled and that all outstanding term Parity Bonds are prepaid or paid from sinking fund payments as scheduled (except to the extent that such interest is capitalized or is reasonably anticipated to be reimbursed to the Recipient by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111 5, 23 Stat. 115 (2009), enacted February 17, 2009), or any future similar program);
- (b) Those portions of the principal amount of all outstanding serial Parity Bonds maturing in such Fiscal Year (but excluding Excluded Principal);
- (c) Those portions of the principal amount of all outstanding term Parity Bonds required to be prepaid or paid in such Fiscal Year (but excluding Excluded Principal); and
- (d) Those portions of the Parity Installment Payments required to be made during such Fiscal Year (except to the extent the interest evidenced and represented thereby is capitalized or is reasonably anticipated to be reimbursed to the Recipient by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111 5, 23 Stat. 115 (2009), enacted February 17, 2009), or any future similar program); provided that, as to any such Parity Bonds or Parity Installment Payments bearing or comprising interest at other than a fixed rate, the rate of interest used to calculate Parity Debt Service shall, for all purposes, be assumed to bear interest at a fixed rate equal to the higher of 1) the actual rate on the date of calculation, or if such Parity Contract or Parity Bond is not yet outstanding, the initial rate (if established and binding), and 2) the highest average variable rate borne over a six month period during the preceding 24 months by outstanding variable rate debt issued by the Recipient or, if no such variable rate debt is at the time outstanding, by variable rate debt of which the interest rate is computed by reference to an index comparable to that to be utilized in determining the interest rate for the debt then proposed to be issued;

And provided further that if any series or issue of such Parity Bonds or Parity Installment Payments have twenty-five percent (25%) or more of the aggregate principal amount of such series or issue due in any one year (and such principal is not Excluded Principal), Parity Debt Service shall be determined for the Fiscal Year of determination as if the principal of and interest on such series or issue of such Parity Bonds or Parity Installment Payments were being paid from the date of incurrence thereof in substantially equal annual amounts over a period of forty (40) years from the date of calculation;

And provided further that, as to any such Parity Bonds or Parity Installment Payments or portions thereof bearing no interest but which are sold at a discount and which discount accretes with respect to such Parity Bonds or Parity Installment Payments or portions thereof, such accreted discount shall be treated as interest in the calculation of Parity Debt Service in the Fiscal Year when due;

And provided further that if the Parity Bonds or Parity Contracts constitute Paired Obligations, the interest rate on such Parity Bonds or Parity Contracts shall be the resulting linked rate or the effective fixed interest rate to be paid by the Recipient with respect to such Paired Obligations;

And provided further that for Parity Contracts which are interest rate swap agreements which do not constitute Paired Obligations but for which an Independent Financial Consultant certifies that such Parity Contracts has a fixed spread component payable to the Recipient, Parity Debt Service shall be credited by an amount equal to the lesser of (a) the average of the actual payment received by the Recipient over the last three Fiscal Years (or if outstanding less than three years, over the period outstanding) and (b) the fixed spread component.

"Parity Installment Payments" means the payments of interest and principal or other scheduled payments scheduled to be paid by the Recipient under and pursuant to the Parity Contracts.

"Parity Obligation" means a debt obligation of the Recipient on parity with this Obligation, including the Obligation and all Parity Bonds and Parity Contracts. The Recipient's currently outstanding Parity Obligations are these:

- The Installment Purchase Agreement by and between Inland Empire Utilities Agency and Chino Basin Regional Financing Authority, dated May 27, 2020 (relating to the WIFIA Loan Agreement by and between Inland Empire Utilities Agency, Chino Basin Regional Financing Authority and the United States Environmental Protection Agency, dated May 27, 2020 [WIFIA N18124A]).
- The Installment Purchase Agreement by and between Inland Empire Utilities Agency and Chino Basin Regional Financing Authority, dated June 1, 2020 (relating to the Chino Basin Regional Financing Authority Refunding Revenue Bonds (Inland Empire Utilities Agency), Series 2020A).
- The Installment Purchase Agreement by and between Inland Empire Utilities Agency and Chino Basin Regional Financing Authority, dated June 15, 2020 (relating to the Chino Basin Regional Financing Authority Revenue Notes (Inland Empire Utilities Agency), Series 2020B).
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated June 12, 2008 [Project No. C-06-4900-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated June 26, 2008 [Project No. C-06-4900-120]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated June 12, 2008 [Project No. C-06-4900-130]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated July 1, 2009 [Project No. C-06-5176-110]

- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated July 1, 2009 [Project No. C-06-5176-120]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated July 1, 2009 [Project No. C-06-5176-130]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated July 1, 2009 [Project No. C-06-5176-140]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated June 26, 2014 [Project No. C-06-5318-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated August 25, 2009 [Project No. C-06-5327-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated June 19, 2009 [Project No. C-06-5332-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated April 29, 2014 [Project No. C-06-7885-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated November 15, 2017 [Project No. C-06-8105-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated November 15, 2017 [Project No. C-06-8105-120]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated October 29, 2020 [Project No. C-06-8235-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated December 21, 2020 [Project No. C-06-8235-120]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated June 24, 2020 [Project No. C-06-8235-150]

"Parity Project" means any additions, betterments, extensions or improvements to the System designated by the Board of Directors of the Recipient as a Parity Project, the acquisition and construction of which is to be paid for with the proceeds of any Parity Contracts or Parity Bonds.

"Party Contact" means, for the Recipient, the Authorized Representative of the Recipient or any designee of the Authorized Representative, and, for the State Water Board, the Grant Manager, or the Program Analyst.

"Payment" means any payment due to the State Water Board from the Recipient pursuant to Section 3.2 of this Agreement, as set forth in Exhibit C.

"Payment Date" means the date on which any Payment is or becomes due and payable.

"Person" means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

"Policy" means the State Water Board's "Policy for Implementing the Clean Water State Revolving Fund," as amended from time to time, and 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 Exhibit A 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 which are reasonable, necessary and allocable by the Recipient to the Project under GAAP, including 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 Inland Empire Utilities Agency.

"Records Retention End Date" means the last date that the Recipient is obligated to maintain records pursuant to Section 2.17 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 Fund" means the reserve fund required pursuant to Section 3.7 of this Agreement.

"Revenues" means all income, rents, rates, fees, charges and other moneys derived from the ownership or operation of the System, including, without limiting the generality of the foregoing,

- (a) All income, rents, rates, fees, charges, business interruption insurance proceeds or other moneys derived by the Recipient from the sale, furnishing and supplying of sewer services, composting services or other services, facilities, and commodities sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the System, including the Recipient's share of the County of San Bernardino's 1% ad valorem property tax (to the extent allocated to the Enterprise Fund), determined in accordance with Generally Accepted Accounting Principles, plus
- (b) The earnings on and income derived from the investment of the amounts described in clauses (1) hereof, including the Recipient's share of the County of San Bernardino's 1% ad valorem property tax (to the extent allocated to the Enterprise Fund), and the general unrestricted funds of the Recipient,

But excluding in all cases revenues derived from ownership or operation of the Water System, customer deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the Recipient, and excluding any proceeds of taxes restricted by law to be used by the Recipient to pay bonds hereafter issued.

"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 Bonds" means all revenue bonds or notes of the Recipient authorized, executed, issued and delivered by the Recipient, the payments of which are payable from Net Revenues on a basis senior to the Installment Payments.

"Senior Contracts" means this Agreement and any amendments and supplements hereto, and all contracts of the Recipient previously or hereafter authorized and executed by the Recipient, the Senior Installment Payments under which are payable from Net Revenues on a basis senior to the Installment Payments, but excluding contracts entered into for operation and maintenance of the System.

"Senior Debt Service" means, for any Fiscal Year, the sum of:

- (a) The interest payable during such Fiscal Year on all outstanding Senior Bonds, assuming that all outstanding serial Senior Bonds are retired as scheduled and that all outstanding term Senior Bonds are prepaid or paid from sinking fund payments as scheduled (except to the extent that such interest is capitalized or is reasonably anticipated to be reimbursed to the Recipient by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111 5, 23 Stat. 115 (2009), enacted February 17, 2009), or any future similar program);
- (b) Those portions of the principal amount of all outstanding serial Senior Bonds maturing in such Fiscal Year (but excluding Excluded Principal);
- (c) Those portions of the principal amount of all outstanding term Senior Bonds required to be prepaid or paid in such Fiscal Year (but excluding Excluded Principal); and
- (d) Those portions of the Senior Installment Payments required to be made during such Fiscal Year (except to the extent the interest evidenced and represented thereby is capitalized or is reasonably anticipated to be reimbursed to the Recipient by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111 5, 23 Stat. 115 (2009), enacted February 17, 2009), or any future similar program);

Provided that, as to any such Senior Bonds or Senior Installment Payments bearing or comprising interest at other than a fixed rate, the rate of interest used to calculate Senior Debt Service shall, for all purposes, be assumed to bear interest at a fixed rate equal to the higher of 1) the actual rate on the date of calculation, or if such Senior Contract or Senior Bond is not yet outstanding, the initial rate (if established and binding), and 2) the highest average variable rate borne over a six month period during the preceding 24 months by outstanding variable rate debt issued by the Recipient or, if no such variable rate debt is at the time outstanding, by variable rate debt of which the interest rate is computed by reference to an index comparable to that to be utilized in determining the interest rate for the debt then proposed to be issued.

"Senior Installment Payments" means the payments of interest and principal or other scheduled payments scheduled to be paid by the Recipient under and pursuant to the Senior Contracts.

"Senior Obligation" means a debt obligation of the Recipient that is senior to this Obligation. The Senior Obligations are these:

• The 2017A Installment Purchase Agreement dated February 2, 2017 between Inland Empire Utilities Agency and Chino Basin Regional Financing Authority.

"SRF" means the Clean Water State Revolving Fund.

"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 no Subordinate Obligations.

"System" means all facilities, land, and property rights of the Recipient, including the Project, and including all properties, structures or works hereafter acquired or constructed by the Recipient and determined to be part of the System, together with all additions, betterments, extensions and improvements to such facilities, properties, structures or works, or any part thereof hereafter acquired or constructed, other than the Water System.

"System Obligation" means any obligation of the Recipient secured by or payable from Revenues or Net Revenues, including this Obligation and obligations listed in this Section 1.1 or Exhibit J, and including without limitation Senior Bonds, Senior Contracts, Senior Obligations, Parity Bonds, Parity Contracts, Parity Obligations and such obligations that are payable on a subordinate basis to this Obligation, Parity Bonds, or Parity Contracts, and additional such 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 B.

"Water System" means the whole and each and every part of the imported water system of the Recipient, including the portion thereof existing on the date hereof, and including all additions, betterments, extensions and improvements to such imported water system or any part thereof hereafter acquired or constructed.

"Year" means calendar year unless otherwise expressly indicated.

1.2 Exhibits Incorporated.

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

1.3 Party Contacts.

State Water	Board	Inland Empire Utilities Agency	
Section:	Division of Financial Assistance		
Name:	Elisabeth Brown, Project Manager	Name:	Shivaji Deshmukh, General Manager
Address:	1001 I Street, 16th Floor	Address:	P.O. Box 9020
City, State,	Secremente CA 05914	City, State,	Chino Hills, CA 91709
Zip:	Sacramento, CA 95814	Zip:	
Phone:	(916) 341-5375	Phone:	(909) 993 - 1600
Email:	elisabeth.brown@waterboards.ca.gov	Email:	sdeshmukh@ieua.org

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

### ARTICLE II REPRESENTATIONS, WARRANTIES, AND COMMITMENTS

The Recipient represents, warrants, and commits to the following as of the Eligible Start Date set forth on the first page hereof and continuing thereafter for the term of this Agreement.

2.1 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 financial assistance.

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

2.2 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.

2.3 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 first page hereof.

2.4 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.

2.5 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 and all Co-Funding Agencies are solvent and will not be rendered insolvent by the transactions contemplated by this

Agreement. The Recipient and all Co-Funding Agencies are able to pay their 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 employers liability, professional liability.

#### 2.6 Legal Status and Eligibility.

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 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.

### 2.7 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.

2.8 Completion of Project.

The Recipient shall expeditiously proceed with and complete construction of the Project in substantial accordance with Exhibit A and Exhibit A-FBA. The following dates are established as on the Cover Page of this Agreement:

- i. Eligible Work Start Date
- ii. Eligible Start Date
- iii. Start of Construction Date
- iii. Completion of Construction Date
- iv. Final Disbursement Request Date
- v. Records Retention End Date
- vi. Final Repayment Date
  - 2.9 Award of Construction Contracts.
- (a) The Recipient shall award the prime construction contract timely in order to meet the start of construction date specified on the Cover Page of this Agreement.
- (b) The Recipient shall promptly notify the Division in writing both of the award of the prime construction contract for the Project and of Initiation of Construction of the Project. The Recipient shall make all reasonable efforts to complete construction in substantial conformance with the terms of the contract by the Completion of Construction date established on the Cover Page of this Agreement.

# 2.10 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 <u>elisabeth.brown@waterboards.ca.gov</u> and <u>robert.pontureri@waterboards.ca.gov</u> and <u>CleanWaterSRF@waterboards.ca.gov</u>:
  - 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) [Reserved].
- (c) 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, elisabeth.brown@waterboards.ca.gov and robert.pontureri@waterboards.ca.gov and CleanWaterSRF@waterboards.ca.gov; and by mail to the contact address set forth in 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 the Project, the Revenues or the System;
  - iv. Failure to meet any debt service coverage test in section 3.7 of this Agreement;
  - v. Draws on the Reserve Fund;
  - vi. Listed Events and Events of Default, except as set forth in this section;
  - vii. Failure to observe or perform any covenant or comply with any condition in this Agreement;
  - viii. Action taken by the Recipient to initiate formal consideration of 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.
- (d) Within ten (10) business days, the Recipient must notify the Division by phone at (916) 327-9978, by email to <u>elisabeth.brown@waterboards.ca.gov</u> and <u>robert.pontureri@waterboards.ca.gov</u> and <u>CleanWaterSRF@waterboards.ca.gov</u>, and by mail to the contact address set forth in this Agreement of the following events:
  - i. Material defaults on Other 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. [reserved]
- 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;
- (e) The Recipient must notify the Division promptly by phone at (916) 327-9978, by email to <u>elisabeth.brown@waterboards.ca.gov</u> and <u>robert.pontureri@waterboards.ca.gov</u> and <u>CleanWaterSRF@waterboards.ca.gov</u>, and by mail to the contact address set forth in 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;
  - 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.

### 2.11 Findings and Challenge

Upon consideration of a voter initiative to reduce Revenues, the Recipient shall make a finding regarding the effect of such a reduction on the Recipient's ability to satisfy the rate covenant set forth in Section 3.7 of this Agreement. The Recipient shall make its findings available to the public and shall 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 Section 3.7 and its obligation to operate and maintain the Project for its useful life. The Recipient shall diligently pursue and bear any, and all costs related to such challenge. The Recipient shall notify and regularly update the State Water Board regarding the status of any such challenge.

# 2.12 Project Access.

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.

2.13 Project Completion; Initiation of Operations.

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

2.14 Continuous Use of Project; 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.

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

status report must accompany any disbursement request and is a condition precedent to any disbursement. At a minimum the reports will contain the following information:

- A summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed;
- (2) A description of compliance with environmental requirements;
- (3) A listing of change orders including amount, description of work, and change in contract amount and schedule; and
- (4) Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.
- (b) Project Completion Report. The Recipient shall submit a Project Completion Report to the Division with a copy to the appropriate Regional Water Quality Control 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 address the following:
  - (1) Description of the Project,
  - (2) Description of the water quality problem the Project sought to address,
  - (3) Discussion of the Project's likelihood of successfully addressing that water quality problem in the future, and
  - (4) Summarize compliance with applicable environmental conditions.

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.

- (c) As Needed Reports. The Recipient shall 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.
- (d) [Reserved].
  - 2.16 Federal Disadvantaged Business Enterprise (DBE) Reporting.

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.

- 2.17 Records.
- (a) Without limitation of the requirement to maintain Project accounts in accordance with GAAP, the Recipient must:

- (1) Establish an official file for the Project which adequately documents all significant actions relative to the Project;
- (2) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;
- (3) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;
- (4) Establish an accounting system which will accurately depict final total costs of the Project, including both direct and Indirect Costs;
- (5) Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
- (6) If Force Account is used by the Recipient for any phase of the Project, other than for planning, design, and construction engineering and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee.
- (b) 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 shall allow and shall 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.
  - 2.18 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 shall 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 will be returned to the State Water Board.
  - 2.19 Data Management.

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

# 2.20 Environmental Clearance.

- (a) No work that is subject to CEQA or NEPA may proceed under this Agreement unless the State Water Board has provided environmental clearance. 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.
  - 2.21 Property Rights.

The Recipient represents that it 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.

2.22 Use of Licensed 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.

2.23 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.

### ARTICLE III FINANCING PROVISIONS

# 3.1 Purchase and Sale of Project.

The Recipient hereby sells to the State Water Board and the State Water Board hereby purchases from the Recipient the Project. Simultaneously therewith, the Recipient hereby purchases from the State Water Board, and the State Water Board hereby sells to the Recipient, the Project in accordance with the provisions of this Agreement. All right, title, and interest in the Project shall immediately vest in the

Recipient on the date of execution and delivery of this Agreement by both parties without further action on the part of the Recipient or the State Water Board. The State Water Board's disbursement of funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement.

- 3.2 Amounts Payable by the Recipient.
- (a) Interest will accrue beginning with each disbursement. Interest on any funds disbursed to the Recipient shall begin to accrue as of the date of each disbursement. Beginning one year after Completion of Construction, the Recipient must submit an annual Payment of the principal of the Project Funds, together with all interest accruing thereon. The Recipient must make Payments fully amortizing the total principal of the Project by the Final Repayment Date.

The Payments are based on a standard fully amortized assistance amount with equal annual payments. 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 Payment. Payment calculations will be made beginning one (1) year after Completion of Construction. Exhibit C is a payment schedule based on the provisions of this article and an estimated disbursement schedule. Actual payments will be based on actual disbursements.

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. Payments shall be made according to the following procedure:

(i) At a time reasonably anticipated to cause the Division to receive each Payment on or before each Payment Date, the Recipient shall pay (A) annual payments of principal and all interest accruing thereon, and (B) payments of any other amounts on each other date which payment thereof is required to be made hereunder; provided that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. The Recipient shall pay Payments and Additional Payments from Net Revenues and/or other amounts legally available to the Recipient therefor. Each 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. 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.

(ii) Notwithstanding anything herein to the contrary, the outstanding balance of the Obligation and any accrued interest thereon shall be due and payable in full on the Final Payment Date (or on any earlier date on which the Obligation is subject to mandatory redemption or prepayment prior to the maturity thereof).

(iii) 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. 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.

- (b) 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.
- (c) Additional Payments. In addition to the Payments required to be made by the Recipient, the Recipient shall also pay to the State Water Board the reasonable extraordinary fees and expenses of the State Water Board, and of any assignee of the State Water Board's right, title, and interest in and to this Agreement, in connection with this Agreement, including all expenses and fees of accountants, trustees, 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. Additional Payments may be billed to the Recipient by the State Water Board from time to time, together with a statement executed by a duly authorized representative of the State Water Board, stating that the amounts billed pursuant to this section have been incurred by the State Water Board or its assignee for one or more of the above items and a copy of the invoice or statement for the amount so incurred or paid. Amounts so billed shall be paid by the Recipient within thirty (30) days after receipt of the bill by the Recipient.
- (d) The Recipient may not prepay any portion of the principal and interest due under this Agreement without the written consent of the Deputy Director of the Division.
  - 3.3 Obligation Absolute.

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

3.4 No Obligation of the State.

Any obligation of the State Water Board herein contained shall not be an obligation, debt, or liability of the State and any such obligation shall be payable solely out of the moneys encumbered pursuant to this Agreement. 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 to the State or offer an amendment to the Recipient to reflect the reduced amount.

- 3.5 Disbursement of Project Funds; Availability of Funds.
- (a) Except as may be otherwise provided in this Agreement, disbursement of Project Funds will be made as follows:
  - 1. Upon execution and delivery of this Agreement 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. 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. 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 <u>http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx</u>. as of the date costs are incurred by the Recipient.

- 10. The Recipient is not entitled to interest earned on undisbursed funds.
- (b) The State Water Board's obligation to disburse Project Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Project Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other agency. If any disbursements due the Recipient under this 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) <u>Fraud and Misuse of Public Funds</u>. 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 shall only be for the 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 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.
  - 3.6 Withholding of Disbursements and Material Violations.

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 System, Project, or Revenues that the State Water Board determines may impair the timely completion of the Project or the repayment of the Obligation;
- 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 Section 2.10;
- i. An Event of Default or an event that the Division determines may become an Event of Default;
  - 3.7 Pledge; Rates, Fees and Charges; Additional Debt.
- (a) <u>Establishment of Enterprise Fund and Reserve Fund</u>. In order to carry out its System Obligations, the Recipient agrees and covenants that it shall establish and maintain or shall have established and maintained the Enterprise Fund. All Revenues received shall be deposited when and as received in trust in the Enterprise Fund. As required in paragraph (f) of this Section, the Recipient shall establish and maintain a Reserve Fund.
- (b) Pledge of Revenues, Enterprise Fund and Reserve Fund. The Obligation hereunder shall be secured by a lien on and pledge of the Enterprise Fund, Revenues, and any Reserve Fund specified in Section 3.7(f) of this Agreement on a junior and subordinate basis to the Senior Bonds and Senior Contracts, on parity with the Parity Bonds and Parity Contracts, and senior to the Subordinate Obligations. The Recipient hereby pledges and grants such subordinate lien on and pledge of the Enterprise Fund and Revenues, and such lien on and pledge of any Reserve Fund specified in Section 3.7(f) of this Agreement, to secure the Obligations, including payment of Payments and Additional Payments hereunder. The Revenues in the Enterprise Fund shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Recipient.
- (c) <u>Application and Purpose of the Enterprise Fund</u>. The Recipient shall, from the moneys in the Enterprise Fund, pay all Operation and Maintenance Costs (including amounts reasonably required to be set aside in contingency reserves for Operation and Maintenance Costs, the payment of which is not then immediately required) as such Operation and Maintenance Costs become due and payable. All remaining moneys in the Enterprise Fund shall thereafter be applied by the Recipient for the following purposes, in the following order of priority:
  - (i) <u>Senior Bonds and Senior Installment Payments</u>. The Recipient shall, from the moneys in the Enterprise Fund, transfer to the applicable (i) trustee for deposit in the respective payment fund, or (ii) payee, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, any Senior Debt Service in accordance with the provisions of any Senior Bond or Senior Contract.
  - (ii) <u>Senior Bonds and Senior Contracts Reserve Accounts</u>. The Recipient shall, from the remaining moneys in the Enterprise Fund, on or before the date required by the applicable Senior Bond or Senior Contract, without preference or priority and in the event of any insufficiency of such moneys ratably without any discrimination or preference, transfer to the applicable trustee for reserve funds and/or accounts, if any, as may have been established in connection with Senior Bonds or Senior Contracts, that sum, if any, necessary to restore such reserve funds and/or accounts to an amount equal to the required balance.

- (iii) <u>Surplus</u>. Moneys on deposit in the Enterprise Fund on any date when the Recipient reasonably expects such moneys will not be necessary to make any of the payments required above shall be expended by the Recipient for the following purposes, in the following priority:
  - (A) The Recipient shall, from the moneys in the Enterprise Fund, transfer to the applicable (i) trustee for deposit in the respective payment fund, or (ii) payee, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, any Parity Debt Service, including the Obligation, in accordance with the provisions of any Parity Bond or Parity Contract.
  - (B) The Recipient shall from the remaining moneys in the Enterprise Fund, on or before the date required by the applicable Parity Bond or Parity Contract, without preference or priority and in the event of any insufficiency of such moneys ratably without any discrimination or preference, transfer to the applicable trustee for reserve funds and/or accounts, if any, as may have been established in connection with Parity Bonds or Parity Contracts, that sum, if any, necessary to restore such reserve funds and/or accounts to an amount equal to the required balance, including any Reserve Fund specified in Exhibit D or elsewhere in this Agreement.
  - (C) Moneys on deposit in the Enterprise Fund on any date when the Recipient reasonably expects such moneys will not be necessary to make any of the payments required above may be expended by the Recipient at any time for any purpose permitted by law, subject to compliance with the other provisions of this Agreement.
- (d) Amounts of Rates, Fees and Charges.
  - (i) The Recipient must, to the fullest extent permitted by law, fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonably expected to be at least sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs and Net Revenues equal to the sum of (i) at least one hundred twenty percent (120%) of Maximum Annual Debt Service with respect to all outstanding System Obligations senior to and on parity with the Obligation, and (ii) at least one hundred percent (100%) of 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 are defeased pursuant to refunding obligations.
  - (ii) The Recipient may make adjustments from time to time in such rates and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates and charges then in effect unless the Net Revenues from such reduced rates and charges are reasonably expected to be sufficient to meet the requirements of this section.
  - (iii) For the avoidance of doubt, so long as the Recipient has complied with its obligations set forth in subdivisions (i) and (ii) of this Section 3.7(d) above, the failure of Net Revenues to meet the threshold set forth in subdivision (i) of this Section 3.7(d), above at the end of a Fiscal Year shall not constitute a default or an Event of Default so long has the Recipient has complied with subdivision (i) of this Section 4.4 at the commencement of the succeeding Fiscal Year.

### (e) Additional Debt Test.

- (i) <u>Issuance of Additional Senior Obligations</u>. The Recipient may not execute any Senior Contract, issue any Senior Bonds, or otherwise incur, permit the incurrence of, or suffer to exist any additional Senior Obligation except as follows. Notwithstanding anything to the contrary set forth in this Agreement, the Recipient may execute Senior Contracts or issue Senior Bonds, as the case may be, solely for the purpose of refunding outstanding Senior Bonds and Senior Contracts if, after giving effect to the application of the proceeds thereof, total Senior Debt Service will not be increased in any Fiscal Year in which any CWSRF loan to the Recipient that is secured by Revenues (outstanding on the date of issuance or incurrence of such refunding Senior Bonds and Senior Contracts) is outstanding, thereby not diminishing the Recipient's ability to repay its CWSRF Obligations, and if the refunding obligation has the same or earlier repayment term as the refunded Senior Contract or Senior Bond.
- (ii) <u>Issuance of Additional Parity or Subordinate Obligations</u>. The Recipient may execute System Obligations on a parity or subordinate basis to this Obligation if Net Revenues in the most recent Fiscal Year, excluding transfers from a rate stabilization fund, if any, meet the applicable ratio specified in 3.7(d), above, with respect to all outstanding and proposed System Obligations, and if the Recipient is in compliance with any reserve fund requirement of this Obligation.

Parity Bonds or Parity Contracts may be issued or incurred, as the case may be, to refund outstanding Parity Bonds or Parity Contracts if such refunding Parity Bonds or Parity Contracts have the same or earlier repayment term as the refunded Parity Bonds or Parity Contracts, and if, after giving effect to the application of the proceeds thereof, Debt Service will not be increased in any Fiscal Year in which any CWSRF loan to the Recipient that is secured by Revenues (outstanding on the date of issuance or incurrence of such refunding Parity Bonds or Parity Contracts) is outstanding.

(f) Reserve Fund.

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

- (g) The Recipient may issue or incur subordinate obligations or otherwise issue or incur obligations payable from a lien on Net Revenues that is subordinate to the lien of Net Revenues securing the Obligation.
- (h) 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.
  - 3.8 Financial Management System and Standards.

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 shall be bound by, and to comply with, the provisions and requirements of the federal Single Audit Act of 1984, Office of Management and Budget (OMB) Circular No. A-133 and 2 CFR Part 200, subpart F, and updates or revisions, thereto.

3.9 Accounting and Auditing Standards.

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.

3.10 Other Assistance.

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

ARTICLE IV MISCELLANEOUS PROVISIONS

4.1 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 made in writing and directed to the contact listed in Section 1.3 and to the Division's Chief of Loans and Grants Administration Section.

4.2 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.

4.3 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.

4.4 Competitive Bidding

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

## 4.5 Compliance with Law, Regulations, etc.

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 shall:

- (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
- (c) Comply with and require compliance with the state and federal requirements set forth elsewhere in this Agreement.
  - 4.6 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.

4.7 Damages for Breach Affecting Tax-Exempt Status or Federal Compliance

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

- 4.8 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 4.8 relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.
  - 4.9 Governing Law.

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

4.10 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.

4.11 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 (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 shall 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.

### 4.12 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.

#### 4.13 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.

#### 4.14 Leveraging Covenants.

- (a) Notwithstanding any other provision hereof, the Recipient covenants and agrees that it will comply with the Tax Covenants set forth in Article V of this Agreement.
- (b) Disclosure of Financial Information, Operating Data, and Other Information. 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).
- (c) 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 shall 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.
  - 4.15 Non-Discrimination Clause.
  - (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 shall 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 shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.
  - 4.16 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.

4.17 Operation and Maintenance; Insurance.

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

The Recipient will procure and maintain or cause to be maintained insurance on the System with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System) as are usually covered in connection with systems similar to the System. Such insurance may be maintained by 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 shall begin such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such net proceeds all costs and expenses

in connection with such reconstruction, repair, or replacement so that the same shall be completed and the System shall be free and clear of all claims and liens. If such net proceeds are insufficient to reconstruct, repair, or restore the System to the extent necessary to enable the Recipient to pay all remaining unpaid principal portions of the Payments, if any, in accordance with the terms of this Agreement, the Recipient shall 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 shall provide the Division with a copy of all such certificates prior to the commencement of construction of the Project.

## 4.18 Permits, Subcontracting, and Remedies.

The 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 shall be submitted to the Division before construction begins.

The Recipient must not contract or allow subcontracting with excluded parties. The Recipient shall 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 shall 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

## 4.19 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 Exhibit A of this Agreement.

## 4.20 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.

## 4.21 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.

# 4.22 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.

## 4.23 Rights in Data.

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

## 4.24 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.

4.25 Termination and Other Remedies Upon Event of Default.

In addition to any other remedy set forth in this Agreement, the following remedies are available under this Agreement. For purposes of this section, the term "State Water Board" shall mean the State Water Board and its assignees.

- (a) <u>Return of Funds; Acceleration; and Additional Payments</u>. 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 do each of the following:
  - (a) return to the State Water Board the grant or principal forgiveness amounts received pursuant to this Agreement;
  - (b) accelerate the payment of all principal owed under this Agreement, if any, which shall be immediately due and payable;
  - (c) pay interest at the highest legal rate on of the foregoing; and
  - (d) pay any Additional Payments;

<u>provided</u>, that on the occurrence of any Bankruptcy Related Event, the outstanding principal, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts owed under this Agreement shall automatically accelerate and become immediately due and payable without action of the State Water Board or any other person.

- (b) <u>Judicial remedies</u>. 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 Payments then due or thereafter to become due, or to enforce performance of any obligation or covenant of the Recipient under this Agreement.
- (c) <u>Termination</u>. 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.
- (d) <u>Remedies Not Exclusive</u>. 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.

- (e) <u>Non-waiver</u>. Nothing in this section or any other section of this Agreement shall affect or impair the Recipient's Obligation to pay 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.
- (f) <u>Status Quo</u>. 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.
  - 4.26 Timeliness.

Time is of the essence in this Agreement.

## 4.27 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.

## 4.28 Useful Life.

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

4.29 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.

#### 4.30 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.

## ARTICLE V TAX COVENANTS

### 5.1 Purpose.

The purpose of this Article V 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 Article V 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.

5.2 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.

5.3 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.

# 5.4 Financing of a Capital Project.

The Recipient will use the Project Funds to finance capital expenditures it has incurred or will incur for the construction, reconstruction, installation or acquisition of the Project in accordance with the terms of this Agreement. Such expenditures shall not have previously been financed with the proceeds of any other issue of indebtedness except for interim financing by the Recipient, the date of maturity, prepayment or redemption of which is within thirty (30) days of the date of disbursement of Project Funds under this Agreement. All Project Funds shall be allocated to expenditures by the Recipient within thirty (30) days of the date of disbursement, including (if at all) Project Funds allocated to repay interim financing of the Recipient. For purposes of this Section F.4, "interim financing" means notes, commercial paper, loans, liens of credit and other forms of short-term borrowing.

## 5.5 Ownership and Operation of Project.

The Recipient exclusively owns and, except as provided in Section 5.12 hereof, operates the Project.

5.6 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 Costs will proceed with due diligence.

5.7 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.

5.8 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 5.20 below), (ii) Preliminary Expenditures (as defined in Section 5.20 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.

5.9 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 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.

5.10 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 5.12 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.

5.11 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.

5.12 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.

5.13 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.

5.14 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 B hereto.

5.15 Payments.

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 Payments during each payment period. Any amounts accumulated in a sinking fund or bona fide debt service fund to pay Payments (whether or not deposited to a fund or account established by the Recipient) will be disbursed to pay Payments within thirteen months of the initial date of accumulation or deposit. Any such fund used for the payment of 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 Payments in either case for the immediately preceding year.

5.16 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.

5.17 No Sinking or Pledged Fund.

Except as set forth in Section 5.18 below, the Recipient will not create or establish any sinking fund or pledged fund which will be used to pay 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 Payments, the Recipient will invest such sinking fund and pledged fund moneys at a yield that does not exceed the yield on the Bonds.

# 5.18 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 Section 3.7. 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 PROV, (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.

## 5.19 Reimbursement Resolution.

The "reimbursement resolution" adopted by the Recipient is incorporated herein by reference, pursuant to Exhibit A.

## 5.20 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.

# 5.21 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.

## 5.22 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.

# 5.23 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.

## 5.24 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.

#### 5.25 Amendments.

The provisions in this Article 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.

## 5.26 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 Article, the expectations of the Recipient as set forth in this Article are reasonable. The Recipient is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation made in the provisions in this Article V.

## 5.27 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 Payments (but excluding the State Water Board's rights to Additional Payments and to notices, opinions and indemnification under each Obligation).

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

## **INLAND EMPIRE UTILITIES AGENCY:**

By: . . . . . . . . . . . . . . . . Name: Shivaji Deshmukh Title: General Manager

Date:\_\_\_\_\_

## STATE WATER RESOURCES CONTROL BOARD:

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

Date:\_\_\_\_\_

## EXHIBIT A – SCOPE OF WORK

- 1. Eligible Work Start Date. The Eligible Work Start Date is set forth on the Cover Page of this Agreement.
- 2. Eligible Start Date. The Eligible Start Date is set forth on the Cover Page of this Agreement.
- 3. Start of Construction Date. The Recipient agrees to start construction no later than the estimated date set forth on the Cover Page of this Agreement.
- 4. Completion of Construction Date. The Completion of Construction date is set forth on the Cover Page of this Agreement. The Recipient shall deliver any request for extension of the Completion of Construction date no less than 90 days prior to the Completion of Construction date.
- 5. Final Disbursement Request Date. The Final Disbursement Request Date is set forth on the Cover Page of this Agreement. 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 Deputy Director of the Division.
- 6. Records Retention End Date is set forth on the Cover Page of this Agreement.
- 7. Incorporated Documents. Incorporated by reference into this Agreement are the following documents:
  - a. the Final Plans & Specifications, which are the basis for the construction contract to be awarded by the Recipient (Agreement will be amended to incorporate such document);
  - b. the Waste Discharge Requirement Order No. R8-2015-0036 and National Pollutant Discharge Elimination System Permit No. CA8000409;
  - c. the Recipient's Reimbursement Resolution No. 2018-12-6 dated December 19, 2018;
  - d. the Recipient's Tax Questionnaire dated December 19, 2018;
  - e. the Davis-Bacon requirements found at <a href="https://www.waterboards.ca.gov/water\_issues/programs/grants\_loans/srf/docs/davisbacon/da">https://www.waterboards.ca.gov/water\_issues/programs/grants\_loans/srf/docs/davisbacon/da</a> vis-bacon 2021 cwsrf-governmental entities public.pdf
- 8. Reporting. Status Reports due at least quarterly.
- 9. Purpose.

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 increase the retention of storm water at the Montclair Basins 2 and 3 by approximately 96 acre-feet per year (AFY) for groundwater recharge and storage.

#### 10. Scope of Work.

The Recipient agrees to do the following:

- Construct two drop inlet structures
- Install two drop inlet gratings
- Construct flow control structure
- Install 48-inch sluice gate
- Install approximately 202 linear feet of 48-inch diameter reinforced concrete pipe
- Install electrical instrumentation and controls

#### 11. Signage.

The Recipient shall place a sign at least four feet tall by eight feet wide made of <sup>3</sup>/<sub>4</sub> 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):



"Funding for the Montclair Basin Improvement Project has been provided in full or in part by the Clean Water State Revolving Fund through an agreement with the State Water Resources Control Board. 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 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.

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

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

# EXHIBIT B – FUNDING AMOUNT

- 1. Estimated Reasonable Cost. The estimated reasonable cost of the total Project, including associated planning and design costs is two million sixty-two thousand dollars and no cents (\$2,062,000.00).
- 2. Project Financing. 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. The estimated amount of principal that will be due to the State Water Board under this Agreement is two million sixty-two thousand dollars and no cents (\$2,062,000.00).
- 3. Payment, Interest Rate, and Charges. The Recipient agrees to make all Payments according to the schedule in Exhibit C at an interest rate of fifty-five hundredths percent (0.55%) per annum. 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 C:
  - an Administrative Service Charge
  - a Small Community Grant Fund Charge
- 4. [Reserved].
- 5. Useful Life. The useful life of this Project is at least thirty (30) years.
- 6. The Final Repayment Date is set forth on the Cover Page.
- 7. Budget costs are contained in the Project Cost Table below.

LINE ITEM	TOTAL ESTIMATED	PROJECT FUNDING		
	COST	AMOUNT		
Construction	\$1,058,849.00	\$1,058,849.00		
Pre-Purchased Material/Equipment	\$0.00	\$0.00		
Purchase of Land	\$0.00	\$0.00		
Contingency	\$213,915.00	\$213,915.00		
Allowances (Soft Costs)	\$789,236.00	\$789,236.00		
TOTAL	\$2,062,000.00	\$2,062,000.00		

The Division's Final Budget Approval and related Form 259 and Form 260 will document a more detailed budget of eligible Project Costs and Project funding amounts.

Upon written request by the Recipient, the Division may adjust the line items of the Summary Project Cost Table at the time of Division's Final Budget Approval. Upon written request by the Recipient, the Division may also adjust the line items of the Summary Project Cost Table as well as the detailed budget at the time of Recipient's submittal of its final claim. Any line item adjustments to the Summary Project Cost 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 Summary Project Cost Table and the detailed budget must not exceed the Project Funding Amount. The Division may also propose budget adjustments.

(b) 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.

8. Preliminary budget costs are as follows:

Planning and design Allowances: \$384,932

Construction costs and disbursements are not available until the Division has approved the final budget form submitted by the Recipient. No costs incurred prior to the Eligible Work Start Date are eligible for reimbursement. Construction costs incurred prior to the Eligible Start Date are not eligible for reimbursement. 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, including planning and design allowances.

## EXHIBIT C – PAYMENT SCHEDULE

See the attached preliminary Payment Schedule. The final Payment Schedule 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. 8415-110 - Inland Empire Utilities Agency Agreement: D2101013 - based on Actual + Projected Disbursements

Montclair Basin Improvement Project

Ref Num	Due Date	Date Received	Principal Payment	Interest Rate%	Interest Payment	Total P and I Payment	Total Payment	Ending Balance	CPI Interest
1	2/22/202	4	90,562.37	0.550	6,883.90	97,446.27	97,446.27	1,753,452.63	0.00
2	2/22/202	5	98,837.21	0.550	10,716.35	109,553.56	109,553.56	1,872,600.42	0.00
3	2/22/202	6	99,254.26	0.550	10,299.30	109,553.56	109,553.56	1,773,346.16	0.00
4	2/22/202	7	99,800.16	0.550	9,753.40	109,553.56	109,553.56	1,673,546.00	0.00
5	2/22/202	8	100,349.06	0.550	9,204.50	109,553.56	109,553.56	1,573,196.94	0.00
6	2/22/202	9	100,900.98	0.550	8,652.58	109,553.56	109,553.56	1,472,295.96	0.00
7	2/22/203	0	101,455.93	0.550	8,097.63	109,553.56	109,553.56	1,370,840.03	0.00
8	2/22/203	1	102,013.94	0.550	7,539.62	109,553.56	109,553.56	1,268,826.09	0.00
9	2/22/203	2	102,575.02	0.550	6,978.54	109,553.56	109,553.56	1,166,251.07	0.00
10	2/22/203	3	103,139.18	0.550	6,414.38	109,553.56	109,553.56	1,063,111.89	0.00
11	2/22/203	4	103,706.44	0.550	5,847.12	109,553.56	109,553.56	959,405.45	0.00
12	2/22/203	5	104,276.83	0.550	5,276.73	109,553.56	109,553.56	855,128.62	0.00
13	2/22/203	6	104,850.35	0.550	4,703.21	109,553.56	109,553.56	750,278.27	0.00
14	2/22/203	7	105,427.03	0.550	4,126.53	109,553.56	109,553.56	644,851.24	0.00
15	2/22/203	8	106,006.88	0.550	3,546.68	109,553.56	109,553.56	538,844.36	0.00
16	2/22/203	9	106,589.92	0.550	2,963.64	109,553.56	109,553.56	432,254.44	0.00
17	2/22/204	0	107,176.16	0.550	2,377.40	109,553.56	109,553.56	325,078.28	0.00
18	2/22/204	1	107,765.63	0.550	1,787.93	109,553.56	109,553.56	217,312.65	0.00
19	2/22/204	2	108,358.34	0.550	1,195.22	109,553.56	109,553.56	108,954.31	0.00
20	2/22/204	3	108,954.31	0.550	599.25	109,553.56	109,553.56	0.00	0.00
			2,062,000.00		116,963.91	2,178,963.91	2,178,963.91		0.00

# 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 Mitigation Monitoring and Reporting Program adopted on March 15, 2017 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.

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. AQ-1 through AQ-4 for air quality and greenhouse gas emissions in the MMRP,
  - b. BIO-1 through BIO-10 for biological resources in the MMRP,
  - c. CUL-1 through CUL-3 for cultural resources in the MMRP,
  - d. HAZ-1 and HAZ-2 for hazards and hazardous materials in the MMRP,
  - e. HYDRO-1 through HYDRO-7 for hydrology and water quality in the MMRP, and
  - f. U-1 for utilities in the MMRP.

#### Financial:

1. Recipient shall maintain separate financial statements in its annual CAFR for the following funds: Regional Wastewater, Recycled Water, Water Resources, and Non-Major funds. Revenues and expenses shall be recorded in their appropriate fund.

## EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

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:

- 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 https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-november-12-2020-orlater.
- vi. No Recipient may receive funding under this Agreement unless it has provided its Unique Entity Identifier 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 <u>https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy</u>. 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 <a href="http://iEdison.gov">http://iEdison.gov</a> 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 as set forth in Exhibit A.
- 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: <a href="http://www.sam.gov/">http://www.sam.gov/</a>.
- 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 <u>www.fgdc.gov</u>.
- 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 <a href="https://www.epa.gov/osa/policy-epa-scientific-integrity">https://www.epa.gov/osa/policy-epa-scientific-integrity</a>, 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 <u>http://grants.nih.gov/grants/olaw/references/phspol.htm#USGovPrinciples</u>.
- xxx. The Recipient certifies that no Project Funds will be used on:
  - 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 <u>2</u> <u>CFR 200.216</u>.

Inland Empire Utilities Agency Agreement No.: D2101013 Project No.: C-06-8415-110

EXHIBIT F – [RESERVED]

# EXHIBIT G – COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES

#### 1. CALIFORNIA DEBT INVESTMENT ADVISORY COMMISSION (CDIAC)

Where Recipient is a public entity, Recipient acknowledges its responsibility to file debt obligations with the CDIAC. Recipient understands that CDIAC has waived filing fees for State Water Board SRF debt.

#### 2. COMPLIANCE WITH STATE REQUIREMENTS

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

## **RESOLUTION NO. 2022-4-4**

**RESOLUTION OF THE INLAND EMPIRE UTILITIES AGENCY\* AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT SALE AGREEMENT BETWEEN THE INLAND EMPIRE UTILITIES AGENCY\* AND THE STATE WATER RESOURCES CONTROL BOARD RELATING TO THE WINEVILLE, JURUPA AND RP-3 BASINS IMPROVEMENTS PROJECT AND APPROVING OTHER MATTERS IN CONNECTION THEREWITH** 

**WHEREAS**, the Inland Empire Utilities Agency<sup>\*</sup> (the "Agency"), a municipal water district duly organized and existing under and pursuant to the Constitution and laws of the State of California, proposes to undertake the financing of certain improvements to the Agency's wastewater system known as the RP-5 Expansion Construction Project (the "Project"); and

**WHEREAS**, the State of California has established its Clean Water State Revolving Fund (the "CWSRF") pursuant to Chapter 6.5 of Division 7 of the California Water Code, as required by Title VI of the federal Water Pollution Control Act; and

**WHEREAS**, this Board has determined that it is in the best interest of the Agency to obtain a loan (the "SRF Loan") from the CWSRF for the purpose of financing all or a portion of the Project; and

**WHEREAS**, the SRF Loan will be evidenced by an Installment Sale Agreement (the "Financing Agreement") between the Agency and the California State Water Resources Control Board (the "CSWRCB"); and

**WHEREAS**, this Board has determined to authorize the execution and delivery of the Financing Agreement for the purpose of financing all or a portion of the Project and to approve certain matters in connection therewith;

**NOW, THEREFORE**, the Board of Directors (the "Board") of the Inland Empire Utilities Agency\* hereby finds, determines, declares and resolves as follows:

1. The incurrence of the SRF Loan in the principal amount not to exceed \$11,772,550 to finance all or a portion of the Project is hereby approved. The incurrence of the SRF Loan is determined to be consistent with the Agency's debt policy and to the extent the incurrence of the SRF Loan is not in compliance with the Agency's debt policy, such noncompliance is waived in accordance with the terms of the Agency's debt policy.

2. The Financing Agreement in substantially the form on file with the Agency is hereby approved. Each of the President, the Vice President, the General Manager or the written designee thereof (each an "Authorized Officer") is hereby individually authorized and directed to execute and deliver the Financing Agreement with such changes, insertions and omissions as may be recommended by General Counsel or Stradling Yocca Carlson & Rauth, A Professional Corporation ("Bond

<sup>&</sup>lt;sup>\*</sup> A Municipal Water District.

Counsel") and approved by the Authorized Officer executing the same, said execution being conclusive evidence of such approval.

3. The Board of Directors acknowledges that the good faith estimates required by Section 5852.1 of the California Government Code are disclosed in Exhibit A to this resolution and are available to the public at the meeting at which this resolution is approved.

4. Each Authorized Officer, the General Manager, Assistant General Manager, Director of Finance, or the written designee thereof and any other proper officer of the Agency, acting singly, is authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by the Financing Agreement and this resolution.

5. Unless otherwise defined herein, all terms used herein and not otherwise defined shall have the meanings given such terms in the Financing Agreement unless the context otherwise clearly requires.

6. This Resolution shall take effect immediately.

ADOPTED this 6<sup>th</sup> day of April, 2022.

Steven J. Elie President of the Inland Empire Utilities Agency<sup>\*</sup> and the Board of Directors thereof

ATTEST:

Marco Tule Secretary/Treasurer of the Inland Empire Utilities Agency<sup>\*</sup> and the Board of Directors thereof

(SEAL)

\* A Municipal Water District

#### EXHIBIT A

# GOOD FAITH COST ESTIMATES

The good faith estimates set forth herein are provided with respect to the SRF Loan in accordance with California Government Code Section 5852.1. Such good faith estimates have been provided to the Inland Empire Utilities Agency by the Municipal Advisor.

*Principal Amount.* The Municipal Advisor has informed the Agency that, based on the Agency's financing plan and current market conditions, its good faith estimate of the aggregate amount of the Installment Sale Agreement for the Lower Day Basin Improvements Project to be sold is \$11,742,550 (the "Estimated Principal Amount").

*True Interest Cost of the SRF Loan.* The Municipal Advisor has informed the Agency that, assuming that the Estimated Principal Amount of the SRF Loan is executed, and based on the expected interest rates prevailing at the time of preparation of such estimate, their good faith estimate of the true interest cost of the SRF Loan, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the SRF Loan, is 0.550%.

*Finance Charge of the SRF Loan*. The Municipal Advisor has informed the Agency that, assuming that the SRF Loan is executed, their good faith estimate of the finance charge for the SRF Loan, which means the sum of all fees and charges paid to third parties (or costs associated with the SRF Loan), is \$15,000.

Amount of Proceeds to be Received. The Municipal Advisor has informed the Agency that, assuming that the Estimated Principal Amount of the SRF Loan is executed, and based on estimated interest rates prevailing at the time of preparation of such estimate, their good faith estimate of the amount of proceeds expected to be received by the Agency for sale of the SRF Loan, less the finance charge of the SRF Loan, as estimated above, and any reserves or capitalized interest paid or funded with proceeds of the SRF Loan, is \$11,772,550.

*Total Payment Amount*. The Municipal Advisor has informed the Agency that, assuming that the Estimated Principal Amount of the SRF Loan is executed, and based on interest rates prevailing at the time of preparation of such estimate, their good faith estimate of the total payment amount, which means the sum total of all payments the Agency will make to pay debt service on the SRF Loan, plus the finance charge for the SRF Loan, as described above, not paid with the proceeds of the SRF Loan, calculated to the final maturity of the SRF Loan, is \$12,455,959, which excludes any reserves or capitalized interest paid or funded with proceeds of the SRF Loan (which may offset such total payment amount).

The foregoing estimates constitute good faith estimates only as of March 28, 2022 and are based on information provided in the draft SRF Loan agreement at the time of preparation of such estimates. The actual principal amount of the SRF Loan issued and sold, the true interest cost thereof, the finance charges thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to (a) the actual date of the entering into the SRF Loan being different than the date assumed for purposes of such estimates, (b) the actual principal amount of SRF Loan sold being different from the Estimated Principal Amount, (c) the actual amortization of the SRF Loan being different than the amortization assumed for purposes of such

estimates, (d) the actual interest rates at the time of sale of the SRF Loan being different than those estimated for purposes of such estimates, (e) other market conditions, or (f) alterations in the Agency's financing plan, or a combination of such factors. The actual date of execution of the SRF Loan and the actual principal amount of the SRF Loan sold will be determined by the Agency based on the timing of the need for proceeds of the SRF Loan and other factors. Factors such as the final loan repayment schedule, any changes to the interest rate on the SRF Loan, timing of the execution of the SRF loan may be affected by factors beyond the control of the Agency, or the Municipal Advisor.

# STATE OF CALIFORNIA ) ) ss. COUNTY OF SAN BERNARDINO )

I, Marco Tule, Secretary of the Inland Empire Utilities Agency<sup>\*</sup>, DO HEREBY CERTIFY that the foregoing Resolution being No. 2022-4-4, was adopted at a regular Board Meeting on April 6, 2022, of said Agency by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marco Tule Secretary/Treasurer of the Inland Empire Utilities Agency<sup>\*</sup> and the Board of Directors thereof

\* A Municipal Water District



GAVIN NEWSOM GOVERNOR JARED BLUMENFELD SECRETARY FOR ENVIRONMENTAL PROTECTION

State Water Resources Control Board

March 23, 2022

Inland Empire Utilities Agency Attn: Shivaji Deshmukh, General Manager P.O. Box 9020 Chino Hills, CA 91709

Agreement Number: D2101012 Project Number: C-06-8260-110

Enclosed is your Agreement for your approval and signature. This Agreement cannot be considered binding by either party until executed by the State Water Resources Control Board (State Water Board).

If you are in agreement with all terms and conditions of the Agreement, please sign and date **two (2) signature** pages; return only the two (2) signature pages – it is not necessary to send the entire Agreement - **no later than thirty (30) calendar days from the date of this letter to:** 

## **Overnight Mail**

## US Mail

State Water Resources Control Board Attention: Amor Moskaira Division of Financial Assistance 1001 I Street, 16<sup>th</sup> Floor Sacramento, CA 95814 State Water Resources Control Board Attention: Amor Moskaira Division of Financial Assistance P. O. Box 944212 Sacramento, CA 94244-2120

In order for the Funding Agreement to be executed by the State Water Board, the following items <u>must also be returned with the signed signature pages:</u>

- 1. Opinion of General Counsel.
- 2. Bond Counsel Letter.
- 3. Closing Resolution.

Be aware that all projects receiving funding must comply with all applicable implementing guidelines and regulations adopted by 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: <u>http://www.dir.ca.gov/lcp.asp</u>.

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

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

Additional Compliance Requirements:

Davis Bacon Compliance: https://www.waterboards.ca.gov/water\_issues/programs/grants\_loans/srf/davisbacon.shtml

Disadvantaged Business Enterprise (DBE) <u>https://www.waterboards.ca.gov/water\_issues/programs/grants\_loans/srf/docs/policy0513/dbe\_</u> <u>compliance\_guidelines\_instructions.pdf</u>

Ms. Moskaira may be contacted at (916) 449-5627 or <u>Amor.Moskaira@waterboards.ca.gov</u>

Once the Agreement is signed by both parties, we will forward an executed copy to you for your records.

Enclosures



# INLAND EMPIRE UTILITIES AGENCY

AND

# CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



# INSTALLMENT SALE AGREEMENT

DISTRIBUTION SYSTEM/WINEVILLE/JURUPA/RP-3 RECHARGE IMPROVEMENTS PROJECT

PROJECT NO. C-06-8260-110

AGREEMENT NO. D2101012

PROJECT FUNDING AMOUNT: \$11,772,550

ELIGIBLE START DATE: JULY 1, 2017 ELIGIBLE WORK START DATE: JULY 13, 2021 START OF CONSTRUCTION DATE: JULY 13, 2021 COMPLETION OF CONSTRUCTION DATE: FEBRUARY 28, 2024 FINAL DISBURSEMENT REQUEST DATE: AUGUST 28, 2024 FINAL REPAYMENT DATE: FEBRUARY 28, 2044 RECORDS RETENTION END DATE: FEBRUARY 28, 2060 THIS PAGE INTENTIONALLY LEFT BLANK

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#### WHEREAS,

- 1. The State Water Board is authorized to provide financial assistance under this Agreement pursuant to the following:
  - Chapter 6.5 of Division 7 of the California Water Code (State Act) and Resolutions Nos. 2019-0064 and 2021-021.
- 2. The State Water Board determines eligibility for financial assistance, determines a reasonable schedule for providing financial assistance, establishes compliance with the Federal Act and State Act and establishes the terms and conditions of a financial assistance agreement.
- 3. The Recipient has applied to the State Water Board for financial assistance for the Project described in Exhibit A of this Agreement and the State Water Board has selected the application for financial assistance.
- 4. The State Water Board proposes to assist in providing financial assistance for eligible costs of the Project, and the Recipient desires to participate as a recipient of financial assistance from the State Water Board and evidence its obligation to pay Payments, which obligation will be secured by Net Revenues as defined herein, upon the terms and conditions set forth in this Agreement, all pursuant to the Federal Act and the State Act.

NOW, THEREFORE, 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 as follows:

Subject to the satisfaction of any conditions 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.

Upon execution, the term of the Agreement shall begin on the Eligible Start Date and extend through the Final Repayment Date.

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.

## ARTICLE I DEFINITIONS

## 1.1 Definitions.

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

"Additional Payments" means the 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.

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

"Allowance" means an amount based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the Project.

"Authorized Representative" means the 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.

"Bankruptcy Related Event" means, with respect to the Recipient, (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Recipient or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Recipient or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; (b) the Recipient shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial portion of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due; (iii) fail to make a Payment in accordance with the provisions of this Agreement and such failure is not cured within thirty (30) days following notification by the State Water Board of failure to make such payment, (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief, in each case under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing; (c) (i) any Person shall commence a process pursuant to which all or a substantial part of the Revenues may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the System Obligations, or (ii) any Person shall commence a process pursuant to which all or a substantial part of the Revenues may be sold or otherwise disposed of pursuant to a sale or disposition in lieu of foreclosure; or (d) any receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official shall transfer, pursuant to directions issued by the holders of the Senior Obligations, funds on deposit in any of the System funds or accounts upon the occurrence and during the continuation of an Event of Default under this Agreement or an event of default under any Obligation Document for application to the prepayment or repayment of any principal amount of the Obligations other than in accordance with the provisions of this Agreement.

"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 Payments paid hereunder.

"Business Day" means any day other than a Saturday, a Sunday or a day on which offices of the Government or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York or Los Angeles, California.

"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 C.

"Chino Basin Watermaster" means Chino Basin Watermaster and any assignee of or successor-ininterest to its payment obligations to Recipient under the agreements identified in subsection (j) of the Event of Default definition given below.

"Co-Funding Agency" means any entity, of any corporate type, with which the Recipient has entered into or intends or reasonably expects to enter into, any agreement providing for payments to the Recipient for the payment of Debt Service, and any assignee of or successor-in-interest to such entity. Chino Basin Watermaster is a Co-Funding Agency under this Agreement.

"Code" as used in Article V 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 on the Cover Page of this Agreement.

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

"CWSRF" means the Clean Water State Revolving Fund.

"Days" means calendar days unless otherwise expressly indicated.

"Debt Service" means, for any Fiscal Year, the sum of:

- (a) The interest payable during such Fiscal Year on all outstanding System Obligations, assuming that all outstanding serial System Obligations are retired as scheduled and that all outstanding term System Obligations are prepaid or paid from sinking fund payments as scheduled (except to the extent that such interest is capitalized or is reasonably anticipated to be reimbursed to the Recipient by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111 5, 23 Stat. 115 (2009), enacted February 17, 2009), or any future similar program);
- (b) Those portions of the principal amount of all outstanding serial System Obligations maturing in such Fiscal Year (but excluding Excluded Principal);
- (c) Those portions of the principal amount of all outstanding term System Obligations required to be prepaid or paid in such Fiscal Year (but excluding Excluded Principal); and
- (d) Those portions of any other payments under System Obligations required to be made during such Fiscal Year (except to the extent the interest evidenced and represented thereby is capitalized or is reasonably anticipated to be reimbursed to the Recipient by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111 5, 23 Stat. 115 (2009), enacted February 17, 2009), or any future similar program); provided that, as to any such System Obligations bearing or comprising interest at other than a fixed rate, the rate of interest used to calculate Debt Service shall, for all purposes, be assumed to bear interest at a fixed rate equal to

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the higher of 1) the actual rate on the date of calculation, or if such System Obligation is not yet outstanding, the initial rate (if established and binding), and 2) the highest average variable rate borne over a six month period during the preceding 24 months by outstanding variable rate debt issued by the Recipient or, if no such variable rate debt is at the time outstanding, by variable rate debt of which the interest rate is computed by reference to an index comparable to that to be utilized in determining the interest rate for the debt then proposed to be issued;

And provided further that if any series or issue of such System Obligation has twenty-five percent (25%) or more of the aggregate principal amount of such series or issue due in any one year (and such principal is not Excluded Principal), Debt Service shall be determined for the Fiscal Year of determination as if the principal of and interest on such series or issue of such System Obligation were being paid from the date of incurrence thereof in substantially equal annual amounts over a period of forty (40) years from the date of calculation;

And provided further that, as to any such System Obligation or portions thereof bearing no interest but which are sold at a discount and which discount accretes with respect to such System Obligations or portions thereof, such accreted discount shall be treated as interest in the calculation of Debt Service in the Fiscal Year when due;

And provided further that if the System Obligations constitute Paired Obligations, the interest rate on such System Obligations shall be the resulting linked rate or the effective fixed interest rate to be paid by the Recipient with respect to such Paired Obligations;

And provided further that for System Obligations which are interest rate swap agreements which do not constitute Paired Obligations but for which an Independent Financial Consultant certifies that such System Obligation has a fixed spread component payable to the Recipient, Debt Service shall be credited by an amount equal to the lesser of (a) the average of the actual payment received by the Recipient over the last three Fiscal Years (or if outstanding less than three years, over the period outstanding) and (b) the fixed spread component.

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

"Enterprise Fund" means (i) all revenue accounts maintained by the Recipient as of the date of this Agreement other than the Water Resources Fund and (ii) any revenue account created after the date of this Agreement and designated by the Chief Financial Officer of the Recipient as a part of the Enterprise Fund.

"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 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 fund requirement, if any, in Section 3.7 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, or any other Bankruptcy Related Event;
- 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;
- j) The occurrence of a material breach or event of default under any agreement providing for payments to the Recipient for the payment of Debt Service;
- k) 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.

"Excluded Principal" means each payment of principal of System Obligations with a maturity of less than 42 months and which the Recipient specifies in a certificate signed by the General Manager of the Recipient and filed with the trustee for the System Obligation that the Recipient intends to pay from the proceeds of System Obligations, other bonds, notes or other obligations of the Recipient or moneys other than Revenues or Net Revenues. No such determination shall affect the security for such System Obligations of the Recipient to pay such System Obligations from Net Revenues.

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

"Final Repayment 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 beginning on July 1 of each year and ending on the last day of June of the next succeeding year, or any other twelve-month period selected and designated as the official Fiscal Year of the Recipient.

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

"Generally Accepted Accounting Principles" or "GAAP" means 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.

"Governmental Authority" means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency,

authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory) of or within the United States of America or its territories or possessions, including the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts "on behalf of" any of the foregoing, whether as an agency or authority of such body.

"Independent Financial Consultant" means a financial consultant or firm of such consultants appointed by the Recipient, and who, or each of whom: (1) is in fact independent and not under domination of the Recipient; (2) does not have any substantial interest, direct or indirect, with the Recipient; and (3) is not connected with the Recipient as an officer or employee thereof, but who may be regularly retained to make reports thereto.

"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.

"Insolvency Laws" means the United States Bankruptcy Code, 11 U.S.C. 101 *et seq*., as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.

"Lien" means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

"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 pursuant to Rule 15c2-12(b)(5) with respect to such System Obligation.

"Maximum Annual Debt Service" means the maximum amount of Debt Service that is 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 Fiscal Year, the Revenues for such Fiscal Year less the Operations and Maintenance Costs for such Fiscal Year.

"Obligation" means the obligation of the Recipient to make 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 in the documents thereby incorporated by reference.

"Obligation Document means any indenture, bond, credit agreement, note, reimbursement agreement, letter of credit, guarantee or any other agreement, instrument or document pursuant to which any System Obligation is incurred by the Recipient.

"Operations and Maintenance Costs" means (1) costs spent or incurred for maintenance and operation of the System calculated in accordance with Generally Accepted Accounting Principles, including (among

other things) the reasonable expenses of management and repair and other expenses necessary to maintain and preserve the System in good repair and working order, and including administrative costs of the Recipient that are charged directly or apportioned to the System, including but not limited to salaries and wages of employees, payments to the Public Employees Retirement System, overhead, insurance, taxes (if any), fees of auditors, accountants, attorneys, consultants or engineers and insurance premiums, and including all other reasonable and necessary costs of the Recipient or charges required to be paid by it to comply with the terms of this Agreement or any other Parity Contract or Senior Contract or of any resolution or indenture authorizing the issuance of any Parity Bonds or Senior Bonds, and (2) all payments under Operation and Maintenance Obligations, but excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles, including amortization of water rights, unrealized losses on investments, write offs of the value of any impaired assets or other bookkeeping entries of a similar nature.

"Operation and Maintenance Obligation" means any contractual obligation with respect to any facilities, properties, structures, works, services, water or rights to receive water, or any loan of credit to or guaranty of debts, claims or liabilities of any other person (including a joint powers agency of which the Recipient is a member) with respect to any facilities, properties, structures, works, services, water or rights to receive water, so long as in each case the payments thereunder are designated as Operation and Maintenance Costs by the Board of Directors of the Recipient; provided however System Obligations shall not constitute Operation and Maintenance Obligations, and in no instance will an Operation and Maintenance Obligation include provisions for the financing of construction or acquisition of any of the Recipient's facilities, structures, or works. There are currently no outstanding Operation and Maintenance Obligations.

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

• The Reimbursement Agreement for the Design and Build Costs for the Gravity Sewer System, Area 1 Sewer Lift Station and Force Main between the Recipient and the City of Fontana, executed October 18, 2005.

"Paired Obligations" means any System Obligation (or portion thereof) designated as Paired Obligations in the resolution, indenture or other document authorizing the issuance or execution and delivery thereof, which are simultaneously issued or executed and delivered (i) the principal of which is of equal amount maturing and to be redeemed or prepaid (or cancelled after acquisition thereof) on the same dates and in the same amounts, and (ii) the interest rates which, taken together, are reasonably expected to result in a fixed interest rate obligation of the Recipient for the term of such System Obligation, as determined by an Independent Financial Consultant in writing. There are currently no outstanding Paired Obligations.

"Parity Bonds" means all revenue bonds or notes of the Recipient authorized, executed, issued and delivered by the Recipient, the payments of which are payable from Net Revenues on a parity with the Installment Payments.

"Parity Contracts" means this Agreement and any amendments and supplements hereto, and all contracts of the Recipient previously or hereafter authorized and executed by the Recipient, the Parity Installment Payments under which are payable from Net Revenues on a parity with the Installment Payments, but excluding contracts entered into for operation and maintenance of the System.

"Parity Debt Service" means, for any Fiscal Year, the sum of:

(a) The interest payable during such Fiscal Year on all outstanding Parity Bonds, assuming that all outstanding serial Parity Bonds are retired as scheduled and that all outstanding term Parity Bonds are prepaid or paid from sinking fund payments as scheduled (except to the extent that such interest is capitalized or is reasonably anticipated to be reimbursed to the Recipient by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111 5, 23 Stat. 115 (2009), enacted February 17, 2009), or any future similar program);

- (b) Those portions of the principal amount of all outstanding serial Parity Bonds maturing in such Fiscal Year (but excluding Excluded Principal);
- (c) Those portions of the principal amount of all outstanding term Parity Bonds required to be prepaid or paid in such Fiscal Year (but excluding Excluded Principal); and
- (d) Those portions of the Parity Installment Payments required to be made during such Fiscal Year (except to the extent the interest evidenced and represented thereby is capitalized or is reasonably anticipated to be reimbursed to the Recipient by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111 5, 23 Stat. 115 (2009), enacted February 17, 2009), or any future similar program); provided that, as to any such Parity Bonds or Parity Installment Payments bearing or comprising interest at other than a fixed rate, the rate of interest used to calculate Parity Debt Service shall, for all purposes, be assumed to bear interest at a fixed rate equal to the higher of 1) the actual rate on the date of calculation, or if such Parity Contract or Parity Bond is not yet outstanding, the initial rate (if established and binding), and 2) the highest average variable rate borne over a six month period during the preceding 24 months by outstanding variable rate debt issued by the Recipient or, if no such variable rate debt is at the time outstanding, by variable rate debt of which the interest rate is computed by reference to an index comparable to that to be utilized in determining the interest rate for the debt then proposed to be issued;

And provided further that if any series or issue of such Parity Bonds or Parity Installment Payments have twenty-five percent (25%) or more of the aggregate principal amount of such series or issue due in any one year (and such principal is not Excluded Principal), Parity Debt Service shall be determined for the Fiscal Year of determination as if the principal of and interest on such series or issue of such Parity Bonds or Parity Installment Payments were being paid from the date of incurrence thereof in substantially equal annual amounts over a period of forty (40) years from the date of calculation;

And provided further that, as to any such Parity Bonds or Parity Installment Payments or portions thereof bearing no interest but which are sold at a discount and which discount accretes with respect to such Parity Bonds or Parity Installment Payments or portions thereof, such accreted discount shall be treated as interest in the calculation of Parity Debt Service in the Fiscal Year when due;

And provided further that if the Parity Bonds or Parity Contracts constitute Paired Obligations, the interest rate on such Parity Bonds or Parity Contracts shall be the resulting linked rate or the effective fixed interest rate to be paid by the Recipient with respect to such Paired Obligations;

And provided further that for Parity Contracts which are interest rate swap agreements which do not constitute Paired Obligations but for which an Independent Financial Consultant certifies that such Parity Contracts has a fixed spread component payable to the Recipient, Parity Debt Service shall be credited by an amount equal to the lesser of (a) the average of the actual payment received by the Recipient over the last three Fiscal Years (or if outstanding less than three years, over the period outstanding) and (b) the fixed spread component.

"Parity Installment Payments" means the payments of interest and principal or other scheduled payments scheduled to be paid by the Recipient under and pursuant to the Parity Contracts.

"Parity Obligation" means a debt obligation of the Recipient on parity with this Obligation, including the Obligation and all Parity Bonds and Parity Contracts. The Recipient's currently outstanding Parity Obligations are these:

- The Installment Purchase Agreement by and between Inland Empire Utilities Agency and Chino Basin Regional Financing Authority, dated May 27, 2020 (relating to the WIFIA Loan Agreement by and between Inland Empire Utilities Agency, Chino Basin Regional Financing Authority and the United States Environmental Protection Agency, dated May 27, 2020 [WIFIA – N18124A]).
- The Installment Purchase Agreement by and between Inland Empire Utilities Agency and Chino Basin Regional Financing Authority, dated June 1, 2020 (relating to the Chino Basin Regional Financing Authority Refunding Revenue Bonds (Inland Empire Utilities Agency), Series 2020A).
- The Installment Purchase Agreement by and between Inland Empire Utilities Agency and Chino Basin Regional Financing Authority, dated June 15, 2020 (relating to the Chino Basin Regional Financing Authority Revenue Notes (Inland Empire Utilities Agency), Series 2020B).
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated June 12, 2008 [Project No. C-06-4900-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated June 26, 2008 [Project No. C-06-4900-120]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated June 12, 2008 [Project No. C-06-4900-130]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated July 1, 2009 [Project No. C-06-5176-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated July 1, 2009 [Project No. C-06-5176-120]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated July 1, 2009 [Project No. C-06-5176-130]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated July 1, 2009 [Project No. C-06-5176-140]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated June 26, 2014 [Project No. C-06-5318-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated August 25, 2009 [Project No. C-06-5327-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated June 19, 2009 [Project No. C-06-5332-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated April 29, 2014 [Project No. C-06-7885-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated November 15, 2017 [Project No. C-06-8105-110]

- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated November 15, 2017 [Project No. C-06-8105-120]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated October 29, 2020 [Project No. C-06-8235-110]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated December 21, 2020 [Project No. C-06-8235-120]
- The Installment Sale Agreement by and between the Inland Empire Utilities Agency and the State Water Resources Control Board, dated June 24, 2020 [Project No. C-06-8235-150]

"Parity Project" means any additions, betterments, extensions or improvements to the System designated by the Board of Directors of the Recipient as a Parity Project, the acquisition and construction of which is to be paid for with the proceeds of any Parity Contracts or Parity Bonds.

"Party Contact" means, for the Recipient, the Authorized Representative of the Recipient or any designee of the Authorized Representative, and, for the State Water Board, the Grant Manager, or the Program Analyst.

"Payment" means any payment due to the State Water Board from the Recipient pursuant to Section 3.2 of this Agreement, as set forth in Exhibit C.

"Payment Date" means the date on which any Payment is or becomes due and payable.

"Person" means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

"Policy" means the State Water Board's "Policy for Implementing the Clean Water State Revolving Fund," as amended from time to time, and 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 Exhibit A 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 which are reasonable, necessary and allocable by the Recipient to the Project under GAAP, including 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 Inland Empire Utilities Agency.

"Records Retention End Date" means the last date that the Recipient is obligated to maintain records pursuant to Section 2.17 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 Fund" means the reserve fund required pursuant to Section 3.7 of this Agreement.

"Revenues" means all income, rents, rates, fees, charges and other moneys derived from the ownership or operation of the System, including, without limiting the generality of the foregoing,

- (a) All income, rents, rates, fees, charges, business interruption insurance proceeds or other moneys derived by the Recipient from the sale, furnishing and supplying of sewer services, composting services or other services, facilities, and commodities sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the System, including the Recipient's share of the County of San Bernardino's 1% ad valorem property tax (to the extent allocated to the Enterprise Fund), determined in accordance with Generally Accepted Accounting Principles, plus
- (b) The earnings on and income derived from the investment of the amounts described in clauses (1) hereof, including the Recipient's share of the County of San Bernardino's 1% ad valorem property tax (to the extent allocated to the Enterprise Fund), and the general unrestricted funds of the Recipient,

But excluding in all cases revenues derived from ownership or operation of the Water System, customer deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the Recipient, and excluding any proceeds of taxes restricted by law to be used by the Recipient to pay bonds hereafter issued.

"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 Bonds" means all revenue bonds or notes of the Recipient authorized, executed, issued and delivered by the Recipient, the payments of which are payable from Net Revenues on a basis senior to the Installment Payments.

"Senior Contracts" means this Agreement and any amendments and supplements hereto, and all contracts of the Recipient previously or hereafter authorized and executed by the Recipient, the Senior Installment Payments under which are payable from Net Revenues on a basis senior to the Installment Payments, but excluding contracts entered into for operation and maintenance of the System.

"Senior Debt Service" means, for any Fiscal Year, the sum of:

- (a) The interest payable during such Fiscal Year on all outstanding Senior Bonds, assuming that all outstanding serial Senior Bonds are retired as scheduled and that all outstanding term Senior Bonds are prepaid or paid from sinking fund payments as scheduled (except to the extent that such interest is capitalized or is reasonably anticipated to be reimbursed to the Recipient by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111 5, 23 Stat. 115 (2009), enacted February 17, 2009), or any future similar program);
- (b) Those portions of the principal amount of all outstanding serial Senior Bonds maturing in such Fiscal Year (but excluding Excluded Principal);
- (c) Those portions of the principal amount of all outstanding term Senior Bonds required to be prepaid or paid in such Fiscal Year (but excluding Excluded Principal); and

(d) Those portions of the Senior Installment Payments required to be made during such Fiscal Year (except to the extent the interest evidenced and represented thereby is capitalized or is reasonably anticipated to be reimbursed to the Recipient by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111 5, 23 Stat. 115 (2009), enacted February 17, 2009), or any future similar program);

Provided that, as to any such Senior Bonds or Senior Installment Payments bearing or comprising interest at other than a fixed rate, the rate of interest used to calculate Senior Debt Service shall, for all purposes, be assumed to bear interest at a fixed rate equal to the higher of 1) the actual rate on the date of calculation, or if such Senior Contract or Senior Bond is not yet outstanding, the initial rate (if established and binding), and 2) the highest average variable rate borne over a six month period during the preceding 24 months by outstanding variable rate debt issued by the Recipient or, if no such variable rate debt is at the time outstanding, by variable rate debt of which the interest rate is computed by reference to an index comparable to that to be utilized in determining the interest rate for the debt then proposed to be issued.

"Senior Installment Payments" means the payments of interest and principal or other scheduled payments scheduled to be paid by the Recipient under and pursuant to the Senior Contracts.

"Senior Obligation" means a debt obligation of the Recipient that is senior to this Obligation. The Senior Obligations are these:

• The 2017A Installment Purchase Agreement dated February 2, 2017 between Inland Empire Utilities Agency and Chino Basin Regional Financing Authority.

"SRF" means the Clean Water State Revolving Fund.

"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 no Subordinate Obligations.

"System" means all facilities, land, and property rights of the Recipient, including the Project, and including all properties, structures or works hereafter acquired or constructed by the Recipient and determined to be part of the System, together with all additions, betterments, extensions and improvements to such facilities, properties, structures or works, or any part thereof hereafter acquired or constructed, other than the Water System.

"System Obligation" means any obligation of the Recipient secured by or payable from Revenues or Net Revenues, including this Obligation and obligations listed in this Section 1.1 or Exhibit J, and including without limitation Senior Bonds, Senior Contracts, Senior Obligations, Parity Bonds, Parity Contracts, Parity Obligations and such obligations that are payable on a subordinate basis to this Obligation, Parity Bonds, or Parity Contracts, and additional such 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 B.

"Water System" means the whole and each and every part of the imported water system of the Recipient, including the portion thereof existing on the date hereof, and including all additions, betterments, extensions and improvements to such imported water system or any part thereof hereafter acquired or constructed.

"Year" means calendar year unless otherwise expressly indicated.

## 1.2 Exhibits Incorporated.

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

#### 1.3 Party Contacts.

State Water	Board	Inland Empire Utilities Agency	
Section:	Division of Financial Assistance		
Name:	Elisabeth Brown, Project Manager	Name:	Shivaji Deshmukh, General Manager
Address:	1001 I Street, 16th Floor	Address:	P.O. Box 9020
City, State, Zip:	Sacramento, CA 95814	City, State, Zip:	Chino Hills, CA 91709
Phone:	(916) 341-5375	Phone:	(909) 993 - 1600
Email:	elisabeth.brown@waterboards.ca.gov	Email:	sdeshmukh@ieua.org

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

#### ARTICLE II REPRESENTATIONS, WARRANTIES, AND COMMITMENTS

The Recipient represents, warrants, and commits to the following as of the Eligible Start Date set forth on the first page hereof and continuing thereafter for the term of this Agreement.

2.1 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 financial assistance.

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

# 2.2 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.

2.3 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 first page hereof.

2.4 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.

2.5 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 and all Co-Funding Agencies are solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. The Recipient and all Co-Funding Agencies are able to pay their 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 employers liability, professional liability.

2.6 Legal Status and Eligibility.

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 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.

2.7 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.

2.8 Completion of Project.

The Recipient shall expeditiously proceed with and complete construction of the Project in substantial accordance with Exhibit A and Exhibit A-FBA. The following dates are established as on the Cover Page of this Agreement:

- i. Eligible Work Start Date
- ii. Eligible Start Date
- iii. Start of Construction Date
- iii. Completion of Construction Date
- iv. Final Disbursement Request Date
- v. Records Retention End Date
- vi. Final Repayment Date
  - 2.9 Award of Construction Contracts.
- (a) The Recipient shall award the prime construction contract timely in order to meet the start of construction date specified on the Cover Page of this Agreement.
- (b) The Recipient shall promptly notify the Division in writing both of the award of the prime construction contract for the Project and of Initiation of Construction of the Project. The Recipient shall make all reasonable efforts to complete construction in substantial conformance with the terms of the contract by the Completion of Construction date established on the Cover Page of this Agreement.
  - 2.10 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 <u>elisabeth.brown@waterboards.ca.gov</u> and <u>robert.pontureri@waterboards.ca.gov</u> and <u>CleanWaterSRF@waterboards.ca.gov</u>:
  - 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) [Reserved].

- (c) Within five (5) Business Days, the Recipient must notify the Division by phone at (916) 327-9978; by email to elisabeth.brown@waterboards.ca.gov, and robert.pontureri@waterboards.ca.gov and CleanWaterSRF@waterboards.ca.gov; and by mail to the contact address set forth 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 the Project, the Revenues or the System;
  - iv. Failure to meet any debt service coverage test in section 3.7 of this Agreement;
  - v. Draws on the Reserve Fund;
  - vi. Listed Events and Events of Default, except as set forth in this section;
  - vii. Failure to observe or perform any covenant or comply with any condition in this Agreement;
  - viii. Action taken by the Recipient to initiate formal consideration of 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.

(d) Within ten (10) business days, the Recipient must notify the Division by phone at (916) 327-9978, by email to <u>elisabeth.brown@waterboards.ca.gov</u>, and <u>robert.pontureri@waterboards.ca.gov</u> and <u>CleanWaterSRF@waterboards.ca.gov</u>, and by mail to the contact address set forth of this Agreement of the following events:

- i. Material defaults on Other 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;
- 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. [reserved]
- 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

- xii. Recipient's financial management, accounting procedures, or internal fiscal controls;
- (e) The Recipient must notify the Division promptly by phone at (916) 327-9978, by email to elisabeth.brown@waterboards.ca.gov, and robert.pontureri@waterboards.ca.gov and <u>CleanWaterSRF@waterboards.ca.gov</u>, and by mail to the contact address set 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;
  - 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.
  - 2.11 Findings and Challenge

Upon consideration of a voter initiative to reduce Revenues, the Recipient shall make a finding regarding the effect of such a reduction on the Recipient's ability to satisfy the rate covenant set forth in Section 3.7 of this Agreement. The Recipient shall make its findings available to the public and shall 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 Section 3.7 and its obligation to operate and maintain the Project for its useful life. The Recipient shall diligently pursue and bear any and all costs related to such challenge. The Recipient shall notify and regularly update the State Water Board regarding the status of any such challenge.

2.12 Project Access.

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.

2.13 Project Completion; Initiation of Operations.

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

2.14 Continuous Use of Project; 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.

- 2.15 Project Reports.
- (a) Progress Reports. The Recipient must provide a progress report to the Division each quarter, beginning no later than 90 days after execution of this Agreement. A status report must accompany any disbursement request and is a condition precedent to any disbursement. At a minimum the reports will contain the following information:
  - A summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed;
  - (2) A description of compliance with environmental requirements;
  - (3) A listing of change orders including amount, description of work, and change in contract amount and schedule; and
  - (4) Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.
- (b) Project Completion Report. The Recipient shall submit a Project Completion Report to the Division with a copy to the appropriate Regional Water Quality Control 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 address the following:
  - (1) Description of the Project,
  - (2) Description of the water quality problem the Project sought to address,
  - (3) Discussion of the Project's likelihood of successfully addressing that water quality problem in the future, and

(4) Summarize compliance with applicable environmental conditions.

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.

- (c) As Needed Reports. The Recipient shall 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.
- (d) [Reserved].
  - 2.16 Federal Disadvantaged Business Enterprise (DBE) Reporting.

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.

#### 2.17 Records.

- (a) Without limitation of the requirement to maintain Project accounts in accordance with GAAP, the Recipient must:
  - (1) Establish an official file for the Project which adequately documents all significant actions relative to the Project;
  - (2) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;
  - (3) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;
  - (4) Establish an accounting system which will accurately depict final total costs of the Project, including both direct and Indirect Costs;
  - (5) Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
  - (6) If Force Account is used by the Recipient for any phase of the Project, other than for planning, design, and construction engineering and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee.
- (b) 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 shall allow and shall 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.

- 2.18 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 shall 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 will be returned to the State Water Board.
  - 2.19 Data Management.

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

- 2.20 Environmental Clearance.
- (a) No work that is subject to CEQA or NEPA may proceed under this Agreement unless the State Water Board has provided environmental clearance. 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.
  - 2.21 Property Rights.

The Recipient represents that it 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.

## 2.22 Use of Licensed 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.

#### 2.23 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.

#### ARTICLE III FINANCING PROVISIONS

## 3.1 Purchase and Sale of Project.

The Recipient hereby sells to the State Water Board and the State Water Board hereby purchases from the Recipient the Project. Simultaneously therewith, the Recipient hereby purchases from the State Water Board, and the State Water Board hereby sells to the Recipient, the Project in accordance with the provisions of this Agreement. All right, title, and interest in the Project shall immediately vest in the Recipient on the date of execution and delivery of this Agreement by both parties without further action on the part of the Recipient or the State Water Board. The State Water Board's disbursement of funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement.

- 3.2 Amounts Payable by the Recipient.
- (a) Interest will accrue beginning with each disbursement. Interest on any funds disbursed to the Recipient shall begin to accrue as of the date of each disbursement. Beginning one year after Completion of Construction, the Recipient must submit an annual Payment of the principal of the Project Funds, together with all interest accruing thereon. The Recipient must make Payments fully amortizing the total principal of the Project by the Final Repayment Date.

The Payments are based on a standard fully amortized assistance amount with equal annual payments. 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 Payment. Payment calculations will be made beginning one (1) year after Completion of Construction. Exhibit C is a payment schedule based on the provisions of this article and an estimated disbursement schedule. Actual payments will be based on actual disbursements.

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. Payments shall be made according to the following procedure:

(i) At a time reasonably anticipated to cause the Division to receive each Payment on or before each Payment Date, the Recipient shall pay (A) annual payments of principal and all interest accruing thereon, and (B) payments of any other amounts on each other date which payment thereof is required to be made hereunder; provided that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. The Recipient shall pay Payments and Additional Payments from Net Revenues and/or other amounts legally available to the Recipient therefor. Each 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. 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.

(ii) Notwithstanding anything herein to the contrary, the outstanding balance of the Obligation and any accrued interest thereon shall be due and payable in full on the Final Payment Date (or on any earlier date on which the Obligation is subject to mandatory redemption or prepayment prior to the maturity thereof).

(iii) 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. 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.

- (b) 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.
- (c) Additional Payments. In addition to the Payments required to be made by the Recipient, the Recipient shall also pay to the State Water Board the reasonable extraordinary fees and expenses of the State Water Board, and of any assignee of the State Water Board's right, title, and interest in and to this Agreement, in connection with this Agreement, including all expenses and fees of accountants, trustees, 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. Additional Payments may be billed to the Recipient by the State Water Board from time to time, together with a statement executed by a duly authorized representative of the

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

- (d) The Recipient may not prepay any portion of the principal and interest due under this Agreement without the written consent of the Deputy Director of the Division.
  - 3.3 Obligation Absolute.

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

3.4 No Obligation of the State.

Any obligation of the State Water Board herein contained shall not be an obligation, debt, or liability of the State and any such obligation shall be payable solely out of the moneys encumbered pursuant to this Agreement. 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 to the State, or offer an amendment to the Recipient to reflect the reduced amount.

- 3.5 Disbursement of Project Funds; Availability of Funds.
- (a) Except as may be otherwise provided in this Agreement, disbursement of Project Funds will be made as follows:
  - 1. Upon execution and delivery of this Agreement 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

- 6. 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. Disbursement Requests submitted without supporting documents may be wholly or partially withheld at the discretion of the Division.
- 7. 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.
- 8. The Recipient shall not request a disbursement unless that Project Cost is allowable, reasonable, and allocable.
- 9. 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.
- 10. 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. 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 <a href="http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx">http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx</a>. as of the date costs are incurred by the Recipient.
- 11. The Recipient is not entitled to interest earned on undisbursed funds.
- (b) The State Water Board's obligation to disburse Project Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Project Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other agency. If any disbursements due the Recipient under this 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) <u>Fraud and Misuse of Public Funds</u>. 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 shall only be for the 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 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.

3.6 Withholding of Disbursements and Material Violations.

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 System, Project, or Revenues that the State Water Board determines may impair the timely completion of the Project or the repayment of the Obligation;
- 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, or any other event 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 Section 2.10;
- i. An Event of Default or an event that the Division determines may become an Event of Default;
  - 3.7 Pledge; Rates, Fees and Charges; Additional Debt.
- (a) <u>Establishment of Enterprise Fund and Reserve Fund</u>. In order to carry out its System Obligations, the Recipient agrees and covenants that it shall establish and maintain or shall have established and maintained the Enterprise Fund. All Revenues received shall be deposited when and as received in trust in the Enterprise Fund. As required in paragraph (f) of this Section, the Recipient shall establish and maintain a Reserve Fund.
- (b) <u>Pledge of Revenues, Enterprise Fund and Reserve Fund</u>. The Obligation hereunder shall be secured by a lien on and pledge of the Enterprise Fund, Revenues, and any Reserve Fund specified in Section 3.7(f) of this Agreement on a junior and subordinate basis to the Senior Bonds and Senior Contracts, on parity with the Parity Bonds and Parity Contracts, and senior to the Subordinate Obligations. The Recipient hereby pledges and grants such subordinate lien on and pledge of the Enterprise Fund and Revenues, and such lien on and pledge of any Reserve Fund specified in Section 3.7(f) of this Agreement, to secure the Obligations, including payment of Payments and Additional Payments hereunder. The Revenues in the Enterprise Fund shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be

valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Recipient.

- (c) <u>Application and Purpose of the Enterprise Fund</u>. The Recipient shall, from the moneys in the Enterprise Fund, pay all Operation and Maintenance Costs (including amounts reasonably required to be set aside in contingency reserves for Operation and Maintenance Costs, the payment of which is not then immediately required) as such Operation and Maintenance Costs become due and payable. All remaining moneys in the Enterprise Fund shall thereafter be applied by the Recipient for the following purposes, in the following order of priority:
  - (i) <u>Senior Bonds and Senior Installment Payments</u>. The Recipient shall, from the moneys in the Enterprise Fund, transfer to the applicable (i) trustee for deposit in the respective payment fund, or (ii) payee, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, any Senior Debt Service in accordance with the provisions of any Senior Bond or Senior Contract.
  - (ii) <u>Senior Bonds and Senior Contracts Reserve Accounts</u>. The Recipient shall, from the remaining moneys in the Enterprise Fund, on or before the date required by the applicable Senior Bond or Senior Contract, without preference or priority and in the event of any insufficiency of such moneys ratably without any discrimination or preference, transfer to the applicable trustee for reserve funds and/or accounts, if any, as may have been established in connection with Senior Bonds or Senior Contracts, that sum, if any, necessary to restore such reserve funds and/or accounts to an amount equal to the required balance.
  - (iii) <u>Surplus</u>. Moneys on deposit in the Enterprise Fund on any date when the Recipient reasonably expects such moneys will not be necessary to make any of the payments required above shall be expended by the Recipient for the following purposes, in the following priority:
    - (A) The Recipient shall, from the moneys in the Enterprise Fund, transfer to the applicable (i) trustee for deposit in the respective payment fund, or (ii) payee, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, any Parity Debt Service, including the Obligation, in accordance with the provisions of any Parity Bond or Parity Contract.
    - (B) The Recipient shall from the remaining moneys in the Enterprise Fund, on or before the date required by the applicable Parity Bond or Parity Contract, without preference or priority and in the event of any insufficiency of such moneys ratably without any discrimination or preference, transfer to the applicable trustee for reserve funds and/or accounts, if any, as may have been established in connection with Parity Bonds or Parity Contracts, that sum, if any, necessary to restore such reserve funds and/or accounts to an amount equal to the required balance, including any Reserve Fund specified in Exhibit D or elsewhere in this Agreement.
    - (C) Moneys on deposit in the Enterprise Fund on any date when the Recipient reasonably expects such moneys will not be necessary to make any of the payments required above may be expended by the Recipient at any time for any purpose permitted by law, subject to compliance with the other provisions of this Agreement.
- (d) Amounts of Rates, Fees and Charges.
  - (i) The Recipient must, to the fullest extent permitted by law, fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonably expected to be at least sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs and Net Revenues equal to the sum of (i) at least

one hundred twenty percent (120%) of Maximum Annual Debt Service with respect to all outstanding System Obligations senior to and on parity with the Obligation, and (ii) at least one hundred percent (100%) of 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 shall be at least 120%, except where System Obligations are defeased pursuant to refunding obligations.

- (ii) The Recipient may make adjustments from time to time in such rates and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates and charges then in effect unless the Net Revenues from such reduced rates and charges are reasonably expected to be sufficient to meet the requirements of this section.
- (iii) For the avoidance of doubt, so long as the Recipient has complied with its obligations set forth in subdivisions (i) and (ii) of this Section 3.7(d) above, the failure of Net Revenues to meet the threshold set forth in subdivision (i) of this Section 3.7(d), above at the end of a Fiscal Year shall not constitute a default or an Event of Default so long has the Recipient has complied with subdivision (i) of this Section 4.4 at the commencement of the succeeding Fiscal Year.
- (e) Additional Debt Test.
  - (i) <u>Issuance of Additional Senior Obligations</u>. The Recipient may not execute any Senior Contract, issue any Senior Bonds, or otherwise incur, permit the incurrence of, or suffer to exist any additional Senior Obligation except as follows. Notwithstanding anything to the contrary set forth in this Agreement, the Recipient may execute Senior Contracts or issue Senior Bonds, as the case may be, solely for the purpose of refunding outstanding Senior Bonds and Senior Contracts if, after giving effect to the application of the proceeds thereof, total Senior Debt Service will not be increased in any Fiscal Year in which any CWSRF loan to the Recipient that is secured by Revenues (outstanding on the date of issuance or incurrence of such refunding Senior Bonds and Senior Contracts) is outstanding, thereby not diminishing the Recipient's ability to repay its CWSRF Obligations, and if the refunding obligation has the same or earlier repayment term as the refunded Senior Contract or Senior Bond.
  - (ii) <u>Issuance of Additional Parity or Subordinate Obligations</u>. The Recipient may execute System Obligations on a parity or subordinate basis to this Obligation if Net Revenues in the most recent Fiscal Year, excluding transfers from a rate stabilization fund, if any, meet the applicable ratio specified in 3.7(d), above, with respect to all outstanding and proposed System Obligations, and if the Recipient is in compliance with any reserve fund requirement of this Obligation.

Parity Bonds or Parity Contracts may be issued or incurred, as the case may be, to refund outstanding Parity Bonds or Parity Contracts if such refunding Parity Bonds or Parity Contracts have the same or earlier repayment term as the refunded Parity Bonds or Parity Contracts, and if, after giving effect to the application of the proceeds thereof, Debt Service will not be increased in any Fiscal Year in which any CWSRF loan to the Recipient that is secured by Revenues (outstanding on the date of issuance or incurrence of such refunding Parity Bonds or Parity Contracts) is outstanding.

(f) Reserve Fund.

Prior to Completion of Construction, the Recipient shall establish a restricted Reserve Fund, held in its Enterprise Fund, equal to one year's Debt Service on this Obligation. The Recipient must maintain the Reserve Fund throughout the term of this Agreement. The Reserve Fund is subject

- to lien and pledged as security for this Obligation, and its use shall be restricted to payment of this Obligation during the term of this Agreement.
- (g) The Recipient may issue or incur subordinate obligations or otherwise issue or incur obligations payable from a lien on Net Revenues that is subordinate to the lien of Net Revenues securing the Obligation.
- (h) 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.
  - 3.8 Financial Management System and Standards.

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 shall be bound by, and to comply with, the provisions and requirements of the federal Single Audit Act of 1984, Office of Management and Budget (OMB) Circular No. A-133 and 2 CFR Part 200, subpart F, and updates or revisions, thereto.

3.9 Accounting and Auditing Standards.

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.

3.10 Other Assistance.

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

ARTICLE IV MISCELLANEOUS PROVISIONS

4.1 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 made in writing and directed to the contact listed to the Division's Chief of Loans and Grants Administration Section.

4.2 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.

4.3 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.

## 4.4 Competitive Bidding

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

4.5 Compliance with Law, Regulations, etc.

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 shall:

- (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
- (c) Comply with and require compliance with the state and federal requirements set forth elsewhere in this Agreement.
  - 4.6 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.

4.7 Damages for Breach Affecting Tax-Exempt Status or Federal Compliance

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. In the event that any breach of any of the provisions of this Agreement by the Recipient shall result in the failure of Project Funds to be used pursuant to the provision or agency thereof to reimburse the federal government, the Recipient shall immediately reimburse the State or any subdivision or agency thereof to reimburse the federal government, the Recipient shall immediately reimburse the State or any subdivision or agency thereof to reimburse the federal government, the Recipient shall immediately reimburse the State or any subdivision or agency thereof to reimburse the federal government, the Recipient shall 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 in an amount equal to any damages paid by or loss incurred by 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 in an amount equal to any damages paid by or loss incurred by 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.

- 4.8 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 4.8 relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.
  - 4.9 Governing Law.

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

4.10 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.

4.11 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 (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 shall 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.

4.12 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.

4.13 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.

- 4.14 Leveraging Covenants.
- (a) Notwithstanding any other provision hereof, the Recipient covenants and agrees that it will comply with the Tax Covenants set forth in Article V of this Agreement.
- (b) Disclosure of Financial Information, Operating Data, and Other Information. 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).
- (c) 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 shall 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.
  - 4.15 Non-Discrimination Clause.
  - (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 shall 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 shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.
  - 4.16 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.

4.17 Operation and Maintenance; Insurance.

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

The Recipient will procure and maintain or cause to be maintained insurance on the System with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System) as are usually covered in connection with systems similar to the System. Such insurance may be maintained by 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 shall begin such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and

the System shall be free and clear of all claims and liens. If such net proceeds are insufficient to reconstruct, repair, or restore the System to the extent necessary to enable the Recipient to pay all remaining unpaid principal portions of the Payments, if any, in accordance with the terms of this Agreement, the Recipient shall 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 shall provide the Division with a copy of all such certificates prior to the commencement of construction of the Project.

## 4.18 Permits, Subcontracting, and Remedies.

The 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 shall be submitted to the Division before construction begins.

The Recipient must not contract or allow subcontracting with excluded parties. The Recipient shall 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 shall 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

#### 4.19 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 Exhibit A of this Agreement.

4.20 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.

#### 4.21 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.

## 4.22 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.

## 4.23 Rights in Data.

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

## 4.24 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.

#### 4.25 Termination and Other Remedies Upon Event of Default.

In addition to any other remedy set forth in this Agreement, the following remedies are available under this Agreement. For purposes of this section, the term "State Water Board" shall mean the State Water Board and its assignees.

- (a) <u>Return of Funds; Acceleration; and Additional Payments</u>. 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 do each of the following:
  - (a) return to the State Water Board the grant or principal forgiveness amounts received pursuant to this Agreement;
  - (b) accelerate the payment of all principal owed under this Agreement, if any, which shall be immediately due and payable;
  - (c) pay interest at the highest legal rate on of the foregoing; and
  - (d) pay any Additional Payments;

<u>provided</u>, that on the occurrence of any Bankruptcy Related Event, the outstanding principal, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts owed under this Agreement shall automatically accelerate and become immediately due and payable without action of the State Water Board or any other person.

- (b) <u>Judicial remedies</u>. 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 Payments then due or thereafter to become due, or to enforce performance of any obligation or covenant of the Recipient under this Agreement.
- (c) <u>Termination</u>. 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.
- (d) <u>Remedies Not Exclusive</u>. 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.

- (e) <u>Non-waiver</u>. Nothing in this section or any other section of this Agreement shall affect or impair the Recipient's Obligation to pay 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.
- (f) <u>Status Quo</u>. 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.
  - 4.26 Timeliness.

Time is of the essence in this Agreement.

#### 4.27 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.

#### 4.28 Useful Life.

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

4.29 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.

4.30 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.

#### ARTICLE V TAX COVENANTS

#### 5.1 Purpose.

The purpose of this Article V 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 Article V 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.

5.2 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.

5.3 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.

## 5.4 Financing of a Capital Project.

The Recipient will use the Project Funds to finance capital expenditures it has incurred or will incur for the construction, reconstruction, installation or acquisition of the Project in accordance with the terms of this Agreement. Such expenditures shall not have previously been financed with the proceeds of any other issue of indebtedness except for interim financing by the Recipient, the date of maturity, prepayment or redemption of which is within thirty (30) days of the date of disbursement of Project Funds under this Agreement. All Project Funds shall be allocated to expenditures by the Recipient within thirty (30) days of the date of disbursement, including (if at all) Project Funds allocated to repay interim financing of the Recipient. For purposes of this Section F.4, "interim financing" means notes, commercial paper, loans, liens of credit and other forms of short-term borrowing.

## 5.5 Ownership and Operation of Project.

The Recipient exclusively owns and, except as provided in Section 5.12 hereof, operates the Project.

5.6 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 Costs will proceed with due diligence.

5.7 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.

5.8 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 5.20 below), (ii) Preliminary Expenditures (as defined in Section 5.20 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.

5.9 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 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" 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.

5.10 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 5.12 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.

5.11 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.

5.12 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.

5.13 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.

5.14 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 B hereto.

5.15 Payments.

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 Payments during each payment period. Any amounts accumulated in a sinking fund or bona fide debt service fund to pay Payments (whether or not deposited to a fund or account established by the Recipient) will be disbursed to pay Payments within thirteen months of the initial date of accumulation or deposit. Any such fund used for the payment of 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 Payments in either case for the immediately preceding year.

5.16 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.

5.17 No Sinking or Pledged Fund.

Except as set forth in Section 5.18 below, the Recipient will not create or establish any sinking fund or pledged fund which will be used to pay 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 Payments, the Recipient will invest such sinking fund and pledged fund moneys at a yield that does not exceed the yield on the Bonds.

## 5.18 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 Section 3.7. 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 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.

5.19 Reimbursement Resolution.

The "reimbursement resolution" adopted by the Recipient is incorporated herein by reference, pursuant to Exhibit A.

5.20 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.

5.21 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.

#### 5.22 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.

## 5.23 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.

#### 5.24 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.

5.25 Amendments.

The provisions in this Article 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.

5.26 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 Article, the expectations of the Recipient as set forth in this Article are reasonable. The Recipient is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation made in the provisions in this Article V.

#### 5.27 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 Payments (but excluding the State Water Board's rights to Additional Payments and to notices, opinions and indemnification under each Obligation).

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

#### **INLAND EMPIRE UTILITIES AGENCY:**

By: \_\_\_\_\_ Name: Shivaji Deshmukh Title: General Manager

Date: \_\_\_\_\_

## STATE WATER RESOURCES CONTROL BOARD:

By: \_\_\_\_\_ Name: Joe Karkoski

Title: Deputy Director Division of Financial Assistance

Date: \_\_\_\_\_

## EXHIBIT A – SCOPE OF WORK

- 1. Eligible Work Start Date. The Eligible Work Start Date is set forth on the Cover Page of this Agreement.
- 2. Eligible Start Date. The Eligible Start Date is set forth on the Cover Page of this Agreement.
- 3. Start of Construction Date. The Recipient agrees to start construction no later than the estimated date set forth on the Cover Page of this Agreement.
- 4. Completion of Construction Date. The Completion of Construction date is set forth on the Cover Page of this Agreement. The Recipient shall deliver any request for extension of the Completion of Construction date no less than 90 days prior to the Completion of Construction date.
- 5. Final Disbursement Request Date. The Final Disbursement Request Date is set forth on the Cover Page of this Agreement. 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 Deputy Director of the Division.
- 6. Records Retention End Date is set forth on the Cover Page of this Agreement.
- 7. Incorporated Documents. Incorporated by reference into this Agreement are the following documents:
  - a. [Reserved];
  - b. [Reserved];
  - c. the Recipient's Reimbursement Resolution No. 2018-12-6 dated December 19, 2018;
  - d. the Recipient's Tax Questionnaire dated February 7, 2018.
  - e. the Davis-Bacon requirements found at <a href="https://www.waterboards.ca.gov/water\_issues/programs/grants\_loans/srf/docs/davisbacon/da">https://www.waterboards.ca.gov/water\_issues/programs/grants\_loans/srf/docs/davisbacon/da</a> vis-bacon 2021 cwsrf-governmental entities public.pdf
- 8. Reporting. Status Reports due at least quarterly.
- 9. Purpose.

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 hydraulically connect the Wineville, Jurupa, and RP-3 basins to further enhance the existing stormwater distribution system, increase the recharge of stormwater flow in the region, and add new yield to the Chino Basin. When completed, these improvements will divert and recharge an additional 2,921 acre-feet per year (AFY) of stormwater and dry-weather runoff and 2,905 AFY of recycled water.

10. Scope of Work.

The Recipient agrees to complete the Distribution System/Wineville/Jurupa/RP-3 Recharge Improvements (PID 23a) Project.

The Distribution System/Wineville/Jurupa/RP-3 Recharge Improvements (PID 23a) Project consists of four major recharge improvements as described below.

I. Stormwater Distribution System Improvements

- Install a pump station at Wineville Basin;
- Install a new force main system to connect Wineville Basin to Jurupa Basin;
- Install an additional pump at the Jurupa Basin Pump Station to address the higher recharge flows coming into the Jurupa Basin; and
- Install new electrical, instrumentation, and communication equipment.

II. Wineville Basin Improvements

- Add a slide gate to the existing low-level outlet;
- Grade a portion of the basin floor to manage flows and create access ramps into basin area; and
- Add a 4-foot gate structure to spillway.

III. Jurupa Basin Improvements,

- Replace the existing diversion with a drop inlet structure.
- IV. RP-3 Basin Improvements
  - Demolish abandoned structure;
  - Deepen the new basin by six feet;
  - Retrofit existing blowoff valve on 20-inch recycled water pipeline and install a downstream isolation valve; and
  - Extend a pipeline to the RP-3 distribution channel.
- 11. Signage.

The Recipient shall place a sign at least four feet tall by eight feet wide made of <sup>3</sup>/<sub>4</sub> 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):



"Funding for this Distribution System/Wineville/Jurupa/RP-3 Recharge Improvements (PID 23a) Project has been provided in full or in part by the Clean Water State Revolving Fund through an agreement with the State Water Resources Control Board. 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 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.

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

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

## EXHIBIT B – FUNDING AMOUNT

- 1. Estimated Reasonable Cost. The estimated reasonable cost of the total Project, including associated planning and design costs is twenty-two million six hundred fifteen thousand nine hundred thirty-one dollars and no cents (\$22,615,931.00).
- 2. Project Financing. 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. The estimated amount of principal that will be due to the State Water Board under this Agreement is eleven million seven hundred seventy-two thousand five hundred fifty dollars and no cents (\$11,772,550.00).
- 3. Payment, Interest Rate, and Charges. The Recipient agrees to make all Payments according to the schedule in Exhibit C at an interest rate of fifty-five hundredths percent (0.55%) per annum. 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 C:
  - an Administrative Service Charge
  - a Small Community Grant Fund Charge
- 4. [Reserved].
- 5. Useful Life. The useful life of this Project is at least thirty (30) years.
- 6. The Final Repayment Date is set forth on the Cover Page.
- 7. Budget costs are contained in the Project Cost Table below.

LINE ITEM	TOTAL ESTIMATED COST	PROJECT FUNDING AMOUNT		
Construction	\$16,280,882	\$9,159,254		
Pre-Purchased Material/Equipment	\$3,109,812	\$1,946,249		
Purchase of Land	\$0.00	\$0.00		
Contingency	\$0.00	\$0.00		
Allowances (Soft Costs)	\$3,225,237	\$667,047		
TOTAL	\$22,615,931	\$11,772,550		

The Division's Final Budget Approval and related Form 259 and Form 260 will document a more detailed budget of eligible Project Costs and Project funding amounts.

Upon written request by the Recipient, the Division may adjust the line items of the Summary Project Cost Table at the time of Division's Final Budget Approval. Upon written request by the Recipient, the Division may also adjust the line items of the Summary Project Cost Table as well as the detailed budget at the time of Recipient's submittal of its final claim. Any line-item adjustments to the Summary Project Cost 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 Summary Project Cost Table and the detailed budget must not exceed the Project Funding Amount. The Division may also propose budget adjustments.

(b) 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.

8. Preliminary budget costs are as follows:

Planning and design Allowances: \$40,000.00

Construction costs and disbursements are not available until the Division has approved the final budget form submitted by the Recipient. No costs incurred prior to the Eligible Work Start Date are eligible for reimbursement. Construction costs incurred prior to the Eligible Start Date are not eligible for reimbursement. 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, including planning and design allowances.

## EXHIBIT C – PAYMENT SCHEDULE

See the attached preliminary Payment Schedule. The final Payment Schedule 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. 8260-110 - Inland Empire Utilities Agency Agreement: D2101012 - based on Actual + Projected Disbursements

Distribution System/Wineville/Jurupa/RP-3 Recharge Improvements (PID 23a)

Ref Num	Due Date Date Receive	ed Principal Payment	Interest Rate%	Interest Payment	Total P and I Payment	Total Payment	Ending Balance	CPI Interest
1	2/28/2025	565,895.28	0.550	56,902.67	622,797.95	622,797.95	11,206,654.72	0.00
2	2/28/2026	561,161.35	0.550	61,636.60	622,797.95	622,797.95	10,645,493.37	0.00
3	2/28/2027	564,247.74	0.550	58,550.21	622,797.95	622,797.95	10,081,245.63	0.00
4	2/28/2028	567,351.10	0.550	55,446.85	622,797.95	622,797.95	9,513,894.53	0.00
5	2/28/2029	570,471.53	0.550	52,326.42	622,797.95	622,797.95	8,943,423.00	0.00
6	2/28/2030	573,609.12	0.550	49,188.83	622,797.95	622,797.95	8,369,813.88	0.00
7	2/28/2031	576,763.97	0.550	46,033.98	622,797.95	622,797.95	7,793,049.91	0.00
8	2/28/2032	579,936.18	0.550	42,861.77	622,797.95	622,797.95	7,213,113.73	0.00
9	2/28/2033	583,125.82	0.550	39,672.13	622,797.95	622,797.95	6,629,987.91	0.00
10	2/28/2034	586,333.02	0.550	36,464.93	622,797.95	622,797.95	6,043,654.89	0.00
11	2/28/2035	589,557.85	0.550	33,240.10	622,797.95	622,797.95	5,454,097.04	0.00
12	2/28/2036	592,800.42	0.550	29,997.53	622,797.95	622,797.95	4,861,296.62	0.00
13	2/28/2037	596,060.82	0.550	26,737.13	622,797.95	622,797.95	4,265,235.80	0.00
14	2/28/2038	599,339.15	0.550	23,458.80	622,797.95	622,797.95	3,665,896.65	0.00
15	2/28/2039	602,635.52	0.550	20,162.43	622,797.95	622,797.95	3,063,261.13	0.00
16	2/28/2040	605,950.01	0.550	16,847.94	622,797.95	622,797.95	2,457,311.12	0.00
17	2/28/2041	609,282.74	0.550	13,515.21	622,797.95	622,797.95	1,848,028.38	0.00
18	2/28/2042	612,633.79	0.550	10,164.16	622,797.95	622,797.95	1,235,394.59	0.00
19	2/28/2043	616,003.28	0.550	6,794.67	622,797.95	622,797.95	619,391.31	0.00
20	2/28/2044	619,391.31	0.550	3,406.65	622,797.96	622,797.96	0.00	0.00
		11,772,550.00		683,409.01	12,455,959.01	12,455,959.01		0.00

## 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 Mitigation Monitoring and Reporting Program adopted on March 15, 2017 for the Project. The Recipient shall 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.

#### REPORTING TO THE STATE WATER BOARD

- 1. In the Recipient's Progress Reports and the Project Completion Report, submitted pursuant to this Agreement, the Recipient shall include a discussion of the status of its compliance with:
  - a. Mitigation Measure AQ-1 through AQ-4 for Air Quality.
  - b. Mitigation Measure BIO-1 through BIO-10 for Biological Resources, including pre-construction surveys for special status species and nesting birds protected under the Migratory Bird Treaty Act.
  - c. Mitigation Measure CUL-1 through CUL-3 for Cultural Resources.
  - d. Mitigation Measure GEO-1 through GEO-2 for Geology, Soils, and Mineral Resources.
  - e. Mitigation Measure HAZ-1 through HAZ-6 for Hazards and Hazardous Materials.
  - f. Mitigation Measure HYDRO-1 through HYDRO-7 for Hydrology and Water Quality.

#### Financial:

1. The Recipient shall maintain separate financial statements in its annual CAFR for the following funds: Regional Wastewater, Recycled Water, Water Resources, and Non-Major funds. Revenues and expenses should be recorded in their appropriate fund.

#### **Russian Sanctions:**

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 <a href="https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf">https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf</a> and the sanctions identified on the United States Department of the Treasury website (<a href="https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions">https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions</a>). The Recipient is required to comply with all applicable 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:

- 1. 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;
- 2. Not transferring technology to Russia or companies that are headquartered or have their principal place of business in Russia; and
- 3. Direct support to the government and people of Ukraine.

## EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

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:

- 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 https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-november-12-2020-orlater.
- vi. No Recipient may receive funding under this Agreement unless it has provided its Unique Entity Identifier 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 <u>https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy</u>. 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 <a href="http://iEdison.gov">http://iEdison.gov</a> 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 as set forth in Exhibit A.
- 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: <a href="http://www.sam.gov/">http://www.sam.gov/</a>.
- 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 <u>www.fgdc.gov</u>.
- 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 <a href="https://www.epa.gov/osa/policy-epa-scientific-integrity">https://www.epa.gov/osa/policy-epa-scientific-integrity</a>, 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 <u>http://grants.nih.gov/grants/olaw/references/phspol.htm#USGovPrinciples</u>.
- xxx. The Recipient certifies that no Project Funds will be used on:
  - 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 <u>2</u> <u>CFR 200.216</u>.

Inland Empire Utilities Agency Agreement No.: D2101012 Project No.: C-06-8260-110

EXHIBIT F – [RESERVED]

#### EXHIBIT G - COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES

#### 1. CALIFORNIA DEBT INVESTMENT ADVISORY COMMISSION (CDIAC)

Where Recipient is a public entity, Recipient acknowledges its responsibility to file debt obligations with the CDIAC. Recipient understands that CDIAC has waived filing fees for State Water Board SRF debt.

#### 2. COMPLIANCE WITH STATE REQUIREMENTS

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

ACTION ITEM

# **2D**



Date: April 6, 2022 **To:** The Honorable Board of Directors **Committee:** 

From: Shivaji Deshmukh, General Manager



**Staff Contact:** Javier Chagoyen-Lazaro, Acting Assistant General Manager Subject: Adoption of Resolutions 2022-4-5 and 2022-4-6 in Support of the Applications for Community Project Funding and Congressionally Directed Spending for the RP-1 Disinfection Improvements Project and City of Rialto Recycled Water Intertie

## **Executive Summary:**

As part of the Fiscal Year 2023 Federal appropriations process, the U.S. Senate and House of Representatives are allowing consideration of Community Project Funding (CPF) and Congressionally Directed Spending (CDS) requests, respectively, for projects that serve regional needs. The process will assist non-profit organizations and local and state governmental agencies to fund projects that have garnered strong support from their communities.

The RP-1 Disinfection Improvements Project (RP-1 Project) will result in community benefits by implementing changes to the tertiary disinfection process at RP-1 that will improve the quality of the plant effluent, increase energy efficiency, and reduce truck traffic to the facility. The City of Rialto Recycled Water Intertie Project (Rialto Project) will secure reliable water supplies for the Chino Basin and support objectives in the Upper Santa Ana River Multi-Species Habitat Conservation Plan to remove flows from the Rialto Wastewater Treatment Plant during the summer months. Adoption of these resolutions will bolster local support for these projects and recognize their community benefits in an effort to secure funding for the RP-1 Project through the CDS program and for the Rialto Project through the CPF program.

## **Staff's Recommendation:**

1. Adopt Resolution No. 2022-4-5, supporting the application of the RP-1 Disinfection Improvements Project for Congressionally Directed Spending; and

2. Adopt Resolution No. 2022-4-6, supporting the application of the City of Rialto Recycled Water Intertie Project for Community Project Funding.

**Budget Impact** Budgeted (Y/N): Y Amendment (Y/N): Y Amount for Requested Approval:

Account/Project Name: **RP-1** Disinfection Improvements: EN11039

Fiscal Impact (explain if not budgeted): N/A

#### **Prior Board Action:**

On April 21, 2021, the Board of Directors adopted Resolution No. 2021-4-5 supporting the application of the RP-1 Disinfection Improvements Project for Community Project Funding.

#### Environmental Determination:

Not Applicable

#### **Business Goal:**

The application to the CPF and CDS programs for project funding aligns with the IEUA Business Goals of Environmental Stewardship and Fiscal Responsibility.

#### Attachments:

- 1. Resolution No. 2022-4-5
- 2. Resolution No. 2022-4-6

#### **RESOLUTION NO. 2022-4-5**

#### **RESOLUTION OF THE BOARD OF DIRECTORS OF THE INLAND EMPIRE UTILITIES AGENCY\*, SAN BERNARDINO COUNTY, CALIFORNIA, SUPPORTING THE APPLICATION OF THE RP-1 DISINFECTION IMPROVEMENTS PROJECT FOR CONGRESSIONALLY DIRECTED SPENDING**

**WHEREAS**, the United States Congress will appropriate Congressionally Directed Spending to assist non-profit organizations and state and local governmental agencies with funding for the construction of projects that serve a critical need for their communities;

WHEREAS, the Regional Water Recycling Plant No. 1 (RP-1) Disinfection Improvements Project has been identified in regional planning documents and the State Water Resources Control Board's Intended Use Plan as a project that will provide recycled water benefits to the Chino Basin;

WHEREAS, the IEUA has applied for Congressionally Directed Spending through its congressional delegation for the construction of the RP-1 Disinfection Improvements Project; and

WHEREAS, the RP-1 Disinfection Improvements Project will enhance process efficiencies and result in environmental sustainability benefits for the Chino Basin, including improved water quality and reduced greenhouse gas emissions.

**NOW THEREFORE, BE IT RESOLVED,** by the Board of Directors that the IEUA hereby commends and supports the implementation of the RP-1 Disinfection Improvements Project and commits to the successful completion of the Project for the benefit of the Chino Basin.

**ADOPTED** this 6<sup>th</sup> day of April, 2022.

Steven J. Elie, President of the Inland Empire Utilities Agency\* and of the Board of Directors thereof

ATTEST:

Marco Tule, Secretary/Treasurer of the Inland Empire Utilities Agency\* and of the Board of Directors thereof

Resolution No. 2022-4-5 Page 2 of 2

STATE OF CALIFORNIA ) ) SS COUNTY OF SAN BERNARDINO )

I, Marco Tule, Secretary/Treasurer of the Inland Empire Utilities Agency\*, DO HEREBY CERTIFY that the foregoing Resolution No. 2022-4-5 was adopted at a regular meeting on April 6, 2022, of said Agency by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marco Tule, Secretary/Treasurer of the Inland Empire Utilities Agency\* and of the Board of Directors thereof

(SEAL)

#### **RESOLUTION NO. 2022-4-6**

#### **RESOLUTION OF THE BOARD OF DIRECTORS OF THE** INLAND EMPIRE UTILITIES AGENCY\*. SAN BERNARDINO COUNTY, CALIFORNIA, SUPPORTING THE APPLICATION OF THE CITY OF RIALTO RECYCLED WATER INTERTIE PROJECT FOR **COMMUNITY PROJECT FUNDING**

**WHEREAS**, the United States Congress will appropriate Community Project Funding to assist non-profit organizations and state and local governmental agencies with funding for the construction of projects that serve a critical need for their communities;

**WHEREAS,** the City of Rialto Recycled Water Intertie Project has been identified in regional planning documents as a project that will provide recycled water benefits to the Chino Basin and environmental benefits to the Upper Santa Ana River Watershed;

WHEREAS, the IEUA has applied for Community Project Funding through its congressional delegation for the construction of the City of Rialto Recycled Water Intertie Project; and

**WHEREAS**, the City of Rialto Recycled Water Intertie Project will enhance water supply reliability and result in environmental sustainability benefits for the Upper Santa Ana River Watershed, including improved water quality and habitat conservation.

**NOW THEREFORE, BE IT RESOLVED,** by the Board of Directors that the IEUA hereby commends and supports the implementation of the City of Rialto Recycled Water Intertie Project and commits to the successful completion of the Project for the benefit of the Chino Basin.

**ADOPTED** this 6<sup>th</sup> day of April, 2022.

Steven J. Elie, President of the Inland Empire Utilities Agency\* and of the Board of Directors thereof

ATTEST:

Marco Tule, Secretary/Treasurer of the Inland Empire Utilities Agency\* and of the Board of Directors thereof

Resolution No. 2022-4-6 Page 2 of 2

STATE OF CALIFORNIA ) ) SS COUNTY OF SAN BERNARDINO )

I, Marco Tule, Secretary/Treasurer of the Inland Empire Utilities Agency\*, DO HEREBY CERTIFY that the foregoing Resolution No. 2022-4-6 was adopted at a regular meeting on April 6, 2022, of said Agency by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marco Tule, Secretary/Treasurer of the Inland Empire Utilities Agency\* and of the Board of Directors thereof

(SEAL)

WORKSHOP ITEM



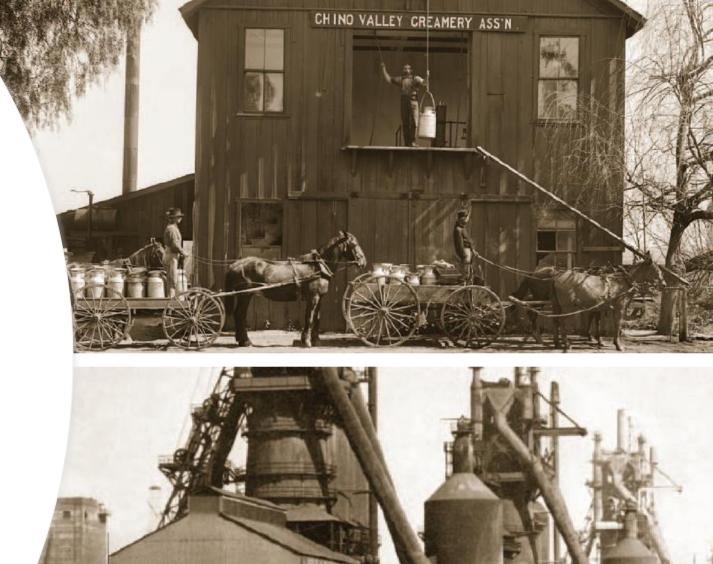
Inland Empire Utilities Agency

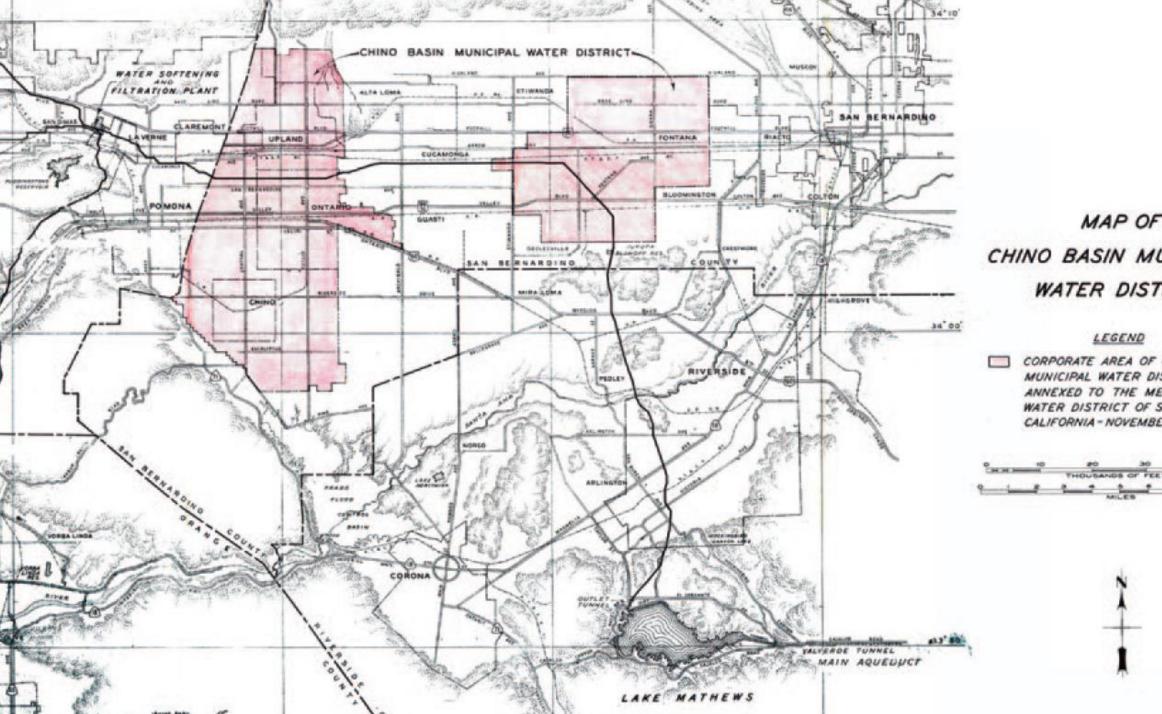
#### Historical Background on Imported Water Supplies - Cooperative Adaptive Management



# Growth in Chino Basin

- 1941: MWD's Aqueduct Completed
- Post WW II: Population boom
- **1945 1952:** Drought
- **1947:** Ontario's population was 20,000
  - 1,300 employees worked at the Hotpoint/General Electric plant
- 1952: Fontana incorporated
  - Kaiser Steel is CA leading producer of steel





MAP OF CHINO BASIN MUNICIPAL WATER DISTRICT

#### LEGEND

CORPORATE AREA OF CHINO BASIN MUNICIPAL WATER DISTRICT AS ANNEXED TO THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA - NOVEMBER 26. 1951.

3

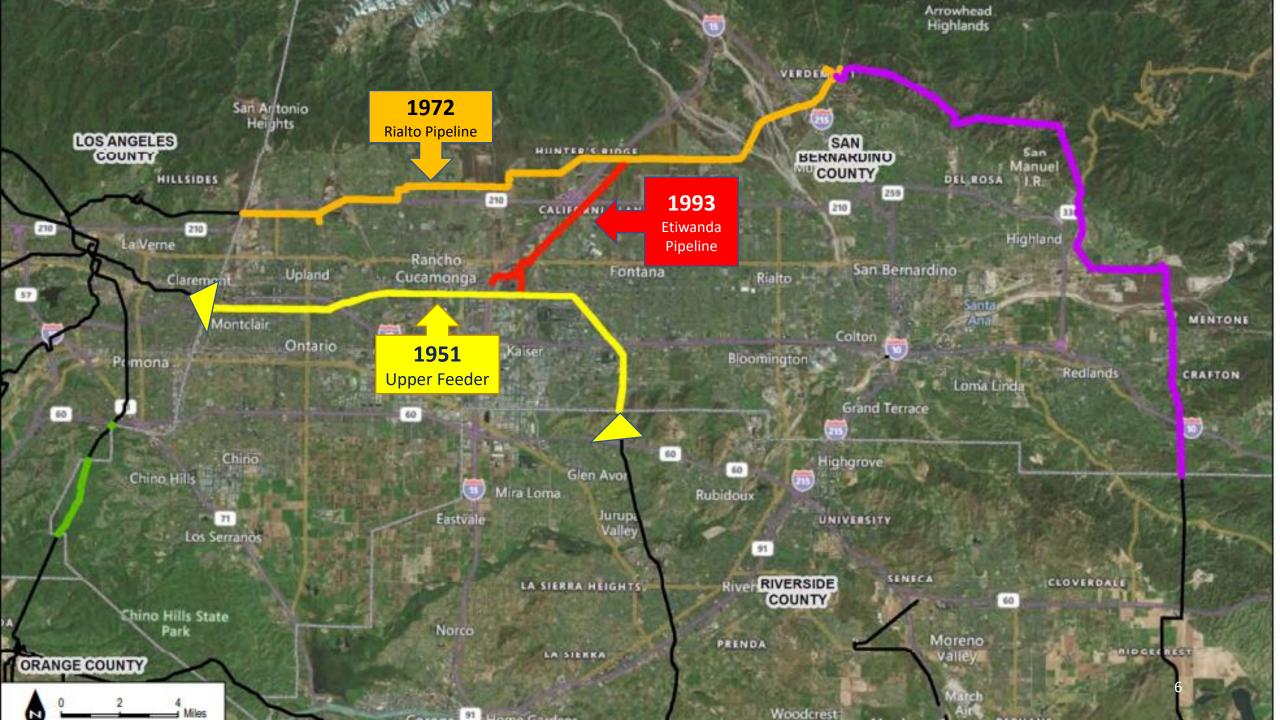


City	Incorporated	Original Population	1950 Population
Ontario	1891	722	22,872
Upland	1906	2,384	9,203
Chino	1910	1,444	5,783
Montclair	1956	13,536 (1960)	13,536 (1960)

Growth in Inland Empire Strains Local Water Supplies

#### Aerial view of agricultural lands in Etiwanda, 1952.

· Josephene a segment of the second



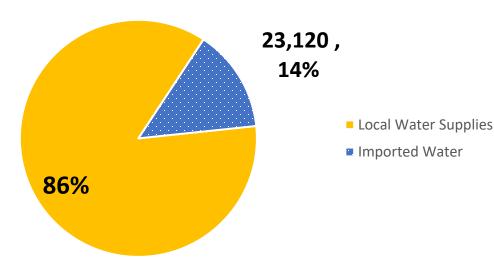
Inland Empire Utilities Agency

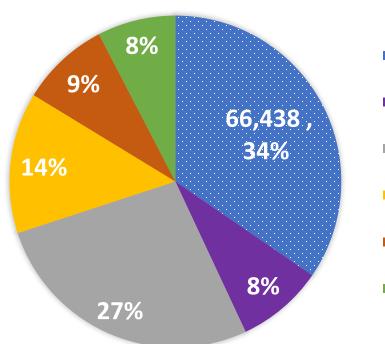
## **IEUA's Supply Portfolio over the Years**

**FY 1953-54**:

IEUA inaugural purchase of 3,135 AF of "unsoftened water" from MWD

1985 IEUA REGIONAL SUPPLIES = 164,412 AFY





**2020 IEUA REGIONAL SUPPLIES =** 

192,108 AFY

Imported Water

Recycled Water

Chino Basin Groundwater (Not Desalinated)

- Other Basins Groundwater (Not Desalinated)
- Surface Water
- Groundwater (Desalinated, Chino Desalter)

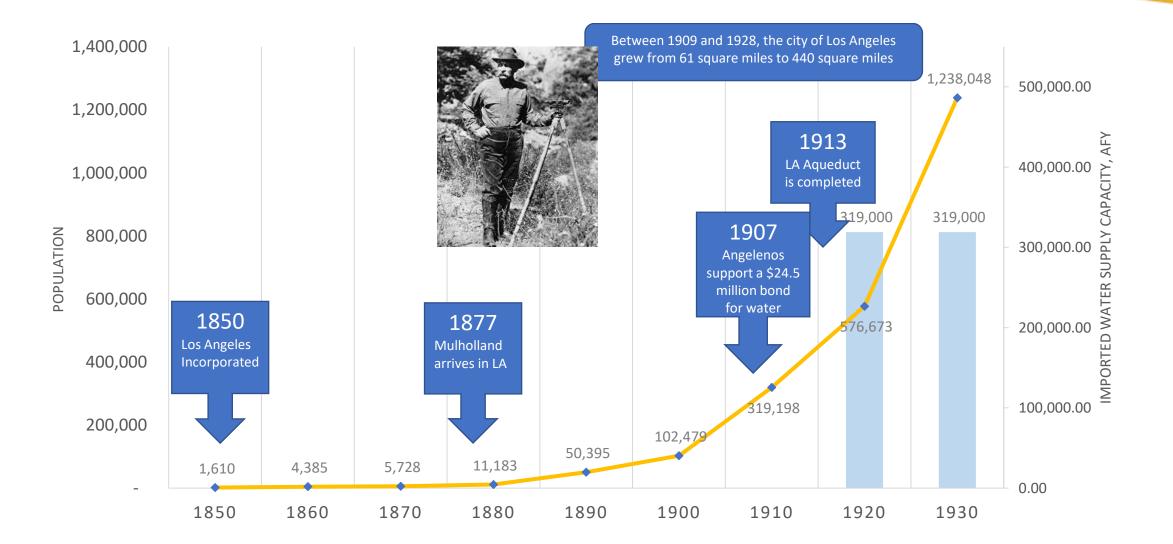


# Los Angeles

The states marks to mark

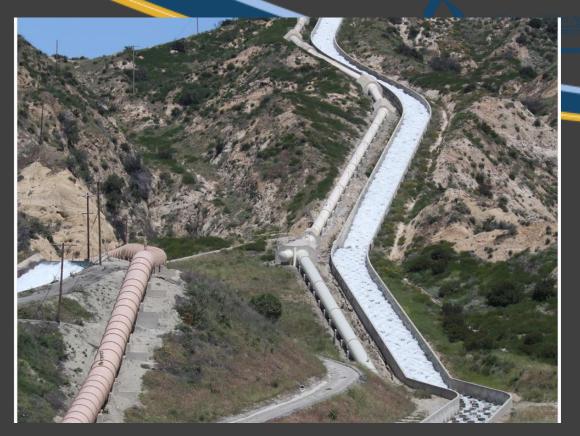
8

## Los Angeles' Exponential Growth



Inland Empire Utilities Agency

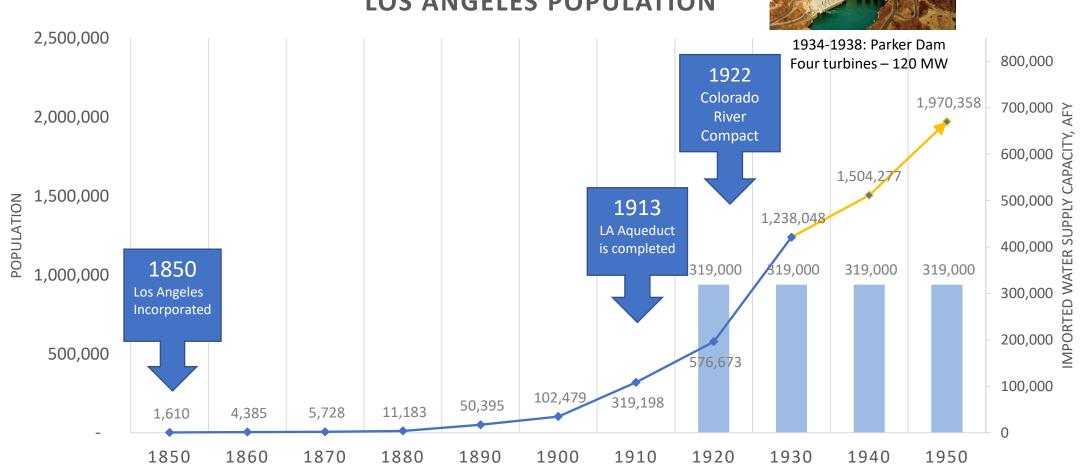




# "There it is. Take it." – W. Mulholland, 11.5.1913

### **Colorado River Opportunity**

Inland Empire Utilities Agency A MUNICIPAL WATER DISTRICT



LOS ANGELES POPULATION





#### **MWD's Original Cities**

- Anaheim
- Beverly Hills
- Burbank
- Compton (1931)
- Fullerton (1931)
- Glendale
- Long Beach (1931)
- Los Angeles
- Pasadena
- San Marino
- Santa Ana
- Santa Monica
- Torrance (1931)
- San Fernando (1971)
- Colton\*
- San Bernardino\*

\$220 million Bonds

= \$3.6 billion today

## **MWD Act of 1927 and Preferential Rights**



#### MWD Act (1927)

"Metropolitan water districts <u>may be organized</u> for the purpose of <u>developing</u>, <u>storing</u>, <u>and distributing water</u> for domestic and municipal purposes and <u>may provide</u>, <u>generate</u>, <u>and deliver electric power</u> within or without the state for the purpose of developing, storing, and distributing water for such district."

#### Sec. 135. [Preferential Right to Purchase Water]

Each member public agency shall have a preferential right to purchase from the district ... bear the same ratio to all of the water supply of the district as the total accumulation of amounts paid by such agency to the district on tax assessments and otherwise [pays for the cost of water]. Inland Empire Utilities Agency A MUNICIPAL WATER DISTRICT

# **MWD Governance**

THE PAR

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#### **Governance: MWD Weighted Vote**

- current weighted vote, recalculated annually

	*Assessed Valuation	Percent	** Vote	*** Director
Member Agency	Amount Certified	of Total	Entitlement	Entitlement
Anaheim \$	52,770,105,769	1.56%	5,277	1
Beverly Hills	40,556,322,250	1.20%	4,056	1
Burbank	26,658,744,353	0.79%	2,666	1
Calleguas MWD	115,523,068,278	3.42%	11,552	1
Central Basin MWD	170,507,424,919	5.05%	17,051	2
Compton	5,532,949,076	0.16%	553	1
Eastern MWD	94,915,554,888	2.81%	9,492	1
Foothill MWD	21,311,191,856	0.63%	2,131	1
Fullerton	22,553,392,934	0.67%	2,255	1
Glendale	36,217,648,695	1.07%	3,622	1
Inland Empire Utilities Agency	134,331,566,053	3.98%	13,433	1
Las Virgenes MWD	27,408,724,004	0.81%	2,741	1
Long Beach	57,723,043,377	1.71%	5,772	1
Los Angeles	706,889,709,099	20.93%	70,689	5
MWD of Orange County	572,644,148,828	16.96%	57,264	4
Pasadena	35,217,752,165	1.04%	3,522	1
San Diego County Water Authority	583,017,440,327	17.26%	58,302	4
San Fernando	2,240,146,159	0.07%	224	1
San Marino	7,301,307,221	0.22%	730	1
Santa Ana	30,349,134,035	0.90%	3,035	1
Santa Monica	43,524,405,763	1.29%	4,352	1
Three Valleys MWD	77,532,535,944	2.30%	7,753	1
Torrance	32,366,063,475	0.96%	3,237	1
Upper San Gabriel Valley MWD	119,424,678,623	3.54%	11,942	1
West Basin MWD	236,079,679,692	6.99%	23,608	2
Western MWD	124,662,919,457	3.69%	12,466	1
TOTAL ASSESSED VALUATIONS WITHIN METROPOLITAN	3,377,259,657,240	100%	337,725	<u>38</u>

٠	Based on proportional
	property values

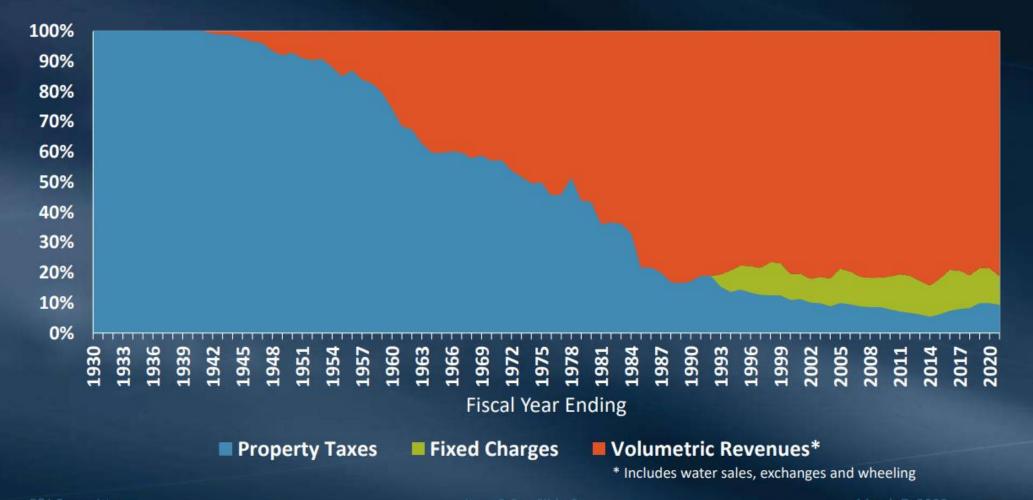
- IEUA = 3.98%, 6<sup>th</sup> largest after
  - LA (20.93%)
  - SDCWA (17.26%)
  - MWDOC (16.96%)
  - West Basin (6.99%)
  - Central Basin (5.05%)
- 38 Board Members — Chair & 4 Vice Chairs
- Additional Board Member for each add'l 5% in AV
  - Central Basin permanently has 2

Inland Empire Utilities Agency A MUNICIPAL WATER DISTRICT



## Why is MWD Governance Based on Property Taxes?

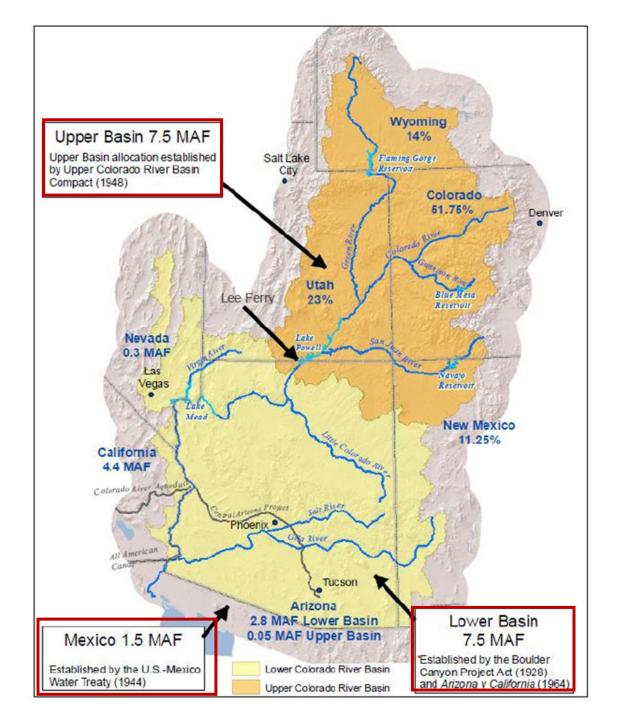
# **Historical Revenue Sources**



# **Colorado River**

Water Supply for Seven States, Ten Tribes, and Two Countries





### "Law of the River"

- 1922 Colorado River Compact divides the river basin into two areas, the Upper and Lower Divisions
- 1928 Boulder Canyon Project Act set a maximum of 4.4 million acre-feet to California
- **1931 Seven Parties Agreement** divided California's 4.4 MAFY among the 7 parties

-created a system of "priorities"

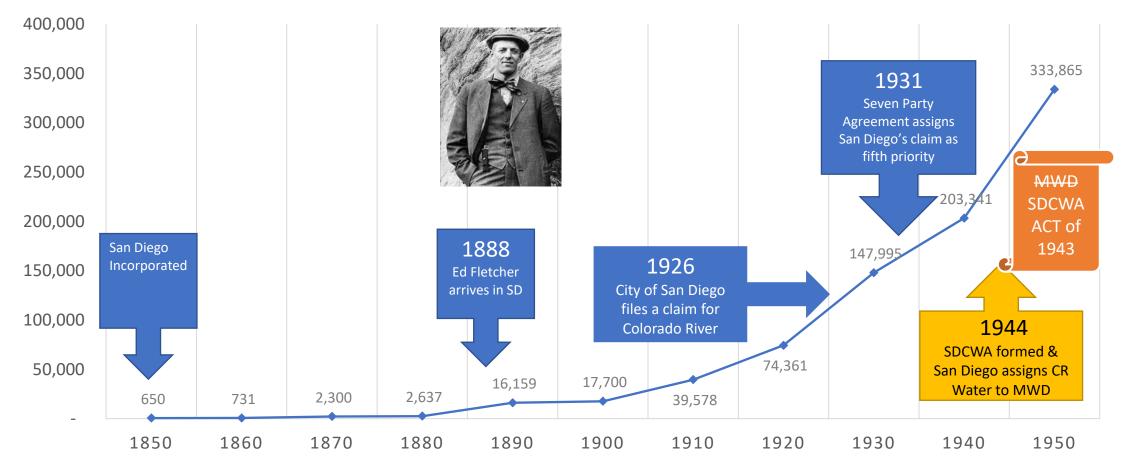
 Metropolitan and San Diego are the only two coastal signatories

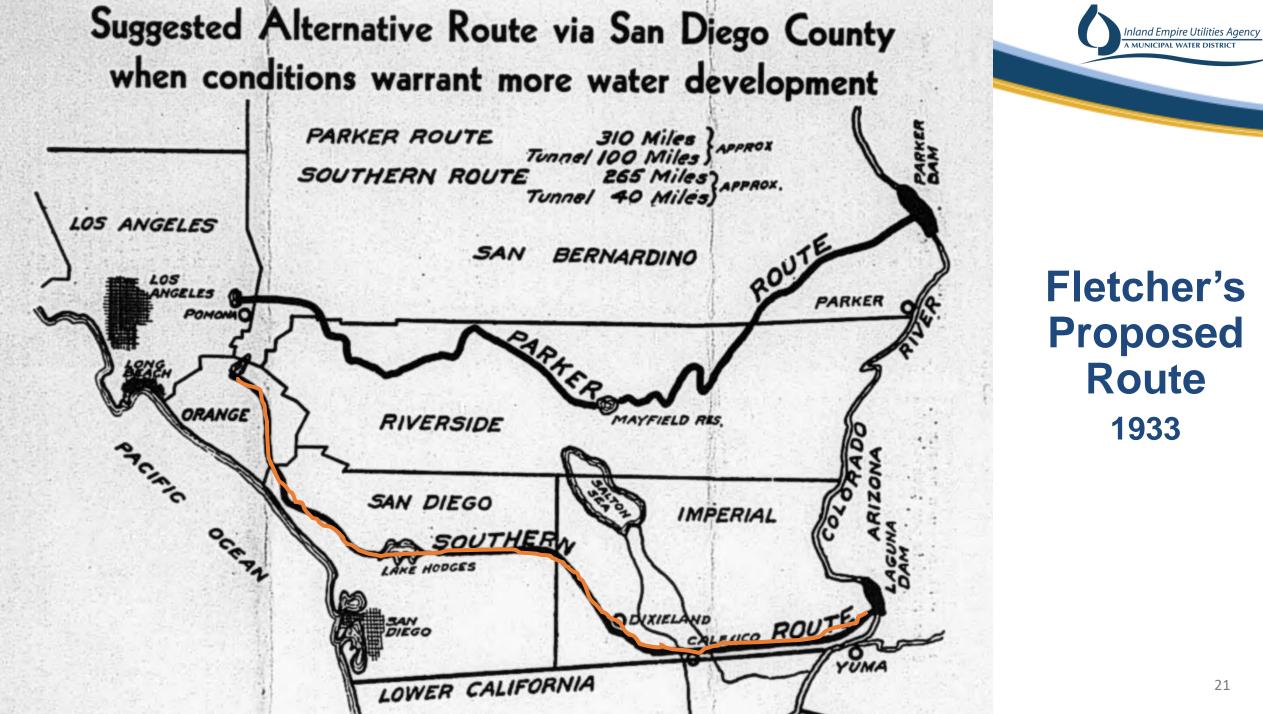
Priority Order	Description	Annual Apportionment (Acre-feet)	Annual Present Perfected Rights (PPRs) (Acre-feet)
1	Palo Verde Irrigation District – for use exclusively on a	3,850,000	219,790
	gross area of 104,500 acres of land within and adjoining the district		(or consumptive use for 33,604 acres)
2	Yuma Project (Reservation District) – for use on California Division, not exceeding 25,000 acres of land		<b>38,270</b> (or consumptive use for 6,294 acres)
3a	Imperial Irrigation District - for use on lands served by All-American Canal in Imperial and Coachella Valleys		<b>2,600,000</b> (or consumptive use for 424,145 acres) - (IID only)
3b	Palo Verde Irrigation District – for use exclusively on an additional 16,000 acres of mesa lands		California's
4	Metropolitan Water District and/or City of Los Angeles and/or others – for use by themselves and/or others on Southern California coastal plain	550,000	Entitlement of 4.4 MAFY
	Subtotal	4,400,000	
5a	Metropolitan Water District and/or City of Los Angeles and/or others on coastal plain	550,000	
5b	City and County of San Diego	112,000	Surplus
6a	Imperial Irrigation District - lands served by the All- American Canal (AAC) in Imperial and Coachella Valleys	300,000	
6b	Palo Verde Irrigation District – for exclusive use on 16,000 acres of mesa lands		
	Total	5,362,000	
7	California Agricultural Use - Colorado River Basin lands in California	All remaining available water	

### San Diego's Early Efforts to Import Water



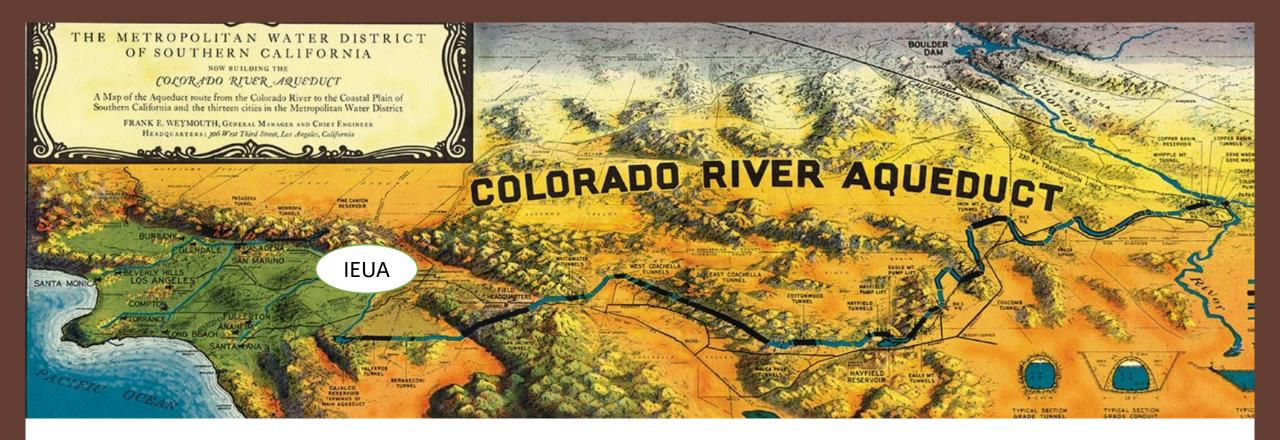
**SD POPULATION** 





**Fletcher's** Proposed Route

21



# 1933-1939 CRA Construction

# **Districts join MWD**

- San Diego County Water Authority (1946)
- West Basin MWD (1948)
- **IEUA (1950)** •
- Three Valleys MWD (1950)
- Eastern MWD (1951) ٠
- MWD of Orange County (1951)
- Foothill MWD (1953)
- Central Basin MWD (1954)
- Western MWD (1954)
- Calleguas MWD (1960)
- Las Virgenes MWD (1960)
- Upper San Gabriel Valley MWD (1963)

#### THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA 306 WEST THIRD STREET LOS ANGELES 13. CALIFORNIA

October 10, 1950

JULIAN HINDS GENERAL MANAGER AND CHIEF ENGINEER

> Board of Directors The Metropolitan Water District of Southern California Building

FILED by order of the Board of Directors of The Metropolitan Water District of Southern California at its meeting held Oar, 20, 1950

ANAHEIM BEVERLY HILLS BURBANK

COMPTON FULLERTO GLENDALE ONG BEAC LOS ANGELES PASADENA

SAN MARINO SANTA ANA TORRANCE WATER DISTRICT

SAN DIEGO COUNT

WEST BASIN MUNICIPA

Gentlemen:

The following report of District operations for the month of September 1950 is respectfully submitted:

Annexation Proceedings

The Pomona Valley Municipal Water District voted September 12, 1950 in favor of annexation to Metropolitan with a total vote of 8,035 to 99.

The vote on June 6, 1950 on formation of the Chino Valley Municipal Water District was 11,921 for and 1,866 against. The five directors have been nominated without opposition and their election will be held November 7 at the time of the general election.

In the San Jacinto area the vote in favor of organizing the Eastern Municipal Water District at the election held on September 26 was 4,107 to 80.

Petitions are being circulated as a preliminary to voting in December on the formation of the Orange County Municipal Water District.

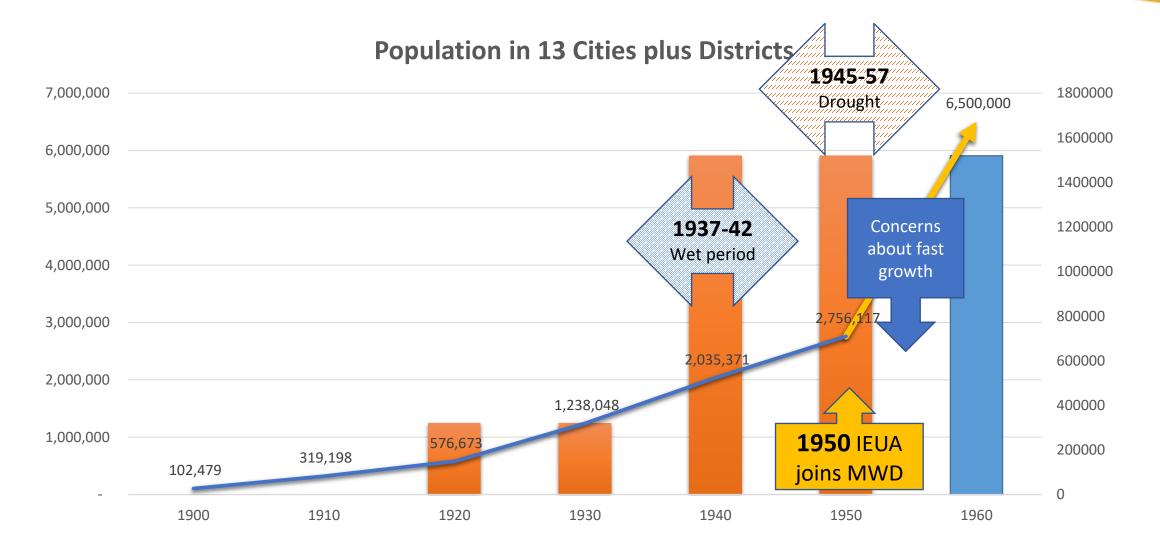
The City of Escondido on August 22, 1950 voted 1,078 to 264 in favor of annexation to San Diego County Water Authority and Metropolitan Water District.

Construction

There was no construction work in progress in September.

Field Surveys and Investigations. - Field surveys were continued with two 4-man parties on the proposed middle

## **Growth within MWD Member Cities**



Inland Empire Utilities Agency

A MUNICIPAL WATER DISTRICT



#### ASSESSED VALUATIONS THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

1.6

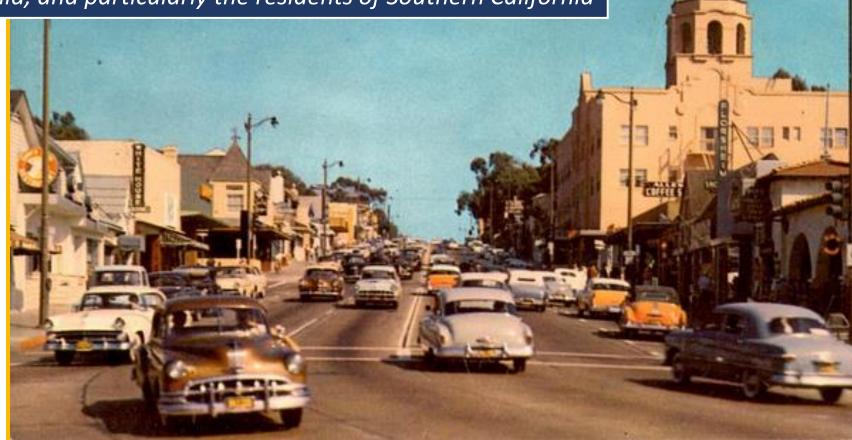
* •				
	Assessed Valuation	Per Cent	Vote	
Anaheim Beverly Hills Burbank Chino Basin	28,156,630 130,436,950 174,156,770	0.46804 2.16823 2.89497	3 13 17	
Municipal Water District	104,649,700	1.73957	10	
Coastal Municipal Water District Compton Eastern Municipal	91,368,600 49,830,690	1.51880 0.82833	9 5	
Water District Foothill Municipal	20,833,980	0.34632	2	
Water District Fullerton Glendale Long Beach	74,854,430 44,791,580 153,783,000 353,102,210	1.24429 0.74456 2.55630 5.86955	7 4 15	
Los Angeles	2,919,312,470	48.52716	292	
Municipal Water District Pasadena Pomona Valley	282,720,070 174,222,760	4.69960 2.89607	28 17	
Municipal Water District San Diego	95,739,190	1.59145	10	
County Water Authority San Marino Santa Ana Santa Monica Torrance West Basin	622,927,240 34,446,200 67,818,450 137,986,210 67,712,100	10.35480 0.57259 1.12733 2.29372 1.12556	62 3 14 7	
Municipal Water District	386,984,380	6.43276	39	
Total	\$6,015,833,6 <u>1</u> 0	100.00000	599	

Weighted Vote and Representation on MWD Board -1952

Inland Empire Utilities Agency

# Laguna Declaration (1952)

...The establishment of overlapping and paralleling government authorities and water distribution facilities to service Southern California areas would place a wasteful and unnecessary financial burden upon all of the people of California, and particularly the residents of Southern California



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"The District is prepared, with its existing governmental powers and its present and projected distribution facilities, to provide its service area with adequate supplies of water to meet expanding and increasing needs in the years ahead ."

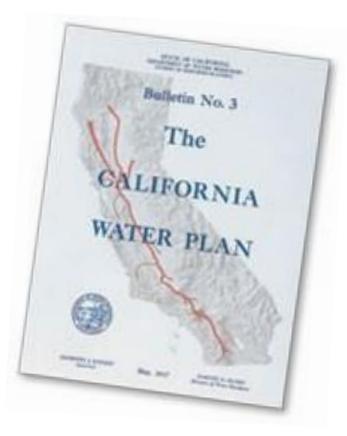
# **California Aqueduct**

#### State Water Project Contractors

**Table A Allocation** 

# **Defining "The Gap"**

- In 1945, the California Legislature authorized an investigation of statewide water resources.
  - The work led to the publication of three important bulletins:
- Bulletin 1 (1951), "Water Resources of California," a collection of data on precipitation, unimpaired stream flows, flood flows and frequency, and water quality statewide; Supplies
- Bulletin 2 (1955), "Water Utilization and Requirements of California," estimates of water uses and forecasts of "ultimate" water needs; Demands, and
- Bulletin 3 (1957), "The California Water Plan," plans for full practical development of California's water resources, both by local projects and a major State project to meet the State's ultimate needs. "The Gap"



nland Empire Utilities Agency

A MUNICIPAL WATER DISTRI

#### **State Water Project Timeline**

Inland Empire Utilities Agency

#### 1960

California voters approve the Burns-Porter Act to finance construction of the State Water Project

#### 1965

Construction begins on Edmonston Pumping Plant, largest SWP pumping facility, to lift water 2,000 feet over the Tehachapi Mountains

#### 1967

Oroville Dam completed. At 770 ft high, it is tallest earthfill dam in the nation. Its reservoir has a capacity of 3.5 MAF 1971

Governor Ronald Reagan starts the first pump at Edmonston Pumping Plant, celebrating the first water deliveries to Southern California

#### 1982

Voters reject Proposition 9 to build a Peripheral Canal along the eastern edge of the Delta

# State Water Contractors By Region



Region	SWP Contractor	Max Table A Delivery Amounts (acre-feet) (2020)	% Of Total Max Table A	Max Table A Delivery Amounts (acre-feet) (2006)			
The Constant of the		Fe	ather River				
Feather	Butte	27,500	0.7%	1,200			
River	Yuba City	9,600	0.2%	9,600			
(1999 Barrier)	Plumas	2,700	0.1%	324			
and the second second second	North Bay						
North Bay	Napa	29,025	0.7%	22,550			
Constant Second	Solano	47,756	1.1%	47,306			
			South Bay				
South Bay	Alameda Zone-7	80,619	1.9%	80,619			
south say	Alameda County	42,000	1.0%	42,000			
	Santa Clara	100,000	2.4%	100,000			
		San J	loaquin Valley				
San	Dudley Ridge	41,350	1.0%	57,343			
	Empire	3,000	0.1%	3,000			
Joaquin	Kern	982,730	23.6%	998,730			
Valley	Kings	9,305	0.2%	9,305			
	Oak Flat	5,700	0.1%	5,700			
	Tulare Lake	87,471	2.1%	95,922			
Central	Central Coastal						
Central	San Luis Obispo	25,000	0.6%	25,000			
Coastal	Santa Barbara	45,486	1.1%	45,486			
		Sout	hern California	97			
	Antelope Valley-East Kern	144,844	3.5%	141,400			
	Castaic Lake	95,200	2.3%	95,200			
	Coachella Valley	138,350	3.3%	121,100			
	Crestline-Lake Arrowhead	5,800	0.1%	5,800			
	Desert	55,750	1.3%	50,000			
Southern	Littlerock Creek	2,300	0.1%	2,300			
California	Metropolitan	1,911,500	45.8%	1,911,500			
	Mojave	89,800	2.2%	75,800			
	Palmdale	21,300	0.5%	21,300			
	San Bernardino Valley	102,600	2.5%	102,600			
	San Gabriel Valley	28,800	0.7%	28,800			
	San Gorgonio Pass	17,300	0.4%	7,000			
	Ventura	20,000	0.5%	20,000			
	TOTAL TABLE A	4,172,786	100%	4,126,885			

# The Original Vision 1950s

Klamath River
 Trinity River
 Mad River
 Eel River

Shasta Reservoir
 Oroville Reservoir

Folsom Reservoir 2007

Large North-of-Delta storage

Deliveries across Delta when dry

WP&S Committee

# Environmental Priorities 1970s

Wild & Scenic Rivers Act (Fed & State)
 SWP plan loses key North Coast storage

Shasta Reservoir

Oroville Reservoir

ath Killer

**sive** 

WP&S Committee

## Integrated Operations 1990s

Oroville

San Luis

Semitropic
 North Ker

0

💿 Kern De

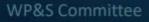
Develop diverse portfolio, including GW banking & off-stream storage

Integrate surface reservoir and groundwater recharge operations

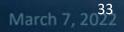
MW	D Service Area	Projects
. 0	Recycling	73
	Groundwater Recovery	23
*	Seawater Desalination	5
•	Groundwater Banking Conservation	8

San Bernardino O Diamond Valley Lake O Desert/Coachella

ope Valley-East Kern



tem 9-3 Slide 5





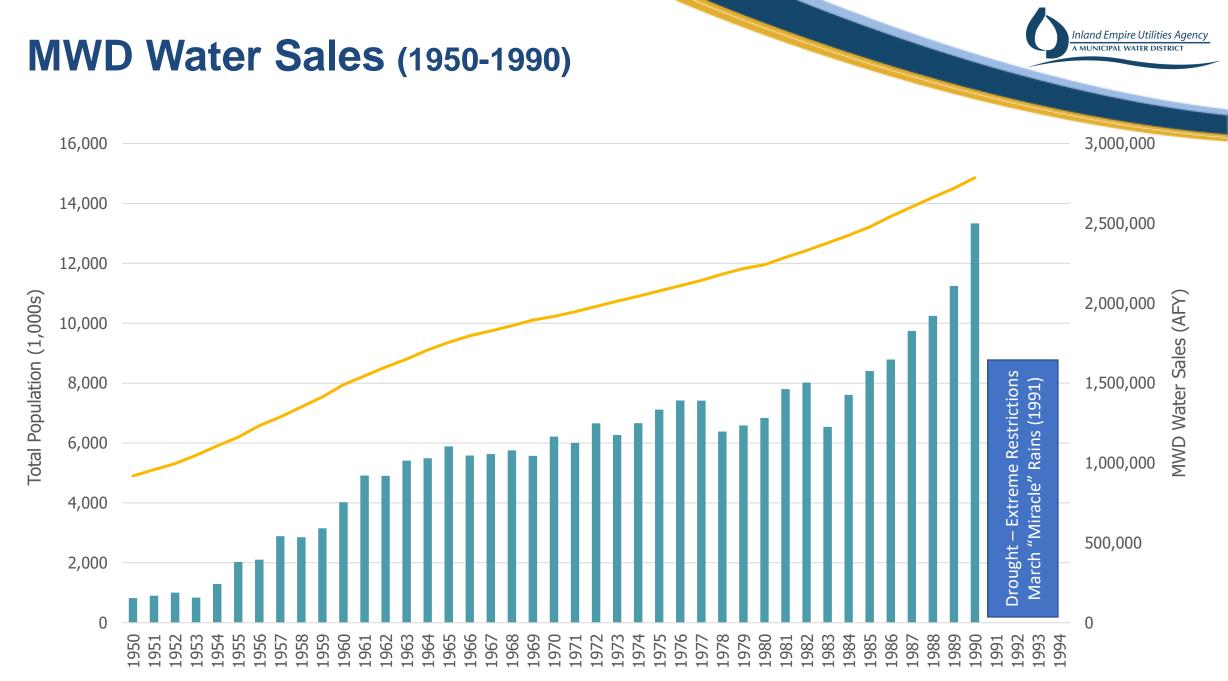
Beginning of Integrated Regional Planning

34

ANA

Quantification Settlement Agreement

> Supply Diversification Era Begins

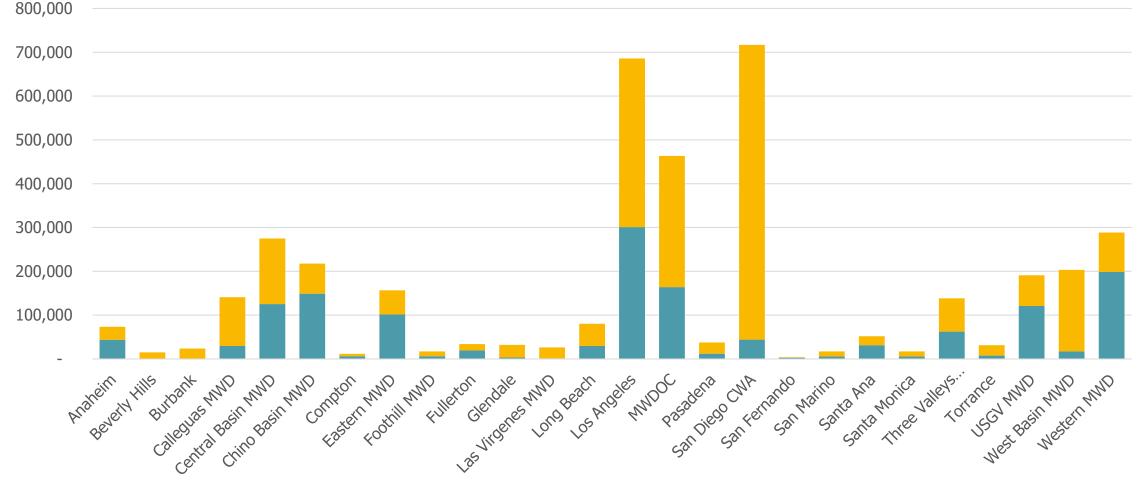


MWD Water Sales (AFY) — Total Population Served (1,000s)

## Local and MWD Supplies in FY 1989-90

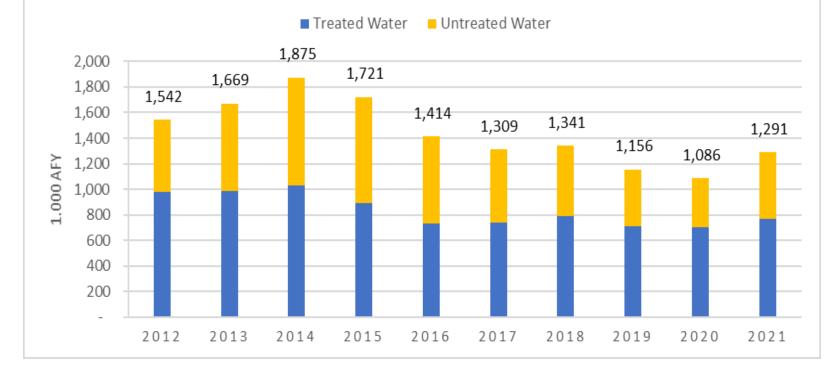
Inland Empire Utilities Agency A MUNICIPAL WATER DISTRICT

Local Supplies MWD Deliveries



## Laguna Declaration Redefined (1996)

... The establishment of overlapping and paralleling government authorities and water distribution facilities to service Southern California areas would place a wasteful and unnecessary financial burden upon all of the people of California, and particularly the residents of Southern California



#### **MWD WATER SALES**

Southern California's Integrated Water Resources Plan Volume 1: The Long-Term Resources Plan Report Number 1107 March 1996 ROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Inland Empire Utilities Agency

Inland Empire Utilities Agency

Quantification Settlement Agreement

200,000 AF/Year Voluntary Transfer, IID to SDCWA ~80,000 AFY Conserved Water from Canal Linings Dispute over MWD Rate to Transport QSA Supplies



The Quantification Settlement Agreement signing on October 16, 2003

Priority Order Description		Annual Apportionment (Acre-feet)	Annual Present Perfected Rights (PPRs) (Acre-feet)		
1	Palo Verde Irrigation District – for use exclusively on a	3,850,000	219,790		
	gross area of 104,500 acres of land within and adjoining the district		(or consumptive use for 33,604 acres)		
2	Yuma Project (Reservation District) – for use on California Division, not exceeding 25,000 acres of land		<b>38,270</b> (or consumptive use for 6,294 acres)		
3a	Imperial Irrigation District - for use on lands served by All-American Canal in Imperial and Coachella Valleys	200 TAFY to SDCWA QSA 2003	<b>2,600,000</b> (or consumptive use for 424,145 acres) - (IID only)		
3b	Palo Verde Irrigation District – for use exclusively on an additional 16,000 acres of mesa lands				
4	Metropolitan Water District and/or City of Los Angeles and/or others – for use by themselves and/or others on Southern California coastal plain	550,000			
	Subtotal	4,400,000			
5a	Metropolitan Water District and/or City of Los Angeles and/or others on coastal plain	550,000			
5b	City and County of San Diego	112,000			
6a	Imperial Irrigation District - lands served by the All- American Canal (AAC) in Imperial and Coachella Valleys	300,000			
6b	Palo Verde Irrigation District – for exclusive use on 16,000 acres of mesa lands				
	Total	5,362,000			
7	California Agricultural Use - Colorado River Basin lands in California	All remaining available water			

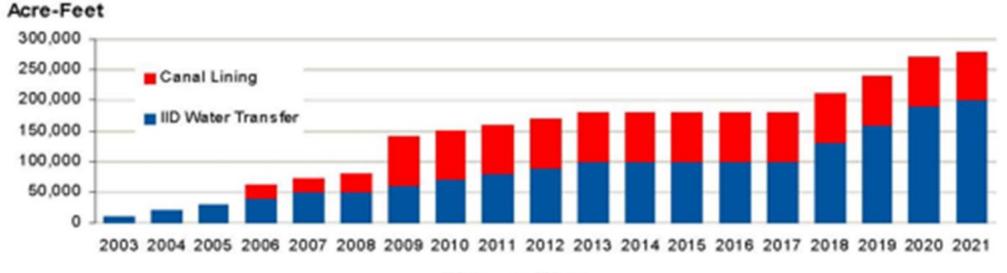
#### **Quantification Settlement Agreement** (2003) Transfer of Colorado River water to SDCWA

- Reduces demands on MWD



Lining the Coachella Canal

#### IID and Canal Lining Deliveries 2003-2021



Calendar Year

### **SDCWA Imported Water Demand Profile**



600,000 180,000 140,000 500,000 179,000 180,000 152,000 187,000 400,000 178,000 143,000 208,000 300,000 179,000 238,000 399,000 391,000 283,000 270,000 200,000 21,000 312,000 295,000 68,000 265,000 258,000 m 178,000 66,000 100,000 N 82,000 T 5<mark>4.00</mark>0 40.000 0 2009 2010 2011 2012 2013 2017 2018 2019 2020 2021 2014 2015 2016

MWD QSA

## **Proportionality of Weighted Vote Today**

	Los Angeles	MWDOC	San Diego CWA	IEUA
Population	4 million (21%)	3.2 million (17%)	3.3 million (17%)	875,000 (4.6%)
Weighted Vote	20.93%	16.96%	17.26%	3.98%
No. of MWD Board Delegates (total = 38)	5	4	4	1
2003 MWD AF Water Purchases* (10-yr avg)	11.64%	13.45%	25.35%	2.82%
2022 MWD AF Water Purchases* (10-yr avg)	18.15%	14.05%	16.30%	3.93%
Preferential Rights*	17.93%	12.31%	26.49%	2.51%

\* Includes water sales, exchanges and wheeling

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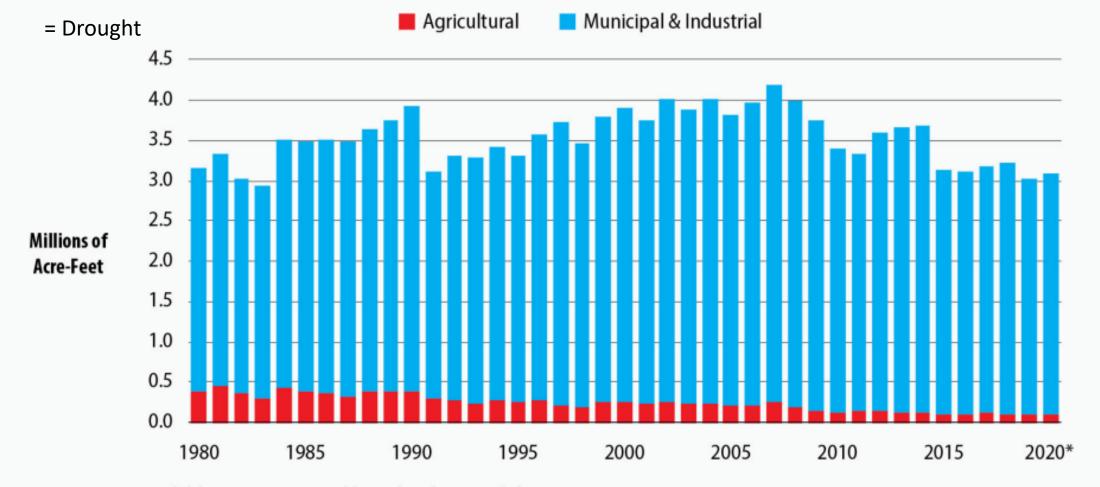


# **Current Era & Look Ahead**

## **Total Demands in MWD Service Area**

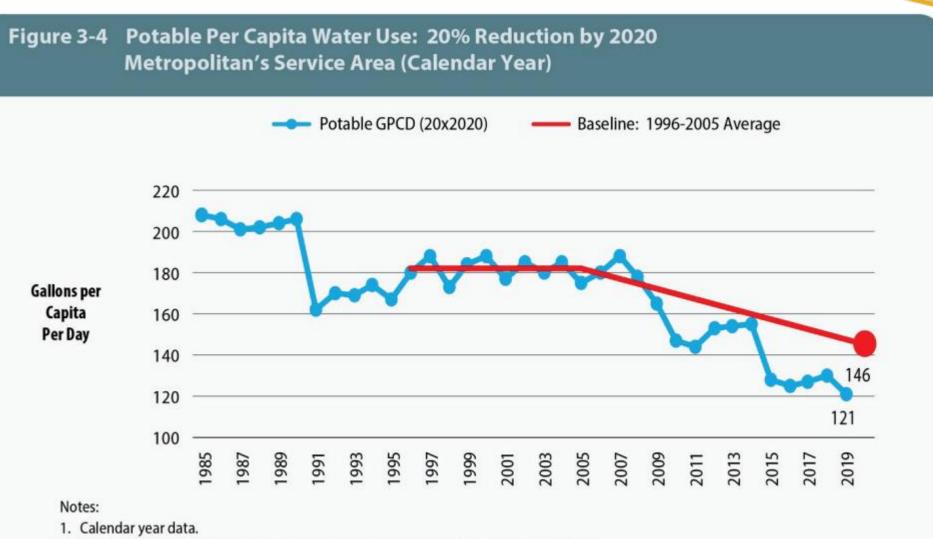






\*Data not available. 2020 estimated based on historical data.

### Per Capita Use Cut Nearly in Half

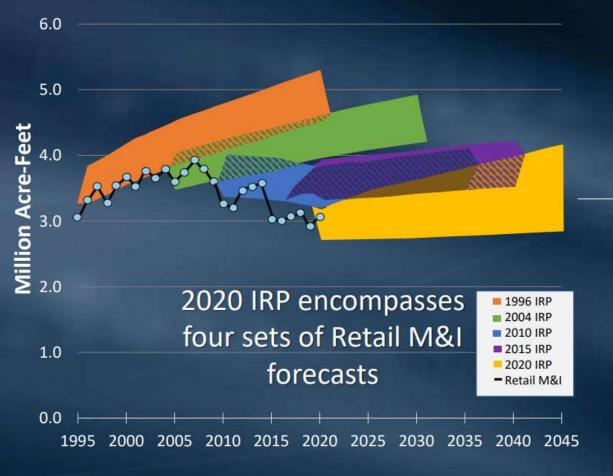


- 2. 2019 GPCD based on best available data as of January 2021 and is subject to change.
- 3. Baseline per capita water use based on 1996-2005 average (182 GPCD).
- 4. Target GPCD for 2020 based on 20% reduction from baseline (146 GPCD).

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## **Evolution of the IRP**



- Scenario planning takes a step forward from prior IRPs
- Reflects a range of hydrologic conditions and incorporates a broader range of outcomes for underlying uncertainties
- Increases preparedness, improves resiliency, and manages vulnerabilities

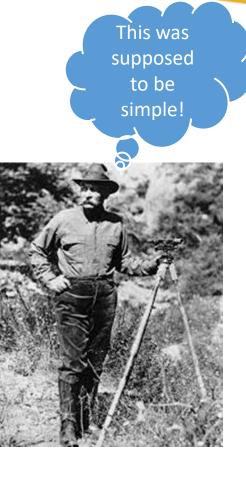
Integrated Resources Plan Special Committee

Item 7-1 Slide !

## **Complexity of MWD's Supplies Today**

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Source	Core Supply				
	Colorado River Basic Apportionment				
	Higher Priority Water Use Adjustment to Colorado River Basic Apportionment				
	IID/MWD Conservation Program				
Colorado River	PVID Fallowing Program				
	Bard Water District Seasonal Fallowing Program				
	Lower Colorado Water Supply Project				
	Exchange with SDCWA				
	Exchange with the United States				
	MWD SWP Table A				
State Water Project	SWP Article 21 Interruptible Supplies				
	SWP Port Hueneme Lease of Ventura Table A				
	Desert Water Agency/Coachella Valley Water District/Metropolitan Water Exchange and Advance Delivery Programs				
	San Gabriel Valley Municipal Water District Program				





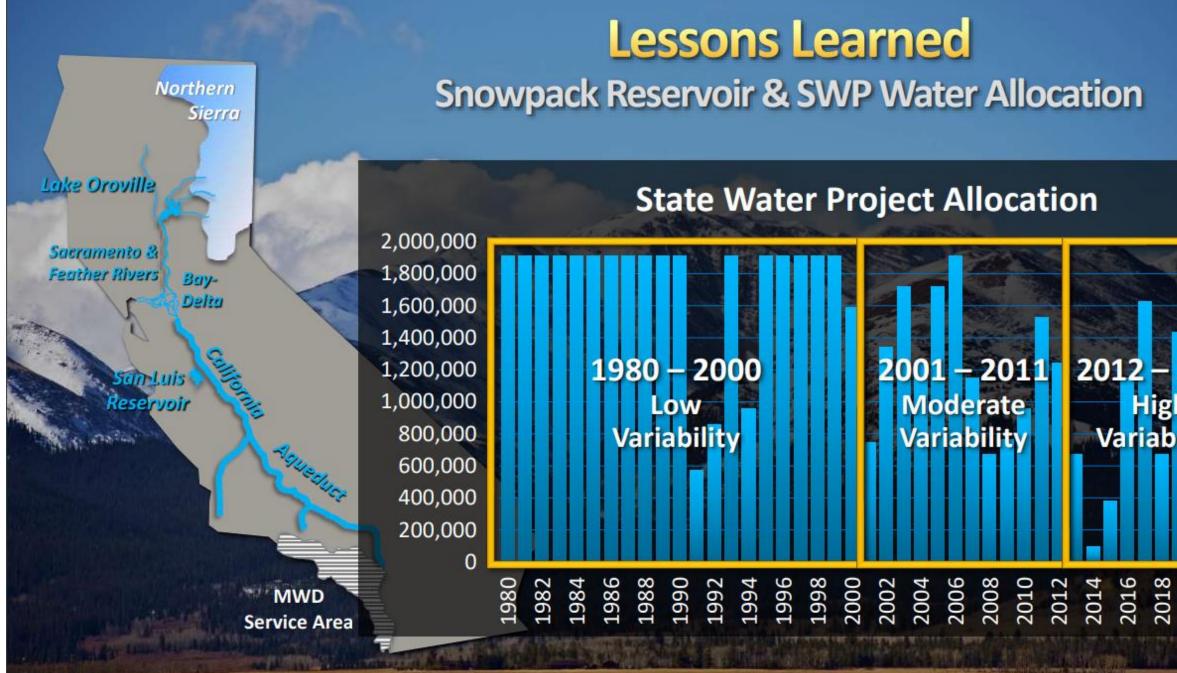
#### Law of the River allocates 16.5 MAFY, but Annual Flows ~13 MAFY



## **Colorado River Drought Contingency Plan**

- MWD signed March 2019
- Needed as a stop-gap until a new set of operating guidelines, due by 2026, are written





Item 9-3 Slide 7

March 7, 2022

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2012 - <mark>2</mark>022

High

Variability

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### Table A.3-1Historical Record of MWD Central Valley Water Transfers

		<b>rchases</b> per year)	Participants		
Program	Total	Metropolitan	Sellers	Buyers	
1991 Governor's Water Bank	820,000	215,000	351	13	
1992 Governor's Water Bank	193,246	10,000	18	16	
1994 Governor's Water Bank	220,000	100	6	15	
2001 Dry-Year Purchase Program	138,806	80,000	9	8	
2003 MWD Water Transfer Program	146,230 <sup>1</sup>	126,230	11	1	
2005 SWC Water Transfer Program	127,275 <sup>2</sup>	0	3	4	
2008 SWC Water Transfer Program	39,152	26,621	4	8	
2009 Governor's Water Bank	47,505	36,900	10	9	
2010 SWC Water Transfer Program	98,959	88,159	11	4	
2013 Multi-Year Water Pool Demo	92,232	30,000	4	9	
2015 Multi-Year Water Pool Demo	3,000	1,374	1	14	
2015 SWC Water Transfer Program	19,686	12,358	5	9	
2016 Multi-Year Water Program	15,000	6,871	2	9	

Diminishing Role of Central Valley Transfers Source: MWD's 2020

UWMP

<sup>1</sup> Quantities denote options Metropolitan secured, of which 20,000 AF were not exercised due to improved hydrologic conditions.

<sup>2</sup> Quantities denote options Metropolitan secured, but were not exercised due to improved hydrologic conditions.

#### THIS JUST IN ... HISTORICALLY DRY CONDITIONS IMPACT PLANNED STATE WATER PROJECT DELIVERIES; ALLOCATION REDUCED TO 5%

🛓 Maven 🗀 Breaking News 🕓 March 18, 2022 🔎 0 💿 314

#### State will continue to expand drought actions heading into a third dry year



From the Department of Water Resources:

Today, the Department of Water Resources (DWR) announced it must reduce the State Water Project allocation to 5 percent of requested supplies for 2022. DWR previously set the allocation at 15 percent but a historically dry January and February, with no significant storms forecast for March, requires a reduction in the allocation to conserve available water supply.

In addition to the 5 percent allocation, DWR will also provide any unmet critical health and safety needs of the 29 water agencies that contract to receive State Water Project supplies.

"We are experiencing climate change whiplash in real time with extreme swings between wet and dry conditions. That means adjusting quickly based on the data and the science," said DWR Director Karla Nemeth. "While we had hoped for more rain and snow, DWR has been preparing for a third consecutive year of drought since October. We are continuing with a series of actions to balance the needs of endangered species, water supply conservation, and water deliveries for millions of Californians."



#### The Metropolitan Water District of Southern California NEWS RELEASE

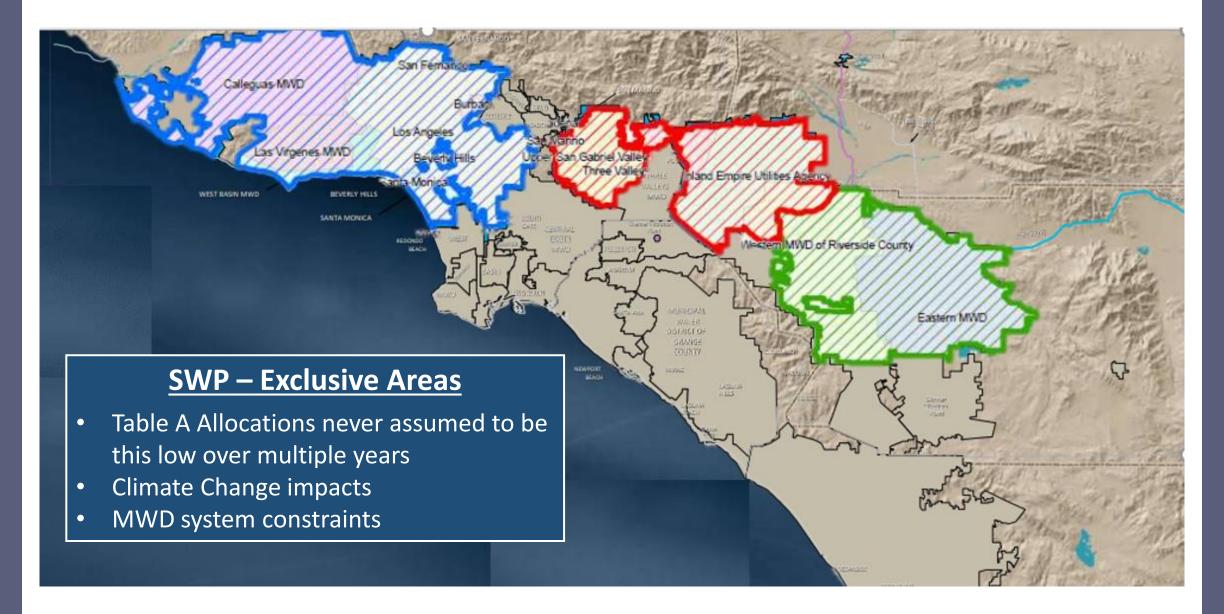
P. O. Box 54153, Los Angeles, California 90054-0153 • (213) 217-6485 • www.mwdh2o.com

"California is seeing drought conditions like we've never seen before – simply put, nature has changed faster than anything we expected. Today's announcement by the state is another stark indicator of our increasingly stressed water supply and the gravity of the situation we are facing. On average, 30 percent of the water we use in Southern California comes from the State Water Project. But through three years of low allocations, we're getting a fraction of what we used to receive – lower deliveries than any time in history.

"Unfortunately, so far the level of conservation we're seeing from the public is not matching the severity of these conditions. We all need to take this drought more seriously and significantly step up our water-saving efforts to help preserve our dropping storage levels and ensure we have the water we need into the summer and fall. Some communities are particularly reliant on SWP supplies, including parts of Ventura, Los Angeles and San Bernardino counties. The residents and businesses in these communities especially need to reduce their water use immediately.

"While Metropolitan and its member agencies are making new supply investments that will help in future droughts, we need greater conservation now to get through these historic conditions.

"We also need the partnership of the state and the federal government to create climate resilient local water supplies and storage to adapt to the changing climate."



## **Drought Action Planning and Development DVL to Rialto**



Improvements to existing facilities and new interconnections to deliver DVL water to SWP Dependent Area

Wadsworth Pumping Plant **Bypass** 

> To Inland Feeder & Mills

Bypass

Inland Feeder-Rialto **Pipeline Intertie** 

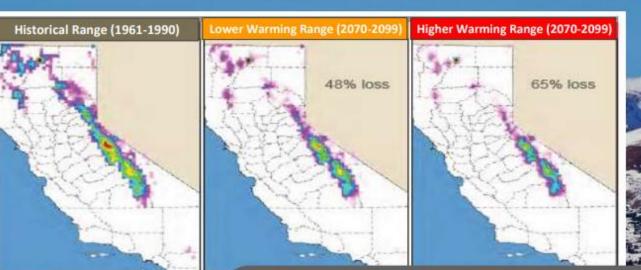
Inland Feeder-SBVMWD **Pump Station Intertie** 





# Looking Ahead

## Lessons Learned Snowpack Reservoir & SWP Water Allocation



Climate Research

- 30 to 65% of snowpack (4-9 million AF) will fall as rain by 2100
- Existing reservoirs not designed to handle faster runoff
- Lower river flows in the spring/summer for fish and water supply

Lake Oroville

Sacramento & Feather Rivers

Northern

Bay-Delta

MWD

Service Area

eservoir

Sierra

56

### **Major State Issues**



**Drought Response** 

**Delta Conveyance & Voluntary Agreements** 

WUE Regulatory Framework - 2024

### Major MWD Initiatives/Challenges...



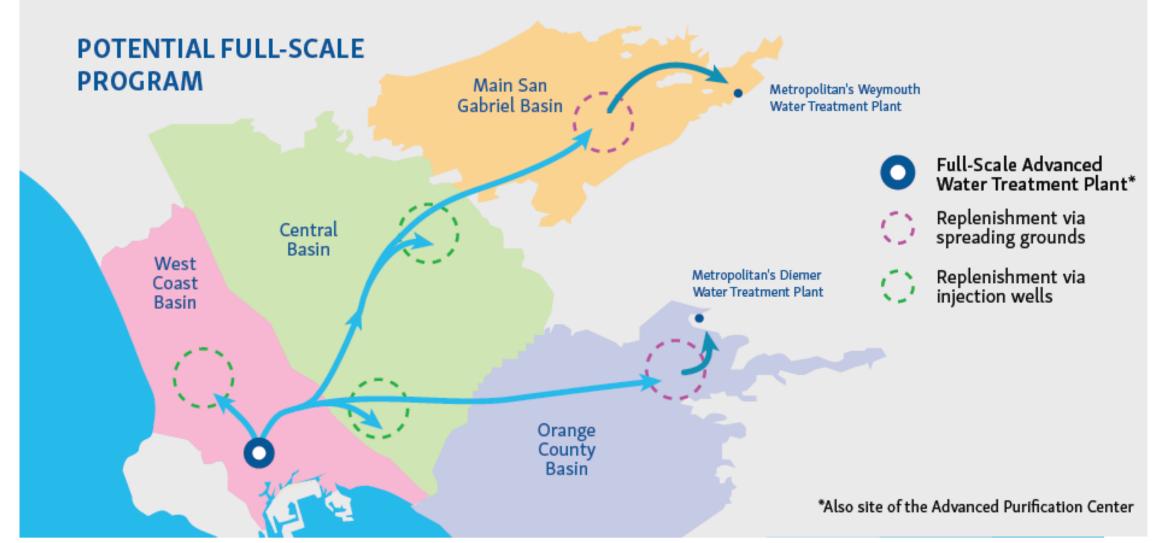


Regional Recycled Water Program 2023

Delta Conveyance/Sites Reservoir 2024

Colorado River Shortages – 20??

## **Regional Recycled Water Program**



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### Table A.3-6 Metropolitan's In-Region Groundwater Storage Programs

Program	Metropolitan Agreement Partners	Program Term	Max Storage AF	Dry-Year Yield AF/Yr
Long Beach Conjunctive Use Storage Project (Central Basin)	Long Beach	June 2002-2027	13,000	4,300
Foothill Area Groundwater Storage Program (Monkhill/ Raymond Basin)	Foothill MWD	February 2003- 2028	9,000	3,000
Orange County Groundwater Conjunctive Use Program	MWDOC OCWD	June 2003-2028	66,000+	22,000
Chino Basin Conjunctive Use Programs	IEUA TVMWD Watermaster	June 2003-2028	100,000	33,000
Live Oak Basin Conjunctive Use Project (Six Basins)	TVMWD City of La Verne	October 2002- 2027	3,000	1,000
City of Compton Conjunctive Use Project (Central Basin)	Compton	February 2005- 2030	2,289	763
Long Beach Conjunctive Use Program Expansion in Lakewood (Central Basin)	Long Beach	July 2005-2030	3,600	1,200
Upper Claremont Basin Groundwater Storage Program (Six Basins)	TVMWD	Sept. 2005- 2030	3,000	1,000
Elsinore Basin Conjunctive Use Storage Program	Western MWD Elsinore Valley MWD	May 2008- 2033	12,000	4,000
Total			211,889	70,263

#### In-Region Groundwater Storage Programs Source: MWD's 2020 UWMP

## Sites Reservoir Proposal Under Analysis

Cost Estimate (2021\$)<sup>1</sup> Total Project Cost Estimate ~ \$3.93 billion

Reservoir Release Estimate ~ \$700-900/acre-ft.

Sacramento

Sites

Feather River

Yuba River

**American River** 

Mokelumne River

61

**Stanislaus River** 

**Tuolumne River** 

Merced River

Metropolitan Share
 Storage – 311,700 AF (22.6%)

1.3 – 1.5 million acre-feet

Off-stream Sacramento River storage

Largest dedicated environmental storage

Broad statewide involvement

WP&S Committee

San Francisco

San Joaquin

### **Ten-Year Forecast**

Rates & Charges Effective January 1st	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
Tier 1 Supply Rate (\$/AF)	\$243	\$328	\$348	\$371	\$403	\$427	\$455	\$473	\$491	\$510	\$520
Tier 2 Supply Rate (\$/AF)	\$285	<mark>\$532</mark>	\$538	\$573	\$603	\$627	\$652	\$671	\$688	\$705	\$723
System Access Rate (\$/AF)*	\$389	\$373	\$416	\$429	\$442	\$470	\$502	\$533	\$564	\$598	\$635
System Power Rate (\$/AF)*	\$167	\$187	\$188	\$201	\$210	\$219	\$223	\$227	\$240	\$253	\$257
Full Service Untreated Volumetric Cost	(\$/AF)										
Tier 1	\$799	\$888	\$952	\$1,001	\$1,055	\$1,116	\$1,180	\$1,233	\$1,295	\$1,361	\$1,412
Tier 2	\$841	\$1,092	\$1,142	\$1,203	\$1,255	\$1,316	\$1,377	\$1,431	\$1,492	\$1,556	\$1,615
Treatment Surcharge (\$/AF)	\$344	\$364	\$370	\$394	\$421	\$436	\$443	\$453	\$463	\$473	\$503
Full Service Treated Volumetric Cost (\$	5/AF)										
Tier 1	\$1,143	\$1,252	\$1,322	\$1,395	\$1,476	\$1,552	\$1,623	\$1,686	\$1,758	\$1,834	\$1,915
Tier 2	\$1,185	\$1,456	\$1,512	\$1,597	\$1,676	\$1,752	\$1,820	\$1,884	\$1,955	\$2,029	\$2,118
Readiness-to-Serve Charge (\$M)	\$140	\$145	\$183	\$183	\$183	\$183	\$188	\$207	\$225	\$241	\$271
Capacity Charge (\$/cfs)	\$12,200	\$10,700	\$11,700	\$13,600	\$14,700	\$16,000	\$18,200	\$21,600	\$22,900	\$24,500	\$25,600

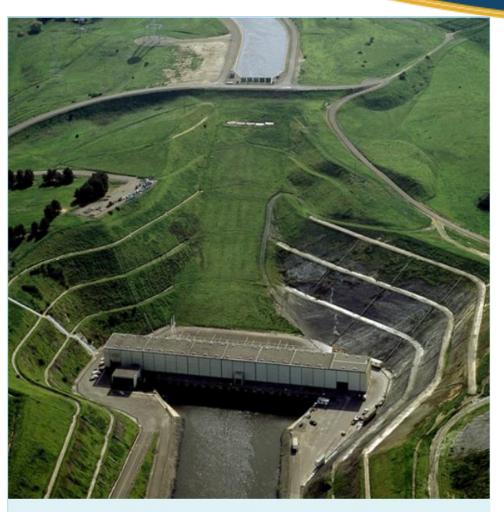
\* This rate element is currently included in the price term of the MWD-SDCWA Exchange Agreement

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## **Delta Conveyance**

#### • Modernized Delta Conveyance

- December 2020, Metropolitan's board voted unanimously to fund Metropolitan's share of the environmental planning and pre-construction costs
- A draft environmental impact report is expected in mid-2022
- Board go/no-go decision in ~2024
- MWD's share of costs = estimated to be 65% of \$15.9 billion (\$10.3 billion in \$2021)



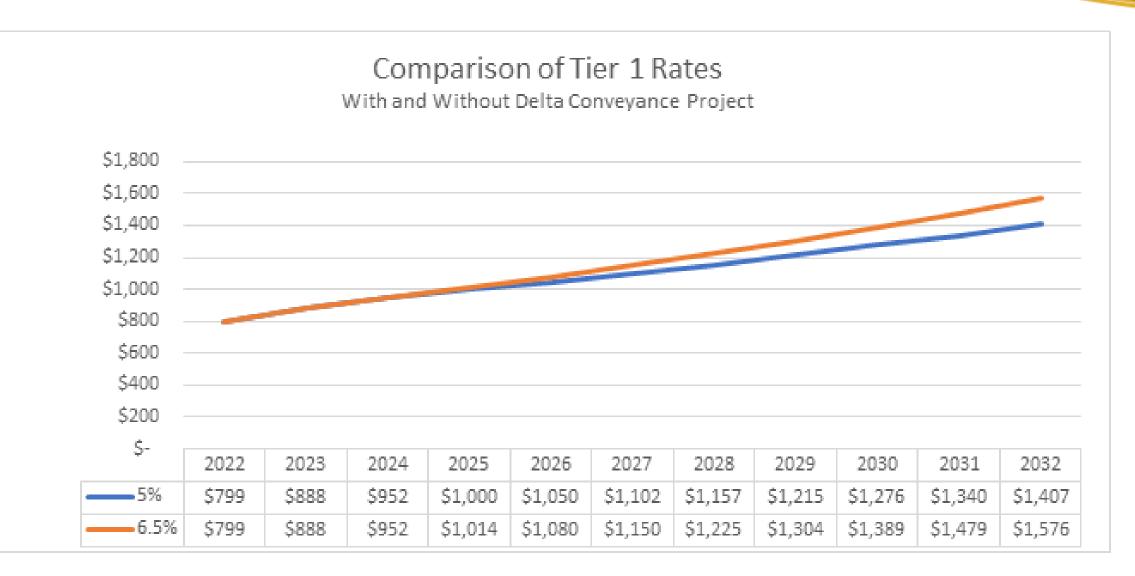
An aerial view of the Harvey O. Banks Delta Pumping Plant, the first major plant designed and constructed within the California State Water Project.

nland Empire Utilities Agency

## **MWD's Ten-Year Rate Forecast**



- Tier 1 Rates With and Without Delta Conveyance



2022 General Manager's Business Plan



- Empower the Workforce & Promote Diversity, Equity, and Inclusion
- Sustain Metropolitan's Mission by Affirming a Business Model
- Adapt to Changing Climate and Water Resources
- Protect Public Health, Regional Economy, & MWD Assets
- Partner with Interested Parties & the Communities we Serve



