

STATE OF CALIFORNIA

HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF PUBLIC HEALTH

FUNDING AGREEMENT
BETWEEN
STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH
AND

County of Monterey
(San Lucas Water District)
PROJECT NUMBER: 2701676-007P

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

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BETWEEN
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(San Lucas Water District)
PROJECT NUMBER: 2701676-007P

UNDER THE SAFE DRINKING WATER STATE REVOLVING FUND LAW OF 1997

THIS FUNDING AGREEMENT (this "Agreement") is entered into by and between the State of California Department of Public Health ("State"), and County of Monterey (San Lucas Water District), a public agency, in the County of Monterey, State of California, duly organized, existing, and acting pursuant to the laws thereof ("Supplier"), which parties do hereby agree as follows:

SECTION 1. PURPOSE OF FUNDING

This Agreement constitutes funding in the form of a loan and a grant made by State to Supplier under the provisions of California Safe Drinking Water State Revolving Fund Law of 1997, Part 12, Chapter 4.5, of Division 104 (commencing with Section 116760) of the Health and Safety Code. The purpose of the funding is to assist in financing the cost of studies, planning and other preliminary activities for a project which will enable Supplier to meet safe drinking water standards established pursuant to Part 12, Chapter 4 (commencing with Section 116270), of Division 104 of the Health and Safety Code and California Code of Regulations, Title 22, or which will address other health concerns. Such studies, planning and preliminary activities are more fully described in the scope of the project, **Attachment 1, hereto, ("Scope of the Project")**, and are collectively referred to hereinafter as, the "Project". Funding may be used only for such Eligible Project Costs as are approved by State.

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

Supplier is solely responsible for the completion of the Project; and for all persons or entities engaged in such work, including but not limited to contractors, subcontractors, suppliers, and providers of services. Review or approval of plans, specifications, bid documents, or other documents by State is solely for the purpose of proper administration of the loan funds by State and shall not be deemed to relieve or restrict Supplier's responsibility.

SECTION 2. INCORPORATION OF OTHER DOCUMENTS

This Agreement incorporates by this reference all attachments to this Agreement, Exhibit "A", "Standard Conditions"; Exhibit "B", "Security Requirements"; Exhibit "C", "Special Requirements"; Exhibit "D", "Compliance With Davis-Bacon"; Exhibit "E", "New Restrictions on Lobbying"; Supplier's "Application For Funds"; and any attachments to said documents.

Supplier accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents and exhibits thereto, and to fulfill all assurances, declarations, representations, and statements made by Supplier in its application, documents, amendments, and communications filed in support of its request for Safe Drinking Water State Revolving Fund financing.

SECTION 3. PROJECT COST

Supplier represents that the total cost of the Project is estimated to be \$440,000 (the "Project Cost") of which State agrees that \$440,000 is eligible for Safe Drinking Water State Revolving Fund financing.

SECTION 4. LOAN AMOUNT

Pursuant to the Safe Drinking Water State Revolving Fund Law of 1997, its applicable rules and regulations, and subject to the availability of funds, State will lend to Supplier, in accordance with the terms of this Agreement, an amount not to exceed \$0 (zero) (the "Loan").

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

SECTION 5. GRANT AMOUNT

Pursuant to the Safe Drinking Water State Revolving Fund Law of 1997, its applicable rules and regulations, and subject to the availability of funds, State will provide grant funding to Supplier in accordance with the terms of this Agreement an amount not to exceed \$440,000 (the "Grant", with the Loan and the Grant hereinafter collectively referred to as, the "Funding").

SECTION 6. SUPPLIER'S COST

Supplier agrees to fund any portion of the Project Cost which is in excess of the Funding. Supplier's cost for this Project is estimated to be \$0 (zero) ("Supplier's Cost"). Unless otherwise set forth in Exhibit "C" to this Agreement, "Special Requirements", such Supplier's Cost shall be expended prior to the expenditure of State loan funds unless such Supplier's Cost is funded by other State or Federal Agencies, in which case funds shall be drawn on a pro-rata basis.

SECTION 7. COMPETITIVE BIDDING

All construction contracts related in any way to the Project shall be let by competitive bid procedures which assure award of such contracts to the lowest responsible bidders. Supplier shall adhere to any applicable state or local ordinance for competitive bidding and applicable labor laws.

Supplier shall not award a construction contract until a summary of bids and identification of the selected lowest responsible bidder is submitted to and approved in writing by State. A full explanation must be provided if Supplier is proposing to award a construction contract to anyone other than the lowest responsible bidder.

SECTION 8. REQUIREMENTS FOR DISBURSEMENT

Not later than sixty (60) days following the Date of Execution (as defined in Section 15, hereof), Supplier shall satisfy all conditions precedent to the disbursement of the Funding, including Basic Conditions Precedent as set forth in Article A-3, hereof. Failure by Supplier to satisfy said conditions and requirements by this date may, at the option of State, result in cancellation of this Agreement under Article A-7, hereof.

SECTION 9. SPECIAL REQUIREMENTS

Supplier shall satisfy the special requirements set forth in Exhibit "C". Failure by Supplier to satisfy timely the special requirements may, at the option of State, result in cancellation of this Agreement under Article A-7, hereof, or declaration that Supplier is in default pursuant to Article A-26, hereof.

SECTION 10. RATE OF INTEREST

The rate of interest to be paid by Supplier on the Principal Amount of the Loan shall be zero percent (0%) per annum (the "Rate of Interest"). Interest shall begin to accrue as of the date of each Disbursement (as defined in Article A-6(b), hereof) of the Loan.

SECTION 11. LOAN REPAYMENT TERM

The Loan repayment term shall commence on the due date of the first P&I Invoice and expire on the date that is 5 (five) years after the due date of the first P&I Invoice (the "Loan Repayment Term").

SECTION 12. FISCAL SERVICES AND DEPOSIT ACCOUNT CONTROL AGREEMENT

Supplier shall enter into a fiscal services agreement with a Fiscal Agent substantially in the form of **Attachment 2** to this Agreement (the "Fiscal Services and Deposit Account Control Agreement"). A Fiscal Agent shall be retained until all amounts due to State under the terms of this Agreement have been paid in full.

Supplier shall open a separate deposit account (the "Deposit Account") with the Fiscal Agent, in which Supplier shall maintain funds sufficient to service the Loan. Funds from the Deposit Account shall be used only for payment of principal and/or interest on the Loan, or any delinquencies thereon, until the Loan is repaid in full.

Once State approves the Fiscal Services and Deposit Account Control Agreement, Supplier shall not do any of the following without first obtaining written approval by State: amend the Fiscal Services and Deposit Account Control Agreement; close the Deposit Account; or retain a new Fiscal Agent.

State shall have no obligation to make Disbursements (as defined in Article A-6(b), hereof) until the Fiscal Agent has been engaged and the Fiscal Services and Deposit Account Control Agreement between Supplier and the Fiscal Agent has been approved by State.

SECTION 13. PROJECT OFFICIALS AND NOTICES

State's Contract Manager shall be the Chief, Drinking Water Technical Programs Branch, Division of Drinking Water and Environmental Management, California Department of Public Health.

State's Contract Manager shall be its representative for administration of this Agreement, and shall have authority to make recommendations and findings with respect to each controversy arising under or in connection with this Agreement, including but not limited to, the interpretation, performance, or payment for work

performed under this Agreement. All such recommendations and findings shall be communicated to the Chief, Division of Drinking Water and Environmental Management of the California Department of Public Health (the "Chief"), and disputes shall be resolved in accordance with Article A-24, hereof.

Supplier's Contract Manager shall be its Director of Resource Management. Supplier's Contract Manager shall be its representative for administration of this Agreement. All communications given to Supplier's Contract Manager shall be deemed given to Supplier and shall be binding on Supplier.

Either party may change its Contract Manager upon written notice to the other party.

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

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

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

San Lucas Water District
Attn: Director of Resource Management
168 W. Alisal St., 2nd Floor
Salinas, CA 93901

A change of address for delivery of notice may be made by either party by written notice of such change of address to the other party.

All written notices that are required either expressly or by implications to be given by one party to the other under this Agreement shall be signed for State by its Contract Manager and for Supplier by its Contract Manager. Except as otherwise expressly required by this Agreement, all such notices shall be deemed to have been given if delivered personally or if enclosed in a properly addressed postage prepaid envelope and deposited in a United States Post Office for delivery by registered or certified mail.

SECTION 14. ENFORCEMENT

Any enforcement action, arising out of or relating to this Agreement may be brought by State or any agent thereof.

SECTION 15. MISCELLANEOUS PROVISIONS

ATTORNEY FEES

In the event either party commences an action or proceeding concerning the subject matter of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover reasonable attorney fees incurred therein.

SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the parties.

GOVERNING LAW

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

CHILD SUPPORT COMPLIANCE ACT

Supplier acknowledges that it is the policy of this state that anyone who enters into a contract with a state agency shall recognize the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code. Supplier further acknowledges that to the best of its knowledge it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department.

LEGAL CAPACITY

Supplier hereby warrants and represents that it is a legal entity in good standing, and that it has the authority to enter into this Agreement and to incur the indebtedness described herein.

Supplier shall notify State as promptly as feasible of any proposed change in Supplier's ownership, organization, legal form or service area.

VENUE

The parties agree that venue of any action between the parties arising out of this Agreement, including disputes that may arise following termination of the Agreement, shall be County of Sacramento, State of California.

DATE OF EXECUTION

"Date of Execution" of this Agreement shall be the date of the latest in time execution by a party hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

SUPPLIER:

County of Monterey (San Lucas Water District)

STATE:

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH



By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address: _____

Approved as to Legal Form
and Sufficiency:

By: *Peter Baldridge*

Name: Peter Baldridge

Title: Assistant Chief Counsel

Date: 8/1/13

EXHIBIT A
STANDARD CONDITIONS

ARTICLE A-1. DEFINITIONS

Whenever in this Agreement the following terms are used, their meaning shall be as follows unless the context clearly requires otherwise:

Agreement or Contract--The Funding Agreement to which this "Exhibit 'A' Standard Conditions" is appended.

Days--Calendar days unless otherwise expressly indicated.

Month--Calendar month unless otherwise expressly indicated.

Year--Calendar year unless otherwise expressly indicated.

Cross-cutting Federal Authorities--Federal laws and Executive Orders that apply in federal financial assistance programs, or to projects and activities receiving federal financial assistance, regardless of whether the statute authorizing the assistance makes them applicable. They are sometimes referred to as "cross-cutters".

Eligible Project Costs--Those project costs which are eligible for funding under applicable State and Federal law.

Fiscal Agent--A bank, which includes savings banks, savings and loan associations, credit unions and trust companies, or any other financial institution or entity approved by State responsible for funds deposited for the repayment of all amounts due to State under the terms of this Agreement.

Force Account--The use of Supplier's own employees or equipment, for planning, engineering, design, construction or construction related activities on the Project.

Grant Amount--The aggregate amount of the Grant disbursed to Supplier under this Agreement. The Grant Amount is characterized as a subsidized loan principal amount, as authorized by 42 U.S.C. 300j-12(d), is not intended and shall not be characterized as a federal subgrant.

Principal Amount of the Loan--The total amount disbursed to Supplier under this Agreement less any Grant Amount disbursed and any amount of such total amount disbursed that may have been repaid or remitted to State by Supplier.

Project Approval Date--The date that is determined by Article A-8, hereof.

Public Water System or Public Water Supply System--A system for the provision to the public of water for human consumption, as defined in Part 12, Chapter 4 (commencing with Section 116270), of Division 104 of the Health and Safety Code, as it may be amended.

ARTICLE A-2. TERM OF AGREEMENT

Subject to the provisions of Article A-7, this Agreement shall become effective on the Date of Execution and shall remain in effect until the Principal Amount of the Loan, all interest thereon, and any other sums of money due to State under this Agreement, have been paid in full. Notwithstanding the foregoing, if the amount set forth in Section 4 "Loan Amount" is zero dollars (\$0.00), this Agreement shall remain in effect until the Project Approval Date described in Article A-8 (the "Term of Agreement").

ARTICLE A-3. BASIC CONDITIONS PRECEDENT

State shall have no obligation to disburse the Funding, or any portion thereof, unless and until Supplier has done all of the following:

- (a) Supplier's governing body has taken action authorizing it to borrow the Loan and to enter into this Agreement, and designating a representative to execute this Agreement and to sign claims for Disbursements (as defined in Article A-6(b), hereof);
- (b) Supplier has dedicated a source of revenue for repayment of the Principal Amount of the Loan plus all interest accrued;
- (c) Supplier has executed all documents required to provide the security required by Article B-3, hereof;
- (d) Supplier has executed a Deposit Account Maintenance Agreement substantially in the form of **Attachment 3** to this Agreement; and Supplier has established all accounts required by the Deposit Account Maintenance Agreement;
- (e) Supplier has engaged the services of a Fiscal Agent and the Fiscal Services and Deposit Account Control Agreement has been fully executed as required by Section 12 of this Agreement; and
- (f) Supplier has submitted an initial budget summary to State substantially in the form of **Attachment 4** to this Agreement and said initial budget summary has been approved by State.

Determination of Supplier's satisfaction of the conditions of this Article A-3 is at the sole discretion of State.

ARTICLE A-4. COMPLIANCE WITH LAWS, REGULATIONS, AND PERMIT REQUIREMENTS

Supplier shall at all times comply with, and require its contractors and subcontractors to comply with, all applicable federal and state laws, rules and regulations, permits, and all applicable local ordinances, specifically including, but not limited to, environmental, procurement and safety laws, rules, regulations, permits, and ordinances.

ARTICLE A-5. PROJECT CHANGES

The Project shall be undertaken in accordance with the Scope of the Project set forth on **Attachment 1** to this Agreement. Supplier shall not make any change in the Project, or issue any change order to a contractor which affects the treatment process, would increase the capacity of any Project component, causes a significant change in the location of any Project component, alters the Scope of the Project, or affects the timely completion of the Project, without receiving prior written approval from State.

Subject to the availability of funds, and so long as the Funding does not exceed \$500,000, Supplier may request an increase in the Funding. If the Project includes a construction component, and Supplier's request for an increase in the Funding is based, in whole or in part, on the construction component of the Project, Supplier's request for an increase in the Funding shall be based upon the final accepted construction bids. Such request may be granted or denied at the sole discretion of State.

Supplier shall not use any funds from any contingency allotment without receiving prior written approval from State.

ARTICLE A-6. DISBURSEMENTS BY STATE

(a) **Claims.** Supplier shall request Disbursement by submitting to State a claim(s) for incurred Eligible Project Costs. A claim for Disbursement (as defined in Article A-6(b), hereof) shall be provided in the form of **Attachment 5** to this Agreement. Claims shall be submitted no less frequently than quarterly, but no more frequently than once a month. **Supplier must submit an initial claim not later than ninety (90) days following the Date of Execution for all eligible costs incurred prior to Date of Execution.** Thereafter, Supplier shall submit claims on a monthly basis. Each claim shall include, at a minimum, all eligible costs incurred on or before sixty (60) days prior to the date of the claim. Supplier expressly agrees that State shall have the right to deny disbursement of funds for all costs incurred for which a claim is not timely submitted in accordance with the requirements of this paragraph. Each claim shall include:

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

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

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

(b) Disbursements. Following the review and approval of a claim by State, State will disburse to Supplier an approved amount, subject to the availability of funds (each, a "Disbursement"). All Disbursements, and any and all interest earned by Supplier on the Disbursements, shall be used solely to pay Eligible Project Costs. The Loan shall be disbursed before the Grant is disbursed.

(c) Rejection of Claims. State may reject a claim if:

(1) It is submitted without signature;

(2) It is submitted under signature of a person other than Supplier's duly authorized representative;

(3) Supplier fails to timely submit a final claim within the time period specified in Article A-6(f);

(4) It is not submitted in accordance with subpart (a) of this Article A-6;
or

(5) Contains costs incurred after the Project Approval Date (as defined in Article A-8).

State will notify Supplier of any claim so rejected, and the reasons therefore.

(d) Correction of Claims. A claim containing a mathematical error will be corrected by State, after telephone notification to Supplier; and will thereafter be treated as if submitted in the corrected amount. State will provide Supplier with notification of the corrected claim.

(e) Adjustments to Claims. State will notify Supplier by certified or registered mail, whenever, upon review of a claim, State determines that any portion or portions of the costs claimed:

(1) Are ineligible to be financed by the Safe Drinking Water State Revolving Fund under Federal or State law, or the terms of this Agreement,

(2) Do not constitute costs approved by State for financing under the terms of this Agreement;

- (3) Are not supported by invoices or receipts acceptable to State; or
- (4) Contains costs incurred after the Project Approval Date (as defined in Article A-8).

Supplier may, within thirty (30) days of the date of receipt of such notice, submit additional documentation to State to cure such deficiency(ies). If Supplier fails to timely submit adequate documentation curing the deficiency(ies), State will adjust the pending claim by the amount of the ineligible and/or unapproved cost(s). Supplier may continue to submit additional documentation in support of rejected cost(s) and may include such cost(s) with additional supporting documentation on a subsequent claim.

(f) Final Claim and Disbursement. Supplier shall submit a final claim not later than six (6) months from the Project Approval Date, as set forth in Article A-8. In addition to the information required by subpart (a) of this Article A-6, the final claim shall include:

- (1) A statement of full written disclosure of all sources and amounts of funds contributed to the Project;
- (2) A certification by Supplier's Contract Manager that the data disclosed is true and correct; and
- (3) A fully executed "Final Release" in the form of **Attachment 6**.

Should Supplier fail to make the full disclosure and certification required by subparts (1) and (2) of this paragraph (f), or should State become aware through any means that Supplier did not disclose all funding sources for the Project; the project funding may be referred to State Department of Finance for a full project audit.

Commencement of repayment of the Principal Amount of the Loan and interest pursuant to Article A-13, hereof, may be required prior to the final Disbursement.

(g) Force Account. Supplier may use its own employees for engineering including development of plans and specifications; legal; and administrative costs, as provided for in Supplier's initial budget summary, as required by Article A-3(f), hereof. Supplier may use its own employees for construction or construction related activities if Supplier has obtained prior State approval.

If Supplier is using the services of its own employees, Supplier shall establish accounts and maintain records which reasonably document all employee hours and costs charged to the Project and the associated tasks performed by each employee.

ARTICLE A-7. WITHHOLDING OF LOAN AND GRANT DISBURSEMENTS BY STATE AND CANCELLATION OF AGREEMENT

(a) Conditions for Withholding. If State determines that the Project is not being carried out substantially in accordance with the provisions of this Agreement or that Supplier has failed in any other respect to comply with the terms and conditions of this Agreement, State shall give written notice to Supplier of such failure to comply. If Supplier does not cure any such failure to State's satisfaction within thirty (30) calendar days of receipt of such notice, State may withhold from Supplier all or any portion of the Loan and/or Grant and take any other action that it deems necessary to protect its interests, including but not limited to declaring Supplier in default as set forth in Article A-26, hereof, or canceling this Agreement pursuant to subpart (b) of this Article A-7.

(b) Withholding Entire Funding. If State determines to withhold the entire Funding from Supplier pursuant to subpart (a) of this Article A-7, notice of such a determination shall constitute a notice of cancellation of this Agreement, and this Agreement shall no longer be binding on any party hereto. Said notice of cancellation shall be sent to Supplier by certified or registered mail, and shall be effective upon receipt.

(c) Withholding Balance of Loan and/or Grant. Where a portion of the Funding has been disbursed to Supplier and State has determined to withhold the balance of the Loan and/or Grant, State shall notify Supplier in writing, via certified or registered mail, that State is withholding the balance of the Loan and/or Grant from Supplier, pursuant to subpart (a) of this Article A-7. In such event, Supplier is deemed to be in default and subject to the provisions of Article A-26, hereof.

ARTICLE A-8. TIMING OF PROJECT

Supplier shall complete the Project and submit a final planning report to State no later than eighteen (18) months from the Date of Execution. Supplier's failure to meet said date may, at the option of State, be considered a material breach of this Agreement and may be treated as a default under Article A-26, hereof.

The Project will be deemed to be completed on the earlier to occur of: (a) date State approves the planning report; or (b) the date that is 18 months following the Date of Execution. Such date is hereinafter known as the "Project Approval Date".

ARTICLE A-9. SUPPLIER'S CONTRACTS

Supplier shall be solely responsible for resolution of any and all disputes arising out of or related to Supplier's contracts for completion of the Project, including but not limited to bid disputes and payment disputes with Supplier's contractors and subcontractors and shall provide appropriate releases (as set forth in Title 15 of the Civil Code) as may be requested by State.

ARTICLE A-10. AUDIT AND INSPECTION OF BOOKS AND RECORDS

(a) Upon execution of this Agreement and until 3 years following final Disbursement, pursuant to Government Code Section 8546.7, the parties shall be subject to the examination and audit by State or any agent thereof. Parties are also subject to examination and audit of the United States Environmental Protection Agency, the Comptroller General of the United States, and the United States Office of the Inspector General, with respect to all matters connected with the performance of this Agreement, including, but not limited to, the cost of administering this Agreement. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records must be retained until such action is resolved, or until the end of said time period whichever shall later occur. All records of Supplier relating in any way to funding received pursuant to this Agreement shall be preserved for this purpose.

(b) During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Agreement. Failure or refusal by Supplier to comply with this provision shall be considered a material breach of this Agreement, and State may declare Supplier in default as set forth in Article A-26, hereof, withhold Disbursements to Supplier, or take any other action it deems necessary to protect its interests. The provisions of this subpart (b) shall be effective until expiration of the time period provided in subpart (a) of this Article A-10.

ARTICLE A-11. STATEMENT OF PRINCIPAL AMOUNT OF LOAN

(a) Transmission of Statement to Supplier. Within sixty (60) days after the final Disbursement, State shall transmit to Supplier a written statement setting forth the Principal Amount of the Loan.

(b) Remittance of Funds by Supplier. Within thirty (30) days from the final Disbursement, Supplier shall remit to State any funds that were disbursed under this Agreement and were not utilized to pay Eligible Project Costs or were otherwise not valid Disbursements pursuant to the terms and conditions of this Agreement.

Such remittance to State shall not constitute repayment of any part of the Principal Amount of the Loan, but shall be deemed to be a return to State of part of the funds disbursed.

ARTICLE A-12. INTEREST PAYMENTS DURING THE PROJECT

Prior to the Project Approval Date, as set forth in Article A-8, hereof, Supplier shall pay interest to State at the rate specified in Section 10 of this Agreement on all Disbursements of the Loan. Interest on the Disbursements of the Loan shall not be deferred.

State will invoice Supplier semiannually for interest accrued prior to the Project Approval Date. Interest on each Disbursement of the Loan shall be calculated using the fraction $x/365$ times the Rate of Interest, where x is the number of calendar days remaining in the semiannual period from the date on which the Disbursement of the Loan was made. Interest accrued prior to the Project Approval Date is due and payable within thirty (30) days of the date of the invoice.

ARTICLE A-13. REPAYMENT OF PRINCIPAL AMOUNT OF LOAN AND INTEREST

(a) Terms of Repayment. State will invoice Supplier semiannually for principal and any interest payments (the "P&I Invoice"). The P&I Invoices will include a statement of the then Principal Amount of the Loan, the amount of the payment which constitutes principal to be paid, and the amount of the payment which constitutes interest, if any, to be paid.

Supplier shall make semiannual payments to State no later than January 1 and July 1 of each year until the Principal Amount of the Loan is repaid in full. Principal and interest payments shall commence no later than one (1) year from the Project Approval Date. Supplier shall make level semiannual payments based on a standard semiannual payment loan amortization method to be determined by State. The standard amortization method shall incorporate the Principal Amount of the Loan as determined by Article A-11, hereof, the Loan Repayment Term specified in Section 11 of this Agreement, and the Rate of Interest, as specified in Section 10 of this Agreement. The final semiannual payment shall be in an amount equal to the then outstanding Principal Amount of the Loan, plus any remaining unpaid accrued interest. Interest on the Principal Amount of the Loan shall not be deferred.

Unless earlier payment is required by the terms of this Agreement, the Principal Amount of the Loan, interest, Delinquent Interest, and any other charges or fees shall be due and payable **five** years from the due date of the first P&I Invoice.

(b) Advance Payment Option. Supplier may make advance payment against principal without penalty, provided that any such advance payment shall be applied first to interest then owed and then to principal, and provided further, that any such payment shall not relieve Supplier of its obligations to make payments in the amount and at the time specified in subpart (a) of this Article A-13 until the Principal Amount of the Loan is repaid in full. Any advance payment must be coordinated with State prior to the making of any such payment to ensure proper credit to Supplier's account.

ARTICLE A-14. PAYMENT DELINQUENCY

Any payment of principal and/or interest required to be paid by Supplier to State pursuant to this Agreement which remains unpaid after it becomes due and payable shall be delinquent. Delinquent interest charges shall be in addition to any other charges or payments owing State from Supplier and shall accrue at the rate of one tenth of one percent (0.1%) per day, on the amount of such delinquent payment, for each day it remains unpaid past the tenth (10th) day after the date payment was due (the "Delinquent Interest"). The Delinquent Interest assessed will not be added to the Principal Amount of the Loan but will be treated as a separate account and obligation of Supplier. Delinquent Interest shall accrue on the total payment amount from the due date of payment through the date payment is made. Any payment by Supplier under terms of this Agreement is deemed to have been made when it is received by State.

ARTICLE A-15. ACCOUNTING AND DEPOSIT OF DISBURSEMENTS

(a) Separate Accounting of Disbursements and Interest; Records. Supplier shall account for Disbursements received separately from all other Supplier's funds. Supplier shall maintain accounting procedures that are in accordance with Generally Accepted Accounting Principles. Supplier shall keep complete and accurate records of all receipts, Disbursements, and interest earned on the Disbursements. Invoices must be maintained for a period of at least three (3) years following final Disbursement. All other records must be maintained for the Loan Repayment Term.

Supplier shall require its agents, contractors and subcontractors to maintain books, records, and other documents pertinent to their work in accordance with Generally Accepted Accounting Principles. Records are subject to inspection by State at any and all reasonable times.

(b) Disposition of Funds Disbursed. In addition to specific requirements set forth in this Agreement, all Disbursements shall be deposited, administered, and accounted for pursuant to all provisions of law applicable to Supplier.

(c) Interim and Final Audits. In addition to the provisions of Article A-10, at any time following the Date of Execution and until completion of the Project, or final Disbursement whichever shall occur last, State reserves the right to conduct an audit of Supplier's disposition of the Funding. After completion of the Project, State may require Supplier to conduct a final audit at Supplier's expense; such audit to be conducted by and a report prepared by an independent Certified Public Accountant.

Failure or refusal by Supplier to comply with these provisions shall be considered a material breach of this Agreement and State may elect to pursue any remedies included but not limited to those provided in Articles A-7 and A-26, hereof.

ARTICLE A-16. INSPECTIONS OF PROJECT BY STATE

State shall have the right but not the duty to inspect the work being performed on the Project at any and all reasonable times during the Term of Agreement. This right shall extend to inspection of any portion of the Project under control of Supplier's contractor and/or subcontractors, and Supplier shall include provisions ensuring such access in all its contracts or subcontracts related to the Project.

ARTICLE A-17. NONDISCRIMINATION CLAUSE

During the Term of Agreement, Supplier, its contractors and subcontractors, shall not deny this Agreement's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, or sex. Supplier, its contractors and subcontractors shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

Supplier, its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code Sections 11135-11139.7) and the regulations or standards adopted by the awarding State Agency to implement such article.

By signing this Agreement, Supplier assures State that it shall comply with the requirements of the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA; the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d (1988) et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (1989); Federal Water Pollution Control Act Amendments of 1972, Pub.L. No. 92-500, 86 Stat 816; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102 (1994); together with all applicable regulations and guidelines adopted to implement same (collectively, the "Anti-Discrimination Laws").

Supplier agrees to collect and maintain information to show compliance with the Anti-Discrimination Laws including a list of discrimination complaints, reports of any compliance reviews conducted by other agencies descriptions of any pending discrimination-based lawsuits and data on the racial, ethnic, national origin, sex and handicap characteristics of the population it serves.

Supplier agrees to cooperate with State in all manner necessary to permit State to adequately report to the United States Environmental Protection Agency on Supplier's compliance with the Anti-Discrimination Laws.

Supplier, its contractors and subcontractors shall give written notice of their obligations under this Article A-17 to labor organizations with which they have a collective bargaining or other agreement.

Supplier's signature on this Agreement shall constitute a certification under the penalty of perjury under the laws of the State of California that Supplier has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990, and Title 2, California Code of Regulations Section 8103.

Supplier shall include the nondiscrimination and compliance provisions of this Article A-17 in all contracts and subcontracts to perform work on the Project.

ARTICLE A-18. WORKERS' COMPENSATION CLAUSE

Supplier affirms that it is aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self insurance in accordance with the provisions of that code, and Supplier affirms that it will comply with such provisions before commencing the performance of the work under this Agreement and will make its contractors and subcontractors aware of this provision.

ARTICLE A-19. SUCCESSORS AND ASSIGNS

This Agreement and all of its provisions shall inure to the benefit of, apply to, and bind the heirs, successors and assigns of the parties hereto. No assignment or transfer of this Agreement or any part hereof by Supplier shall be valid unless and until it is approved in writing by State and made subject to such reasonable terms and conditions as State may impose.

ARTICLE A-20. STATE TO BE HELD HARMLESS

Supplier shall indemnify, hold harmless, protect and defend State and its officers, employees, agents and representatives from loss, suits, actions or claims brought for, or on account of violation of laws, ordinances, rules, or regulations, or injury, damage, or loss, including death, caused by acts or omissions of Supplier, its employees, contractors, or agents; or in any way arising from, or related to the Project.

ARTICLE A-21. REMEDIES NOT EXCLUSIVE

The use by either party of any remedy specified herein for the enforcement of this Agreement is not exclusive, and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

ARTICLE A-22. AMENDMENTS

This Agreement may be amended only by mutual written agreement signed by the parties hereto. Requests by Supplier for amendments must be in writing stating the amendment request and the reason for the request.

ARTICLE A-23. WAIVER OF RIGHTS

It is the intention of the parties hereto that from time to time either party may waive any of its rights under this Agreement unless contrary to law. Any waiver by either party hereto of rights arising in connection with this Agreement shall not be deemed to be a waiver with respect to any other rights or matters.

ARTICLE A-24. DISPUTE CLAUSE

Any dispute that Supplier may have regarding the performance of this Agreement including, but not limited to, claims for Disbursements or extensions of time, shall be submitted to State's Contract Manager identified in Section 13 of this Agreement. State Contract Manager may make findings and recommendations and shall transmit a copy of any such findings and recommendations to the Chief (as defined in Section 13, hereof) who shall make a decision. Such decision shall be written and transmitted to Supplier by certified or registered mail, and shall be final and conclusive.

ARTICLE A-25. PERFORMANCE AND ASSURANCES

Supplier agrees to faithfully and expeditiously perform or cause to be performed all Project work as submitted and approved, or as later amended and approved by State under this Agreement and to apply funds received only to Eligible Project Costs and to operate and maintain the Project in accordance with applicable provisions of the law.

ARTICLE A-26. DEFAULT PROVISIONS

(a) Supplier will be in default under this Agreement if any of the following occur (each, an "Event of Default"):

(1) Supplier's failure to pay any installment when due, or the entire indebtedness to State when due at the designated due date;

(2) Supplier's failure to make any remittances required by this Agreement;

(3) Supplier's material breach of this Agreement, or any supplement or amendment thereto, or any other agreement between Supplier and State evidencing or securing Supplier's obligations under this Agreement;

(4) Supplier's making of any false warranty, representation, or statement with respect to this Agreement or the Project;

(5) Loss, theft, damage or impairment to any collateral given as security under this Agreement;

(6) Seizure of, or levy on any collateral given as security under this Agreement; and/or

(7) Dissolution or cessation of operations by Supplier, termination of Supplier's existence, insolvency of Supplier, or filing of a voluntary or involuntary bankruptcy petition by or on behalf of Supplier.

(b) When an Event of Default occurs, State shall give Supplier notice of default. Supplier shall have thirty (30) calendar days from the date of such notice to cure the default. If Supplier fails to timely cure the default to the satisfaction of State, State may do any or all of the following:

(1) Declare that the aggregate amount of all Disbursements made by State, including any portion of the Grant, shall be deemed the Loan, and shall be repaid to State in accordance with the terms of this Agreement;

(2) Declare Supplier's obligations immediately due and payable, with or without demand or notice to Supplier, which Supplier expressly waives;

(3) Terminate any obligation of State to make further Disbursements;

(4) Exercise all rights and remedies available to a secured creditor after default, including, but not limited to, the rights and remedies of secured creditors under the Uniform Commercial Code;

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

(6) Notwithstanding the provisions of Section 5, hereof, commencing from the date of each Disbursement, apply the Rate of Interest specified in Section 10, hereof, to all Disbursements made by State, including any portion of the Grant; and/or

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

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

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

ARTICLE A-27. DRUG-FREE WORKPLACE CERTIFICATION

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

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

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

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

(c) Every employee who works on the Project:

- (1) Will receive a copy of Supplier's drug-free policy statement; and
- (2) Will agree to abide by terms of Supplier's statement as a condition of employment on the Project.

This Agreement may be subject to suspension of payments or termination, or both, and Supplier may be subject to debarment if State determines that (1) Supplier has made a false certification, or (2) Supplier violates the certification by failing to carry out the requirements of this Article A-27.

ARTICLE A-28. CONFLICT OF INTEREST--CURRENT AND FORMER STATE EMPLOYEES

Supplier shall comply with, and shall require that all of its owners, officers, directors, agents, representatives and employees are at all times in compliance with, currently applicable laws and regulations pertaining to conflicts of interest of current and

former state employees, including but not limited to Government Code Sections 1090 et seq. and 87100 et seq.; Public Contract Code Section 10410 et seq.; and California Code of Regulations, Title 2, Sections 18700 et seq.

ARTICLE A-29. ADDITIONAL INSURED

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

ARTICLE A-30. PROHIBITED USE OF STATE FUNDS FOR SOFTWARE

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

ARTICLE A-31. LABOR COMPLIANCE

Supplier shall comply with Public Resources Code Section 75075 and all applicable implementing guidelines and regulations adopted by California Department of Industrial Relations, regarding Labor Compliance Programs. Supplier's failure or refusal to comply with this requirement shall be considered a material breach of this Agreement.

ARTICLE A-32. DAVIS-BACON ACT COMPLIANCE

Supplier understands and acknowledges that Pub.L. 111-88 and Section 1450(e) of the Safe Drinking Water Act (42 U.S.C. 300j-9(e)) make applicable provisions of sections 3141-3144, 3146, and 3147 of Title 40 of United States Code ("Davis-Bacon Act") and applicable regulations and guidance regarding wage rates payable to laborers and mechanics employed by contractors and subcontractors on the Project.

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

On or after the Date of Execution, Supplier agrees to include, or cause to be included, in full, the applicable language set forth in **Attachment 7**, hereof, in all Project bid solicitation documents and in all Project contracts and subcontracts in excess of \$2,000 entered into for the actual construction, alteration and/or repair, including painting and decorating of any Project component.

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

Supplier's failure to provide the quarterly reports required by this Article A-32 may result in State's withholding Disbursements until the reports are provided in a form acceptable to the State.

ARTICLE A-33. NEW RESTRICTIONS ON LOBBYING

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

ARTICLE A-34. ADDITIONAL REPORTING

Supplier acknowledges that, from time to time during the term of this Agreement, State may receive further guidance from the United States Environmental Protection Agency ("USEPA") which may require additional information/reporting from Supplier. Upon such guidance from USEPA, State will notify Supplier in writing. Upon notification, Supplier agrees to provide the requested information/reports to State in the time period specified. Supplier's failure to provide the requested information/report in the time specified may be deemed by State to be a material breach of this Agreement and may be treated as a default under Article A-26.

ARTICLE A-35. DATA UNIVERSAL NUMBER SYSTEM (DUNS)

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

EXHIBIT B

SECURITY REQUIREMENTS

ARTICLE B-1. NO PRIORITY FOR ADDITIONAL LOANS

Supplier agrees that it shall not incur any additional indebtedness having any priority in payment over Supplier's obligations to State under this Agreement; and that it shall not give security in any facility or equipment, which are constructed or obtained under the terms of this Agreement, without obtaining prior written consent of State, which consent shall not be unreasonably withheld.

ARTICLE B-2. RATES AND CHARGES

Supplier agrees that it will levy and collect assessments or user charges as may be necessary to operate and to maintain the Project and to meet the payments of the Loan when due; and if for any reason, gross revenues prove insufficient to make payments due pursuant to this Agreement, Supplier agrees to raise sufficient funds through increased user charges or assessments or any other legal means available to it to meet the Loan payments and to operate and to maintain the Project.

ARTICLE B-3. SECURITY INTEREST

Intentionally left blank as the amount set forth in Section 4 "Loan Amount" is zero (\$0.00) dollars.

ARTICLE B-4. LEGAL OBLIGATION

This Agreement and payment due hereunder, shall not in any way be construed to be a debt of the **County of Monterey (San Lucas Water District)** in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness nor will anything contained in this Agreement constitute a pledge or obligation of general revenues, funds, or moneys for which **County of Monterey (San Lucas Water District)** is obligated to levy or pledge any form of taxation.

EXHIBIT C

SPECIAL REQUIREMENTS

ARTICLE C-1. SECURITY

Intentionally left blank as the amount set forth in Section 4 "Loan Amount" is zero (\$0.00) dollars.

ARTICLE C-2. ADDITIONAL REQUIREMENTS

(a) Notwithstanding the requirements of Section 12 and Article A-3(e), if the amount set forth in Section 4 "Loan Amount" is zero dollars (\$0.00), Supplier is not required to engage a Fiscal Agent or enter into a Fiscal Services Deposit Account Control Agreement.

(b) On or before the Project Approval Date, Supplier shall complete and submit a water rate analysis of projected operation and maintenance cost, over at least the twenty (20) year period following the Project Approval Date, for Supplier's public water system. Said analysis shall include the projected operation and maintenance cost of the proposed Selected Construction Project. If the Selected Constructed Project includes consolidation with another public water system, said analysis shall also include the projected operation and maintenance cost of the public water system resulting from such consolidation. Said water rate analysis is herein referred to as the "Rate Study".

(c) Not later than six (6) months following Date of Execution, Supplier shall submit its proposed process, protocols, timelines, and criteria for the performance of the Rate Study to State for its review and approval. Supplier shall not proceed with the Rate Study until written authorization to proceed is obtained from State. Supplier shall submit said proposed process, protocols, timelines and criteria to State at the following address:

California Department of Public Health
Division of Drinking Water and
Environmental Management
ATTN: Fiscal Services Unit
1616 Capitol Ave., MS 7418
Sacramento, CA 95899-7377

(d) Not later than (18) months from the Date of Execution Supplier shall submit a copy of the findings and recommendations of the Rate Study to State, at the following address:

California Department of Public Health
Division of Drinking Water and
Environmental Management
ATTN: Fiscal Services Unit
1616 Capitol Ave., MS 7418
Sacramento, CA 95899-7377

(e) Supplier expressly acknowledges that as a condition to the State's issuance of any funding agreement for Supplier's construction of the Selected Construction Project, State may require Supplier, or the surviving public water system if consolidation is the Selected Construction Project, to demonstrate that it has adopted and implemented an appropriate rate structure to demonstrate its financial capacity to operate and maintain its public water system and/or any public water system(s) resulting from construction of the Selected Construction Project, upon its construction.

(f) Supplier shall submit a copy of the feasibility report, as required by the Scope of the Project, to the State's Monterey District for review and approval and shall not proceed with the development of any plans and specifications for a construction project until written authorization to proceed with the selected construction project is obtained from the State's Monterey District Office. Thereafter, the selected construction project will be referred to as the "Selected Construction Project".

(g) If the Selected Construction Project includes drilling a new well, Supplier shall submit a copy of the groundwater study, prepared by a State of California licensed hydrogeologist, to the State's Monterey District Office prior to proceeding with preparation of plans and specifications for the test well.

(h) If the Selected Construction Project includes drilling a new well, Supplier shall submit a copy of the test well plans and specifications, and any water quality testing plan, to the State's Monterey District Office for review and approval prior to bidding and awarding of any contract for such new well.

(i) If the Selected Construction Project includes drilling a new well, Supplier shall submit copies of any test well completion reports, hydrogeologist reports, test well water results, and well logs to the State's Monterey District Office within sixty (60) calendar days of completion of the test well.

(j) If the Selected Construction Project includes treatment, Supplier shall provide to the State's Monterey District Office a copy of pilot study protocols for review and approval prior to commencing with pilot studies.

(k) If the Selected Construction Project includes treatment, Supplier shall submit a report to the State's Monterey District Office which summarizes the findings of the pilot studies and makes a recommendation for which possible construction project should be pursued.

(l) If the Selected Construction Project is consolidation, then Supplier shall submit to the State's Monterey District Office a copy of the draft agreement between the water systems involved in the consolidation project, no later than fifteen (15) months from the Date of Execution.

(m) If the Selected Construction Project is consolidation, then Supplier shall submit to the State's Monterey District Office a copy of the final agreement between the water systems involved in the consolidation project, no later than eighteen (18) months from the Date of Execution.

(n) Supplier shall submit draft plans and specifications for the Selected Construction Project to the State's Monterey District Office no later than fifteen (15) months from the Date of Execution.

(o) Supplier shall submit final plans and specifications for the Selected Construction Project to the State's Monterey District Office no later than eighteen (18) months from the Date of Execution.

(p) Supplier shall submit the final planning study report to the State's Monterey District Office no later than eighteen (18) months from the Date of Execution.

(q) Supplier shall submit all final California Environmental Quality Act (CEQA) documents and notices for the Selected Construction Project to the Office of Planning and Research no later than fifteen (15) months from the Date of Execution. A copy of all such CEQA documents and notices shall be sent to the State's Environmental Review Unit no later than eighteen (18) months from the Date of Execution.

Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

State's Environmental Review Unit
1616 Capitol Avenue, MS 7418
Sacramento, CA 95814

(r) If the total estimated construction costs for the Selected Construction Project exceeds \$1,250,000, Supplier shall submit CDPH Federal Cross-cutting Worksheet to State's Environmental Review Unit no later than eighteen (18) months from the Date of Execution.

EXHIBIT D

COMPLIANCE WITH DAVIS-BACON

ARTICLE D-1. DAVIS-BACON PROVISIONS

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

The USEPA Region 9 has provided guidance on the Davis-Bacon Act requirements, which is attached hereto as "Attachment 7" and incorporated herein by reference. As used in **Attachment 7**, the term "subrecipient" means Supplier, and the terms "State", "State recipient" and "recipient" each mean the State of California Department of Public Health.

If Supplier is a governmental entity (including, without limitation, a city, county, city and county, or local agency), the applicable contract language that is required is set forth in Section I of **Attachment 7**. If Supplier is not a governmental entity, the applicable contract language that is required is set forth in Section II of **Attachment 7**.

EXHIBIT E

NEW RESTRICTIONS ON LOBBYING

ARTICLE E-1. NEW RESTRICTIONS ON LOBBYING

40 CFR Part 34 – New Restrictions on Lobbying

Subpart A—General

§34.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in appendix B, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

§34.105 Definitions.

For purposes of this part:

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

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

(1) The awarding of any Federal contract;

(2) The making of any Federal grant;

(3) The making of any Federal loan;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§34.110 Certification and disclosure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subpart B—Activities by Own Employees

§34.200 Agency and legislative liaison.

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

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

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

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

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

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

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

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

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

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

§34.205 Professional and technical services.

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

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

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

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

§34.210 Reporting.

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

Subpart C—Activities by Other Than Own Employees

§34.300 Professional and technical services.

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

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

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

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

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

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

Subpart D—Penalties and Enforcement

§34.400 Penalties.

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

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

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

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

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

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

§34.405 Penalty procedures.

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

§34.410 Enforcement.

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

Subpart E—Exemptions

§34.500 Secretary of Defense.

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

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

Subpart F—Agency Reports

§34.600 Semi-annual compilation.

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

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

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

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

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

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

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

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

§34.605 Inspector General Report.

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

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

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

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

ATTACHMENTS

- Attachment 1. Scope of the Project (Section 1, Article A-5)
- Attachment 2. Fiscal Services and Deposit Account Control Agreement (Section 12)
- Attachment 3. Deposit Account Maintenance Agreement (Article A-3(d))
- Attachment 4. Initial Budget Summary (Article A-3(f))
- Attachment 5. Claim for Disbursement of Funds (Article A-6(a))
- Attachment 6. Final Release (Article A-6(f)(3))
- Attachment 7. Davis-Bacon Wage Provisions (Article A-32)

Attachment No. 1 SCOPE OF THE PROJECT

San Lucas Water District
Project No. 2701676-007
Approved Date: January 28, 2013

Scope of the Project

Project Management – oversight of grant, consultants, administrative support costs, weekly project team meetings.

- Water District staff, counsel, operator, auditor
- County staff, counsel

Feasibility Report – Identify Preferred Option

- Review historical water quality, geotechnical, & groundwater reconnaissance studies
- Review/update water quality deficiencies in existing water supply.
- Evaluate all available feasible options for long-term solutions to water supply problem. Options to be considered include:
 1. Wellhead Treatment - existing well
 2. Drill new well
 - A. No treatment - at either site of existing well or new location
 - B. With Treatment (Groundwater under influence of surface water) - at either site of existing well or new location
 3. Intertie or Import water from King City/California Water Service Co. (service agreement, construct new pipeline)

The report will discuss for each option:

- Type of project
 - Where infrastructure will be located
 - Availability/long term sustainability/reliability of source
 - Project budget – total amount of funding needed: feasibility study/selection of option, preliminary design, site acquisition/right-of-way, CEQA, permits, Plans, Specifications, and Engineering
 - Physical challenges/obstacles to each option (site acquisition, permits, environmental)
 - Economic challenges (relative cost, local match for grants, community's ability to pay for treatment or increased water bills)
 - Schedule/dates for delivery of each phase of activity leading to project completion & delivery of new potable water supply to the community
- Identify Preferred Option for further study and implementation.

OPTION 1 – If Treatment of the Existing Well is determined to be the Preferred Option

Preliminary Engineering

- Determine level of treatment required
- Evaluate condition, capacity, and long-term O&M requirements for existing well
- Recommendation for repairs/upgrades to existing well, specific treatment technique, and issues related to waste disposal.
- Preliminary engineering design of treatment system, upgrades to well, and site improvements
- Land surveying & mapping for required rights-of-entry and/or easements, if any
- Determine required water rights and/or permits, if any
- Prepare Project Description

CEQA/NEPA

- Determine if CEQA only, or NEPA if federal funds involved
- Determine if any exemptions apply
- Circulate Notice of Preparation
- Prepare IS/EA
- Determine level of analysis required (Neg Dec, Mitigated Neg Dec, EIR)
- Prepare environmental studies and reports as required
- Circulate Draft document, receive comments
- Respond to comments, prepare Final Document
- Adopt necessary findings & file Final Document

Final Engineering, Plans & Specifications

- Acquire temporary rights of access for treatment pilot study
- Conduct treatment pilot study, and Final Report of recommended treatment system.
- Submit report to CDPH and County Environmental Health
- Complete plans & specs to sufficient level of detail to enable District to identify future funding, and when/if funding identified, to apply for and acquire institutional agreements, water rights, easements if needed, environmental permits, and regulatory (encroachment) permits.
- Submit draft plans & specs to CDPH and County Environmental Health
- Submit final plans & specs to CDPH and County Environmental Health

OPTION 2A – If a New Well with No Treatment Required is determined to be the Preferred Option

Preliminary Engineering

- Determine optimum locations for at least two (2) test wells
- Prepare test well plans and specifications, submit to CDPH and County Environmental Health for approval
- Obtain temporary rights of entry/easements for test wells
- Drill test wells, conduct water quality sampling per County Environmental Health protocols
- Report of test well analysis program to CDPH and County Environmental Health
 - Water quality results
 - Well capacity
 - Recommendation if development of a production well is feasible
- Preliminary engineering design of production well and site improvements
- Land surveying & mapping for required rights-of-entry and/or easements, if any
- Determine required water rights and/or permits, if any
- Prepare Project Description

CEQA/NEPA

- Determine if CEQA only, or NEPA if federal funds involved
- Determine if any exemptions apply
- Circulate Notice of Preparation
- Prepare IS/EA
- Determine level of analysis required (Neg Dec, Mitigated Neg Dec, EIR)
- Prepare environmental studies and reports as required
- Circulate Draft document, receive comments
- Respond to comments, prepare Final Document
- Adopt necessary findings & file Final Document

Final Engineering, Plans & Specifications

- Acquire rights of access and/or easements for production well and associated pipelines
- Complete plans & specs to sufficient level of detail to enable District to identify future funding, and when/if funding identified, to apply for and acquire institutional agreements, water rights, rights-of-way/easements, environmental permits, and regulatory (encroachment) permits.
- Submit draft plans & specs to CDPH and County Environmental Health
- Submit final plans & specs to CDPH and County Environmental Health

OPTION 2B – If a New Well with Surface Water Treatment is determined to be the Preferred Option

Preliminary Engineering

- Determine optimum locations for at least two (2) test wells
- Prepare test well plans and specifications, submit to CDPH and County Environmental Health for approval
- Obtain temporary rights of entry/easements for test wells
- Drill test wells, conduct water quality sampling per County Environmental Health protocols
- Report of test well analysis and treatment pilot study to CDPH and County Environmental Health
 - Water quality results
 - Well capacity
 - Recommendation if development of a production well is feasible
 - Recommendation for specific treatment technique, and issues related to waste disposal.
 - Treatment pilot study and report of recommended treatment system.
- Preliminary engineering design of production well, treatment plant, and site improvements
- Land surveying & mapping for required rights-of-entry and/or easements, if any
- Determine required water rights and/or permits, if any
- Prepare Project Description

CEQA/NEPA

- Determine if CEQA only, or NEPA if federal funds involved
- Determine if any exemptions apply
- Circulate Notice of Preparation
- Prepare IS/EA
- Determine level of analysis required (Neg Dec, Mitigated Neg Dec, EIR)
- Prepare environmental studies and reports as required
- Circulate Draft document, receive comments
- Respond to comments, prepare Final Document
- Adopt necessary findings & file Final Document

Final Engineering, Plans & Specifications

- Acquire rights of access and/or easements for production well, treatment plant, and associated pipelines
- Complete plans & specs to sufficient level of detail to enable District to identify future funding, and when/if funding identified, to apply for and acquire institutional agreements, water rights, rights-of-way/easements, environmental permits, and regulatory (encroachment) permits.
- Submit draft plans & specs to CDPH and County Environmental Health
- Submit final plans & specs to CDPH and County Environmental Health

OPTION 3 – If Intertie or Import of Outside Water Source is determined to be the Preferred Option

Preliminary Engineering

- Dialogue with City of King City and California Water Service Co. to determine capacity, and negotiate commitment of capacity and cost to provide initial connection and long-term service costs for SLWD.
- Draft Intertie Agreement, review by CDPH and County Environmental Health
- Preliminary engineering design of pipeline system for intertie, review by CDPH and County Environmental Health
- Land surveying & mapping for required rights-of-entry and/or easements, if any
- Determine required institutional agreements, water rights, and/or permits, if any
- Prepare Project Description

CEQA/NEPA

- Determine if CEQA only, or NEPA if federal funds involved
- Determine if any exemptions apply
- Circulate Notice of Preparation
- Prepare IS/EA
- Determine level of analysis required (Neg Dec, Mitigated Neg Dec, EIR)
- Prepare environmental studies and reports as required
- Circulate Draft document, receive comments
- Respond to comments, prepare Final Document
- Adopt necessary findings & file Final Document

Final Engineering, Plans & Specifications

- Acquire rights of access and/or easements for pipelines and associated facilities (pump stations, etc.)
- Complete plans & specs to sufficient level of detail to enable District to identify future funding, and when/if funding identified, to apply for and acquire rights-of-way/easements, environmental permits, and regulatory (encroachment) permits.
- Submit draft plans & specs to CDPH and County Environmental Health
- Submit final plans & specs to CDPH and County Environmental Health

FISCAL SERVICES AND DEPOSIT ACCOUNT CONTROL AGREEMENT

This FISCAL SERVICES AND DEPOSIT ACCOUNT CONTROL AGREEMENT (this "Agreement") is entered into as of _____, 20____, among _____ ("Depositor"), _____, a _____ ("Fiscal Agent") and the State of California Department of Public Health ("Secured Party"), who each hereby agrees as follows.

RECITALS

A. Secured Party has issued or will issue a Funding Agreement to Depositor under the Safe Drinking Water State Revolving Fund Law of 1997 (the "Funding Agreement"), whereby Secured Party has made or will make a loan to Depositor in a principal amount of up to \$ _____ (the "Loan").

B. The Funding Agreement requires or will require, among other things, that Depositor engage the services of a fiscal agent to assist in accumulating funds sufficient to repay the Loan to Secured Party.

C. For valuable consideration, receipt of which is hereby acknowledged by Depositor, and in order to secure the Loan, Depositor has granted Secured Party a security interest in deposit account number(s) _____ maintained by Depositor with Fiscal Agent at the office indicated on the signature page below, any subaccount(s) or related account(s) into and from which balances from such account(s) are swept by Fiscal Agent from time to time for reserve related or other purposes, all funds now or hereafter deposited into such account(s), and any proceeds thereof, including without limitation any interest earned thereon (collectively, the "Account").

D. All capitalized terms defined in the UCC (as hereinafter defined) and not otherwise defined in this Agreement shall have the same meaning in this Agreement as in the UCC, and the rules of interpretation in Article 1 of the UCC shall apply to the interpretation of this Agreement.

E. In connection with the foregoing, Depositor is requesting that Fiscal Agent enter into this Agreement in order to perform services as Depositor's fiscal agent and perfect Secured Party's security interest in the Account.

AGREEMENT

1. Definitions.

a. "Business Day" means a day, other than a Saturday, Sunday or holiday on which the applicable party is open for business at the location to which the communication is sent.

b. "Disposition Instruction" means an instruction to Fiscal Agent directing the disposition of the funds in the Account.

c. “Invoice” means each semiannual invoice prepared by Secured Party, which includes, without limitation, all accrued interest and the principal and/or interest amount due and payable by Depositor for such preceding semiannual period of the Loan.

d. “Notice of Exclusive Control” means the first instruction to Fiscal Agent originated by Secured Party directing that Fiscal Agent no longer comply with Depositor’s Disposition Instructions. The Notice of Exclusive Control may also contain a Disposition Instruction originated by Secured Party.

e. “Outside Time” means the opening of business on the first Business Day following the Business Day on which the Notice of Exclusive Control is received at the address for Fiscal Agent specified herein. If the Notice of Exclusive Control is received at such address after 2:00 p.m., local time, then in determining the Outside Time, the Notice of Exclusive Control will be considered to have been actually received on the following Business Day.

f. “UCC” means the Uniform Commercial Code of the jurisdiction whose law governs this Agreement or, if relevant to any matter other than the meaning of a defined term, the Uniform Commercial Code of the jurisdiction whose law applies to the matter under the choice of law rules of the jurisdiction whose law governs this Agreement.

2. Fiscal Agent’s Responsibility.

a. Fiscal Agent shall perform the following services:

(i) Receive Invoices from Secured Party on behalf of Depositor and transmit payments to Secured Party when instructed; and

(ii) Promptly give written notice to Secured Party of any failure by Depositor to satisfy the deposit requirements set forth in Section 3 hereof, including but not limited to Depositor’s delinquency in making such deposits.

b. Fiscal Agent shall have no duty to inquire or determine whether Depositor’s obligations to Secured Party are in default or whether Secured Party is entitled, under any separate agreement between Secured Party and Depositor, to give Disposition Instructions or any other instructions or a Notice of Exclusive Control relating to the Account. Fiscal Agent shall have no responsibility or liability to Secured Party for complying with any Disposition Instruction, order or other instruction, whether oral or written, concerning the Account, except to the extent such compliance would violate (i) Section 4(e) hereof, or (ii) written instructions or orders previously received from Secured Party, but only to the extent Fiscal Agent had reasonable opportunity to act thereon. Fiscal Agent shall not have any liability to Depositor or Secured Party for losses or damages resulting from any failure to comply with Disposition Instructions relating to the Account or delay in complying with any Disposition Instruction or any other instruction if (i) compliance with any Disposition Instruction or any other instruction would require Fiscal Agent to violate any then-existing injunction or order of any court of competent jurisdiction, including without limitation in any bankruptcy case under Title 11 of the United States Code, or (ii) the failure or delay is due to circumstances beyond Fiscal Agent’s reasonable control. Without limiting the foregoing, in no event shall Fiscal Agent have any liability, directly or indirectly, for any special, indirect, punitive, exemplary or consequential losses or damages, including without limitation lost profits, whether or not any claim for such

losses or damages is based on tort or contract or Fiscal Agent knew or should have known the likelihood of such losses or damages in any circumstances.

c. Fiscal Agent may rely on notices and communications it believes in good faith to be genuine and given by the appropriate party. Without limiting the foregoing, Fiscal Agent may (but shall not be obligated to) require that Secured Party or Depositor from time to time deliver to Fiscal Agent such documentation as Fiscal Agent may reasonably request to evidence the authority of those entities or individuals purporting to give Disposition Instructions or any other instructions on behalf of Secured Party or Depositor to Fiscal Agent hereunder.

3. Depositor's Responsibilities.

a. Interest Only Payments. Prior to completion of the Project, Depositor shall deposit into the Account an amount equal to all unpaid accrued interest, as more particularly described on each Invoice. Depositor shall make all required deposits no later than 15 days after receipt of an Invoice from Secured Party. Secured Party shall provide a copy of each Invoice to Fiscal Agent.

b. Principal and Interest Payments. After completion of the Project, Depositor will be required to deposit funds into the Account in an amount and as frequently as instructed by Secured Party in order to sufficiently meet Depositor's semiannual principal plus interest payment obligations, as required by each Invoice. Secured Party shall provide a copy of all such instructions to Fiscal Agent substantially in the form attached hereto as Exhibit "A".

4. Control of Account.

a. Depositor's Right to Give Disposition Instructions. Until (i) Secured Party has given Fiscal Agent the Notice of Exclusive Control substantially in the form of Exhibit "B" attached hereto, and (ii) the Outside Time has occurred, Depositor shall be entitled to initiate Disposition Instructions from the Account, provided such Disposition Instructions have been authorized by Secured Party. Secured Party's authorization pursuant to this Section 4(a) shall be limited to the payment of Invoices.

b. Secured Party's Right to Give Disposition Instructions. Notwithstanding any separate agreement Depositor may have with Fiscal Agent, Secured Party shall be entitled at any time to give Disposition Instructions to Fiscal Agent, or instructions as to any other matters relating to the Account, all without further consent of Depositor. Fiscal Agent shall comply with, and is fully entitled to rely upon, any Disposition Instructions or any such instructions from Secured Party as to any other matters relating to the Account, even if such instructions are contrary to any instructions or demands that Depositor may give to Fiscal Agent.

c. Effect of Instructions from Secured Party. Secured Party's rights under this Agreement to give Fiscal Agent Disposition Instructions or instructions as to any other matters relating to the Account includes without limitation the power to give stop payment orders for any items being presented to the Account for payment. Depositor confirms that Fiscal Agent should follow all such instructions from Secured Party even if the result of following any such instructions is that Fiscal Agent dishonors items presented for payment from the Account. Depositor further confirms that Fiscal Agent will have no liability to Depositor for the wrongful

dishonor of such items resulting from Fiscal Agent's compliance with any such instructions from Secured Party.

d. After the Outside Time. After the Outside Time, Fiscal Agent will no longer comply with Depositor's communications, including Depositor initiated Disposition Instructions.

e. Notice of Exclusive Control. Fiscal Agent will comply with the Notice of Exclusive Control, and with any Disposition Instructions originated by Secured Party either before any Notice of Exclusive Control, together with the Notice of Exclusive Control or following Secured Party's Notice of Exclusive Control, in each case (i) without Depositor's further consent, and (ii) even if following the instruction results in Fiscal Agent otherwise not complying with Depositor's communications. The Notice of Exclusive Control may be rescinded or otherwise modified by Secured Party, but such rescission or modification shall not be effective against Fiscal Agent unless and until written notice of such rescission or modification shall be delivered to and acknowledged by Fiscal Agent.

5. Priority of Secured Party's Security Interest; Rights Reserved by Fiscal Agent. Fiscal Agent agrees that all of its present and future rights against the Account are subordinate to Secured Party's security interest therein; provided, however, that Secured Party agrees that nothing herein subordinates or waives any of, and that Fiscal Agent expressly reserves all of, Fiscal Agent's present and future rights (whether described as rights of setoff, banker's lien, chargeback or otherwise, and whether available to Fiscal Agent under the law or under any other agreement between Fiscal Agent and Depositor concerning the Account, or otherwise) with respect to: (a) items deposited to the Account and returned unpaid, whether for insufficient funds or for any other reason, and without regard to the timeliness of return of any such item or the occurrence or timeliness of any drawee's notice of non-payment of such items; (b) claims of breach of the applicable Uniform Commercial Code's transfer or presentment warranties made against Fiscal Agent in connection with items deposited to the Account; (c) any automated clearing house (also known as "ACH") entry credited to the Account and returned unpaid or subject to an adjustment entry under applicable clearing house rules, whether for insufficient funds or for any other reason, and without regard to the timeliness of such return or adjustment; (d) any credit to the Account from a merchant card transaction, against which a contractual demand for chargeback has been made; (e) any credit to the Account made in error; and (f) Fiscal Agent's usual and customary charges for services rendered in connection with the Account, to the extent that, in each case, Depositor has not separately paid or reimbursed Fiscal Agent therefor. Items, entries, and transactions described in clauses (a) through (e) of this Section are collectively referred to as "Returned Items."

6. Statements. In addition to the original deposit account statement for the Account which is provided to Depositor, Fiscal Agent will send a duplicate statement to Secured Party. Depositor hereby authorizes Fiscal Agent to provide any additional information relating to the Account to Secured Party upon Secured Party's request without Depositor's further consent.

7. Notice of Adverse Claims; Record of Security Interest.

a. Fiscal Agent represents and warrants to Secured Party that Fiscal Agent has not received notice of any currently effective lien or encumbrance on or other claim to the Account from any other person or entity and has not entered into, and covenants with Secured Party that it will not enter into, any agreement with any other person or entity by which Fiscal Agent is

obligated to comply with instructions from such other person or entity as to the disposition of funds from the Account or other dealings with the Account. Fiscal Agent will use commercially reasonable efforts, subject to applicable law, to notify Secured Party promptly if any other person or entity claims a property interest in the Account. To the extent that it gives notice to Depositor, Fiscal Agent will promptly notify Secured Party if any other person or entity claims that it has a property interest in the Account.

b. Fiscal Agent further represents and warrants to Secured Party that Fiscal Agent has marked its books and records to indicate that Secured Party has the right to control the Account as set forth herein.

8. Returned Items. Depositor and Secured Party understand and agree that Fiscal Agent will collect the amount of each Returned Item by debiting the Account. Depositor agrees to pay the amount of any Returned Item immediately upon demand to the extent that there are not sufficient funds in the Account to cover such amount on the day of the debit. Secured Party agrees to pay any such amount that is not paid in full by Depositor within 10 days after demand on Depositor by Fiscal Agent up to the amount of the proceeds received by Secured Party from the corresponding Returned Item. Fiscal Agent agrees that any demand upon Secured Party for such amount shall be made within 90 days after Secured Party's receipt of such proceeds. To the extent that Fiscal Agent is precluded from making demand or giving notice hereunder by reason of the commencement of a bankruptcy or similar proceeding, then such demand or notice shall be deemed to have been made or given at the commencement of such proceeding.

9. Costs; Indemnity.

a. Depositor will be responsible for Fiscal Agent's customary charges for services rendered in connection with the Account.

b. Depositor will indemnify Fiscal Agent and its officers, directors, employees and agents against any and all losses, claims, liabilities and expenses arising out of this Agreement (including without limitation all fees and costs incurred by Fiscal Agent in complying with Disposition Instructions or any other instructions or requests given by Depositor hereunder and reasonable attorneys' fees and disbursements and the reasonable estimate of the allocated costs and expenses of in-house legal counsel and staff), except to the extent the losses, claims, liabilities or expenses are determined by a court of competent jurisdiction to be caused by Fiscal Agent's gross negligence or willful misconduct.

c. Secured Party will indemnify Fiscal Agent and its officers, directors, employees and agents against losses, claims, liabilities and expenses arising out of Fiscal Agent's compliance with Disposition Instructions or any other instructions or requests from Secured Party in connection with this Agreement (including without limitation reasonable attorneys' fees and disbursements and the reasonable estimate of the allocated costs and expenses of in-house legal counsel and staff), except to the extent the losses, claims, liabilities or expenses are determined by a court of competent jurisdiction to be caused by Fiscal Agent's gross negligence or willful misconduct.

d. To the extent that a given claim, liability or expense shall arise out of Fiscal Agent's following of a Disposition Instruction or any instruction or request from Secured Party in connection with this Agreement, Depositor's and Secured Party's indemnity obligations under

this Section 9 with respect to such claim, liability or expense shall be joint and several. The obligations of Depositor and Secured Party under this Section 9 shall survive the termination of this Agreement and the resignation or removal of Fiscal Agent.

10. Termination; Survival.

a. Secured Party may terminate this Agreement by written notice to Fiscal Agent and Depositor. Depositor may not terminate this Agreement except with written consent of Secured Party and on 30 days' prior written notice to Secured Party and Fiscal Agent.

b. This Agreement may be terminated by Fiscal Agent only as follows: (i) immediately upon notice to the other parties if Fiscal Agent becomes obligated to terminate this Agreement or to close the Account under any statute, rule or regulation or any order, judgment, decree or injunction, or a garnishment, restraining notice or other legal process, directing, or prohibiting or otherwise restricting, the disposition of the funds in the Account, binding upon Fiscal Agent; (ii) without limiting the foregoing, with written consent of Secured Party which may not be unreasonably withheld but may be conditioned on Secured Party's ability to transfer the Account to a financial institution that agrees to substantially undertake Fiscal Agent's obligations under this Agreement.

c. This Agreement will terminate upon Fiscal Agent's receipt of written notice from Secured Party expressly stating that Secured Party's security interest in the Account has terminated.

d. Sections 2 ("Fiscal Agent's Responsibility"), 8 ("Returned Items") and 9 ("Costs; Indemnity") will survive termination of this Agreement and the resignation or removal of Fiscal Agent.

11. Governing Law.

a. Fiscal Agent represents and warrants to Secured Party that any account agreement(s) between Fiscal Agent and Depositor relating to the establishment and general operation of the Account will expressly provide that such account agreement(s) are governed by the law of the State of California. Fiscal Agent covenants that it will not, without Secured Party's prior written consent, amend those account agreement(s) to change their governing law or to provide that secured transactions relating to the Account are governed by the law of another jurisdiction.

b. This Agreement will be governed by the internal laws of California.

12. Entire Agreement. This Agreement is the entire agreement among the parties regarding the subject matter hereof and supersedes any prior agreements and contemporaneous oral agreements of the parties concerning its subject matter. To the extent that any provision in this Agreement conflicts with any provision in any other agreement between Fiscal Agent and Depositor, the provision in this Agreement shall control.

13. Amendments. No amendment of this Agreement will be binding unless it is in writing and signed by Depositor, Secured Party and Fiscal Agent, and no waiver of any right under this Agreement will be binding unless it is in writing and signed by the party to be charged.

14. Severability. To the extent a provision of this Agreement is unenforceable, this Agreement will be construed as if the unenforceable provision were omitted.

15. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of Fiscal Agent, Secured Party and Depositor and their respective successors and assigns. Notwithstanding the foregoing, neither Depositor nor Fiscal Agent shall assign, transfer or delegate any of its rights or obligations under this Agreement without prior written consent of Secured Party, which may be withheld at its sole discretion. Any banking association or corporation into which Fiscal Agent may be merged, converted or with which Fiscal Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which Fiscal Agent shall be a party, or any banking association or corporation to which all or substantially all of the corporate trust business of Fiscal Agent shall be sold or otherwise transferred, shall succeed to all Fiscal Agent's rights, obligations and immunities hereunder without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding

16. Notices. All notices, instructions or other communications to a party under this Agreement shall be in writing and shall be sent to the party's address for notices set forth below or to such other address as shall be designated by such party by notice given to the other parties, and, except as otherwise expressly provided for herein, will be effective on receipt.

17. No Agency, Etc. Nothing contained in this Agreement shall create any agency, fiduciary, joint venture or partnership relationship between Depositor, Secured Party and Fiscal Agent.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

The foregoing is hereby acknowledged and agreed to, effective as of the date first set forth above.

DEPOSITOR:

_____,
a _____

By: _____

Name: _____

Title: _____

Address for notices:

Attention: _____

Telephone: _____

Facsimile: _____

[Signatures continue on following page.]

SECURED PARTY:

State of California
Department of Public Health

By: _____
Name: _____
Title: _____

Address for notices:

State of California
Department of Public Health,
Division of Drinking Water and Environmental Management
P.O. Box 997377, MS 7418
Sacramento, California 95899-7377
Telephone: _____
Facsimile: _____

[Signatures continue on following page.]

FISCAL AGENT:

_____,
a _____

By: _____

Name: _____

Title: _____

Address for notices:

Attention: _____

Telephone: _____

Facsimile: _____

Office of Fiscal Agent where the Account is maintained:

Attention: _____

Telephone: _____

Facsimile: _____

EXHIBIT "A"

FORM INSTRUCTIONS FOR DEPOSITS

[Address]

Attn: _____

[Name of Depositor]

[Address]

Attn: _____

Re: Instruction for Deposits

Ladies and Gentlemen:

Pursuant to Section 3 of that certain Fiscal Services and Deposit Account Control Agreement dated as of _____, 20__, by and among [INSERT NAME OF DEPOSITOR] (the "Depositor"), [INSERT NAME OF FISCAL AGENT] and us (the "Control Agreement") and in order to satisfy Depositor's principal and interest payments under the Loan, Depositor shall deposit \$_____ into the Account beginning _____, 20__, and every [OPTION: one month OR three month OR six month] anniversary thereafter. Capitalized terms used in these instructions shall have the meanings ascribed to them in the Control Agreement.

Very truly yours,

State of California
Department of Public Health

By: _____

Name: _____

Title: _____

EXHIBIT "B"

FORM NOTICE OF EXCLUSIVE CONTROL

[Address]
Attn: _____

Re: Notice of Exclusive Control

Ladies and Gentlemen:

This is the Notice of Exclusive Control as defined in that certain Fiscal Services and Deposit Account Control Agreement dated _____, 20__, among you, us and **[INSERT DEPOSITOR'S FULL NAME]** (the "Depositor") (as currently in effect, the "Control Agreement"). A copy of the Control Agreement as fully executed is attached. Capitalized terms used in this Notice of Exclusive Control have the meanings given them in the Control Agreement.

This Notice of Exclusive Control directs Fiscal Agent to no longer to comply with Depositor's Disposition Instructions.

Very truly yours,

State of California
Department of Public Health

By: _____
Name: _____
Title: _____

DEPOSIT ACCOUNT MAINTENANCE AGREEMENT

1. Pursuant to this DEPOSIT ACCOUNT MAINTENANCE AGREEMENT (this "Agreement"), _____ ("Depositor") hereby covenants to the State of California Department of Public Health ("State") that it will establish and maintain the deposit account(s) described below (individually and collectively, the "Accounts") for the purpose of satisfying its obligations under that certain Funding Agreement between Depositor and State dated as of _____, 20____, Number _____ (the "Funding Agreement").
Additionally, Depositor agrees not to close the Accounts prior to the termination or expiration of the Funding Agreement.

2. The Accounts which are the subject of this Agreement are described below: (NOTE: "A" below must be completed. If the Funding Agreement provides loan funds, subparts B and C below must also be completed.)
 - A. Account for deposit of funds received from State:
Bank _____ Phone No. _____
Mailing Address _____
Account and/or Ledger No. _____
Account and/or Ledger No. _____

 - B. Account for deposit of ratepayer payments, prior to deposit with Fiscal Agent:
Bank _____ Phone No. _____
Mailing Address _____
Account and/or Ledger No. _____
Account and/or Ledger No. _____

 - C. Account for deposit held by Fiscal Agent:
Bank _____ Phone No. _____
Mailing Address _____
Account and/or Ledger No. _____
Account and/or Ledger No. _____

3. Depositor will notify State in writing immediately if any third party obtains or attempts to obtain a lien or other interest in any of the Accounts by consent, attachment, execution or other form of legal process.

Depositor

By: _____

Date: _____

Name: _____

Mailing Address _____

Phone No.: _____

Safe Drinking Water State Revolving Fund (SDWSRF) Program

BUDGET AND EXPENDITURE SUMMARY

LOAN FUNDS

FORGIVENESS OF PRINCIPAL FUNDS

NEGATIVE INTEREST FUNDS

OTHER SOURCE OF FUNDS _____

Name of Water System				Funding Agreement Number		
Contact Person		DUNS Number	Telephone Number		Email Address	
Claim Number		For Period From (Month/Day/Year)	To (Month/Day/Year)			
LINE ITEM NO.	DESCRIPTION	BUDGET AMOUNT	TOTAL PRIOR CLAIMS	CURRENT CLAIM	TOTAL CLAIMS TO DATE	BALANCE
SUBTOTAL THIS PAGE						
SUBTOTAL PAGE						
SUBTOTAL PAGE						
TOTAL						
REVIEWED BY SUPPLIER'S AUTHORIZED REPRESENTATIVE <i>(Print Name, Title)</i>			SIGNATURE		DATE	
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH APPROVAL - District Engineer <i>(Print Name)</i>			SIGNATURE		DATE	

Safe Drinking Water State Revolving Fund (SDWSRF) Program

CLAIM FOR REIMBURSEMENT (PUBLIC)

See instruction sheet.

- | | |
|--|---|
| <input type="checkbox"/> Forgiveness of Principal Funds | <input type="checkbox"/> Negative Interest Funds |
| <input type="checkbox"/> Other Source of funds _____ | <input type="checkbox"/> Loan Funds |

Part A

Name of Water System		
Address		
Phone Number	Fax Number	SRF ARRA Funding Agreement No.
Claim Number	For Period From (Month/Day/Year)	To (Month/Day/Year)

Part B Expenditure Summary

Budget Line Item Number	Attachment Number	Description	Project Expenditures	SRF ARRA Funds Requested
<div style="border: 2px solid black; padding: 10px; background-color: #f0f0f0; margin: 0 auto; width: 80%;"> <p style="text-align: center;">Do not request reimbursement for funds that won't be immediately disbursed to the contractor.</p> <p style="text-align: center;">(To remove this message, select the outer edge of the yellow box and hit the "Delete" key.)</p> </div>				

PART C

1. Total this claim - <i>Do not request reimbursement for funds that won't be immediately disbursed to the contractor.</i>		
2. Total all prior claims		
3. Total expenditures to date (1 + 2 above)		
4. DWP Funding Agreement Amount		
5. Total funds obligated (Same as 3)		
6. Funds still available (4 - 5 above)		

Prepare an Original and Two (2) Copies. Original plus one copy to:
 Department of Public Health, Safe Drinking Water State Revolving Fund Program, P.O. Box 997377, MS 7418
 Sacramento, CA 95899-7377 One copy to: CDPH District Engineer

FOR STATE USE ONLY	Amount of Claim	Payment Approved (CDPH Analyst)	Date
	Date Paid	Claim Schedule No.	Amount Paid
	Signature, CDPH Program Manager		Date

Your claim packet must include original "wet" signatures from the person(s) designated in your resolution. Please sign in blue ink. Photocopies are to be made from the originals.

Please submit the original and one copy of the entire claim package to:

Department of Public Health, Safe Drinking Water Office
P.O. Box 997377, MS 7418
Sacramento, CA 95899-7377

In addition, a full copy of the claim package must be sent to your CDPH District Office.

Instructions for completing "CLAIM FOR REIMBURSEMENT (PUBLIC OR PRIVATE)"

INDICATE WHICH FUNDING SOURCE YOU ARE CLAIMING

Check the appropriate box

PART A

Name of Water System

The name should be identical to the name used in the Funding Agreement with the State.

Funding Agreement Number

The number is on the Funding Agreement (Ex. AR09NI00)

Claim Number

Submit no more than one claim per month. The format for numbering claims will be in sequence (Claim No. 1, No. 2, etc.)

PART B - Expenditure Summary

Line Item Number

This number corresponds to the line items on your Budget and Expenditure Summary form as well as the corresponding Itemized forms.

Attachment Number

Numerically identify each attachment, corresponding to each Claim for Reimbursement (Itemized) form, found in the upper right hand corner.

Description

Must match the B&E line item description, but may include additional information, such as the name of the contractor.

Project Expenditures

Enter the total dollar amount incurred for the line item this claim period (include costs funded by ARRA and non-ARRA sources).

Funds Requested

The dollar amount of ARRA funds requested for each line item. If your project is funded from multiple sources, you must submit to CDPH copies of all payment requests (claims) for each funding source.

PART C - Totals

1. Sum of project expenditures and ARRA funds requested from the columns in Part B.
2. Total all prior claims - *Do not include this claim.*
3. Sum of Items 1 (Total this Claim) and 2 (Total all prior claims).
4. Grant amount from the Funding Agreement.
5. Same as Item 3, the sum of Items 1 and 2.
6. Funds still available - Item 4 minus Item 5. This amount must be equal to or greater than zero.

The totals in Part C should match the totals on the Claim B&E.

Do not request reimbursement for funds that won't be immediately disbursed to the contractor.

DO NOT WRITE IN THE BLOCKS MARKED "FOR STATE USE ONLY".

If additional space is required use a second Claim for Reimbursement form and identify it as "Page Two" in the upper right hand corner. Show a total only for the last Claim for Reimbursement form.

Instructions for submitting "CLAIM FOR REIMBURSEMENT (ITEMIZED)"

Submit an itemized form for each contractor whose service is being funded this claim.

PART A

FOR CONSTRUCTION COSTS ONLY - Date of Completion

The expected completion date for this contractor's portion of the project.

FOR CONSTRUCTION COSTS ONLY - Amount of Contract

The amount of the contract for this contractor's portion of the project.

If any revisions have been made to the completion date or contract amount, note them in the space provided.

The CDPH District Office must approve of any changes.

Dates of Claims

The date range for this claim (from the Public/Private claim form).

PART B

Budget Line Item

This number corresponds to the line items on your claim (Public/Private) and Budget and Expenditure Summary form.

Contract Items (Unit, Quantity and Unit Price)

"See Attached Invoice # [enter corresponding invoice number or range]."
Alternatively, identify each item by its basic description

This Period

Quantity and Amount

Total amount for this contractor submitted this claim.

Total to Date

Quantity and Amount

Total amount for this contractor to date (entire project).

PART C

Amount Earned

Total of "This Period" and "Total to Date" columns in Part B.

Amount Due (This Period) and Amount Due (Total to Date)

Enter the amount of funds requested this claim.

Previous Payments

Enter the sum of previous payments related to this contractor in the Total to Date column.

FOR CONSTRUCTION COSTS ONLY - Estimated Percentage

Total percentage of work completed by this contractor for this contract, required.

FOR CONSTRUCTION COSTS ONLY - Contractor's Progress

Indicate if contractor is on schedule. If "no," explain.

Part D

D2 and D3 must always be signed by the personnel designated per ARRA resolution. Part D2 is always signed by a registered civil engineer unless otherwise approved in writing by State. Part D1 is signed FOR CONSTRUCTION COSTS ONLY.

Do not request reimbursement for funds that won't be immediately disbursed to the contractor.

	THIS PERIOD	TOTAL TO DATE
AMOUNT EARNED	\$	\$0.00
PREVIOUS PAYMENTS		\$
AMOUNT DUE	\$0.00	\$0.00

ESTIMATED PERCENTAGE OF JOB COMPLETED (applicable for construction costs only)	IS CONTRACTOR'S CONSTRUCTION PROGRESS ON SCHEDULE? (applicable for construction costs only)
_____ %	<input type="checkbox"/> YES <input type="checkbox"/> NO EXPLAIN:

PART D

1. Certification of Contractor (applicable for construction costs only)

According to the best of my knowledge and belief, I certify that all items and amounts shown on the foregoing Claim for Reimbursement (Itemized) are correct; that all the work has been performed and/or material supplied in full accordance with the requirements of the referenced Funding Agreement, and/or duly authorized deviations, substitutions, alternations, and/or additions; that the foregoing is a true and correct statement of the contract account up to and including the last day of the period covered by this claim; that no part of the "Balance Due This Payment" has been received and that the undersigned and his subcontractors have complied with the nondiscrimination provisions of the Funding Agreement.

Signature

Date

Name (Print)

Title

2. Certification of Individual Authorized Representative to Sign Budget and Expenditure Summary

I certify that I have checked and verified the foregoing Claim for Reimbursement (Itemized); that to the best of my knowledge and belief it is a true and correct statement of work performed and/or material included in this claim; has been inspected by me and/or by my duly authorized representative or assistants and that it has been performed and/or supplied in full accordance with requirements of the referenced contract; and that partial payment claimed and requested by the contractor is correctly computed on the basis of work performed and/or material supplied to date.

Signature

Date

Name (Print)

Position Title or Registration Number

3. Request for Payment by Entity

The construction of the project is progressing satisfactorily, and to the best of my knowledge the amounts contained in the foregoing Claim for Reimbursement (Itemized) are true and correct statements of actual costs incurred for work performed and I hereby request payment of funds from the SRF ARRA Fund in the amount of \$ _____ for reimbursement of eligible project costs estimated above.

Signature

Date

Name (Print)

Position Title or Registration Number

Final Release

Definitions: As used in this release "Funding Agreement" refers to that certain State of California Department of Public Health Funding Agreement identified in paragraph 2 below; "final invoice" refers to "final claim" as used in said Funding Agreement and "Supplier" refers to the party identified as "Supplier" in said Funding Agreement.

Instructions to Supplier:

With your final invoice(s) submit one (1) original and one (1) copy. The original must bear the original signature of a person authorized to bind Supplier. The additional copy may bear photocopied signatures.

2. Submission of Final Invoice

Pursuant to Funding Agreement number _____ entered into between the State of California Department of Public Health (CDPH) and the Supplier (identified below), the Supplier does acknowledge that final payment has been requested via invoice number _____, in the amount of \$ _____ and dated _____.

3. Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number referenced above, Supplier does hereby release and discharge the State, its officers agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced Agreement.

4. Repayments Due to Audit Exceptions / Record Retention

By signing this form, Supplier acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Supplier agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment will be refunded to the State.

All expense and accounting records related to the above referenced Agreement must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said Funding Agreement.

5. Other Issues

By signing this form, Supplier further agrees, in connection with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced Funding Agreement, including, but not limited to, those provisions relating to notification to the State and related to resolution of disputes and the defense or prosecution of litigation.

ONLY SIGN AND DATE THIS DOCUMENT WHEN ATTACHING TO THE FINAL INVOICE

Supplier's Legal Name (as on Agreement)

Signature of Supplier

Date: _____

Printed Name/Title of Person Signing

CDPH Distribution: Accounting (Original) Program(Copy); Division of Drinking Water and Environmental Management

ATTACHMENT 7

Davis-Bacon Wage Rate Requirements

Preamble

With respect to the Safe Drinking Water State Revolving Fund (SDWSRF), the United States Environmental Protection Agency (EPA) provides capitalization grants to each State which in turn provides subgrants or loans to eligible entities within the State. Typically, the subrecipients are municipal or other local governmental entities that manage the SDWSRF funds. For these types of subrecipients, the provisions set forth under Roman Numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring the subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I-5.

Occasionally, the subrecipient may be a private for profit or not for profit entity. For these types of subrecipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section II-5.

I. Requirements For Subrecipients That are Governmental Entities:

The following terms and conditions specify how State recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance with respect to State recipients and subrecipients. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact the EPA Region 9 Davis-Bacon Coordinator at (415) 947-8000 for guidance. The recipient or subrecipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/esa/whd/recovery/>

1. Applicability of the DB prevailing wage requirements.

DB prevailing wage requirements apply to contracts in excess of \$2,000 which are entered into for the actual construction, alteration and/or repair, including painting and decorating, of a construction project under the SDWSRF that is financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR 5.1. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the State recipient before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
- (ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The State recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a construction project under the SDWSRF that is financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR 5.1, the following clauses:

(1) *Minimum wages.*

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of

laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State recipient's award official. The State recipient's award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State recipient's award official or will notify the State recipient's award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State recipient's award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination

or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.*

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into

the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees.*

(i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every

apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply

with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination; debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and subrecipient(s), State recipient, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility.*

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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

(a) *Contract Work Hours and Safety Standards Act.* The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

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

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly

number of hours worked, deductions made, and actual wages paid. Further, the subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using

disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

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

II. Requirements For Subrecipients That Are Not Governmental Entities

The following terms and conditions specify how State recipients will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance with respect to subrecipients that are not governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. If a State recipient needs guidance, the recipient may contact EPA Region 9 Davis-Bacon Coordinator at (415) 947-8000 for guidance. The recipient or subrecipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/esa/whd/recovery/>

Under these terms and conditions, the subrecipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.

1. Applicability of the Davis-Bacon (DB) prevailing wage requirements.

DB prevailing wage requirements apply to contracts in excess of \$2,000 which are entered into for the actual construction, alteration and/or repair, including painting and decorating, of a construction project under the SDWSRF that is financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR 5.1. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the State recipient before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Subrecipients must obtain proposed wage determinations for specific localities at www.wdol.gov. After the subrecipient obtains its proposed wage determination, it must submit the wage determination to the Safe Drinking Water State Revolving Fund Program, Division of Drinking Water and Environmental Management, California Department of Public Health, 1616 Capitol Avenue MS 7418, P. O. Box 997377, Sacramento, CA 95899-7377, attention SDWSRF Pipeline Coordinator, for approval prior to inserting the wage determination into a solicitation, contract or issuing task

orders, work assignments or similar instruments to existing contractors (ordering instruments) unless subsequently directed otherwise by the State recipient Award Official.

(b) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
- (ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated

for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The State recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR 5.1 or the FY 2012 Appropriations Act, the following clauses:

(1) *Minimum wages:*

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

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

Subrecipients may obtain wage determinations from the U.S. Department of Labor's

web site, www.dol.gov.

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

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* The subrecipient(s) shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.*

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall

maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable

wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees.*

(i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates

(expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees*. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity*. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and subrecipient(s), State recipient, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility.*

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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

(a) *Contract Work Hours and Safety Standards Act.* The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in

addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The subrecipient shall upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

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

(c) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the

contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S. Department of Labor or

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

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