

000277

COMMITTEE ACTION SHEET

COUNCIL DOCKET OF		<u>Nov. 13, 2007</u>	
<input type="checkbox"/> Supplemental	<input type="checkbox"/> Adoption	<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Unanimous Consent
			Rules Committee Consultant Review

R -
O -

Water Department – Proposition 50 Grant from State of California Department of Public Health for Otay Water Treatment Plant

Reviewed Initiated By NR&C On 9/26/07 Item No. 3f

RECOMMENDATION TO:

Approve

VOTED YEA: Frye, Hueso, Maienschein, Faulconer

VOTED NAY:

NOT PRESENT:

CITY CLERK: Please reference the following reports on the City Council Docket:

REPORT TO THE CITY COUNCIL NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

Executive Summary Sheet dated September 12, 2007; Water Department's September 26, 2007, PowerPoint

COUNCIL COMMITTEE CONSULTANT 

000279

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: September 12, 2007 REPORT NO.: N/A
 ATTENTION: Natural Resources and Culture Committee Meeting of
 September 26, 2007
 ORIGINATING DEPARTMENT: Water Department
 SUBJECT: Proposition 50 Grant from State of California Department of
 Public Health for Otay Water Treatment Plant
 COUNCIL DISTRICT(S): All
 CONTACT/PHONE NUMBER: Rod Greek (533-5407)/Carmel Wong (533-4128)

REQUESTED ACTION:

Council authorization to accept, appropriate and expend funds from the State of California Department of Public Health (CDPH) under the Proposition 50 Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, Chapter 4b.

STAFF RECOMMENDATION:

Staff recommends the following:

- Authorize the Mayor and/or designee to execute on behalf of the City of San Diego, a Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 Funding Agreement, amendments, reimbursement claims, and Final Release form for Otay Water Treatment Plant Phase II to reduce demand on the Colorado River.
- Authorize the Mayor and/or designee to designate revenues from Water Fund rates, charges and assessments, bond proceeds and financing as the dedicated source of revenue for matching funds required under the Funding Agreement in the amount of \$9,049,831. This dedication to remain in full force and effect until such funding agreement is fully discharged, unless modification or change of such dedication is approved by the State of California.
- Authorize the City Engineer, or other registered engineer designated by the Mayor, to execute Budget and Expenditure Summary and Certification of Project Completion forms.
- Authorize the City Auditor and Comptroller to accept, appropriate, and expend up to \$8,331,062 in grant funds contingent upon City Auditor & Comptroller first certifying that funds are available.
- Authorize the City Auditor and Comptroller, upon advice from the administering department, to transfer excess funds, if necessary, to the appropriate reserves.

EXECUTIVE SUMMARY:

In September 2004, under the Proposition 50 Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, CDPH solicited projects for drinking water source protection, water security, reduced demand on Colorado River water, small community water systems, community water systems, disinfection byproduct treatment facilities, and demonstration projects/studies for contaminant treatment/removal. On April 18, 2006, based upon favorable ranking by CDPH, the City's Water Department submitted a full project application for Otay Water Treatment Plant (WTP) Upgrade and Expansion. This project will aid in meeting the State's commitment to reduce the amount of Colorado River Water (CRW) used by upgrading the Otay WTP to allow a greater amount of State Project Water to be treated, thereby reducing the amount of CRW used.

000280
On June 28, 2007, a Letter of Commitment (LOC) for P50-3710020-016 was issued by CDPH for the City's Otay Water Treatment Plant Project. The LOC outlines the terms and conditions the City must meet prior to issuance of a funding agreement – including the authorizations contained within this Resolution.

FISCAL CONSIDERATIONS:

This project will fulfill a critical need in meeting the current and future California and Federal water quality regulations, as well as reducing the demand on the Colorado River. Total project costs are estimated to be: Otay Water Treatment Plant Upgrade Phase II - CIP#73285.2, \$17,380,893.

Of the total project cost, \$8,331,062 will be grant funded and 80% of the remaining project cost (\$9,049,831) will be reimbursed with bond proceeds, either from the Subordinated Water Revenue Notes, Series 2007A or a following water revenue debt issuance in Fiscal Year 2008. Project expenses not grant funded or bond reimbursed will be cash funded. The Water Department has sufficient capacity to issue additional debt following the rate increases approved by the City Council on February 26, 2007.

The CDPH initial grant offer is \$8,331,062. This offer is based upon the award guidelines that the funding agency will grant 50% of the estimated project cost, up to \$20,000,000 per project. Subsequent to funding agreement execution, City of San Diego may request a one-time increase in funding. Such request must be based upon competitive bids. Approval of the request may be granted or denied at the sole discretion of the State, and is subject to funding availability. If awarded, grant reimbursements would occur over multiple fiscal years.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

None with this grant opportunity. However, a similar request to Council to apply for, secure, and expend Proposition 50, Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, grant funding for Water Department Security Upgrades from the State of California, was approved unanimously at the City Council Meeting on 7/16/07 (Peters, Faulconer, Atkins, Young, Maienschein, Frye, Madaffer, Hueso, in support).

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Community outreach to affected area will occur with the advertising and award of the Otay Water Treatment Plant Upgrade Phase I and II.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders are the City of San Diego, Water Department customers, and the Department of Public Health.

 9/12/07

J.M. Barrett
Water Department Director



R.F. Haas
Deputy Chief of Public Works



Natural Resources and Culture Committee Meeting

Water Department



September 26, 2007

NREC 9/26/07 #34,9



Proposition 50 Grants from State
of California Department of
Public Health for Miramar and
Otay Water Treatment Plants



Proposition 50

- ✿ Proposition 50 is a \$3.44 billion bond measure passed by California voters on Nov. 5, 2002 to provide funds for safe drinking water, flood protection, watershed protection, water conservation, water supply and security programs
- ✿ Programs are carried out by four state agencies
 - ✿ State Water Resources Control Board
 - ✿ Department of Water Resources
 - ✿ Department of Public Health
 - ✿ CALFED

Miramar Water Treatment Plant Grant Application

- ✿ September 2004, the State of California Department of Public Health (CDPH) solicited projects to reduce demand of Colorado River Water
- ✿ April 2006, City submitted a full application for Miramar Water Treatment Plant Upgrade and Expansion
- ✿ June 2007, CDPH approved a \$20 million Grant under Proposition 50 to aid in the State of California's commitment to reduce the amount of Colorado River Water used.
- ✿ June 14, 2007, a Letter of Commitment was issued by CDPH outlining terms and conditions of requirements to be met prior to executing funding agreement

000284

Miramar Project Description

- Miramar Water Treatment Plant (WTP) Upgrade and Expansion will aid in the State of California's commitment to reduce the amount of Colorado River Water used by upgrading the WTP, as well as allowing greater amounts of State Water Project water and local water to be treated.
- Contract C represents the fifth of six components of the Miramar WTP Upgrade & Expansion project. It consists of Ozone Equipment furnishing and installation.

000285

Otay Water Treatment Plant Grant Application

- ✦ September 2004, the State of California Department of Public Health (CDPH) solicited projects to reduce demand of Colorado River Water
- ✦ April 2006, City submitted a full application for Otay Water Treatment Plant Upgrade and Expansion
- ✦ June 2007, CDPH approved a \$8.3 million Grant under Proposition 50 to aid in the State of California's commitment to reduce the amount of Colorado River Water used.
- ✦ June 14, 2007, a Letter of Commitment was issued by CDPH outlining terms and conditions of requirements to be met prior to executing funding agreement

00286

Otay Project Description

- Otay Water Treatment Plant (WTP) Upgrade and Expansion will aid in the State of California's commitment to reduce the amount of Colorado River Water used by upgrading the WTP, as well as allowing greater amounts of State Water Project water and local water to be treated.
- Otay WTP Upgrades Phase II – Chlorine Dioxide Disinfection and Process Control System to be partially funded by grant.

000287

Requested Action

- ✿ Authorize Signature of Funding Agreement and Related Documents
- ✿ Authorize designation of revenues as the dedicated sources of revenues for matching funds
- ✿ Authorize City Engineer to execute Budget and Expenditure Summary and Certificate of Completion
- ✿ Authorize City Auditor and Comptroller to accept, appropriate and expend up to \$20 million (Miramar) and \$8.3 million (Otay) in funds if grants are secured
- ✿ Authorize City Auditor and Comptroller to transfer excess funds, if necessary

00288

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE) **100**
N/A **11/13**

000289

TO: **CITY ATTORNEY** 2. FROM (ORIGINATING DEPARTMENT): **WATER DEPARTMENT** 3. DATE: **September 17, 2007**

4. SUBJECT: **Proposition 50 Grant from State of California Department of Public Health for Otoy Water Treatment Plant**

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) **Rod Greek, 533-5407 MS 904A** 6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) **Carmel Wong, 533-4128 MS 904A** 7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	41500	9. ADDITIONAL INFORMATION / ESTIMATED COST:	
DEPT.		The total project cost is estimated to be \$17,380,893. The grant funds of up to \$8,331,062 will be deposited into the Water Operating Fund 41500.	
ORGANIZATION			
OBJECT ACCOUNT	76410		
JOB ORDER			
C.I.P. NUMBER			
AMOUNT	\$8,331,062		

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	<i>Alegando R...</i>	9/20/07	8	DEPUTY CHIEF	<i>[Signature]</i>	10-18-07
2	EOCP	<i>[Signature]</i>	9/24/07	9	COO	<i>[Signature]</i>	10-19-07
3	EAS	<i>Carol Brunt</i>	9/17/07	10	CITY ATTORNEY	<i>[Signature]</i>	10/25/07
4	GRANTS COORD.	<i>Debra Kroschke</i>	9/25/07	11	ORIG. DEPT	<i>[Signature]</i>	10/26/07
5	LIAISON OFFICE	<i>[Signature]</i>	9/28/07	DOCKET COORD: <i>[Signature]</i> COUNCIL LIAISON: <i>[Signature]</i>			
6	FINANCIAL MGMT	<i>[Signature]</i>	10/11/07	COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/>			
7	AUDITOR	<i>[Signature]</i>	10/16/07	COUNCIL DATE: 11/13/07			

11. PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

1. Authorizing the Mayor and/or designee to execute, for and on behalf of the City of San Diego, a Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 Funding Agreement, Amendments, Reimbursement Claims, and Final Release form for the Otoy Water Treatment Plant Phase II to reduce demand on the Colorado River;
2. Authorizing the Mayor and/or designee to designate revenues from Water Fund rates, charges and assessments, bond proceeds and financing as the dedicated source of revenue for matching funds required under the Funding Agreement in the amount of \$9,049,831. This dedication to remain in full force and effect until such funding agreement is fully discharged, unless modification or change of such dedication is approved by the State of California; (continued on back)

11a. Staff Recommendations: APPROVE THE RESOLUTIONS

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): All
 COMMUNITY AREA(S): All
 ENVIRONMENTAL IMPACT: This activity is covered under the Otoy Water Treatment Plan Upgrade (LDR 40-0932) Mitigated Negative Declaration. The activity is adequately addressed in the environmental document and there is no change in circumstance, additional information, or project changes to warrant additional environmental review. Because the prior environmental documents adequately covered this activity as part of the previously approved project, the activity is not a separate project for purposes of CEQA review per CEQA Guidelines Sections §15060(c)(3) and 15378(c).

HOUSING IMPACT: None

CITY CLERK INSTRUCTIONS: Please return one copy of the executed City Council Action and a copy of the resolution to Tammy Ferguson, (619) 533-4109, MS 904-A

(continued)

000290

3. Authorizing the City Engineer, or other registered engineer designated by the Mayor, to execute the Budget and Expenditure Summary and Certificate of Project Completion forms;
4. Authorizing the City Auditor and Comptroller to accept, appropriate, and expend up to \$8,331,062 in grant funds contingent upon City Auditor and Comptroller first certifying that funds are available;
5. Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess funds, if necessary, to the appropriate reserves.

000291

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: September 17, 2007 REPORT NO.: N/A
ATTENTION: Council President and City Council
ORIGINATING DEPARTMENT: Water Department
SUBJECT: Proposition 50 Grant from State of California Department of
Public Health for Otay Water Treatment Plant
COUNCIL DISTRICT(S): All
CONTACT/PHONE NUMBER: Rod Greek (533-5407)/Carmel Wong (533-4128)

REQUESTED ACTION:

Council authorization to accept, appropriate and expend funds from the State of California Department of Public Health (CDPH) under the Proposition 50 Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, Chapter 4b.

STAFF RECOMMENDATION:

Staff recommends the following:

- Authorize the Mayor and/or designee to execute on behalf of the City of San Diego, a Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 Funding Agreement, amendments, reimbursement claims, and Final Release form for Otay Water Treatment Plant Phase II to reduce demand on the Colorado River.
- Authorize the Mayor and/or designee to designate revenues from Water Fund rates, charges and assessments, bond proceeds and financing as the dedicated source of revenue for matching funds required under the Funding Agreement in the amount of \$9,049,831, This dedication to remain in full force and effect until such funding agreement is fully discharged, unless modification or change of such dedication is approved by the State of California.
- Authorize the City Engineer, or other registered engineer designated by the Mayor, to execute Budget and Expenditure Summary and Certification of Project Completion forms.
- Authorize the City Auditor and Comptroller to accept, appropriate, and expend up to \$8,331,062 in grant funds contingent upon City Auditor & Comptroller first certifying that funds are available.
- Authorize the City Auditor and Comptroller, upon advice from the administering department, to transfer excess funds, if necessary, to the appropriate reserves.

EXECUTIVE SUMMARY:

In September 2004, under the Proposition 50 Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, CDPH solicited projects for drinking water source protection, water security, reduced demand on Colorado River water, small community water systems, community water systems, disinfection byproduct treatment facilities, and demonstration projects/studies for contaminant treatment/removal. On April 19, 2006, based upon favorable ranking by CDPH, the City's Water Department submitted a full project application for Otay Water Treatment Plant (WTP) Upgrade and Expansion. This project will aid in meeting the State's commitment to reduce the amount of Colorado River Water (CRW) used by upgrading the Otay WTP to allow a greater amount of State Project Water to be treated, thereby reducing the amount of CRW used.

000292

On June 14, 2007, a Letter of Commitment (LOC) for P50-3710020-016 was issued by CDPH for the City's Otay Water Treatment Plant Project. The LOC outlines the terms and conditions the City must meet prior to issuance of a funding agreement – including the authorizations contained within this Resolution.

FISCAL CONSIDERATIONS:

This project will fulfill a critical need in meeting the current and future California and Federal water quality regulations, as well as reducing the demand on the Colorado River. Total project costs are estimated to be: Otay Water Treatment Plant Upgrade Phase II - CIP#73285.2, \$17,380,893. ✓

Of the total project cost, \$8,331,062 will be grant funded and 80% of the remaining project cost (\$9,049,831) will be reimbursed with bond proceeds, either from the Subordinated Water Revenue Notes, Series 2007A or a following water revenue debt issuance in Fiscal Year 2008. Project expenses not grant funded or bond reimbursed will be cash funded. The Water Department has sufficient capacity to issue additional debt following the rate increases approved by the City Council on February 26, 2007.

The CDPH initial grant offer is \$8,331,062. This offer is based upon the award guidelines that the funding agency will grant 50% of the estimated project cost, up to \$20,000,000 per project. Subsequent to funding agreement execution, City of San Diego may request a one-time increase in funding. Such request must be based upon competitive bids. Approval of the request may be granted or denied at the sole discretion of the State, and is subject to funding availability. If awarded, grant reimbursements would occur over multiple fiscal years. ✓

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

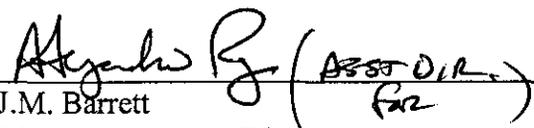
The subject item will be presented to the Natural Resources and Culture Committee prior to the Council docket date. A similar request to Council to apply for, secure, and expend Proposition 50, Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, grant funding for Water Department Security Upgrades from the State of California, was approved unanimously at the City Council Meeting on 7/16/07 (Peters, Faulconer, Atkins, Young, Maienschein, Frye, Madaffer, Hueso, in support).

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Community outreach to affected area will occur with the advertising and award of the Otay Water Treatment Plant Upgrade Phase I and II.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders are the City of San Diego, Water Department customers, and the Department of Public Health.


J.M. Barrett
Water Department Director


R.F. Haas
Deputy Chief of Public Works

000293

RESOLUTION NUMBER R- _____

DATE OF FINAL PASSAGE _____

A RESOLUTION AUTHORIZING EXECUTION OF
PROPOSITION 50 GRANT FUNDING AGREEMENT;
AUTHORIZING THE EXPENDITURE OF FUNDS; AND
TAKING RELATED ACTIONS.

WHEREAS, in September 2004, under the Proposition 50 Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 [Proposition 50], the California Department of Public Health [CDPH] solicited projects for drinking water source protection, water security and for the reduction of demand on Colorado River water; and

WHEREAS, on April 19, 2006, based upon a favorable ranking by CDPH, the City of San Diego Water Department submitted a full project application for the Otay Water Treatment Plant Upgrade and Expansion Phase II Project [Project] to aid in meeting the State of California's commitment to the reduction of demand on Colorado River water; and

WHEREAS, on June 14, 2007, a Letter of Commitment [LOC] designated P50-3710020-016 for \$8,331,062 in Proposition 50 grant funds was issued by CDPH for the Project, subject to terms and conditions; and

WHEREAS, City adopted a Project budget totaling \$17,380,893, with the remaining \$9,049,831 of Project costs to be funded by, through, or with water rates, charges and assessments, bond proceeds and financing; and

WHEREAS, prior to the State issuing a Proposition 50 Funding Agreement for the Project [Funding Agreement], City is required to adopt a resolution dedicating a source of revenues for matching funds, authorizing an officer to execute said Proposition 50 Funding Agreement and

amendments, and designating persons to approve claims and sign Project related forms; NOW,
THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego:

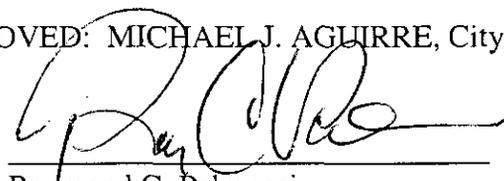
1. That the Mayor or his designee is authorized and empowered to execute, for and on behalf of said City, a Proposition 50 Funding Agreement for the Project, any Amendments and Claims for Reimbursement, and Final Release for the Project, as set forth in the Proposition 50 Funding Agreement on file in the office of the City Clerk as Document No. RR _____.
2. That the City Engineer or other registered engineer as designated by the Mayor, is authorized to execute the Budget and Expenditure Summary and Certificate of Project Completion forms for the Project.
3. That the City Council hereby designates revenues from the Water Fund, Fund No. 41500, and from water rates, charges and assessments, bond proceeds and financing as the dedicated source of revenue for matching funds for the Project as required under the Funding Agreement in an amount not to exceed \$9,049,831, and this dedication shall remain in full force and effect until such Funding Agreement is fully discharged unless modification or change of such dedication is approved by the State of California.
4. That the City Auditor and Comptroller is authorized to accept, appropriate, and expend up to \$8,331,062 in grant funds solely and exclusively for Project purposes, contingent upon first furnishing one or more certificates certifying that the funds are, or will be, on deposit with the City Treasurer.
5. That the City Auditor and Comptroller, upon advice from the administering department, is authorized to transfer excess funds, if any, to the appropriate reserves.

000295

6. That this activity is covered under the Otay Water Treatment Plan Upgrade (LDR 40-0932) Mitigated Negative Declaration, that this activity is adequately addressed in the environmental document and there is no change in circumstance, additional information, or project changes to warrant additional environmental review and that the prior environmental documents adequately covered this activity as part of a previously approved project, thus this activity is not a separate project for purposes of review under the California Environmental Quality Act [CEQA] per CEQA Guidelines Sections §15060(c)(3) and 15378(c).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Raymond C. Palmucci
Deputy City Attorney

RCP:js
10/25/2007
Or.Dept: Water
R-2008-148

000296

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

Proposition 50
Chapter 4b
Letter of Commitment Attachment

Application for funding under the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 has been reviewed by the California Department of Health Services (CDHS) and the Department of Water Resources (DWR). CDHS has determined that project number **P50-3710020-016 (Otay)**, as proposed by the Applicant, **City of San Diego** is eligible for a grant in the amount of **\$8,331,062**.

Funding is contingent upon compliance by **City of San Diego** with the following terms and conditions. Compliance shall be determined at the sole discretion of CDHS or its authorized representative. Items indicated as DWR Requirements must be submitted to DWR. Items indicated as CDHS Requirements must be submitted to CDHS as directed.

CDHS understands that the total project cost is **\$16,662,124** and that **City of San Diego** is responsible for providing the difference between the grant amount and the total project cost if any, to ensure a fully funded project.

- I. **No later than 6 months following the date City of San Diego signs this Letter of Commitment (LOC), unless otherwise specified in this letter, City of San Diego shall complete all requirements of this Section I. All items under Section I must be submitted before a funding agreement will be issued for signature by City of San Diego's authorized representative.**

DWR Requirements

- 1. Submit a written resolution, adopted by City of San Diego's governing body, designating (an) official(s) with legal authority to:
 - a. sign the funding agreement;
 - b. approve claims for reimbursement;
 - c. sign the Budget and Expenditure Summary form, copy enclosed;
 - d. sign the Final Release form, copy enclosed; and
 - e. sign a certification that the project is complete and ready for final inspection.

Person(s) signing the Budget and Expenditure Summary and project completion certification must be a registered engineer(s) or person(s) approved by CDHS.

- 2. Submit a written resolution, adopted by City of San Diego's governing body, designating matching funds in the amount of \$8,331,062 for purposes of this project. A separate resolution is not necessary. Designation of these funds may be included with the aforementioned resolution.

3. Submit a written designation of **City of San Diego's** Grant Administrator.

Note: **City of San Diego** may submit a draft of the resolution(s) to DWR for review prior to taking it to **City of San Diego's** board or governing body for adoption or approval. DWR may then review the draft and make recommendations in advance, thus avoiding unnecessary delays in issuance of **City of San Diego's** funding agreement. DWR cannot accept a resolution that does not meet the program requirements. **City of San Diego** is encouraged to satisfy the above DWR Requirements immediately. Any concerns or comments should be directed to DWR.

CDHS Requirements

1. The **City of San Diego** shall submit to CDHS documentation demonstrating compliance with Labor Code section 1771.8.

II. Prior to final execution of the funding agreement by the State, the following items must be provided:

CDHS Requirements

1. Complete and sign a Payee Data Record (STD 204), copy enclosed. This form is to be returned with the signed funding agreement.
2. Sign and return funding agreement documents to CDHS within 60 calendar days of the receipt of the funding agreement package.

Failure to timely comply with DWR and CDHS Requirements in Sections I and II may result in a withdrawal of this LOC. Should this occur, **City of San Diego's** project will be bypassed but will remain on the project priority list. **City of San Diego** may submit a new application for future funding only after receiving another letter of invitation from CDHS. If for any reason **City of San Diego** is unable to comply with any of the above requirements, **City of San Diego** should contact CDHS as soon as possible.

III. Before any funds may be disbursed under terms of the funding agreement, the following items must be provided:

DWR Requirements

1. **City of San Diego** shall provide evidence that a separate checking account or a separate ledger has been established to account for funds received from the State.

Please indicate the name and address of the financial institution, exact name of account holder, and the account name and number. If this bank account is not used solely to account for funds received from the State, **City of San Diego** must establish a ledger within **City of San Diego's** accounting system identifying the project number and Proposition 50 funding agreement number.

CDHS Requirements

1. **City of San Diego** shall submit an initial project budget of eligible project costs approved by CDHS on a DWR Budget and Expenditure Summary form.

IV. General Requirements

1. If **City of San Diego** is required to provide matching funds, with each disbursement claim submitted, **City of San Diego** must submit acceptable documentation that an equal amount has been expended, from non-state sources, for eligible project costs.
2. If any materials submitted to satisfy the conditions of the LOC are deemed inadequate, **City of San Diego** must submit additional information as specified, and within the timeframe designated by CDHS.
3. As grant funding is to be provided, **City of San Diego** must use a competitive bid process for the construction of the project. The bid summary must be submitted to CDHS for review prior to the awarding of the prime construction contract.
4. **City of San Diego** must initiate project construction within one year of execution of funding agreement by CDHS.
5. **City of San Diego** must complete project construction within three years of execution of funding agreement by CDHS.
6. Subsequent to funding agreement execution **City of San Diego** may request a one-time increase in funding. Such request must be based upon competitive bids and shall be submitted to CDHS. Approval of City of **City of San Diego's** request may be granted or denied at the sole discretion of the State, and is subject to funding availability.
7. All disbursements for construction costs may be subject to a ten percent (10%) retention on each claim until completion of the project as specified in the funding agreement.

8. This LOC is not an authorization to begin construction. Unless CDHS submits prior written approval, initiation of construction of this project prior to the execution of a Proposition 50 funding agreement may affect CDHS participation in reimbursement of eligible costs.
9. **City of San Diego** may be reimbursed only for such eligible project costs consisting of eligible construction expenses incurred on or after the date of this LOC, and eligible preliminary expenses incurred after March 5, 2005.
10. **City of San Diego** may use only eligible project costs incurred after October 28, 2003 to satisfy matching fund requirements.
11. Reimbursements will not occur until the funding agreement has been executed.

V. **Special Conditions to be Included in the Funding Agreement**

1. **City of San Diego** represents that construction and operation of the Project will enable **City of San Diego** to treat a higher blend ratio of State Project Water and to Colorado River Water received from Metropolitan Water District (MWD), as well as a higher ratio of local water supplies to Colorado River Water, while ensuring compliance with the Disinfectants and Disinfection Byproducts Rule (Stage 1 Rule). For purposes of meeting the Stage 1 Rule, the Project will enable **City of San Diego** to reduce demand for Colorado River water over the next ten years by the following estimated amounts (Based on the MWD modeling results from February 2005):
 - 10% of the annual average volume of water treated by the Project excluding the local supply.
 - 35% of the annual average volume of the local water supply treated by the Project
2. **City of San Diego** agrees to operate the Project to treat blends of water that reduce its demand for Colorado River water, recognizing that the actual blends will depend on deliveries from MWD, the availability of Colorado River Water, the availability of other supplemental water supplies other factors not within **City of San Diego's** control.
3. No later than 60 days prior to Project Completion Date, as specified in Article A-8 of the Funding Agreement, City shall update its Otay Water Treatment Plant Operations Plan to reflect the terms of these Special Conditions, and shall submit said plan, together with an application for amendment of its Domestic Water Supply Permit, to the San Diego District of CDHS, for review and approval.

4. **City of San Diego** shall notify the CDHS San Diego District Office before construction begins and at the completion of project construction.
5. **City of San Diego** may not place facilities into operation without an amended water supply permit from CDHS San Diego District Office.

Note: Pursuant to Government Code Section 8546.7, the contracting parties shall be subject to the examination and audit of the State or any agent thereof, and the State Auditor.

All correspondence for DWR, unless otherwise noted, shall be submitted to:

Department of Water Resources
Safe Drinking Water Office
1416 Ninth Street, Room 816
P.O. Box 942836
Sacramento, CA 94236-0001

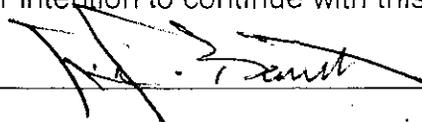
All correspondence for CDHS, unless otherwise noted, shall be submitted to:

California Department of Health Services
Division of Drinking Water and Environmental Management
Proposition 50 Program
P.O. Box 997413, MS 7408
Sacramento, CA 95899-7413

City of San Diego's signature below indicates **City of San Diego's** acceptance of these terms and conditions and **City of San Diego's** intention to proceed with the project. It does not constitute any obligation on **City of San Diego's** part to enter into the grant funding agreement. Failure to sign and return this letter within the time period specified will result in the withdrawal of the reservation of funds and the bypassing of **City of San Diego's** project.

In order to maintain the reservation of funds in the Proposition 50 account for **City of San Diego's** project, **City of San Diego** must sign this LOC at the space provided below and return it within 60 days of receipt to CDHS.

The terms and conditions set forth in this LOC are acceptable to the **City of San Diego** and it is our intention to continue with this project as proposed.

Signature:  Date: 7/14/07

Print Name: Jim Barrett

Title: Water Department Director - City of San Diego

Address: 600 B Street, Suite 400, MS 913, San Diego, CA 92101

Proposition 50 Public Agency Grant
Funding Agreement No. 50 _____

REVISION
1/15/2007

STATE OF CALIFORNIA

HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF HEALTH SERVICES

FUNDING AGREEMENT
BETWEEN
THE STATE OF CALIFORNIA
DEPARTMENT OF HEALTH SERVICES
AND
(Entity name)

PROJECT NUMBER P50- _____

FOR A GRANT UNDER CHAPTER ____ OF THE WATER SECURITY, CLEAN DRINKING
WATER, COASTAL AND BEACH PROTECTION ACT OF 2002

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
1. Purpose of Funding.....	1
2. Incorporation of Other Documents.....	2
3. Project Cost.....	2
4. Grant Amount.....	2
5. Supplier's Cost and Matching Funds.....	2
6. Competitive Bidding.....	3
7. Requirements for Disbursement.....	3
8. Special Terms and Conditions.....	3
9. Operation and Maintenance of Project.....	3
10. Project Officials and Notices.....	4
11. Enforcement.....	5
12. Miscellaneous Provisions.....	5

EXHIBIT A
STANDARD CONDITIONS

<u>Article</u>	<u>Page</u>
A- 1. Definitions.....	7
A- 2. Term of Agreement.....	7
A- 3. Basic Conditions Precedent.....	7
A- 4. Compliance with Laws, Regulations, and Permit Requirements.....	8
A- 5. Project Changes.....	8

TABLE OF CONTENTS (continued)

<u>Article</u>	<u>Page</u>
A- 6. Disbursements by State	8
(a) Claims	8
(b) Disbursement	9
(c) Rejection of Claims	9
(d) Correction of Claims	9
(e) Adjustments to Claims	9
(f) Final Claim and Disbursement	10
(g) Force Account	10
A- 7. Withholding of Grant Disbursements by State and Cancellation of Agreement	11
(a) Conditions for Withholding	11
(b) Withholding Entire Grant Amount	11
(c) Withholding Balance of Grant Amount	11
A- 8. Timing of Project	11
A- 9. Supplier's Contracts	12
A-10. Audit and Inspection of Books and Records	12
A-11. Remittance of Funds By Supplier	12
A-12. Accounting and Deposit of Grant Disbursements	13
(a) Separate Accounting of Grant Disbursements	13
(b) Disposition of Funds Disbursed	13
(c) Interim and Final Audits	13
A-13. Inspections of Project by State	13
A-14. Prohibition Against Disposal of Project Without State Permission	14
A-15. Nondiscrimination Clause	14
A-16. Workers' Compensation Clause	15
A-17. Successors and Assigns	15
A-18. State to be Held Harmless	15
A-19. Remedies Not Exclusive	15

TABLE OF CONTENTS (continued)

<u>Article</u>	<u>Page</u>
A-20. Amendments	16
A-21. Waiver of Rights.....	16
A-22. Dispute Clause.....	16
A-23. Performance and Assurances.....	16
A-24. Default Provisions	16
A-25. Drug-Free Workplace Certification.....	17
A-26. Conflict of Interest--Current and Former State Employees	18
(a) Current State Officers and Employees	18
(b) Former State Officers and Employees	19
A-27. Additional Insured	19
A-28. Prohibited Use of State Funds for Software.....	20
A-29 Labor Compliance.....	20

EXHIBIT B
SPECIAL TERMS AND CONDITIONS

<u>Article</u>	<u>Page</u>
B- 1.	21

ATTACHMENTS

1. Budget and Expenditure Summary (Article A-3(c))
2. Claim form (Article A-6(a))
3. Final Release (Article A-6 (f)(4))

STATE OF CALIFORNIA

HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF HEALTH SERVICES

FUNDING AGREEMENT
BETWEEN
STATE OF CALIFORNIA
DEPARTMENT OF HEALTH SERVICES
AND
(Entity name)
PROJECT NUMBER P50-_____

UNDER CHAPTER _____ OF THE WATER SECURITY, CLEAN DRINKING
WATER, COASTAL AND BEACH PROTECTION ACT OF 2002

THIS AGREEMENT, is entered into between the State of California Department of Health Services herein referred to as "State", and **(Entity name)**, a public agency, in the County of _____ State of California, duly organized, existing, and acting pursuant to the laws thereof, herein referred to as "Supplier", which parties do hereby agree as follows:

SECTION 1. PURPOSE OF FUNDING

This Agreement provides funding in the form of a grant made by State to the Supplier under the provisions of the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, Division 26.5 of the Water Code, commencing with Section 79500, (herein referred to as the "Act".) The purpose of the funding is to assist in financing a project which will enable Supplier to _____, herein referred to as the "Project". Funds may be used only for such eligible project costs as are approved by State.

Supplier is solely responsible for the design, construction, operation, and maintenance of the Project; and for all persons or entities engaged in such work, including but not limited to contractors, subcontractors, suppliers, and providers of

services. Review or approval of plans, specifications, bid documents or other construction documents by State is solely for the purpose of proper administration of the 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 Exhibit A, "Standard Conditions"; Exhibit B, "Special Terms and Conditions"; Supplier's "Department of Health Services Proposition 50 Program Application for Funding"; project plans and specifications as submitted to and approved by State; and any attachments to said documents.

Supplier accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents and exhibits thereto, and to fulfill all assurances, declarations, representations, and statements made by Supplier in its application, documents, amendments, and communications filed in support of its request for funding, including but not limited to any and all plans and specifications submitted to and approved by State.

SECTION 3. PROJECT COST

Supplier represents that the total cost of the Project is estimated to be \$_____ of which State agrees that \$_____ is the total Eligible Project Costs.

SECTION 4. GRANT AMOUNT

Subject to the availability of funds and in accordance with the terms of this Agreement, State will provide grant funding to Supplier in an amount not to exceed \$_____, herein referred to as "Grant Amount".

SECTION 5. SUPPLIER'S COST AND MATCHING FUNDS

Supplier agrees to fund any project costs which are in excess of the Grant Amount set forth in Section 4 of this Agreement. Matching funds are incurred Eligible Project Costs paid, or to be paid, with non-State funds, herein referred to as "Matching Funds". Unless otherwise noted in Exhibit B, Matching Funds are required. Supplier must provide Matching Funds in an amount not less than the Grant Amount. Supplier's Cost for this Project, including Matching Funds, is estimated to be \$_____, herein referred to as "Supplier's Cost". Each disbursement of grant funds is expressly conditioned upon Supplier's demonstration that it has incurred an equal amount of costs approved by State as Matching Funds.

SECTION 6. 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 comply with all applicable state, or local ordinances for competitive bidding and all applicable labor laws.

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

SECTION 7. REQUIREMENTS FOR DISBURSEMENT

By _____, Supplier shall satisfy all conditions precedent to the disbursement of funds under this Agreement, including Basic Conditions Precedent as set forth in Article A-3 of the Standard Conditions. 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 of the Standard Conditions and/or declaration that Supplier is in default pursuant to Article A-24 of the Standard Conditions.

SECTION 8. SPECIAL TERMS AND CONDITIONS

Supplier shall satisfy the special terms and conditions set forth in Exhibit B. Failure by Supplier to timely satisfy the special terms and conditions may, at the option of State, result in cancellation of this Agreement under Article A-7 of the Standard Conditions, and/or declaration that Supplier is in default pursuant to Article A-24 of the Standard Conditions.

SECTION 9. OPERATION AND MAINTENANCE OF PROJECT

Upon project completion, and for a period of ____ years, which is the reasonably expected useful life of the Project, Supplier shall, as further consideration for this funding, commence and continue operation of the Project; cause the Project to be operated in an efficient and economical manner; provide for the making of all repairs, renewals, and replacements necessary for the effective operation of the Project; and cause the Project to be maintained in as good of condition as upon its construction, ordinary and reasonable wear and depreciation excepted. Failure by Supplier to operate and maintain the Project in accordance with this provision may, at the option of State, be considered a material breach of Agreement and may be treated as a default under Article A-24 of the Standard Conditions.

SECTION 10. PROJECT OFFICIALS AND NOTICES

State's Grant Administrator shall be the Chief, Technical Programs Branch, Division of Drinking Water and Environmental Management, California Department of Health Services. All communications given to State's Grant Administrator shall be deemed given to State.

State's Grant Administrator shall be State's 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. All such recommendations and findings shall be communicated to the Chief, Division of Drinking Water and Environmental Management of the California Department of Health Services, and disputes shall be resolved in accordance with Article A-22 of the Standard Conditions.

Supplier's Grant Administrator shall be its _____. Supplier's Grant Administrator shall be Supplier's representative for administration of this Agreement. All communications given to Supplier's Grant Administrator shall be deemed given to Supplier.

Either party may change its Grant Administrator upon written notice to the other party.

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

State of California
Department of Health Services
Division of Drinking Water and
Environmental Management
Attention: Proposition 50 Program
1616 Capitol Avenue, MS 7408
Post Office Box 997413
Sacramento, California 95899-7413

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

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

All written notices that are required either expressly or by implication to be given by one party to the other under this Agreement shall be signed for State by its Grant

Administrator and for Supplier by its Grant Administrator. 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 11. ENFORCEMENT

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

SECTION 12. 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.

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 is the date of the latest in time execution by a party hereto.

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

Approved as to Legal Form
and Sufficiency:

STATE OF CALIFORNIA
DEPARTMENT OF HEALTH SERVICES

By _____
Mark Hagiya
Assistant Chief Counsel
Department of Health Services

By _____
Rufus B. Howell
Chief, Division of Drinking Water and
Environmental Management
Sacramento, California

Date _____

Date _____

Supplier

By _____
Signature

Print Name

Title

Address

Date _____

EXHIBIT A

STANDARD CONDITIONS

ARTICLE A-1. DEFINITIONS

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

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

Days--Calendar days unless otherwise expressly indicated.

Month--Calendar month unless otherwise expressly indicated.

Year--Calendar year unless otherwise expressly indicated.

Eligible Project Costs--Those project costs which are eligible for funding under the Act and applicable State law and implementing criteria.

Force Account--The use of Supplier's own employees or equipment on the Project.

Grant Amount--The total amount disbursed to Supplier under this Agreement.

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 its execution and shall remain in effect until the expiration of the period of time required for operation and maintenance of the Project, as set forth in Section 9 of this Agreement.

ARTICLE A-3. BASIC CONDITIONS PRECEDENT

State shall have no obligation to disburse funds under this Agreement unless and until:

(a) Supplier has provided satisfactory documentation of the action taken by its governing body authorizing it to enter into this Agreement, and designating a

representative to execute this Agreement and to sign a claim for disbursement of funds.

(b) Supplier has provided detailed information concerning the account established for deposit of funds received from State.

(c) Supplier has submitted an initial budget approved by State in the form of **Attachment 1** to this Agreement.

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, including, but not limited to, environmental, labor, procurement and safety laws, rules, regulations, permits, and ordinances.

ARTICLE A-5. PROJECT CHANGES

The Project shall be constructed in accordance with the plans and specifications approved by State on _____. Supplier shall not make any change in the Project, or issue any change order to a contractor, without receiving prior written approval from State.

Supplier may request a one-time increase in the total funding provided in this Agreement. Such request shall be based upon the final accepted construction bids. Such request may be granted or denied at the sole discretion of State. Supplier shall submit evidence to State that Matching Funds are available in an amount equal to the amount of additional grant funding requested.

Supplier shall submit to State in writing any proposed changes to the Project budget including but not limited to transferring of funds between line item allotments. Supplier shall obtain written approval of such proposed changes from State before the proposed changes are adopted.

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 of funds shall be provided in the form

of **Attachment 2** to this Agreement and shall not be submitted more than once a month and shall include:

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

(2) a statement, with supporting documentation, demonstrating that Matching Funds equal to the amount of the claim have been incurred.

(b) Disbursements

Following the review and approval of a claim by State, it will disburse to Supplier an approved amount, subject to any retention requirements specified in Exhibit B, Special Terms and Conditions, and subject to the availability of funds. Any and all funds disbursed to Supplier under this Agreement, and any and all interest earned by Supplier on such funds, shall be used solely to pay Eligible Project Costs.

(c) Rejection of Claims

A claim may be rejected by State 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) Supplier fails to adequately demonstrate required Matching Funds.

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 confirm correction of the error, to Supplier, in writing.

(e) Adjustments to Claims

If upon review of a claim State determines that any portion or portions of the costs claimed are ineligible to be funded under the Act, State law, implementing criteria, or the terms of this Agreement, State will notify Supplier, by certified or registered mail,

of its determination concerning Supplier's failure to adequately document costs as Eligible Project Costs. Supplier may, within thirty (30) days of the date of receipt of such notice, submit additional documentation or evidence to cure such deficiency(ies). If Supplier does not submit additional information, or if State determines such additional information to be inadequate, State will adjust the pending claim by the amount of the, ineligible cost(s).

Supplier may submit additional documentation or evidence, and resubmit any such rejected costs on a subsequent claim.

(f) Final Claim and Disbursement

Not later than six (6) months from the Project Completion Date, as set forth in Article A-8, Supplier shall submit a final claim. With the final claim, Supplier shall provide:

- (1) A statement of full written disclosure of all sources and amounts of funds contributed to the Project;
- (2) A certification by Supplier's Grant Administrator that the data disclosed is true and correct;
- (3) Proof of a Recorded Notice of Completion;
- (4) A fully executed "Final Release" in the form of **Attachment 3** to this Agreement.

Should Supplier fail to make the full disclosure and certification required by parts 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 may be referred to the California Department of Finance for a full project audit.

(g) Force Account

Costs of construction or construction related activities performed by Force Account, if determined by State, in its sole discretion, to be Eligible Project Costs, may be used as Matching Funds, but are not eligible for grant funding under the terms of this Agreement.

Costs of engineering, legal, and administrative activities performed by Force Account, if determined by State, in its sole discretion, to be Eligible Project Costs, may be used as Matching Funds or may be eligible for grant funding pursuant to the terms of this Agreement.

When Supplier uses 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 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 may give written notice of such failure to comply. If Supplier does not cure any such failure to State's satisfaction within ten (10) calendar days of receipt of such notice, State may withhold from the Supplier all or any portion of the grant funding 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-24, or canceling this Agreement pursuant to Subpart (b) of this Article A-7.

(b) Withholding Entire Grant Amount

If State determines to withhold the entire Grant Amount 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 Grant Amount-

When a portion of the grant amount has been disbursed to Supplier and State determines to withhold funding, State will notify Supplier in writing, via certified or registered mail, that State is withholding the balance of the funding from Supplier, pursuant to Subpart (a) of this Article A-7. In such event, Supplier will be deemed to be in default and subject to the provisions of Article A-24.

ARTICLE A-8. TIMING OF PROJECT

Supplier agrees to proceed expeditiously, and shall meet a Project Completion Date of not later than _____. Supplier's failure to meet said Project Completion Date may, at the option of State, be considered a material breach of agreement and may be treated as a default under Article A-24. The facility shall not be placed into operation until State has conducted a final inspection and notifies Supplier in writing that the Project is complete.

When the Project is complete, Supplier shall certify to State that the Project is complete in accordance with the approved plans and specifications and ready for final

inspection by State. The date of such certification by Supplier shall be the Project Completion Date for purposes of this Agreement.

ARTICLE A-9. SUPPLIER'S CONTRACTS

Supplier shall be solely responsible for resolution of any and all disputes arising out of or related to Supplier's construction and contracts for construction of the Project, including but not limited to bid disputes and payment disputes with Supplier's contractors and subcontractors and shall provide appropriate releases (as set forth in California Civil Code Title 15) 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 under this Agreement, pursuant to Government Code Section 8546.7, the parties shall be subject to the examination and audit by State or any agent thereof, and the State Auditor, 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, negotiation, audit or other action is commenced before the expiration of said three (3) year period, all records must be retained until such action is resolved, or until the end of said three (3) year 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 substantial failure to comply with this Agreement, State may declare Supplier in default as set forth in Article A-24, 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. REMITTANCE OF FUNDS BY SUPPLIER

Within thirty (30) days following the date of final disbursement of funds, Supplier shall remit to State any funds that were disbursed under this Agreement and were not utilized to pay Eligible Project Costs. Such funds will not be included in the Grant Amount.

ARTICLE A-12. ACCOUNTING AND DEPOSIT OF GRANT DISBURSEMENTS

(a) Separate Accounting of Grant Disbursements

Supplier shall account for the funds disbursed pursuant to this Agreement 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 such funds.

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. Such records shall be 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 funds disbursed pursuant to this Agreement 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 execution of this Agreement 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 all funds disbursed under this Agreement. 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 substantial breach of this Agreement.

ARTICLE A-13. 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 this Agreement. This right shall extend to any subcontracts, and Supplier shall include provisions ensuring such access in all its contracts or subcontracts related to the Project.

ARTICLE A-14. PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION

During the term of this Agreement Supplier shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, without prior written consent of State.

ARTICLE A-15. NONDISCRIMINATION CLAUSE

During the performance of this Agreement, Supplier, its contractors and subcontractors, shall not deny the 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 11135-11139.5) 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. Said group of laws and requirements are collectively referred to in this Agreement as 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, its contractors and subcontractors shall give written notice of their obligations under this Article to labor organizations with which they have a collective bargaining or other agreement.

Supplier's signature on this Agreement shall constitute a certification under 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-15 in all contracts and subcontracts to perform work on the Project.

ARTICLE A-16. WORKERS' COMPENSATION CLAUSE

Supplier affirms that it is aware of the provisions of Section 3700 of the California 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 performance of work under this Agreement and will make its contractors and subcontractors aware of this provision.

ARTICLE A-17. 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 by State and made subject to such reasonable terms and conditions as State may impose.

ARTICLE A-18. STATE TO BE HELD HARMLESS

Supplier shall indemnify, hold harmless, protect and defend State and its officers, employees, agents and representatives from any loss, suit, action or claim brought for, or on account of any violation of law, ordinance, rule, or regulation, or any 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-19. 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-20. 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-21. 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-22. DISPUTE CLAUSE

Any dispute that Supplier may have regarding the performance of this Agreement including, but not limited to, claims for additional disbursements of funds or extension of time, shall be submitted to State's Grant Administrator identified in Section 10 of this Agreement. State's Grant Administrator may make findings and recommendations and transmit a copy of the claim and any such findings and recommendations to the Department of Health Services, Chief, Division of Drinking Water and Environmental Management, who shall make a decision on such dispute which decision shall be in writing and transmitted to Supplier by certified or registered mail. Said decision shall be final and conclusive.

ARTICLE A-23. PERFORMANCE AND ASSURANCES

Supplier agrees to faithfully and expeditiously perform or cause to be performed all Project work as described in the final plans and specifications as submitted to and approved by State, 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-24. DEFAULT PROVISIONS

(a) Supplier will be in default under this Agreement if any of the following occur:

- (1) Supplier's failure to make any remittances required by this Agreement;
- (2) Supplier's substantial breach of this Agreement, or any supplement or amendment to it;
- (3) Supplier's making of any false warranty, representation, or statement with respect to this Agreement or the Project;
- (4) 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; and/or
- (5) Supplier's failure to provide required Matching Funds.

(b) When an event of default occurs, State may give Supplier notice of default. Supplier shall have ten (10) 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, then State may do any or all of the following:

- (1) Declare that any and all amounts disbursed to Supplier under the terms of this Agreement shall be deemed an obligation of Supplier and due and payable to State;

(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 to Supplier under this Agreement;

(4) Perform any of Supplier's obligations under this Agreement for Supplier's account; and/or

(5) 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 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-25. 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;

(4) Penalties that may be imposed upon employees for drug abuse violations.

(c) Every employee who works on the Project:

(1) Shall be issued a copy of Supplier's drug-free policy statement;

(2) Shall 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 has violated the certification by failing to carry out the requirements of this Article A-25.

ARTICLE A-26. CONFLICT OF INTEREST--CURRENT AND FORMER STATE EMPLOYEES

(a) Current State Officers and Employees:

(1) Supplier shall not utilize in the performance of this Agreement any state officer or employee in the state civil service or other appointed state official unless the employment, activity, or enterprise is required as a condition of the officer or employee's regular state employment. Employee in the state civil service is defined to be any person legally holding a permanent or intermittent position in the state civil service.

(2) If any state officer or employee is utilized or employed in the performance of this Agreement, Supplier shall first obtain written verification from State that the employment, activity, or enterprise is required as a condition of the officer's, employee's, or official's regular state employment and shall keep said verification on file for three (3) years after the termination of this Agreement.

(3) Supplier may not accept occasional work from any currently employed state officer, employee, or official.

(4) If Supplier accepts volunteer work from any currently employed state officer, employee, or official, Supplier may not reimburse, or otherwise pay or compensate, such person for expenses incurred, including, without limitation, travel expenses, per diem, or the like, in connection with volunteer work on behalf of Supplier.

(5) Supplier shall not employ any state officers, employees, or officials who are on paid or unpaid leave of absence from their regular state employment.

(6) Supplier or anyone having a financial interest in the Agreement may not become a state officer, employee, or official during the term of this Agreement. Supplier shall notify each of its employees, and any other person having a financial interest in this Agreement that it is unlawful under the Public Contract Code for such person to become a state officer, employee, or official during the term of this Agreement unless any relationship with the Supplier giving rise to a financial interest, as an employee or otherwise, is first terminated.

(7) Occasional or one-time reimbursement of a state employee's travel expenses is not acceptable.

(b) Former State Officers and Employees:

(1) Supplier shall not utilize in the performance of this Agreement any formerly employed person of any state agency or department that was employed under the state civil service, or otherwise appointed to serve in the State Government, if that person was engaged in any negotiations, transactions, planning, arrangement, or any part of the decision making process relevant to the Agreement while employed in any capacity by any state agency or department. This prohibition shall apply for a two (2) year period beginning on the date the person left state employment.

(2) Supplier shall not utilize within twelve (12) months from the date of separation from services, a former employee of the contracting state agency or department if that former employee was employed in a policy making position in the same general subject area as the proposed Agreement within the twelve (12) month period prior to the employee leaving state service.

ARTICLE A-27. 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 insureds*; and shall provide State with a copy of all such certificates prior to the commencement of construction of the Project.

ARTICLE A-28. PROHIBITED USE OF STATE FUNDS FOR SOFTWARE

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

ARTICLE A-29 LABOR COMPLIANCE

Supplier shall comply with Labor Code section 1771.8 regarding Labor Compliance Programs. Supplier's failure or refusal to comply with this requirement shall be considered a substantial breach of this Agreement.

EXHIBIT B

SPECIAL TERMS AND CONDITIONS

ARTICLE B-1.

1. Supplier shall notify the California Department of Health Services, _____ District Office when construction is completed.
2. Notwithstanding any other term or condition of this Agreement, Supplier may be reimbursed only for such Eligible Project Costs consisting of eligible construction expenses incurred on or after _____, the date of Supplier's Letter of Commitment, and eligible preliminary expenses incurred after March 5, 2005.
3. Notwithstanding any other term or condition of this Agreement, Supplier may use only Eligible Project Costs incurred after October 28, 2003 to satisfy Matching Fund requirements. **(NOTE TO ANALYST: REMOVE IF NO MATCHING FUNDS)**
4. Supplier shall notify the California Department of Health Services, _____ District Office prior to any start up testing of the treatment facilities.
5. Notwithstanding any other term or condition of this Agreement, Supplier is not required to provide Matching Funds. **(NOTE TO ANALYST: REMOVE IF MATCHING FUNDS ARE REQUIRED)**