COMMITTEE ACTION SHEET

COUNCIL DOCKET OF _____

☐ Supplemental ☐ Adoption ☐ Consent ☐ Unanimous Consent Rules Committee Consultant Review

R -

O -

California Department of Public Health Safe Drinking Water State Revolving Fund Loan Application

☒ Reviewed ☐ Initiated By NR&C On 12/03/08 Item No. 5

RECOMMENDATION TO:

Forward this item to the full City Council.

VOTED YEA: Frye, Faulconer, Peters

VOTED NAY:

NOT PRESENT: Atkins

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

REPORT TO THE CITY COUNCIL NO.

INDEPENDENT BUDGET ANALYST NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

Water Department's November 24, 2008, Executive Summary Sheet

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

000015

DATE ISSUED:	November 24, 2008
ATTENTION:	Natural Resources & Culture Committee Agenda of December 3, 2008
ORIGINATING DEPARTMENT:	Water Department
SUBJECT:	California Department of Public Health Safe Drinking Water State Revolving Fund Loan Application
COUNCIL DISTRICTS:	All
CONTACT/PHONE NUMBER:	Rod Greek (619) 980-5928/Kim Vance (619) 533-5466

REQUESTED ACTION:
Council authorization to apply for, accept, appropriate and expend funds from the California Department of Public Health (CDPH) - Safe Drinking Water State Revolving Fund (SDWSRF) for the Alvarado Water Treatment Plant, Phase IV, Project No 3710020-028.

STAFF RECOMMENDATION:
- Authorize the Mayor and/or designee to execute, for and on behalf of the City of San Diego, a Safe Drinking Water State Revolving Fund (SRF) Loan, Funding Agreement, Amendments, Reimbursement Claims, and Final Release form for the Alvarado Water Treatment Plant Upgrade & Expansion Phase IV project.
- Authorize the Mayor and/or designee to designate revenues from Water Fund rates, charges and assessments, and financing proceeds as the dedicated source of revenue for matching funds required under the Funding Agreement in the amount of $33,275,113. 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.
- Authorize the City Engineer, or other registered engineer designated by the Mayor, to execute the Budget and Expenditure Summary and Certificate of Project Completion forms.
- Authorize the City Auditor and Comptroller to accept, appropriate, and expend up to $12,000,000 for reimbursement by a State Revolving Fund loan contingent upon the City Auditor and 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.
- Authorize the $12,000,000 loan to be repaid over 20 years at a 2.3086 percent interest rate.
- Authorize for the record, that the final Alvarado Water Treatment Plant Upgrade & Expansion (LDR 98-0130) EIR has been reviewed and considered prior to approving the project; directing the City Clerk to file a Notice of Determination.

EXECUTIVE SUMMARY:
In January 2008, the Water Department submitted a Safe Drinking Water State Revolving Fund (SRF) Loan application to the California Department of Public Health (CDPH) for the Alvarado Water Treatment Plant Upgrade & Expansion, Phase IV (AWTP) project. On September 29, 2008, CDPH determined that Project No. 3710020-028 was eligible for a construction loan in the amount of $12 million and a Safe Drinking Water State Revolving Fund Notice of Acceptance of Application (NOAA) was sent to the City of San Diego Water Department indicating that funds are being reserved for the project. The NOAA also outlines the terms and conditions the City must meet prior to issuance of a funding agreement.

The Safe Drinking Water State Revolving Fund is a low interest loan program with a fixed rate, allowing up to $20 million per project and up to $30 million per entity. It provides public water systems in California the opportunity to utilize subsidized funding to correct infrastructure problems, to assess and protect source water, and to improve technical, managerial and financial capability.

000016

FISCAL CONSIDERATIONS:

The funding agreement, when issued for the Alvarado WTP Upgrade & Expansion Phase IV project, will provide a $12 million loan to be repaid over 20 years at a 2.3086 percent interest rate. Semiannual principal and interest payments will be approximately $376,266.73 and will normally begin after project completion, which is scheduled for August, 2010. The total project costs for the AWTP Upgrade & Expansion, Phase IV project, CIP No. 73-261.3 is estimated to be $65,275,113.

Of the total project cost, approximately $20 million will be funded by the CDPH Proposition 50 program. The remaining costs will be funded by the Water Operating Fund or Water Department financing proceeds. The Water Department has sufficient capacity to issue additional debt following the rate increases approved by the City Council on February 26, 2007.

EQUAL OPPORTUNITY CONTRACTING

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2702) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On May 30, 2008, Resolution No. R-303743 was passed authorizing the execution of a $20 million Proposition 50 Grant Funding agreement and authorized expenditure of funds for the Alvarado WTP Upgrade & Expansion Phase IV project.

A request to authorize advertising for bid/award for the AWTP Upgrade and Expansion – Ozone Project was heard at NR&C on July 18, 2007 and forwarded to the City Council without a recommendation. At the October 29, 2007 City Council meeting, the request was passed by City Council with the direction to add architectural enhancements and color to the building and provide Council an annual project update.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Community meetings were conducted to inform members of the public, including the Friends of Lake Murray, Mission Trails Regional Park Citizen's Advisory Committee and Task Force, and local residents of the scope and schedule of the AWTP Upgrade & Expansion project. Other outreach efforts included fact-sheets, newsletters and updates on the City of San Diego website.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders are the City of San Diego, Water Department Customers, Mission Trails Regional Park Citizen's Advisory Committee and Task Force, San Diego County Water Authority and the California Department of Public Health.

11/10/08

Alex Ruiz
Assistant Water Department Director

11.20.08

J.M. Barnett
Director of Public Utilities

000017	DOCKET SUPPORTING INFORMATION CITY OF SAN DIEGO ***EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION***	DATE: January 8, 2009	50 02/24

SUBJECT: California Department of Public Health Safe Drinking Water State Revolving Fund Loan Application

GENERAL CONTRACT INFORMATION

Recommended Consultant: California Department of Public Health

Amount of this Action: $12,000,000.00

SUBCONSULTANT PARTICIPATION

There is no subconsultant activity associated with this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity Required:

This agreement is not subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2702) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517) since the participant is a Government Agency.

ADDITIONAL COMMENTS

This action is a request for Authorization to accept, appropriate, and expend up to $12,000,000.00 for reimbursement by a State Revolving Fund loan.

JLR

000019

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY) NA

TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Water Department	DATE: 12/17/2008

SUBJECT: California Department of Public Health Safe Drinking Water State Revolving Fund Loan Application

PRIMARY CONTACT (NAME, PHONE):	SECONDARY CONTACT (NAME, PHONE):
Rod Greek,619-980-5928	Kim Vance, 619-533-5466

COMPLETE FOR ACCOUNTING PURPOSES

FUND	41500					
DEPT.	760					
ORGANIZATION						
OBJECT ACCOUNT	76410					
JOB ORDER	189031					
C.I.P. NUMBER	732613					
AMOUNT	$12,000,000.00	0.00	0.00	0.00	0.00	0.00
FUND						
DEPT.						
ORGANIZATION						
OBJECT ACCOUNT						
JOB ORDER						
C.I.P. NUMBER						
AMOUNT	0.00	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE): The total project cost is estimated to be $65,275,113, funded in part by a $20,000,000 grant from the CDPH Proposition 50 Program, to be deposited into the Water Operating Fund 41500

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:		APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Grants Administration	Liaison Office	ORIG DEPT.	Ruiz, Alex	12/24/2008
Environmental Analysis	Financial Management	CFO		
Water Department	Comptroller	DEPUTY CHIEF	Barrett, Jim	2/5/2009
Equal Opportunity Contracting		COO		
Debt Management		CITY ATTORNEY	Palmucci, Ray	2/9/2009
		COUNCIL PRESIDENTS OFFICE	Halsey, Keely	2/11/2009

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 Safe Drinking Water State Revolving Fund (SRF) Loan, Funding Agreement, Amendments, Reimbursement Claims, and Final Release form for the Alvarado Water Treatment Plant Upgrade & Expansion Phase IV project.
2. Authorizing the Mayor and/or designee to designate revenues from Water Fund rates, charges and assessments, and financing proceeds as the dedicated source of revenue required under the Funding Agreement in the amount of $33,275,113. 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.

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 $12,000,000 for reimbursement by a State Revolving Fund loan and certifying that funds are available contingent upon the loan being secured.

5. Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess funds, if necessary, to the appropriate reserves.

6. Authorizing the $12,000,000 loan to be repaid over 20 years at a 2.3086 percent interest rate.

STAFF RECOMMENDATIONS:
Approve the requested actions.

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 Alvarado Water Treatment Plant Upgrade and Expansion (LDR 98-0130) Environmental Impact Report. 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).
CITY CLERK INSTRUCTIONS:	Please return one copy of the executed City Council Action and a copy of the resolution to Kim Vance, (619) 533-5466, MS 904-A This Item is subject to Charter Section 99 requirements (10 day public noticing and 6 votes required)

000021

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 12/17/2008
ORIGINATING DEPARTMENT: Water Department
SUBJECT: California Department of Public Health Safe Drinking Water State Revolving Fund Loan Application
COUNCIL DISTRICT(S): All
CONTACT/PHONE NUMBER: Rod Greek/619-980-5928

REQUESTED ACTION:
Council authorization to apply for, accept, appropriate and expend funds from the California Department of Public Health (CDPH) - Safe Drinking Water State Revolving Fund (SDWSRF) for the Alvarado Water Treatment Plant, Phase IV, Project No 3710020-028.
STAFF RECOMMENDATION:
Approve the requested actions.
EXECUTIVE SUMMARY OF ITEM BACKGROUND:
In January 2008, the Water Department submitted a Safe Drinking Water State Revolving Fund (SRF) Loan application to the California Department of Public Health (CDPH) for the Alvarado Water Treatment Plant Upgrade & Expansion, Phase IV (AWTP) project. On September 29, 2008, CDPH determined that Project No. 3710020-028 was eligible for a construction loan in the amount of $12 million and a Safe Drinking Water State Revolving Fund Notice of Acceptance of Application (NOAA) was sent to the City of San Diego Water Department indicating that funds are being reserved for the project. The NOAA also outlines the terms and conditions the City must meet prior to issuance of a funding agreement.

The Safe Drinking Water State Revolving Fund is a low interest loan program with a fixed rate, allowing up to $20 million per project and up to $30 million per entity. It provides public water systems in California the opportunity to utilize subsidized funding to correct infrastructure problems, to assess and protect source water, and to improve technical, managerial and financial capability.

FISCAL CONSIDERATIONS:
The funding agreement, when issued for the Alvarado WTP Upgrade & Expansion Phase IV project, will provide a $12 million loan to be repaid over 20 years at a 2.3086 percent interest rate. Semiannual principal and interest payments will be approximately $376,266.73 and will normally begin after project completion, which is scheduled for August, 2010. The total project costs for the AWTP Upgrade & Expansion, Phase IV project, CIP No. 73-261.3 is estimated to be $65,275,113.

In addition, of the total project cost, approximately $20 million will be funded by a separate grant from the CDPH Proposition 50 program. The remaining costs will be funded by the Water Operating Fund or Water Department financing proceeds. The Water Department has sufficient capacity to issue additional debt following the rate increases approved by the City Council on February 26, 2007.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):
This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2702) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTION:
On May 30, 2008, Resolution No. R-303743 was passed authorizing the execution of a $20 million Proposition 50 Grant Funding agreement and authorized expenditure of funds for the Alvarado WTP Upgrade & Expansion Phase IV project.

A request to authorize advertising for bid/award for the AWTP Upgrade and Expansion – Ozone Project was heard at NR&C on July 18, 2007 and forwarded to the City Council without a recommendation. At the October 29, 2007 City Council meeting, the request was passed by City Council with the direction to add architectural enhancements and color to the building and provide Council an annual project update. This item was heard before the Committee on Natural Resources & Culture on December 3, 2008 and a motion was made to forward the item to the City Council.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:
Community meetings were conducted to inform members of the public, including the Friends of Lake Murray, Mission Trails Regional Park Citizen's Advisory Committee and Task Force, and local residents of the scope and schedule of the AWTP Upgrade & Expansion project. Other outreach efforts included fact-sheets, newsletters and updates on the City of San Diego website.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:
The key stakeholders are the City of San Diego, Water Department Customers, Mission Trails Regional Park Citizen's Advisory Committee and Task Force, San Diego County Water Authority and the California Department of Public Health.

Ruiz, Alex
Originating Department

Barrett, Jim
Deputy Chief/Chief Operating Officer

000023

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AUTHORIZING EXECUTION OF FUNDING AGREEMENTS FOR A PUBLIC WORKS CONSTRUCTION LOAN UNDER THE SAFE DRINKING WATER FUND LAW; FOR EXPENDITURE OF FUNDS; AND TAKING RELATED ACTIONS.

WHEREAS, in January 2008, the Water Department submitted a Safe Drinking Water State Revolving Fund [SRF] loan application to the California Department of Public Health [CDPH] for the Alvarado Water Treatment Plant Upgrade and Expansion Phase IV Project [Project]; and

WHEREAS, on May 30, 2008, the City Council adopted Resolution No. R-303743 which authorized the execution of a $20,000,000 Proposition 50 Grant Funding Agreement and authorized expenditure of funds for the Project; and

WHEREAS, on September 29, 2008, CDPH determined that the Project was eligible for a construction loan in the amount of $12,000,000 and a Safe Drinking Water State Revolving Fund Notice of Acceptance of Application [NOAA] was sent to the Water Department indicating that funds were reserved for the Project; NOW, THEREFORE:

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor or his designee is hereby authorized by ordinance to execute, for and on behalf of the City of San Diego, a Safe Drinking Water State Revolving Fund Loan, Funding Agreement, Amendments, Reimbursement Claims, and Final Release form for the Project.

Section 2. That the Mayor or his designee is hereby authorized by ordinance to designate revenues from Water Fund rates, charges and assessments, and financing proceeds as the dedicated source of revenue required under the Funding Agreement in an amount not to exceed $33,275,113, 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.

Section 3. That the City Engineer, or other registered engineer designated by the Mayor, is authorized to execute the Budget and Expenditure Summary and Certificate of Project Completion forms.

Section 4. That the City Auditor and Comptroller is authorized to accept, appropriate, and expend an amount not to exceed $12,000,000 for reimbursement by a State Revolving Fund loan and certifying that funds are available contingent upon the loan being secured.

Section 5. That the City Auditor and Comptroller is authorized, upon advice from the administering department, to transfer excess funds, if necessary, to appropriate reserves.

Section 6. That the $12,000,000 loan is authorized to be repaid over 20 years at a 2.3086 percent rate.

Section 7. That this activity is covered under the Alvarado Water Treatment Plant Upgrade & Expansion Environmental Impact Report LDR No. 98-0130, that there is no change in circumstance, additional information or project changes to warrant additional environmental review and that this project 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).

000025 Section 8. That a full reading of this Ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 9. That this Ordinance shall take effect and be in force on the thirtieth (30th) day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By _____
Raymond C. Palmucci
Deputy City Attorney

RCP:sc
02/10/2009
Or.Dept: Water Dept.
O-2009-93

I hereby certify that the foregoing Ordinance 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

000027

Construction Loan
Agreement No. SRF0_CX_

STATE OF CALIFORNIA

HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF PUBLIC HEALTH

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FUNDING AGREEMENT
BETWEEN
STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH
AND

(ENTITY NAME)

PROJECT NUMBER

FOR A CONSTRUCTION LOAN UNDER THE
SAFE DRINKING WATER STATE REVOLVING FUND LAW OF 1997

(Rev. 8/21/07)

000028

TABLE OF CONTENTS

Section		Page
1.	Purpose of Loan	1
2.	Incorporation of Other Documents	2
3.	Project Cost	2
4.	Loan Amount	2
5.	Supplier's Cost	3
6.	Requirements for Disbursement	3
7.	Special Requirements	3
8.	Rate of Interest	3
9.	Loan Repayment Term	3
10.	Operation and Maintenance of Project	3
11.	Fiscal Services Agreement	4
12.	Project Officials and Notices	4
13.	Enforcement	5
14.	Miscellaneous Provisions	5

DRAFT

EXHIBIT A
STANDARD CONDITIONS

Article		Page
A- 1.	Definitions	8
A- 2.	Term of Agreement	9
A- 3.	Basic Conditions Precedent	9
A- 4.	Compliance with Laws, Regulations, and Permit Requirements	10
A- 5.	Project Changes	10

000029

TABLE OF CONTENTS (continued)

Article		Page
A- 6.	Loan Disbursements by State	10
	(a). Claims	10
	(b) Disbursement	10
	(c) Rejection of Claims	11
	(d) Correction of Claims	11
	(e) Adjustments to Claims	11
	(f) Final Claim and Disbursement	12
	(g) Force Account	12
A- 7.	Withholding of Loan Disbursements by State and Cancellation of Agreement	12
	(a) Conditions for Withholding	12
	(b) Withholding Entire Loan Amount	12
	(c) Withholding Balance of Loan Amount	13
A- 8.	Timing of Project	13
A- 9.	Supplier's Contracts	13
A-10.	Audit and Inspection of Books and Records	13
A-11.	Statement of Principal Amount of Loan	14
	(a) Transmission of Statement to Supplier	14
	(b) Remittance of Funds by Supplier	14
A-12.	Interest Payments During Construction	14
A-13.	Repayment of Principal Amount of Loan and Interest	15
	(a) Terms of Repayment	15
	(b) Advance Payment Option	15
A-14.	Payment Delinquency	15
A-15.	Accounting and Deposit of Loan Disbursements	16
	(a) Separate Accounting of Loan Disbursements and Interest; Records	16
	(b) Disposition of Funds Disbursed	16
	(c) Interim and Final Audits	16
A-16.	Inspections of Project by State	16
A-17.	Prohibition Against Disposal of Project Without State Permission	17

DRAFT

TABLE OF CONTENTS (continued)

Article		Page
A-18.	Nondiscrimination Clause	17
A-19.	Workers' Compensation Clause	18
A-20.	Successors and Assigns	18
A-21.	State to be Held Harmless	18
A-22.	Remedies Not Exclusive	19
A-23.	Amendments	19
A-24.	Waiver of Rights	19
A-25.	Dispute Clause	19
A-26.	Performance and Assurances	19
A-27.	Default Provisions	19
A-28.	Drug-Free Workplace Certification	21
A-29.	Conflict of Interest--Current and Former State Employees	21
A-30.	Additional Insured	23
A-31.	Prohibited Use of State Funds for Software	23
A-32.	Single Audit Act	23

DRAFT

EXHIBIT B
SECURITY REQUIREMENTS

Article		Page
B- 1.	No Priority for Additional Loans	24
B- 2.	Rates and Charges	24
B- 3.	Security Interest	24

TABLE OF CONTENTS (continued)

000031

Article		Page
B- 4.	Reserve Fund	24
B-5.	Legal Obligation	24

EXHIBIT C
SPECIAL REQUIREMENTS

Article		Page
C- 1.	Security	25
C- 2.	Additional Requirements	25

EXHIBIT D
COMPLIANCE WITH CROSS-CUTTING FEDERAL AUTHORITIES

Article		Page
D- 1.	Compliance with Federal Authorities	26
D- 2.	Equal Employment Opportunity Requirements	26
D- 3.	Participation of Small, Minority and Women-Owned Business Enterprises	28
D- 4.	Procurement Prohibitions	30
D- 5.	Debarment and Suspension	30
	(a) Instructions for Certification	30
	(b) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions	31
D- 6.	Uniform Relocation and Real Property Acquisition Act	32
D- 7.	National Labor Relations Board Certification	32

DRAFT

000032

ATTACHMENTS

Attachment 1. Fiscal Services Agreement (Section 11)

Attachment 2. Security Agreement (Article A-3(d))

Attachment 3. Initial Budget Summary (Article A-3(g))

Attachment 4. Claim for Disbursement of Funds (Article A-6(a))

Attachment 5. Final Release (Article A-6(f)(4))

Attachment 6. Supplier's Certification of Project Completion (Article A-8(b))

Attachment 7. "Fair Share Objectives" – Safe Drinking Water State Revolving Fund MBE/WBE Conformance Recommended Sequence (Article D-3(a))

Attachment 8. Minority Business Enterprise/Women Business Enterprise Information Form (Article D-3(b))

Attachment 9. Minority Business Enterprise/Women Business Enterprise MBE/WBE Quarterly Utilization Report (Article D-3(c))

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STATE OF CALIFORNIA

HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF PUBLIC HEALTH

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FUNDING AGREEMENT
BETWEEN
STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH
AND
(*ENTITY NAME*)
PROJECT NUMBER: _____

UNDER THE SAFE DRINKING WATER STATE REVOLVING FUND LAW OF 1997

THIS AGREEMENT, is entered into by and between State of California Department of Public Health, herein referred to as the "State", and _____, 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 LOAN

This Agreement constitutes a loan 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 of Health and Safety Code (Section 116760 and following). The purpose of the loan is to assist in financing construction of 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, herein referred to as the

"Project". Loan funds may be used only for such eligible project costs as are approved by State.

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

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 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 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 Exhibit A, "Standard Conditions"; Exhibit B, "Security Requirements"; Exhibit C, "Special Requirements"; Exhibit D, "Compliance with Cross-cutting Federal Authorities"; Supplier's "Application For Construction Funds"; 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 Safe Drinking Water State Revolving Fund financing, 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 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 $____.

For valuable consideration, Supplier agrees to pay State the entire principal amount disbursed under the terms and conditions of this Agreement together with interest, delinquent interest 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

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paragraph, shall survive termination of this Agreement for any reason including but not limited to operation of law.

SECTION 5. SUPPLIER'S COST

Supplier agrees to fund the difference between the estimate of the Project Cost (Section 3) and the Loan Amount (Section 4). Supplier's Cost for this Project is estimated to be $_____, herein referred to as "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 6. 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.

SECTION 7. 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 of the Standard Conditions, or declaration that Supplier is in default pursuant to Article A-27 of the Standard Conditions.

SECTION 8. RATE OF INTEREST

The rate of interest to be paid by Supplier on all amounts disbursed under this Agreement shall be _____ percent per annum of the unpaid balance of the loan. Interest on any loan funds disbursed to Supplier shall begin to accrue as of the date of each disbursement.

SECTION 9. LOAN REPAYMENT TERM

This loan has a Loan Repayment Term of _____ years.

SECTION 10. OPERATION AND MAINTENANCE OF PROJECT

Upon project completion and for a period of _____ years, which is the reasonably expected life of the Project, Supplier shall, as further consideration of this loan, commence and continue operation of the Project; shall cause the Project to be operated in an efficient and economical manner; shall provide for the making of all

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repairs, renewals, and replacements necessary for the effective operation of the Project; and shall 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-27 of the Standard Conditions.

SECTION 11. FISCAL SERVICES AGREEMENT

Supplier shall enter into a Fiscal Services Agreement, in the form of **Attachment 1** to this Agreement, with a Fiscal Agent. 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 special account with the Fiscal Agent, in which Supplier shall maintain funds, including the Reserve Fund required by Article B-4 of the Security Requirements, sufficient to service the loan. Funds from this 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 a Fiscal Services Agreement, Supplier shall not amend said Fiscal Services Agreement, close the special account, or retain a new Fiscal Agent without ninety (90) days prior written notice to State and receipt of prior written approval by State of a new or amended Fiscal Services Agreement.

A City or County may employ the services of its controller or treasurer as Fiscal Agent. Any other public agency may employ the services of its County controller or treasurer as Fiscal Agent.

State shall have no obligation to disburse funds until the Fiscal Agent has been engaged and the Fiscal Services Agreement between Supplier and the Fiscal Agent has been approved by State.

SECTION 12. PROJECT OFFICIALS AND NOTICES

State's Contract Manager shall be the Chief, Safe Drinking Water State Revolving Fund and Small Water Systems Section, 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, and disputes shall be resolved in accordance with Article A-25 of the Standard Conditions.

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Supplier's Contract Manager shall be its_____. 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
Safe Drinking Water State Revolving Fund Program
Attn: Chief, Safe Drinking Water State
Revolving Fund and Small Water Systems Section
1616 Capitol Mall, MS 7418
Post Office Box 997413
Sacramento, CA 95899-7413

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

_____

_____

_____

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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 13. ENFORCEMENT

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

SECTION 14. 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.

FEDERAL FINANCIAL ASSISTANCE

Supplier acknowledges that the source of funds disbursed to Supplier by State under this Agreement includes federal financial assistance, and Supplier agrees to comply with all applicable Cross-cutting Federal Authorities including those listed in Exhibit D to this Agreement and provisions of the Single Audit Act as set forth in the Federal Office of Management and Budget (OMB) Circular A-133.

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

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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:

By_____
Assistant Chief Counsel
California Department of Public Health

Date_____

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH

By_____
Chief, Division Drinking Water and
Environmental Management
Sacramento, California

Date_____

_____
Supplier

By_____
Signature

_____
Print Name

_____
Title

_____
Address

_____

Date_____

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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, savings and loan, 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.

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

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.

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Repayment Term--The period of time between the Project Completion Date and the date the principal amount of the loan is repaid in full. The repayment term of this loan is specified in Article A-13.

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 or until the expiration of the period of time required for operation and maintenance of the Project, as set forth in Section 10 of this Agreement, whichever shall occur last.

ARTICLE A-3. BASIC CONDITIONS PRECEDENT

State shall have no obligation to disburse funds under this Agreement unless and until Supplier has done all of the following:

(a) Supplier's governing body has taken action authorizing it to borrow funds and to enter into this Agreement, and designating a representative to execute this Agreement and to sign claims for disbursement of funds.

(b) Supplier has dedicated a source of revenue for repayment of the principal amount of the loan plus interest.

(c) Supplier has executed all documents required to provide the security required by Article B-3.

(d) Supplier has executed a Security Agreement in the form of **Attachment 2** to this Agreement; and Supplier has established all accounts required by said agreement.

(e) Supplier has engaged the services of a Fiscal Agent and the Fiscal Services Agreement has been fully executed as required by Section 11 of this Agreement.

(f) Supplier has provided detailed information concerning the account established to collect funds to repay the loan before the funds are transferred to the Fiscal Agent.

(g) Supplier has submitted an initial budget summary to State in the form of **Attachment 3** to this Agreement and said 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.

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

Supplier shall at all times comply with, and require its contractors or 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 constructed in accordance with the plans and specifications as approved by State on _____. 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, or affects the timely completion of the Project, 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.

ARTICLE A-6. LOAN 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 4** to this Agreement, and shall not be submitted more than once a month. Each claim shall include:

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

(2) a statement of incurred 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. 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.

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(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; or

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

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 Project costs approved by State for financing under the terms of this Agreement, or

(3) Are not supported by invoices or receipts acceptable to State.

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

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Supplier shall submit a final claim not later than six (6) months from the Project Completion 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;

(3) Proof of a Recorded Notice of Completion; and

(4) A fully executed "Final Release" in the form of **Attachment 5**.

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 loan principal and interest pursuant to Article A-13 may be required prior to the final disbursement of funds.

(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 Budget of Eligible Project Costs. 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 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 ten (10) calendar days of receipt of such notice, State may withhold from Supplier all or any portion of the loan amount and take any other action that it deems necessary to protect its interests, including but not limited

DRAFT

to declaring Supplier in default as set forth in Article A-27, or canceling this Agreement pursuant to subpart (b) of this Article A-7.

(b) Withholding Entire Loan Amount

If State determines to withhold the entire loan 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 Loan Amount

Where a portion of the loan amount has been disbursed to Supplier and State has determined to withhold funding, State shall notify Supplier in writing, via certified or registered mail, that State is withholding the balance of the loan amount 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-27.

ARTICLE A-8. TIMING OF PROJECT

(a) Supplier agrees to proceed expeditiously, and shall complete the project no later than _____. Supplier's failure to complete the project by 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.

(b) Within 15 days following completion of the Project, Supplier shall certify to the local District Office of State California Department of Public Health that the Project is complete and ready for final inspection. Supplier's certification shall be substantially in the form provided by State and attached hereto as **Attachment 6** to this Agreement.

(c) State will conduct a final inspection and certify that the Project is complete. Supplier shall not place the Project into operation prior to State's certification.

(d) The date of State's certification or the date set forth in subpart (a) of this Article A-8, whichever shall occur first, 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 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.

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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 contracting 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 substantial failure to comply with this Agreement, and State may declare Supplier in default as set forth in Article A-27, 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.

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ARTICLE A-11. STATEMENT OF PRINCIPAL AMOUNT OF LOAN

(a) Transmission of Statement to Supplier

Within sixty (60) days after final disbursement of funds, 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 of loan funds, 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 loan, but shall be deemed to be a return to State of part of the funds disbursed and a reduction in the total amount loaned to Supplier pursuant to this Agreement.

ARTICLE A-12. INTEREST PAYMENTS DURING CONSTRUCTION

During construction, Supplier shall pay interest to State at the rate specified in Section 8 of this Agreement on the amounts disbursed. Interest on the amounts disbursed shall not be deferred.

State will invoice Supplier semiannually for interest accrued during the Project construction period. Interest on each disbursement shall be calculated using the fraction x/365 times the interest rate of ____ percent as specified in Section 8, where x is the number of calendar days remaining in the semiannual period from the date on which the disbursement was made. Interest accrued during the construction period 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

Supplier shall make semiannual payments to State until the principal amount of the loan is repaid in full. State will invoice Supplier semiannually for principal and any interest payments. Such invoices will include a statement of the outstanding 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 level semiannual payments based on a standard semiannual payment loan amortization method to be determined by State. The standard amortization method shall incorporate the outstanding loan principal as determined by Article A-11, the Loan Repayment Term specified in Section 9 of this Agreement, and the Rate of Interest, as specified in Section 8 of this Agreement.

Loan principal and interest payments shall be due and payable within thirty (30) days from the date of the invoice. Principal and interest payments shall commence no later than one (1) year from the Project Completion Date. All such payments shall be made on a semiannual basis on April 1 and October 1 of each year. The first semiannual principal and interest payment for this loan is projected to be due **(date)**. The remaining payments shall be made semiannually thereafter until the principal amount of the loan is repaid in full. The final semiannual payment shall be in an amount equal to the then unpaid portion of the principal amount of the loan, plus any remaining unpaid accrued interest. Interest on the principal shall not be deferred.

Unless earlier payment is required by the terms of this Agreement, the entire amount of the loan, principal, interest, delinquent interest, and any other charges or fees shall be due and payable ___ years from the Project Completion Date specified in Article A-8 of this Agreement.

(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

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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 (.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. Any such delinquent interest assessed will not be added to the loan balance 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 LOAN DISBURSEMENTS

(a) Separate Accounting of Loan Disbursements and Interest; Records

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 expenditures of such funds. Invoices must be maintained for a period of at least three (3) years following final disbursement under this Agreement. 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 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

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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, the 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 and State may elect to pursue any remedies included but not limited to those provided in Article A-7.

ARTICLE A-16. INSPECTIONS OF PROJECT BY STATE

State shall have the right but not the duty to inspect the work being performed on this 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. PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION

During the term of this Agreement:

(a) 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, or with Supplier's service of domestic water, without prior written consent of State. State may require as a condition of such consent, that Supplier's proceeds from any such disposition of any real or personal property be transferred to State to be applied to Supplier's indebtedness under this Agreement.

(b) Supplier shall not take any action, including but not limited to actions relating to user fees, charges and assessments, that could adversely affect the ability of Supplier to make timely payments or to otherwise meet its obligations under this Agreement.

ARTICLE A-18. NONDISCRIMINATION CLAUSE

During the term of this 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

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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 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 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-18 in all contracts and subcontracts to perform work on the Project.

ARTICLE A-19. WORKERS' COMPENSATION CLAUSE

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of time, shall be submitted to State's Contract Manager identified in Section 11 of this Agreement. State's Contract Manager may make findings and recommendations and shall transmit a copy of any such findings and recommendations to the Chief, Division of Drinking Water and Environmental Management, California Department of Public Health who shall make a decision, which shall be written and transmitted to Supplier by certified or registered mail. Said decision shall be final and conclusive.

ARTICLE A-26. 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 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-27. DEFAULT PROVISIONS

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

(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 substantial breach of this Agreement, or any supplement or amendment to it, or any other agreement between Supplier and the 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, or damages 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, the State shall 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, the State may do any or all of the following:

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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 the performance of the work under this Agreement and will make its contractors and subcontractors aware of this provision.

ARTICLE A-20. 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-21. 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-22. 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-23. 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-24. 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-25. DISPUTE CLAUSE

Any dispute that Supplier may have regarding the performance of this Agreement including, but not limited to, claims for disbursements of funds or extensions

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

(2) Terminate any obligation of the State to make further disbursements to Supplier under this Agreement;

(3) 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 California Uniform Commercial Code;

(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-28. DRUG-FREE WORKPLACE CERTIFICATION

By signing this Agreement, Supplier hereby certifies under penalty of perjury under the laws of 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;

DRAFT

(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;

(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 the department 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-28.

ARTICLE A-29. 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 Gov. Code Sections 1090 et.seq. and 87100 et.seq.; Public Contract Code Sec. 10410 et.seq.; and California Code of Regulations, Title 2, Sections 18700 et.seq..

ARTICLE A-30. 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-31. 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-32. SINGLE AUDIT ACT

If Supplier receives $500,000 or more in federal awards in a year from any source, including federal funds disbursed under this Agreement, Supplier agrees to comply with all requirements of the Office of Management and Budget Circular A-133 issued pursuant to the Single Audit Act.

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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 the same becomes 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 loan payments and to operate and to maintain the Project.

ARTICLE B-3. SECURITY INTEREST

Supplier pledges to repay the entire principal amount disbursed under this Agreement, together with all interest thereon, as set forth in this Agreement, from (insert repayment source), and Supplier hereby pledges said (insert fund or revenue) as collateral to secure said repayment. Supplier hereby represents and agrees that said pledge shall create and constitute a lien and security interest in said collateral in accordance with the provisions of the California Government Code, Section 5450, et seq.

Supplier shall execute any and all documents required by State to create and maintain State's security interest, including any amendments, modifications, and/or new or revised documents which State determines is reasonably necessary to maintain, preserve, and protect State's security interest.

ARTICLE B-4. RESERVE FUND

Supplier agrees to provide for the accumulation of necessary reserves in accordance with Section 11 of this Agreement to assure that funds will be available to make the semiannual payments when due. At a minimum, a reserve of two (2) semiannual payments shall be accumulated during the first _____ years of the Loan Repayment Term and thereafter be maintained at that level. The Reserve Fund shall be maintained and administered by the Fiscal Agent.

DRAFT

(USE ONLY FOR CITY, COUNTY, TOWNSHIP/TOWN, SCHOOL DISTRICT AGREEMENTS) REMBERER IF DELETED TO DELETE FROM TABLE OF CONTENTS

ARTICLE B-5. LEGAL OBLIGATION

The obligation of Supplier to make payments under this Agreement is payable from its (insert account or fund) or other sources of legally available funds. This Agreement and payment due thereunder, shall not in any way be construed to be a debt of the (City, County, Township, School District, financing authority, etc.) 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 (City, County, Township, School District, financing authority, etc.) is obligated to levy or pledge any form of taxation.

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EXHIBIT C

SPECIAL REQUIREMENTS

ARTICLE C-1. SECURITY

Supplier grants to State a security interest in all of the following:

1. Pledge of revenue as more fully described in Article B-3.

2. Accounts as described in and/or required by Article A-3 (d), (e) and (f).

State reserves the right to require, and Supplier agrees to provide, security in additional real and/or personal property which State determines is reasonably necessary to secure payment of Supplier's obligations under this Agreement.

ARTICLE C-2. ADDITIONAL REQUIREMENTS

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EXHIBIT D

COMPLIANCE WITH
CROSS-CUTTING FEDERAL AUTHORITIES

ARTICLE D-1. COMPLIANCE WITH FEDERAL AUTHORITIES

(a) By its signature to the Agreement to which this Exhibit "D" is attached, Supplier agrees to comply with all applicable state and federal laws and authorities, including but not limited to the federal authorities listed below; and to the fullest extent required by law, shall require compliance with said authorities by its contractors and subcontractors on the Project.

- Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans
- Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended
- Debarment and Suspension, Executive Order 12549
- Age Discrimination Act of 1975, Pub. L. 94-135
- Title VI of the Civil Rights Act of 1964, Pub. L. 88-352 (2)
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act)
- Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)
- Equal Employment Opportunity, Executive Order 11246
- Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432
- Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590

(b) In partial compliance with the above list of Cross-cutting Federal Authorities, Supplier agrees to take certain actions specifically set forth in the following Articles:

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ARTICLE D-2. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

Supplier agrees that it shall be deemed to be a contractor and shall comply with the following requirements in that role:

(a) During the performance of this Agreement, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap or age. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, or age. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the Federal Government setting forth the provisions of the Equal Opportunity Clause and the Rehabilitation Act of 1973. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin, physical or mental handicap, or age, and the rights of applicants and employees.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, physical or mental handicap, or age.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding of notice, to be provided by the Federal Government advising the labor union or workers' representative of the contractor's commitments under the Equal Opportunities Clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of the Rehabilitation Act of 1973 and of the Federal Executive Order No. 11246 as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the

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Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the requirements of this Equal Opportunity Clause or with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further federal contracts in accordance with procedures authorized in *Federal Executive Order No. 11246 as amended, and such other sanctions may be* imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) [of this Article] in every contract, subcontract or purchase order related to this Contract unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, or section 503 of the Rehabilitation Act of 1973, so that such provisions will be binding upon each contractor, subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor or the Director of Federal Compliance Programs or State may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that in the event the contractor becomes involved in or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request in writing to State, which, in turn, may request the United States to enter into such litigation to protect the interests of the United States and State.

Each contractor shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of Federal Executive Order 11246, as amended, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(b) In addition, if the Project is to be constructed in a geographical area that has been designated by the Office of Federal Contract Compliance for special treatment, Supplier agrees that it will undertake, and will require its contractors and subcontractors to undertake affirmative action programs in accordance with regulations and other directives promulgated by that Office.

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ARTICLE D-3. PARTICIPATION OF SMALL, MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES

(a) Supplier acknowledges that Executive Orders 11625,12138, and 12432 are applicable to this Contract, and that the United States Environmental Agency (EPA) requires that recipients of financial assistance, including assistance under the SDWSRF, comply with the requirements of said orders. In compliance with such requirements, State has negotiated "Fair Share Objectives" with EPA for participation of small, minority and women-owned businesses in all procurement activity undertaken with funds made available to Supplier under this Contract. Said "Fair Share Objectives" are set forth in **Attachment 7** to this Agreement and incorporated herein by this reference. Supplier agrees that it will cooperate with and assist State in achieving said "fair share objectives" and will exercise good faith efforts to achieve such minimum participation of small, minority and women-owned businesses, and in particular agrees that in the selection of any and all contractors for the procurement of equipment, supplies, construction, and services related to the project, it, at a minimum, has or will undertake the following affirmative steps:

(1) Include small, minority and women-owned businesses on solicitation lists;

(2) Assure that small, minority and women-owned businesses are solicited whenever they are potential sources;

(3) Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by small, minority and women-owned businesses;

(4) Establish delivery schedules, when the requirements of the work permit, which will encourage participation by small, minority and women-owned businesses;

(5) Use the services of the Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce, as appropriate; and

(6) If any contractor awards subagreements, require the contractor to take the affirmative steps in paragraphs (1) through (5) of this paragraph.

(b) Supplier agrees that prior to the award of any contract for the procurement of equipment, supplies, construction, or services related to the Project, it has or will review the efforts of such contractor to include small, women, and minority owned businesses and will assure State that such contractor has complied with the requirements of this Article D-3. A form for providing said assurance will be provided by State in a form substantially similar to that of **Attachment 8** to this Agreement.

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(c) Supplier agrees that it shall report, and shall require its contractors to report, on its good faith efforts and achievements in meeting State's "fair share objectives" and other requirements of this Article. Supplier shall provide such reports to State within fifteen (15) days after the end of each Federal fiscal quarter during which Supplier, or any of its contractors, have awarded any contracts for procurement of equipment, supplies, construction or services related to the Project. Supplier shall report said information on a form to be provided by State, which form will be substantially similar to the form attached hereto as **Attachment 9** to this Agreement.

ARTICLE D-4. PROCUREMENT PROHIBITIONS

By its signature on this Contract, Supplier certifies that it will not procure goods, services, or materials from any entity, or otherwise utilize any facility for the construction of the Project, if such entity or facility is listed on the USEPA's List of Violating Facilities, and Supplier further certifies it will comply with the provisions of Executive Order No.11738, 3 C.F.R. 799 (1973), Section 306 of the Clean Air Act 42 U.S.C. 7606 (1994) and Section 508 of the Clean Water Act 33 U.S.C. 1368 (1992).

ARTICLE D-5. DEBARMENT AND SUSPENSION

Supplier agrees that for purposes of the following subparts (a) and (b), Supplier is the "prospective lower tier participant" and this Funding Agreement is the "proposal".

(a) Instructions for Certification

(1) By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

(2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

(3) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

(4) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

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(5) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

(6) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

(7) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(9) Except for transactions authorized under paragraph (5) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

(b) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

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(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

ARTICLE D-6. UNIFORM RELOCATION AND REAL PROPERTY ACQUISITION ACT

Supplier will comply, or has already complied with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646, 42 U.S.C. 4655), as amended, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchase.

ARTICLE D-7. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

(Not applicable if Supplier is a public entity.)

Supplier by signing this Contract, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Supplier within the immediate preceding two-year period because of Supplier's failure to comply with an order of a federal court which orders Supplier to comply with an order of the National Labor Relations Board.

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