



## City Council Staff Report

Date: December 7, 2016

NEW BUSINESS

Subject: APPROVAL OF AN INSTALLMENT SALE AGREEMENT IN THE MAXIMUM AMOUNT OF \$29,917,266 WITH THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, AND AWARD OF A CONSTRUCTION CONTRACT TO W.M. LYLES CO. IN THE AMOUNT OF \$20,522,737 FOR THE CITY OF PALM SPRINGS WASTEWATER TREATMENT PLANT UPGRADE, CITY PROJECT NO. 15-14

From: David H. Ready, City Manager

Initiated by: Engineering Services Department

---

### SUMMARY

The City Council will consider approving various actions associated with the financing, construction, and construction administration of the Wastewater Treatment Plant Upgrade, City Project No. 15-14, (the "Project").

### RECOMMENDATION:

- 1) Adopt Resolution No. \_\_\_\_\_, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING AN INSTALLMENT SALE AGREEMENT WITH THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD FOR PUBLICLY OWNED TREATMENT WORKS (POTW) CONSTRUCTION FINANCING FOR THE "WWTP HEADWORKS AND CLARIFIER UPGRADE PROJECT", CLEAN WATER STATE REVOLVING FUND LOAN PROJECT NO. 8122-110, CITY PROJECT NO. 15-14, AND AUTHORIZING CERTAIN ACTIONS RELATED THERETO;"
- 2) Award a construction contract (Agreement No. \_\_\_\_\_) to W.M. Lyles Co., in the amount of \$20,522,737 for Bid Schedules A and B for the Wastewater Treatment Plant Upgrade Project, City Project No. 15-14; and
- 3) Delegate authority to the City Manager to approve and execute construction contract change orders up to a cumulative amount of 2.5% of the contract amount (\$513,068) with all change orders reported to the City Council;

ITEM NO. 58

- 4) Authorize a Purchase Order in the amount of \$298,524 with MWH Constructors, Inc., pursuant to the City's "on-call" agreement, (A6687), for wastewater engineering, construction management and inspection services for the WWTP Upgrade Project, City Project No. 15-14;
- 5) Authorize the City Manager to execute all necessary documents.

**STAFF ANALYSIS:**

On April 1, 2015, the City Council approved various actions related to the Project, including:

- 1) Adopted Resolution No. 23799 declaring its intention to finance the construction of the Project through a low-interest loan provided by the State of California, acting by and through the State Water Resources Control Board (the "State Water Board"), through the Clean Water State Revolving Fund ("CWSRF"), with an expected maximum principal of \$35,000,000;
- 2) Adopted Resolution No. 23800 authorized the City Manager to sign and file, for and on behalf of the City, a Financial Assistance Application for a financing agreement from the State Water Board for the planning, design, and construction of the Project;
- 3) Authorized the pre-purchase of selected critical mechanical and electrical equipment required for the Project in the amount of \$3,351,699.48

A copy of the April 1, 2015, City Council staff report is included for reference as Attachment 1.

On May 4, 2016, the City Council approved additional actions related to the Project, including:

- 1) Approval of Amendment No. 1 to Agreement No. 6691 with Veolia Water West Operating Services, Inc., ("Veolia"), in the amount of \$213,531 for a revised total contract amount of \$2,919,027 for professional engineering and construction management services associated with the construction phase of the Project;
- 2) Approval of a list of 11 pre-qualified general contractors for the Project, which included:
  - a) Cushman Contracting – Goleta, CA
  - b) C.W. Roen Construction – Danville, CA
  - c) GSE Construction – Livermore, CA
  - d) J.F. Shea Construction – Walnut, CA
  - e) J.R. Filanc Construction – Escondido, CA
  - f) Pascal & Ludwig Constructors – Ontario, CA
  - g) PCL Construction – Corona, CA

- h) Shimmick Construction – Irvine, CA
  - i) SSC Construction – Corona, CA
  - j) Stanek Constructors – Escondido, CA
  - k) W.M. Lyles Co. – Temecula, CA
- 3) Reconfirmed approval of the plans, specifications, and working details for the Project, inclusive of the design-build of new potable water and fire line system improvements, and authorized staff to advertise for bids with the pre-qualified contractors.

Pursuant to the City Council’s actions on May 4, 2016, staff initiated the formal bidding process on May 5, 2016, with the 11 pre-qualified contractors. On August 11, 2016, at 3:00 p.m., the Procurement and Contracting Division received six construction bids from the pre-qualified contractors listed in Table 1:

<b>Company</b>	<b>Location</b>	<b>Bid Amount</b>
W.M. Lyles Co.	Temecula, CA	\$20,522,737
C.W. Roen Construction Co.	Danville, CA	\$21,093,889
J.R. Filanc Construction Co. Inc.	Escondido, CA	\$21,193,788
GSE Construction Company, Inc.	Livermore, CA	\$22,117,899
J.F. Shea Construction, Inc.	Walnut, CA	\$22,540,888
PCL Construction, Inc.	Corona, CA	\$23,610,121

**Table 1**

Through the City’s prior agreement with Veolia, Carollo Engineers prepared the plans and specifications for the Project. In March 2016, Carollo Engineers provided a final engineer’s estimate of \$23,274,980 for the Project (inclusive of contingency but excluding escalation to mid-point and sales tax factors); a copy of Carollo Engineers estimate is included as **Attachment 2**.

The City’s formal bidding process established very competitive bids from 6 of the 11 pre-qualified contractors, with the lowest responsive bid from W.M. Lyles Co. submitted at \$20,522,737 which is 12% below the engineer’s estimate. In accordance with the City’s bid documents, the contractor is obligated to guarantee their bid price for a period of 120 calendar days from submittal of bids – which guarantees the bid price until December 9, 2016. A full bid summary is included as **Attachment 3**.

On September 21, 2016, the City Council adopted Resolution No. 24096, dedicating and pledging the net revenues of the City’s Wastewater Enterprise Fund to payment of any and all CWSRF financing for the Project. This commitment was a final requirement of the State Water Board in its review and approval of the CWSRF loan for the Project.

On November 16, 2016, the State Water Board provided official notice via email, included as **Attachment 4**, that the Project has been approved, and establishing an effective date for eligible reimbursement of construction phase costs of November 14, 2016. As noted in the State's official notice, a final form of the CWSRF loan agreement will not be received for at least 8 weeks, however, the terms and conditions of the CWSRF loan agreement have been reviewed by the City Attorney, as well as Suzanne Harrell, the City's Financial Advisor.

Ms. Harrell has previously confirmed with the State Water Board that the CWSRF loan agreement will have financing established at 1.70% for a 30-year term, with first payment due 1 year after project completion; a copy of Ms. Harrell's confirmation e-mail regarding the CWSRF loan agreement is included as **Attachment 5**.

A copy of the draft CWSRF loan agreement is included as **Attachment 6**, and will have additional information populated into the agreement by the State Water Board, including the scope of work and funding amount/interest rate which has been established at a maximum loan amount of \$29,917,266 and interest rate of 1.70%.

Another benefit to utilizing the CWSRF program, is that it includes the state's "Green Project Reserve" (or "GPR") which sets aside grants to local agencies in the form of loan forgiveness, or "capitalization grants", on eligible projects funded through the CWSRF program. The GPR was enacted based on Congress' intent to direct State investment practices in the water sector to guide funding toward projects that:

- adopt practices that reduce the environmental footprint of water and wastewater treatment, collection, and distribution;
- utilize green or soft-path practices to complement and augment hard or gray infrastructure;
- adapt to climate change;
- enhance water and energy conservation;
- help utilize more sustainable solutions to wet weather flows; and
- promote innovative approaches to water management problems.

Through the City's efforts to identify for the State Water Board certain energy efficiencies to be implemented by the Project, and other environmental benefits to be realized, the City has been successful in the State Water Board awarding the City a capitalization grant in the form of principal forgiveness of up to \$728,435 through the GPR. The principal forgiveness and GPR program requirements will be added to the form of the final CWSRF loan agreement provided to the City for execution.

Staff recommends that the City Council adopt the attached Resolution approving the CWSRF loan agreement, in substantially the form included as Attachment 6, allowing for certain changes and additions provided by the State Water Board, subject to review and approval by the City Attorney. Approval of the CWSRF loan agreement at this time

is required to allow for the City Council's award of construction contract to W.M. Lyles Co., prior to expiration of the bid guarantee date of December 9, 2016.

### ***Public Works Contractor Registration Law (SB 854)***

Under California Labor Code Section 1771.1, as amended by Senate Bill (SB) 854 (2014), unless registered with the State of California Department of Industrial Relations (DIR), a contractor may not bid, nor be listed as a subcontractor, for any bid proposal submitted for public works projects on or after March 1, 2015. Similarly, a public entity cannot award a public works contract to a non-registered contractor, effective April 1, 2015. Staff has reviewed the DIR's contractor registration database, and has confirmed that W. M. Lyles Co., and the listed subcontractors, are registered with the DIR, and are appropriately licensed.

W. M. Lyles Co., of Temecula, California submitted the lowest responsive bid. Staff reviewed the bid, references, and contractor's license, and found the W. M. Lyles Co. to be properly licensed and qualified. A construction contract with W. M. Lyles Co. for the Project is included as **Attachment 7**.

### ***Local Business Preference Compliance***

Section 7.09.030 of the Palm Springs Municipal Code, "Local Business Preference Program," requires prime contractors to use good faith efforts to sub-contract the supply of materials and equipment to local business enterprises and to sub-contract services to businesses whose work force resides within the Coachella Valley. However, the Local Business Preference Program does not apply to projects that receive state or federal funding that preclude the application of local preferences. Financing for the Project is made available through the CWSRF program, which is funded in part through federal funds allocated to the State Water Board by U.S. EPA, and local preferences are not allowed.

### ***City Council Approval of Contingency Funds***

Given the size and scope of the Project, staff recommends that the City Council delegate authority to the City Manager to approve and execute construction contract change orders up to a cumulative amount of 2.5% of the contract amount equivalent to \$513,068. In consultation with Veolia and the City's Owner's Representative (see section below), the Assistant City Manager/City Engineer will carefully evaluate any additional or extra work claims represented by W.M. Lyles Co., and if valid, submit to the City Manager for his approval. In this way, work can proceed uninterrupted as the City Manager and Assistant City Manager/City Engineer administratively process construction contract change orders up to the authority specifically delegated herein by the City Council. However, all change orders under this granted authority will be placed on the City Council agenda as a "receive and file" to keep Council Members apprised of the change order amounts and expenditure rationale.

***Construction Management / Administration (Owner's Rep Services)***

The Project requires highly technical wastewater engineering services, in addition to the full contract oversight and administration required given the CWSRF loan to be used to finance it. Given limited staff resources currently available it is recommended that the City Council utilize the City's on-call firms to provide Owner's Representative services in addition to the construction administration services provided by Veolia.

On April 1, 2015, the City Council approved "on-call" agreements with two firms for wastewater engineering, construction management and inspection services: MWH Constructors, Inc., and West Yost Associates. The City solicited proposals for Owner's Representative services from each, and on the basis of the experience of the firm and the designated Project Manager, staff is recommending the City Council approve the proposal with MWH Constructors, Inc., for this assignment.

MWH Constructors, Inc., has submitted a proposal offering an Owner's Representative on a part-time basis (approximately 80 hours per month) through the duration of the construction at an hourly rate of \$148 for a maximum of 1,866 hours. Costs will be incurred on a time and material basis, not to exceed the maximum budget of \$298,524; a copy of their proposal is included as **Attachment 8**. Staff recommends that the City Council authorize issuance of a Purchase Order not to exceed the maximum budget to facilitate assignment of MWH Constructors, Inc., as the City's Owner's Representative for the Project.

**ENVIRONMENTAL IMPACT:**

On June 18, 2014, the City Council, acting as the lead agency in accordance with the California Environmental Quality Act ("CEQA"), and pursuant to Section 15074 of the CEQA Guidelines, reviewed, approved, and ordered the filing of a Mitigated Negative Declaration ("MND") for the construction of several new replacement facilities at the City's Wastewater Treatment Plant facility, including: influent sewer, headworks, septage receiving station, influent pump station, primary clarifiers, scum pump station, primary sludge pump station, primary sludge de-gritting, gravity thickener cover, Digester No. 2 cover, foul air treatment facility, new electrical building, and lighting system. These projects, bundled together, have been identified as the City of Palm Springs Wastewater Treatment Plant Upgrade, City Project No. 15-14. A Notice of Determination ("NOD") for the Project was subsequently filed with the Riverside County Clerk on June 25, 2014. A copy of the NOD is included as **Attachment 9**.

**FISCAL IMPACT:**

The estimated total Project costs have been updated in the following Table:

<b>Project Element</b>	<b>Amount</b>
Design Phase Costs (Incurred)	\$3,312,305
Additional Professional Services	\$1,817,802
Pre-Purchased Equipment	\$3,341,769
Construction	\$20,522,737
Construction Contingency (5%)	\$1,026,137
Construction Management Services	\$1,101,226
Owner's Rep Services	\$298,524
<b>Total Project Cost</b>	<b>\$31,420,500</b>

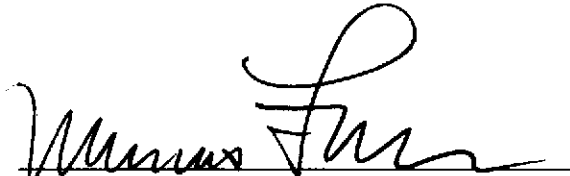
The Design Phase costs of \$3,312,305 have been expended and Pre-Purchased Equipment costs of \$3,341,769 have been encumbered, leaving an estimated cost of \$24,766,426 to complete the Project. Currently, the Wastewater Fund Enterprise (Fund 420) has a Fund Balance of approximately \$12.8 Million. Although the Fund Balance may be used towards the Project costs, staff recommended and the City Council directed that the City reserve the Wastewater Enterprise Fund Balance for working capital, unexpected costs and emergencies, and utilize low interest financing for construction costs for the Project.

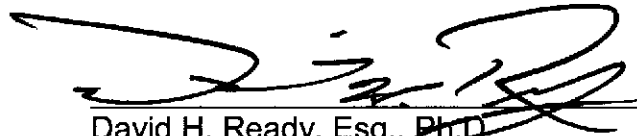
The CWSRF loan agreement negotiated with the State Water Board will provide financing of up to \$29,927,196 (the prior estimated cost to be financed) at 1.7% interest, for a 30-year term. Based on the low bid received, the final cost to be financed is estimated at \$24,766,426, resulting in a new annual debt service of approximately \$1,063,000 to be paid by the Wastewater Enterprise Fund. The City's Wastewater Enterprise Fund currently has no debt.

The City's Financial Advisor, Suzanne Harrell, previously reviewed the financial status of the City's Wastewater Enterprise, and has determined that with the currently adopted sewer rates, the City might comfortably assume a maximum net bonding capacity of \$29 Million with an annual debt service payment of \$1.8 Million. Based on the low bid received, the reduced final total project cost estimate, and the low-interest CWSRF loan agreement financing rate of 1.70%, the annual debt service of approximately \$1,063,000 will be 40% lower than the maximum debt service of \$1.8 Million the Wastewater Enterprise could absorb. Current wastewater revenues sufficiently exceed expenditures to facilitate the financial indebtedness incurred with the CWSRF loan agreement, and the financial integrity of the Wastewater Enterprise Fund will not be compromised.

All costs associated with the Project, both prior and future costs, are entirely funded by the Wastewater Enterprise Fund (Fund 420). No General Fund or Measure J Capital Fund budget has been or will be required in the delivery of the Project.

SUBMITTED:

  
Marcus L. Fuller, MPA, P.E., P.L.S.  
Assistant City Manager/City Engineer

  
David H. Ready, Esq., Ph.D.  
City Manager

Attachments:

1. April 1, 2015, staff report
2. Engineer's Estimate
3. Bid Summary
4. State Water Board Confirmation Email
5. Suzanne Harrell Confirmation Email
6. Draft CWSRF Loan Agreement
7. W. M. Lyles Co. Construction Contract
8. MWH Proposal for Owner's Rep Services
9. CEQA Notice of Determination
10. Resolution



# **ATTACHMENT 1**



## City Council Staff Report

Date: April 1, 2015

NEW BUSINESS

Subject: APPROVAL TO PROCEED WITH BIDDING, APPROVAL TO PROCEED WITH PRE-PURCHASE OF EQUIPMENT, AND APPROVAL OF VARIOUS ACTIONS RELATED TO THE FINANCING OF PROJECT COSTS ASSOCIATED WITH THE CITY OF PALM SPRINGS WASTEWATER TREATMENT PLANT UPGRADE, CITY PROJECT NO. 15-14

From: David H. Ready, City Manager

Initiated by: Office of the City Manager

---

### SUMMARY

Over the last 18 months, staff has coordinated with its wastewater treatment plant and sewer system operator, Veolia Water West Operating Services, Inc., ("Veolia"), on the design of five of the highest priority wastewater treatment plant capital projects, bundled together as the City of Palm Springs Wastewater Treatment Plant Upgrade, City Project No. 15-14, (the "Project"). The plans, specifications, and estimates have been completed for the Project, and it is necessary to proceed with bidding and pre-purchase of critical equipment. The total estimated cost of the construction phase of the Project is \$30 Million. Approval of these various actions will authorize staff to enter into an Agreement with Veolia to proceed with bidding of the Project, and authorize staff to pursue debt financing through either a Clean Water State Revolving Fund Loan, or through the issuance of tax-exempt bonds issued by the City.

### RECOMMENDATION:

- 1) Adopt Resolution No. \_\_\_\_\_, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, AUTHORIZING THE REIMBURSEMENT OF FUNDS REQUESTED FROM THE STATE WATER RESOURCES CONTROL BOARD UNDER THE CLEAN WATER STATE REVOLVING FUND FOR THE CITY OF PALM SPRINGS WASTEWATER TREATMENT PLANT UPGRADE, CITY PROJECT NO. 15-14;" and
- 2) Adopt Resolution No. \_\_\_\_\_, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO ACT ON ITS BEHALF TO SIGN, FILE AND EXECUTE A FINANCIAL

ASSISTANCE APPLICATION FOR A FINANCING AGREEMENT FROM THE STATE WATER RESOURCES CONTROL BOARD UNDER THE CLEAN WATER STATE REVOLVING FUND FOR THE CITY OF PALM SPRINGS WASTEWATER TREATMENT PLANT UPGRADE, CITY PROJECT NO. 15-14;" and

- 3) Adopt Resolution No. \_\_\_\_\_, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, AUTHORIZING THE REIMBURSEMENT OF FUNDS FROM THE PROCEEDS OF TAX-EXEMPT BONDS OR OTHER OBLIGATIONS FOR THE CITY OF PALM SPRINGS WASTEWATER TREATMENT PLANT UPGRADE, CITY PROJECT NO. 15-14;" and
- 4) Waive all competitive requirements of Title 7 of the Palm Springs Municipal Code finding that AndersonPenna Partners, Inc., has demonstrated experience and expertise of providing the required financial assistance services through a competitive qualifications based selection process completed by the South Coast Water District through its Request for Proposal (Contract No. 14-04-0006); and
- 5) Approve Agreement No. \_\_\_\_\_ with AndersonPenna Partners, Inc., in the amount of \$39,220 for professional assistance in the preparation of applications forms, documents, financial and technical assistance in the submittal of a funding request to the California State Water Resources Control Board for a government loan of as much as \$30 Million from the Clean Water State Revolving Fund (SRF) Program to finance the construction of the City of Palm Springs Wastewater Treatment Plant Upgrade, City Project No. 15-14; and
- 6) Approve Agreement No. \_\_\_\_\_ with Veolia Water West Operating Services, Inc., in the amount of \$2,705,496 for professional engineering and construction management services associated with the construction phase of the City of Palm Springs Wastewater Treatment Plant Upgrade, City Project No. 15-14; and
- 7) Authorize the pre-purchase of selected critical mechanical and electrical equipment required for the City of Palm Springs Wastewater Treatment Plant Upgrade, City Project No. 15-14, and authorize the issuance of a Purchase Order to Veolia Water West Operating Services, Inc., in the amount of \$3,351,699.48; and
- 8) Approve the plans, specifications, and working details for the City of Palm Springs Wastewater Treatment Plant Upgrade, City Project No. 15-14, and authorize staff to advertise for bids; and
- 9) Authorize the City Manager to execute all necessary documents.

**STAFF ANALYSIS:**

On April 21, 2010, the City Council approved the City of Palm Springs Wastewater Treatment Plant Capital Repair and Rehabilitation Plan, (the "WWTP CIP"), and an associated Wastewater Financial Plan and Rate Study, (the "2010 Rate Study"). The WWTP CIP is a budgeting document that identified a plan and budget for the critical and highest priority capital projects at the WWTP over the next 20 years. The 2010 Rate Study was a comprehensive evaluation of the City's sewer rates to determine if the rates would accommodate the on-going operation and maintenance costs for the WWTP, as well as any necessary major capital projects associated with the WWTP CIP. A copy of the April 21, 2010, staff report is included as **Attachment 1**.

At that time, the City Council directed staff to prioritize the WWTP CIP to identify Priority 1 projects as those projects that will directly reduce or eliminate the generation of odors at the WWTP, identified as follows:

<b>Priority 1 Projects</b>	
New Circular Primary Clarifiers w/Sludge Pump Station	\$9,050,000
New Headworks	\$5,920,000
New Primary Effluent Pump Station	\$2,910,000
New Sludge Centrifuge	\$1,490,000
Digester No. 2 Dome Replacement	\$1,050,000
WWTP Facility Plan	\$250,000
<b>Priority 1 Total</b>	<b>\$20,670,000</b>

On July 7, 2010, the City conducted a public hearing to consider and approve the adoption of increased sewer rates associated with the 2010 Rate Study; however, the City Council directed staff to defer the rate increase at that time for further review at a future date.

On February 15, 2012, the City Council provided direction to staff on the WWTP CIP, and an updated sewer rate study (the "2012 Rate Study"), which carried forward the \$20,670,000 estimated cost of the WWTP CIP from the 2010 Rate Study.

On April 18, 2012, the City Council conducted a public hearing, and adopted Resolution No. 23120 approving increased sewer rates effective July 1, 2012, for the purposes of financing the increasing costs of wastewater service and the cost of the Priority 1 Projects identified in the WWTP CIP. A copy of the April 18, 2012, staff report is included as **Attachment 2**.

In April 2013, the City released a Request for Proposals (RFP #05-13) to solicit proposals for professional engineering services for the design phase of the Priority 1 Projects. Proposals were received in May 2013 and a review committee made up of City staff and Veolia evaluated and interviewed firms which resulted in the selection of Carollo Engineers.

In accordance with Section 5.3 of the Amended and Restated Wastewater Services Agreement (O&M) dated June 28, 2006, (the "O&M Agreement"), the City agreed to allow Veolia the right to design, construct, manage or supervise any WWTP capital project. On that basis, on September 4, 2013, the City Council authorized Veolia to proceed with the design of the following five high priority capital projects at the City's Wastewater Treatment Plant:

- Digester No. 2 Dome Replacement, City Project No. 13-19
- New Sludge Centrifuge, City Project No. 13-20
- New Primary Effluent Pump Station, City Project No. 13-21
- New Headworks, City Project No. 13-22
- New Circular Primary Clarifiers w/Sludge Pump Station, City Project No. 13-23

Staff has bundled these projects together as the City of Palm Springs Wastewater Treatment Plant Upgrade, City Project No. 15-14, (the "Project"). The total cost of design phase services for the Project was \$3,312,305.

On June 18, 2014, the City Council adopted a Mitigated Negative Declaration ("MND") allowing for construction of the Project, following a comprehensive environmental review. At that time, staff reported on the decisions made by staff and Veolia on the final design of the Project, with particular reference made to the deferral of the Sludge Centrifuge for the following reasons:

- The Sludge Centrifuge identified in the WWTP CIP was not focused on odor reduction, but was instead intended to replace existing equipment as it reached the end of its useful life.
- The preliminary cost estimate of \$1.5 Million for the Sludge Centrifuge was based on a low cost installation that would not reduce odors.
- The Sludge Centrifuge was originally designated a Priority 4 project, then later elevated to Priority 1 with an expectation that the existing sludge drying beds was a significant source of odors at the WWTP
- Odor study completed of the WWTP determined the Sludge Centrifuge would only remove 4% of overall odors, yet has a high estimated cost of \$8 Million

Given an estimated cost of \$8 Million the Sludge Centrifuge and the minimal impacts to odor reduction, a higher priority was placed on enhancing the odor reduction associated with the Priority 1 projects, including:

- Two odor treatment scrubbers, for redundancy, to continue the treatment of odors when one unit is out of service for maintenance.
- Sludge dewatering, to minimize the quantity of foul air to be treated and move the source of odors further from the park boundary.

**What odor reduction will the Project achieve at the WWTP?**

The engineering consultant for the Project, Carollo Engineers, commissioned an Odor Evaluation Report of the City's WWTP prepared by Webster Environmental Associates, Inc., (the "Odor Report"). Onsite sampling and testing for odors at the WWTP occurred in November 2013, and an odor dispersion model was used to predict off-site odor impacts from the WWTP, and to evaluate the reduction of odor impacts resulting from the improvements to be constructed by the Project. The odor sample analyses determined a "Detection Threshold (DT)" which identifies the ability of a person detecting a strong odor at any point in time; a higher DT indicates a stronger odor.

The Odor Report also calculated "Odor Emission Rates (OER)" which is an overall evaluator of how "smelly" a WWTP is in comparison to other equivalent WWTP's, when compared to their capacity to treat sewage (per Million Gallons per day [MGD]). The Palm Springs WWTP was determined to generate an Odor Emission Rate of 22,100,858 for its 11 MGD capacity, or a factor of 2,027,602 per MGD, which is rated an average "smelly" factor of comparable "medium" sized WWTP's previously evaluated by the consultant, as shown in the following Table 1. It should be noted that much smaller WWTP's can generate significantly higher OER's.

Category	WWTP	Location	Job #	Plant Size (MGD)	Study Year	OER	OER/MGD	Category Averages
Large	Moccasin Bend WWTP	Chattanooga, TN	416	140	2007	245,874,315	1,756,245	243,824,916
	Dayton WWTP	Dayton, OH	533	72	2013	122,537,835	1,701,914	
	Atherton WWTP	Little Blue Valley, MO	528	52	2013	363,062,597	6,981,973	
Medium	Richmond WPCP	Richmond, CA	496	16	2012	36,386,487	2,274,155	25,463,929
	Post Point WWTP	Bellingham, WA	451	12	2010	17,182,830	1,431,903	
	Broomfield WRF	Broomfield, CO	452	12	2010	10,741,953	895,163	
	Palm Springs WWTP	Palm Springs, CA	546	11	2013	22,100,858	2,027,602	
	Morristown WWTP	Morristown, TN	500	8	2012	40,907,516	5,454,335	
Small	Clarksville WWTP	Clarksville, IN	505	5	2012	7,084,000	1,416,800	40,713,410
	Hilton Head SIPSD RWP	Hilton Head Island, SC	517	5	2012	3,547,014	729,403	
	El Dorado Hills WWTP	El Dorado Hills, CA	539	4	2013	43,738,399	10,934,600	
	North WWTP	Sugarland, TX	519	4	2013	8,026,108	2,006,527	
	Englewood WRF	Englewood, FL	489	3	2012	112,969,625	37,656,542	
	Edwards WWTF	Edwards, CO	466	3	2012	68,815,311	22,938,437	

The Odor Report determined that over 82% of the odors detected from the WWTP are generated by the headworks, located at the entrance to the WWTP immediately adjacent to and south of the tennis courts at Demuth Park. This result was expected, as staff reported the condition of the City's existing headworks included in the April 21, 2010, City Council staff report, stating:

*By its nature of accepting raw sewage, the headworks facility is considered a Class I hazardous facility. It is critical to have reliability and redundancy in the headworks facility due to the corrosive nature of its environment. The City's existing headworks facility is inadequate and does not provide the reliability or redundancy required. The headworks facility is considered in poor condition when compared to headworks facilities at other comparatively sized WWTP's. One significant factor with the headworks facility is the invert elevation into the WWTP; the invert is too high and the slope of the main sewer trunk line into the WWTP is flat causing surcharging within the sewer line. The invert into the WWTP must be lowered to improve the hydraulics into the WWTP, improving the gravity free-flow movement of wastewater into the headworks facility. As it exists, the surcharging of the main sewer trunk line has the potential to further corrode the headworks facility, cause sewage to back-up, and ultimately if unaddressed, to cause sewage overflows in the streets from upstream sewer manholes, as the volume of wastewater flow into the WWTP increases over the next 20 years.*

*Another significant factor with the existing headworks facility is the fact that it is not housed within an enclosed building; the headworks facilities are exposed to the air and are located within close proximity to Demuth Park. This is a major contributor to foul odor problems experienced in the area. More importantly, the fact that the headworks facility operation is exposed to the public is visually offensive, with raw sewage materials easily seen by the public at the entrance into the WWTP.*

*Construction of a complete new, enclosed headworks facility at a lower elevation is required to appropriately address these issues.*

The odor dispersion model provided "Odor Frequency" contour maps for the existing WWTP, developing maps to identify where odors from the WWTP could be detectable. The model predicted odors from the WWTP are detectable up to 1000 hours out of 8,760 hours in any given year, (or 11% frequency), for the residential neighborhood immediately north of the WWTP, and exceeding 500 hours in any given year, (or 6% frequency), in the residential neighborhoods immediately south of the WWTP. As expected, the highest receptor of odors is Demuth Park, where odors can be detected up to 2,000 hours annually (or 23% frequency). The following Figure 1 shows the odor detection frequency contours for the existing WWTP:





Existing WWTP Odor Contours – Figure 1

The Odor Report analyzed the effectiveness of the planned improvements included with the Project, which include a completely new headworks facility relocated to the center of the WWTP, as well as a new odor control system to collect and treat air from each new odor source. ***The Odor Report predicts that the Project will achieve an overall 78% reduction of existing odors detected from the WWTP***, and completed an odor dispersion modeling scenario predicting that odors from the WWTP will be detectable up to 200 hours annually, (2% frequency, reduced from 1,000 hours or 11% frequency), for the residential neighborhood immediately north of the WWTP, and 300 hours annually, (3% frequency, reduced from 500 hours or 6% frequency), in the residential



neighborhoods immediately south of the WWTP. The following Figure 2 shows the odor detection frequency contours for the WWTP with the Project:



**Proposed WWTP Odor Contours – Figure 2**

The Odor Report determined that the Project will achieve a real and noticeable reduction in odors detected from the WWTP. However, the Project cannot cost-effectively eliminate all odors from the WWTP. After completion of the Project, approximately 30% of the odors detected from the WWTP will be generated from the new headworks, primarily from the foul odors initially treated and “scrubbed” by the new odor control system which are subsequently vented into the air. After scrubbing, these odors will have a much less stringent smell, but nonetheless may be detected at certain

times. A future WWTP capital project may be funded to install a second-stage odor treatment system to further "scrub" the air and reduce the concentration of the odors released into the air; however, a second-stage odor control system has a high cost to operate and maintain.

Similarly, after completion of the Project, approximately 34% of the odors detected from the WWTP will continue to be generated by the sludge drying beds. As stated earlier in this report, the Sludge Centrifuge was deleted from the scope of the Project due to the high cost of addressing the odors generated by the sludge drying beds with a new enclosed sludge centrifuge treatment system. Whereas the sludge drying beds currently generate only 8% of the odors detected from the WWTP, due to all the improvements proposed by the Project (and reduced odors generated), the sludge drying beds are expected to generate 34% of the overall reduced odors from the WWTP in the future. If odors continue to be detected at unreasonable levels in the future, the City Council may consider a future WWTP capital project to fund construction of the Sludge Centrifuge at an estimated capital cost of as much as \$8 Million.

### ***Veolia Bidding Phase***

By June 2014, Carollo Engineers completed the final design and prepared a bid package for Veolia to solicit construction bids as the general contractor, on behalf of the City. On July 9, 2014, three bids were received by Veolia for the Project, as follows:

- 1) Kana Engineering; \$18,888,197
- 2) C.W. Roen; \$19,054,000
- 3) W.M. Lyles; \$20,452,569

Upon reviewing the three bids received, Veolia determined that the two lowest bids were non-responsive on the basis that these bidders did not meet the minimum requirements of having completed five wastewater treatment plant projects with a minimum construction value of \$20 Million each. Subsequently, Veolia notified the bidders of its intention to award a contract to W.M. Lyles, and negotiated a reduced contract amount of \$19,018,197 in consideration of several value-engineered suggestions made by W.M. Lyles. At that time Kana Engineering and C.W. Roen each submitted official bid protests to the City to dispute the findings made by Veolia, and to refute their qualifications as the basis for finding their bids non-responsive. Following review by staff, and in consultation with the City Attorney, Veolia agreed to reject all of the bids received, with the City administering the re-bidding and contract award process.

### **Re-Bidding of the Project**

In consultation with the City Attorney, staff recommends that re-bidding of the Project be administered by the City through its standard Public Works bidding process, particularly given the anticipated contract amount of \$20 Million. In order to re-bid the Project, it will be necessary to make certain revisions to the plans and specifications previously

completed by Carollo Engineers, which will incorporate the contract addenda issued by Veolia during the original bid process, as well as incorporate the City's standard bid specifications. Veolia and Carollo Engineers will also review the suggested value-engineered suggestions made by W.M. Lyles and incorporate those suggestions deemed viable into the final plans and specifications released by the City for bidding.

Veolia has provided the City with a proposal to coordinate the additional professional engineering services required to revise the plans and specifications to allow the City to re-bid the Project, which also includes all necessary construction management and inspection services required to deliver the Project. Under the terms of this proposal, Veolia will act as the City's contract manager, administer the City's contract with the general contractor, and ensure full compliance with all of the terms and conditions of the plans and specifications. Staff is recommending that the City continue to utilize the Veolia-Carollo Engineers team during the construction phase of the Project, to avoid and minimize risk that might have occurred with a third party administering the Project and lacking the full knowledge and history of the design decisions that were made in the final design. Further minimization of risk is made possible through Veolia's turn-key coordination of the on-going operation and maintenance of the WWTP, which will be challenging as construction of the Project commences and certain elements of the WWTP must be taken off-line.

Veolia's proposal for coordinating all of the services required through construction of the Project is for the not to exceed amount of \$2,705,496. Staff is recommending that these services be provided to the City pursuant to a separate professional services agreement, rather than by a Notice to Proceed issued through a Purchase Order, to provide the City with the additional indemnification and insurance requirements, (including errors and omissions), normally required of the City's professional consultants. Staff has prepared an agreement with Veolia for the construction phase services, included as **Attachment 3**.

Upon authorization by the City Council, staff will immediately initiate efforts with Veolia and Carollo Engineers to accomplish the following tasks:

- |   |                         |
|---|-------------------------|
| 1. Revise plans and specifications for re-bidding:  | April – June 2015       |
| 2. Prepare contractor pre-qualification packages:   | April – June 2015       |
| 3. Coordinate contractor pre-qualification process: | June – July 2015        |
| 4. Coordinate re-bidding process:                   | August – September 2015 |

The re-bidding process will be subject to the timing of final financing approvals required to fund the total cost of the Project, as noted in the Fiscal Impact section of this report. However, at worst case staff anticipates financing approvals to be obtained by December 2015 allowing for re-bidding to occur by January 2016 at the latest, with contract award by February 2016. Construction is anticipated to take 24 months, commencing by March 2016.

**Pre-Purchase of Critical Equipment**

Veolia and Carollo Engineers has recommended that the City pre-purchase certain critical mechanical and electrical equipment ahead of and separate from the bidding process. This recommendation was made in an effort to eliminate excessive overhead and profit added by the general contractor to the high cost of this specialized equipment. More importantly, pre-purchase of the equipment would expedite the construction schedule by minimizing the lead-time required to manufacture the equipment, and ensures that the particular make and model of the specialized equipment specified by Carollo Engineers is actually acquired for the Project. Carollo Engineers recommends, and staff agrees, against requiring this critical equipment to be purchased by the general contract and be subject to substitution by the general contractor for "equivalent" or "or equal" provisions required in the public bidding process.

A formal summary of the eight separate critical pieces of equipment recommended for pre-purchase is included as **Attachment 4**. The total cost of the pre-purchased equipment, inclusive of administration of the pre-purchase bidding process, submittal reviews, taxes and insurance is \$3,351,699.48 as shown on **Attachment 5**.

**ENVIRONMENTAL IMPACT:**

On June 18, 2014, the City Council, acting as the lead agency in accordance with the California Environmental Quality Act ("CEQA"), and pursuant to Section 15074 of the CEQA Guidelines, reviewed, approved, and ordered the filing of a Mitigated Negative Declaration ("MND") for the construction of several new replacement facilities at the City's Wastewater Treatment Plant facility, including: influent sewer, headworks, septage receiving station, influent pump station, primary clarifiers, scum pump station, primary sludge pump station, primary sludge de-gritting, gravity thickener cover, Digester No. 2 cover, foul air treatment facility, new electrical building, and lighting system. These projects, bundled together, have been identified as the City of Palm Springs Wastewater Treatment Plant Upgrade, City Project No. 15-14, (the "Project"). A Notice of Determination ("NOD") for the Project was subsequently filed with the Riverside County Clerk on June 25, 2014, and is included as **Attachment 6**.

**FISCAL IMPACT:**

The WWTP CIP provided preliminary construction cost estimates for the various priority capital projects on the basis of a Capital Rehabilitation and Repair Plan prepared in June 2009, as follows:

**Priority 1 Projects**

New Circular Primary Clarifiers w/Sludge Pump Station	\$9,050,000
New Headworks	\$5,920,000
New Primary Effluent Pump Station	\$2,910,000
New Sludge Centrifuge	\$1,490,000
Digester No. 2 Dome Replacement	\$1,050,000
WWTP Facility Plan	\$250,000
<b>Priority 1 Total</b>	<b>\$20,670,000</b>

The currently estimated construction cost is \$21,700,000 excluding the pre-purchased equipment.

During the City Council's prior discussions of the sewer rate increases, a decision was originally made to avoid debt financing and to proceed with delivery of the WWTP CIP on a "pay as you go" basis. On this assumption, the 2012 Rate Study spread the cost of the Priority 1 Projects over a 10 year period, with an annual capital expense of \$2,067,000 budgeted. However, in completing the final design of each of the separate Priority 1 Projects, it was determined that the most cost effective delivery of these project was as a single bundled capital project, and that delivering each separately over an extended 10 year period was not achievable given the inter-dependency of each project on the other. Therefore, it is necessary to consider alternatives to financing the total cost of the Priority 1 Projects as a single bundled project.

The final Project costs are identified in Table 2:

<b>Project Element</b>	<b>Amount</b>
Design Phase Costs (Incurred)	\$3,312,305
Additional Professional Services	\$1,645,202
Pre-Purchased Equipment	\$3,341,769
Construction Estimate	\$21,700,000
Construction Contingency (10%)	\$2,170,000
Construction Management Services	\$1,060,295
<b>Total Project Cost</b>	<b>\$33,229,571</b>

**Table 1**

The June 2009 Capital Rehabilitation and Repair Plan estimated the total cost of the Priority 1 Projects at \$20,670,000 – inclusive of a 20% contingency for engineering design and construction management/inspection, in 2009 dollars. The total project cost has increased due to a number of factors, including significant improvement in the economy which has drastically changed the bidding environment for these types of



large public works projects. Also, through the final design process there were certain additional scopes of work required, including:

- Structural modification to existing Digester No. 2
- Utility trenching to provide access to sludge piping
- Larger primary clarifiers
- New electrical building
- New control room
- Bypass pumping for construction of the influent diversion structure
- Hazardous material removal for existing asbestos cement pipe
- New plant SCADA system

In addition, it was determined to be most cost-effective to include work associated with two Priority 2 WWTP capital improvement projects as part of the Priority 1 Projects: 1) a new septage receiving station as part of the new headworks facility; and 2) the gravity thickener upgrades.

The June 2009 Capital Rehabilitation and Repair Plan was not able to anticipate these additional requirements that have now been deemed required as part of the Project, leading to the increased overall cost.

The Design Phase costs of \$3,312,305 have been expended, leaving an estimated cost of \$29,917,266 to complete the Project. Currently, the Wastewater Fund Enterprise (Fund 420) has a Fund Balance of approximately \$13.5 Million. Although the Fund Balance may be used towards the Project costs, staff recommends that the City reserve its Fund Balance for working capital, unexpected costs and emergencies, and utilize low interest financing for the remaining \$30 Million cost.

The City's Financial Advisor, Suzanne Harrell, has reviewed the financial status of the City's Wastewater Enterprise, and has determined that with the currently adopted sewer rates, the City may comfortably assume a maximum net bonding capacity of \$29 Million. A copy of Ms. Harrell's memorandum is included as **Attachment 7**.

There are generally two options available to the City for debt financing for the Project: 1) tax-exempt bonds issued by the City, or 2) a Clean Water State Revolving Fund Loan ("SRFL"). It is important to note that both a tax-exempt bond or the SRFL are secured by net revenue of the City's Wastewater Enterprise, and do not otherwise reduce the City's general fund financing capabilities, or obligate the general fund in any way. As required with all sewer infrastructure financing, the City will be required to covenant to raise sewer rates if, and when needed, to provide sufficient revenue to secure and repay the obligation. However, the current sewer rate structure will produce an estimated net income of over \$2.5 Million for Fiscal Year 2014/15, which is sufficient to cover an annual debt service payment of \$1.8 Million as projected in Attachment 7.

Currently, a \$29 Million tax-exempt bond on a wastewater project may incur an interest rate of 4%, resulting in \$1,800,000 annual debt service payments over a 25-year period for a total financing cost of \$45 Million. However, the State Water Resources Control Board offers very low interest loans through the State Revolving Fund, currently at 1.9% interest, for a 30-year term. The SRFL is the least expensive option for debt financing, resulting in \$1,270,000 annual debt service payments over a 30-year period for a total financing cost of \$38 Million.

On the basis that the City's sewer rate payers can save \$7 Million of overall debt service payments with the SRFL vs. tax-exempt bonds, staff recommends that the City pursue the SRFL. However, the process to secure the SRFL is challenging and complicated, and is estimated to take 9 months to complete. Staff has researched with other public agencies the success of securing the SRFL on similar wastewater projects, and was introduced to AndersonPenna Partners, Inc., a firm specializing and experienced with project finance and delivering many types of public infrastructure projects using the SRFL. Specifically, AndersonPenna has demonstrated success in securing \$226 Million for 22 various public infrastructure projects through the SRFL process.

Recently, AndersonPenna was awarded an agreement by the South Coast Water District through its Request for Proposal (Contract No. 14-04-0006), issued July 2013 to solicit proposals from firms to provide assistance in the coordination and processing of the SRFL for its Tunnel Rehabilitation and Pipeline Replacement Project with an estimated cost of \$102 Million. In September 2013 the South Coast Water District selected AndersonPenna and approved an agreement with the firm to secure the SRFL for its project. Subsequently, AndersonPenna has successfully completed the SRFL process for the South Coast Water District.

Ordinarily, staff would release a Request for Proposals of its own to solicit these services from professional firms. Title 7 "Procurement and Contracting" of the Municipal Code provides an exception to the traditional purchasing requirements for "special expertise." Specifically, Section 7.04.030 "Special expertise procurement," states:

*A contract may be awarded without competition when it is determined that an unusual or unique situation exists, in that due to experience and expertise demonstrated in prior contracts with the city a particular contractor is uniquely qualified for a particular task, that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals contrary to the public interest. Any special procurement under this section shall be made with such competition as is practicable under the circumstances.*

However, this exception can only be allowed for those unique situations where a firm has special expertise demonstrated on "prior contracts with the City." Therefore, given the need to immediately initiate the process to secure the SRFL which may require 9 months to complete, time is of the essence and staff recommends that the City Council waive the requirements for competition in this case, and authorize the City to enter into

an agreement with AndesonPenna on the basis of its demonstrated experience and expertise of providing the required financial assistance services through a competitive qualifications based selection process completed by the South Coast Water District through its Request for Proposal (Contract No. 14-04-0006).


Staff has prepared an agreement with AndersonPenna in the amount of \$39,220 to provide the required professional services to the City to secure the SRFL for the Project. A copy of the agreement is included as **Attachment 8**.

In order to legally recover Project costs incurred prior to the issuance of debt financing, it is necessary for the City Council to adopt Resolutions authorizing the reimbursement of such costs from the proceeds of the debt issuance. Staff has prepared the necessary Resolutions for the City Council's adoption, considering whether the debt issuance is the SRFL or a tax-exempt bond.

All costs associated with the Project, both prior and future costs, are entirely funded by the Wastewater Enterprise Fund (Fund 420). No General Fund or Measure J Capital Fund budget will be required in the delivery of the Project.

SUBMITTED:

Prepared by:



Marcus L. Fuller, MPA, P.E., P.L.S.  
Assistant City Manager/City Engineer

Approved by:



David H. Ready, Esq., Ph.D.  
City Manager



# **ATTACHMENT 2**



## PROJECT SUMMARY

Estimate Class: **2**

Project:	Palm Springs Headworks & Primary Clarifier Upgrac	PIC:	JPH
Client:	City of Palm Springs and Veolia Water	PM:	DJL
Location:	Palm Springs, California	Date:	Mar-16
Zip Code:	92262	By:	HT/TL
Carollo Job #	09328A10	Reviewed:	DJL

NO.	DESCRIPTION	TOTAL
01	Influent Sewer	\$223,464
09	Influent Metering	\$60,769
12	Headworks	\$1,984,429
15	Influent Pump Station	\$1,897,174
20	Primary Clarifiers	\$2,814,139
21	Primary Scum Pump Station	\$423,339
25	Primary Sludge Pump Station	\$957,083
27	Degritting	\$742,613
30	Odor Control	\$1,238,256
55	Gravity Thickeners	\$79,474
90	EI&C	\$2,079,463
91	Excavation & Backfill	\$1,904,818
92	Paving	\$557,780
99	Yard Piping	\$2,636,428
<b>TOTAL DIRECT COST</b>		<b>\$17,599,228</b>
General Conditions	10.0%	\$1,759,923
Subtotal		<b>\$19,359,151</b>
Estimating Unknowns	5.0%	\$879,961
Subtotal		<b>\$20,239,113</b>
General Contractor Overhead and Profit	15.0%	\$3,035,867
Subtotal		<b>\$23,274,980</b>
Escalation to Mid-Point	7.1%	\$1,656,557
Subtotal		<b>\$24,931,537</b>
Sales Tax	9.0%	\$1,121,919
Subtotal		<b>\$26,053,456</b>
Programming		\$0
Subtotal		<b>\$26,053,456</b>
Allowances		\$0
Subtotal		<b>\$26,053,456</b>
<b>TOTAL ESTIMATED CONSTRUCTION COST</b>		<b>\$26,053,456</b>

The cost estimate herein is based on our perception of current conditions at the project location. This estimate reflects our professional opinion of accurate costs at this time and is subject to change as the project design matures. Carollo Engineers have no control over variances in the cost of labor, materials, equipment; nor services provided by others, contractor's means and methods of executing the work or of determining prices, competitive bidding or market conditions, practices or bidding strategies. Carollo Engineers cannot and does not warrant or guarantee that proposals, bids or actual construction costs will not vary from the costs presented as shown.

# **ATTACHMENT 3**

**WASTE WATER TREATMENT PLANT UPGRADE  
CITY PROJECT NO 15-14**

**BID SUMMARY**

<b>LUMP SUM BID SCHEDULE A - REVISED (ADDENDUM NO. 4)</b>	<b>QUANT.</b>	<b>UNIT</b>	<b>W.M. LYLES CO.</b>	<b>C.W. ROEN CONSTRUCTION CO.</b>	<b>J.R. FILANC CONSTRUCTION CO., INC.</b>
<b>DESCRIPTION</b>					
The scope of work of this Lump Sum Bid Schedule includes all work, excluding certain bid items separately paid for on a unit price basis as identified on Bid Schedule B, all as identified in the Construction Drawings and Typical Details titled: CITY OF PALM SPRINGS VEOLIA WATER WEST OPERATING SERVICES, INC. HEADWORKS AND PRIMARY CLARIFIER UPGRADE APRIL 2016 VOLUMES 1 THROUGH 5 The scope of work of this Lump Sum Bid Schedule also includes all work required by the Contract/Technical Specifications applicable to the Wastewater Treatment Plant Upgrade (also identified as the Headworks and Primary Clarifier Upgrade), City Project No. 15-14.					
	1	LS	\$19,726,412	\$19,721,000	\$20,173,351
Special Note: All work identified on the Construction Drawings, and required by the Contract/Technical Specifications, (Volumes 1 through 5), shall be furnished, complete in place, including all associated trades, construction of all site improvements, and completing all associated work necessary to deliver the improvements in complete working order. In submitting this Lump Sum Bid, the Bidder acknowledges that, with the exception of those specific bid items separately paid for on a unit price basis as identified on Bid Schedule B, there will be no separate or additional payment made for completion the work required hereunder this Lump Bid Schedule A.					
<b>LUMP SUM BID - REVISED (ADDENDUM NO.4) SCHEDULE OF VALUES:</b>					
<b>DESCRIPTION OF WORK</b>			<b>SCHEDULE OF VALUES</b>	<b>SCHEDULE OF VALUES</b>	<b>SCHEDULE OF VALUES</b>
Division 01 – General Requirements	1	LS	\$2,300,000	\$950,000	\$2,744,094
Division 02 – Site Work	1	LS	\$3,800,000	\$4,100,000	\$2,072,137
Division 03 – Concrete	1	LS	\$3,800,000	\$4,000,000	\$3,366,350
Division 05 – Metals	1	LS	\$800,000	\$1,200,000	\$825,814
Division 06 – Wood and Plastics	1	LS	\$250,000	\$300,000	\$285,363
Division 07 – Thermal and Moisture Protection	1	LS	\$50,000	\$40,000	\$22,633
Division 09 – Finishes	1	LS	\$1,000,000	\$1,100,000	\$435,075
Division 10 – Specialties	1	LS	\$10,000	\$6,000	\$0
Division 11 – Equipment	1	LS	\$900,000	\$1,130,000	\$483,047
Division 13 – Special Constructions	1	LS	\$700,000	\$650,000	\$1,754,500
Division 14 – Conveying Systems	1	LS	\$150,000	\$145,000	\$326,596
Division 15 – Mechanical	1	LS	\$3,816,412	\$3,800,000	\$5,697,646
Division 16 – Electrical	1	LS	\$1,800,000	\$1,800,000	\$2,140,096
Division 17 – Instrumentation and Control System	1	LS	\$350,000	\$500,000	\$20,000
<b>Total Lump Sum Bid:</b>			<b>\$19,726,412</b>	<b>\$19,721,000</b>	<b>\$20,173,351</b>

<b>BID SCHEDULE B</b>	<b>QUANT.</b>	<b>UNIT</b>	<b>UNIT PRICE</b>	<b>AMOUNT</b>	<b>UNIT PRICE</b>	<b>AMOUNT</b>	<b>UNIT PRICE</b>	<b>AMOUNT</b>
1. 6" ACP Pipe removal/disposal	46	LF	\$ 50	\$ 2,300	\$ 85	\$ 3,910	\$ 215	\$ 9,890
2. 8" ACP Pipe removal/disposal	391	LF	\$ 55	\$ 21,505	\$ 50	\$ 19,550	\$ 33	\$ 12,903
3. 10" ACP Pipe removal/disposal	173	LF	\$ 65	\$ 11,245	\$ 70	\$ 12,110	\$ 60	\$ 10,380
4. 12" ACP Pipe removal/disposal	184	LF	\$ 70	\$ 12,880	\$ 73	\$ 13,432	\$ 57	\$ 10,488
5. 18" ACP Pipe removal/disposal	150	LF	\$ 90	\$ 13,500	\$ 106	\$ 15,900	\$ 77	\$ 11,550
6. 27" ACP Pipe removal/disposal	265	LF	\$ 110	\$ 29,150	\$ 141	\$ 37,365	\$ 54	\$ 14,310
7. 30" ACP Pipe removal/disposal	506	LF	\$ 125	\$ 63,250	\$ 102	\$ 51,612	\$ 80	\$ 40,480
8. Digester No. 2 Surface Repair	3,071	SF	\$ 13	\$ 39,923	\$ 72	\$ 221,112	\$ 28	\$ 85,988
9. Digester No. 2 Concrete Coating	4,673	SF	\$ 14	\$ 65,422	\$ 16	\$ 74,768	\$ 14	\$ 65,422
10. Digester No. 2 Epoxy Injection for Existing Concrete	500	LF	\$ 40	\$ 20,000	\$ 180	\$ 90,000	\$ 35	\$ 17,500
11. 2" Potable Water Line	1,220	LF	\$ 40	\$ 48,800	\$ 24	\$ 29,280	\$ 51	\$ 62,220
12. Buried 2" BFV in Valve Box	5	EA	\$ 1,100	\$ 5,500	\$ 1,400	\$ 7,000	\$ 374	\$ 1,870
13. 8" Fire Line (8' Depth)	2,700	LF	\$ 75	\$ 202,500	\$ 175	\$ 472,500	\$ 129	\$ 348,300
14. 8" Fire Line (3' Depth)	1,290	LF	\$ 55	\$ 70,950	\$ 95	\$ 122,550	\$ 113	\$ 145,770
15. Buried 8" BFV in Valve Box	14	EA	\$ 3,800	\$ 53,200	\$ 3,700	\$ 51,800	\$ 3,065	\$ 42,910
16. 6" Commercial Fire Hydrant Assembly (including isolation valves)	8	EA	\$ 7,400	\$ 59,200	\$ 10,000	\$ 80,000	\$ 9,377	\$ 75,016
17. Air Relief Valve Assembly	10	EA	\$ 7,000	\$ 70,000	\$ 6,000	\$ 60,000	\$ 6,004	\$ 60,040
18. Utility Pothole and Coordination for Water Line Installation	10	EA	\$ 700	\$ 7,000	\$ 1,000	\$ 10,000	\$ 540	\$ 5,400
<b>TOTAL OF ALL ITEMS OF BID SCHEDULE B:</b>				<b>\$ 796,325</b>		<b>\$ 1,372,889</b>		<b>\$ 1,020,437</b>

<b>TOTAL OF BID SCHEDULES A+B:</b>				<b>\$ 20,522,737</b>		<b>\$ 21,093,889</b>		<b>\$ 21,193,788</b>
------------------------------------	--	--	--	----------------------	--	----------------------	--	----------------------

1

2

3

**WASTE WATER TREATMENT PLANT UPGRADE  
CITY PROJECT NO 15-14**

BID Bid Opening: August 11, 2016

LUMP SUM BID SCHEDULE A - REVISED (ADDENDUM NO. 4)	QUANT.	UNIT	GSE	J.F. SHEA	PCL
DESCRIPTION			CONSTRUCTION CO, INC	CONSTRUCTION, INC.	CONSTRUCTION, INC.
<p>The scope of work of this Lump Sum Bid Schedule includes all work, excluding certain bid items separately paid for on a unit price basis as identified on Bid Schedule B, all as identified in the Construction Drawings and Typical Details titled:</p> <p align="center">CITY OF PALM SPRINGS VEOLIA WATER WEST OPERATING SERVICES, INC. HEADWORKS AND PRIMARY CLARIFIER UPGRADE APRIL 2016 VOLUMES 1 THROUGH 5</p> <p>The scope of work of this Lump Sum Bid Schedule also includes all work required by the Contract/Technical Specifications applicable to the Wastewater Treatment Plant Upgrade (also identified as the Headworks and Primary Clarifier Upgrade), City Project No. 15-14.</p> <p>Special Note: All work identified on the Construction Drawings, and required by the Contract/Technical Specifications, (Volumes 1 through 5), shall be furnished, complete in place, including all associated trades, construction of all site improvements, and completing all associated work necessary to deliver the improvements in complete working order. In submitting this Lump Sum Bid, the Bidder acknowledges that, with the exception of those specific bid items separately paid for on a unit price basis as identified on Bid Schedule B, there will be no separate or additional payment made for completing the work required hereunder this Lump Bid Schedule.</p>	1	LS	\$20,604,600	\$21,015,200	\$22,096,500
<b>LUMP SUM BID - REVISED (ADDENDUM NO.4) SCHEDULE OF VALUES:</b>					
<b>DESCRIPTION OF WORK</b>			<b>SCHEDULE OF VALUES</b>	<b>SCHEDULE OF VALUES</b>	<b>SCHEDULE OF VALUES</b>
Division 01 – General Requirements	1	LS	\$2,914,600	\$1,986,500	\$1,300,000
Division 02 – Site Work	1	LS	\$6,200,000	\$3,514,000	\$7,400,000
Division 03 – Concrete	1	LS	\$3,500,000	\$3,600,000	\$4,900,000
Division 05 – Metals	1	LS	\$950,000	\$1,173,000	\$1,000,000
Division 06 – Wood and Plastics	1	LS	\$300,000	\$400,000	\$150,000
Division 07 – Thermal and Moisture Protection	1	LS	\$20,000	\$44,000	\$100,000
Division 09 – Finishes	1	LS	\$550,000	\$605,000	\$600,000
Division 10 – Specialties	1	LS	\$10,000	\$40,000	\$6,500
Division 11 – Equipment	1	LS	\$950,000	\$1,540,300	\$940,000
Division 13 – Special Constructions	1	LS	\$1,150,000	\$1,583,500	\$2,170,000
Division 14 – Conveying Systems	1	LS	\$150,000	\$142,000	\$30,000
Division 15 – Mechanical	1	LS	\$1,600,000	\$4,087,900	\$1,500,000
Division 16 – Electrical	1	LS	\$2,000,000	\$1,870,000	\$1,500,000
Division 17 – Instrumentation and Control System	1	LS	\$310,000	\$428,000	\$500,000
<b>Total Lump Sum Bid:</b>			<b>\$20,604,600</b>	<b>\$21,015,200</b>	<b>\$22,096,500</b>

BID SCHEDULE B	QUANT.	UNIT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
1. 6" ACP Pipe removal/disposal	46	LF	\$ 159	\$ 7,314	\$ 123	\$ 5,658	\$ 71	\$ 3,266
2. 8" ACP Pipe removal/disposal	391	LF	\$ 91	\$ 35,581	\$ 95	\$ 37,145	\$ 70	\$ 27,370
3. 10" ACP Pipe removal/disposal	173	LF	\$ 117	\$ 20,241	\$ 141	\$ 24,393	\$ 100	\$ 17,300
4. 12" ACP Pipe removal/disposal	184	LF	\$ 128	\$ 23,184	\$ 195	\$ 35,880	\$ 100	\$ 18,400
5. 18" ACP Pipe removal/disposal	150	LF	\$ 140	\$ 21,000	\$ 167	\$ 25,050	\$ 100	\$ 15,000
6. 27" ACP Pipe removal/disposal	265	LF	\$ 140	\$ 37,100	\$ 181	\$ 42,865	\$ 105	\$ 27,825
7. 30" ACP Pipe removal/disposal	506	LF	\$ 142	\$ 71,852	\$ 160	\$ 80,960	\$ 126	\$ 64,768
8. Digester No. 2 Surface Repair	3,071	SF	\$ 27	\$ 82,917	\$ 32	\$ 98,272	\$ 27	\$ 82,917
9. Digester No. 2 Concrete Coating	4,673	SF	\$ 13	\$ 60,749	\$ 15	\$ 70,095	\$ 15	\$ 70,095
10. Digester No. 2 Epoxy Injection for Existing Concrete	500	LF	\$ 76	\$ 38,000	\$ 75	\$ 37,500	\$ 177	\$ 88,500
11. 2" Potable Water Line	1,220	LF	\$ 146	\$ 178,120	\$ 102	\$ 124,440	\$ 65	\$ 79,300
12. Buried 2" BFV in Valve Box	5	EA	\$ 1,167	\$ 5,935	\$ 3,100	\$ 15,500	\$ 6,900	\$ 34,500
13. 8" Fire Line (8' Depth)	2,700	LF	\$ 217	\$ 585,900	\$ 164	\$ 442,800	\$ 148	\$ 399,600
14. 8" Fire Line (3' Depth)	1,290	LF	\$ 96	\$ 123,840	\$ 157	\$ 202,530	\$ 162	\$ 208,980
15. Buried 8" BFV in Valve Box	14	EA	\$ 4,505	\$ 63,070	\$ 3,400	\$ 47,600	\$ 9,200	\$ 128,800
16. 6" Commercial Fire Hydrant Assembly (including isolation valves)	8	EA	\$ 9,622	\$ 76,976	\$ 14,900	\$ 119,200	\$ 11,500	\$ 92,000
17. Air Relief Valve Assembly	10	EA	\$ 6,491	\$ 64,910	\$ 10,500	\$ 105,000	\$ 13,000	\$ 130,000
18. Utility Pothole and Coordination for Water Line Installation	10	EA	\$ 1,661	\$ 16,610	\$ 1,100	\$ 11,000	\$ 2,500	\$ 25,000
<b>TOTAL OF ALL ITEMS OF BID SCHEDULE B:</b>				<b>\$ 1,513,299</b>		<b>\$ 1,525,688</b>		<b>\$ 1,513,621</b>

<b>TOTAL OF BID SCHEDULES A+B:</b>			<b>\$ 22,117,899</b>	<b>\$ 22,540,888</b>	<b>\$ 23,610,121</b>
------------------------------------	--	--	----------------------	----------------------	----------------------

4

5

6

# **ATTACHMENT 4**

## Marcus Fuller

---

**From:** Brown, Elisabeth@Waterboards <Elisabeth.Brown@waterboards.ca.gov>  
**Sent:** Wednesday, November 16, 2016 11:32 AM  
**To:** Marcus Fuller  
**Cc:** Tabitha Richards; Pontureri, Robert@Waterboards; Stevens, Christopher@Waterboards; Sudi Shoja (SShoja@andpen.com); Calderon, Melky@Waterboards  
**Subject:** RE: City of Palm Springs (8122-110) - CWSRF Project List

Please see correction in the email below. You will be able to request reimbursement for construction costs after you submit the Final Budget Approval (FBA) package and we amend the agreement to incorporate the construction costs.

---

**From:** Brown, Elisabeth@Waterboards  
**Sent:** Wednesday, November 16, 2016 11:29 AM  
**To:** Marcus.Fuller@palmsprings-ca.gov  
**Cc:** Tabitha Richards; Pontureri, Robert@Waterboards; Stevens, Christopher@Waterboards; Sudi Shoja (SShoja@andpen.com); Calderon, Melky@Waterboards  
**Subject:** RE: City of Palm Springs (8122-110) - CWSRF Project List

Hi Marcus,

The Project's master file has been approved by Christopher. The eligible start date for the City of Palm Springs Project (8122-110) has been established as November 14, 2016. All construction costs incurred after the aforementioned date are eligible, upon the Division's approval, for reimbursement. The eligible start date will be included on the first page of the Installment Sale Agreement.

It may take around 8 weeks until you receive a copy of the agreement for signatures. After you sign the agreement, it will be executed by our Deputy Director. Once it is executed, you will be able to request reimbursement for ~~construction costs~~ **planning and design costs**.

I am planning to work until this Friday, 11/18/2016. If you have any questions after that day, please contact Melky Calderon at (916) 341-5646 or [Melky.Calderon@waterboards.ca.gov](mailto:Melky.Calderon@waterboards.ca.gov). He will be the Project Manager for this project while I am out on maternity leave.

Thanks,

Beth

# **ATTACHMENT 5**



## Marcus Fuller

---

**From:** Suzanne Harrell <s.harrell@harrellco.com>  
**Sent:** Thursday, July 21, 2016 5:21 PM  
**To:** Marcus Fuller  
**Cc:** Douglas C. Holland; Geoffrey Kiehl; Nancy Klukan  
**Subject:** State Revolving Fund Loan

Hi Marcus. This will confirm those financing details for the SRF Loan we discussed early today. The Loan should be executed in the beginning of August, and you mentioned that the bids would be opened on August 11 and construction awarded on September 21.

According to Susan Damian at the SWRCB, the amount will be \$29,927,196 plus any construction period accrued interest to the completion date. Once the project is complete, they will add the construction period interest to the principal and provide you with an amortization payment schedule for the total. The amortization is 30 years at 1.70%. The first payment will be due 1 year after project completion. We estimate the annual payment will be approximately \$1.3 million.

The rate covenant requires you to establish rates and charges sufficient to generate net revenue = 1.1 x debt service.

They will remove the local match language of Exhibit B, once she confirms with Beth.

The vendor payment process is likely to be that you request the amount, the State disburses it to you and then you pay the vendor directly. Or you can pay the vendor directly and then request reimbursement from the state.

As we talked about last week, there are standard tax law covenants, so we can go over those once the agreement is in place – I reviewed them and they are standard.

Suzanne

Harrell & Company Advisors  
333 City Boulevard West, Suite 1430  
Orange, CA 92868  
714-939-1464  
[s.harrell@harrellco.com](mailto:s.harrell@harrellco.com)

# **ATTACHMENT 6**



**WASTEWATER**

---

---

CITY OF PALM SPRINGS

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



INSTALLMENT SALE AGREEMENT

PUBLICLY OWNED TREATMENT WORKS (POTW)  
CONSTRUCTION FINANCING

WWTP HEADWORKS AND CLARIFIER UPGRADE PROJECT

CLEAN WATER STATE REVOLVING FUND PROJECT NO. 8122-110

AGREEMENT NO. [ ]

AMOUNT: \$

ELIGIBLE START DATE: \_\_\_\_\_

END DATE: \_\_\_\_\_

DATED AS OF [DATE]

---

---

THIS PAGE INTENTIONALLY LEFT BLANK

TABLE OF CONTENTS

ARTICLE I DEFINITIONS ..... 1

1.1 Definitions..... 1

1.2 Exhibits and Appendices Incorporated..... 4

ARTICLE II REPRESENTATIONS, WARRANTIES, AND COMMITMENTS ..... 4

2.1 General Recipient Commitments. .... 4

2.2 Authorization and Validity..... 4

2.3 No Violations. .... 5

2.4 No Litigation. .... 5

2.5 Solvency..... 5

2.6 Legal Status and Eligibility. .... 5

2.7 Financial Statements..... 5

2.8 Completion of Project..... 5

2.9 Award of Construction Contracts. .... 5

2.10 Notice..... 6

2.11 Findings and Challenge..... 7

2.12 Project Access..... 7

2.13 Project Completion; Initiation of Operations ..... 8

2.14 Continuous Use of Project; Lease or Disposal of Project..... 8

2.15 Project Reports..... 8

2.16 Federal Disadvantaged Business Enterprise (DBE) Reporting..... 9

2.17 Records..... 9

2.18 Audit..... 10

ARTICLE III FINANCING PROVISIONS..... 10

3.1 Purchase and Sale of Project..... 10

3.2 Amounts Payable by the Recipient. .... 10

3.3 Obligation Absolute..... 11

3.4 No Obligation of the State..... 12

3.5 Disbursement of Project Funds; Availability of Funds..... 12

3.6 Withholding of Disbursements and Material Violations..... 13

3.7 Pledge; Rates, Fees and Charges; Additional Debt..... 13

3.8 Financial Management System and Standards..... 14

3.9 Accounting and Auditing Standards..... 14

3.10 Other Assistance..... 14

ARTICLE IV TAX COVENANTS..... 14

4.1 Purpose..... 14

4.2 Tax Covenant..... 15

4.3 Governmental Unit..... 15

4.4 Financing of a Capital Project..... 15

4.5 Ownership and Operation of Project..... 15

4.6 Temporary Period..... 15

4.7 Working Capital..... 15

4.8 Expenditure of Proceeds..... 15

4.9 Private Use and Private Payments..... 16

4.10 No Sale, Lease or Private Operation of the Project..... 16

4.11 No Disproportionate or Unrelated Use..... 16

4.12 Management and Service Contracts..... 16

4.13 No Disposition of Financed Property..... 17

4.14 Useful Life of Project..... 17

4.15 Installment Payments..... 17

4.16 No Other Replacement Proceeds..... 17

4.17 No Sinking or Pledged Fund..... 17

4.18 Reserve Amount..... 18

4.19 Reimbursement Resolution..... 18

4.20 Reimbursement Expenditures..... 18

4.21 Change in Use of the Project..... 18

4.22 Rebate Obligations. .... 18

4.23 No Federal Guarantee. .... 19

4.24 No Notices or Inquiries from IRS. .... 19

4.25 Amendments..... 19

4.26 Reasonable Expectations. .... 19

ARTICLE V MISCELLANEOUS PROVISIONS ..... 19

5.1 Amendment..... 19

5.2 Assignability. .... 19

5.3 Bonding. .... 20

5.4 Competitive Bidding ..... 20

5.5 Compliance with Law, Regulations, etc. .... 20

5.6 Conflict of Interest. .... 20

5.7 Damages for Breach Affecting Tax-Exempt Status or Federal Compliance..... 20

5.8 Disputes. .... 21

5.9 Governing Law. .... 21

5.10 Income Restrictions. .... 21

5.11 Indemnification and State Reviews. .... 21

5.12 Independent Actor. .... 22

5.13 Leveraging Covenants..... 22

5.14 Non-Discrimination Clause..... 22

5.15 No Third Party Rights. .... 23

5.16 Operation and Maintenance; Insurance. .... 23

5.17 Permits, Subcontracting, and Remedies. .... 23

5.18 Prevailing Wages..... 24

5.19 Public Funding..... 24

5.20 Recipient’s Responsibility for Work. .... 24

5.21 Related Litigation. .... 24

5.22 Rights in Data ..... 24

5.23 State Water Board Action; Costs and Attorney Fees ..... 24

5.24 Termination; Immediate Acceleration; Interest ..... 24

5.25 Timeliness ..... 25

5.26 Unenforceable Provision ..... 25

5.27 Useful Life ..... 25

5.28 Venue ..... 25

5.29 Waiver and Rights of the State Water Board ..... 25

- EXHIBIT A - SCOPE OF WORK & INCORPORATED DOCUMENTS
- EXHIBIT A - FBA –FINAL BUDGET APPROVAL
- EXHIBIT B - FUNDING AMOUNT
- EXHIBIT C - PAYMENT SCHEDULE
- EXHIBIT D - SPECIAL CONDITIONS
- EXHIBIT E - PROGRAMMATIC CONDITIONS & CROSS-CUTTERS
- EXHIBIT F - SCHEDULE OF SYSTEM OBLIGATIONS
- EXHIBIT G - DAVIS-BACON REQUIREMENTS
- EXHIBIT H - COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES



This Installment Sale Agreement, including all exhibits and attachments hereto, (Agreement), by and between the State Water Resources Control Board, an administrative and regulatory agency of the State of California (State Water Board), and the local government entity identified on the cover page of this Agreement, duly organized and existing under the laws of the State of California (Recipient):

WHEREAS the United States of America, pursuant to Title VI of the federal Water Pollution Control Act as such has been and may be amended from time to time (Federal Act), requires each State to establish a water pollution control revolving fund to be administered by an instrumentality of the State as a condition to receipt of capitalization grants under the Clean Water Act; and

WHEREAS the State of California (State) has established a Clean Water State Revolving Fund (CWSRF or SRF) pursuant to Chapter 6.5 of Division 7 of the California Water Code (State Act) to be used for purposes of the Clean Water Act; and

WHEREAS the State Water Board is the state agency authorized to administer the CWSRF and provide financial assistance from the CWSRF to recipients for the construction of eligible projects, as provided in the State Act; and

WHEREAS the State Water Board determines eligibility for financial assistance, determines a reasonable schedule for financing such projects, establishes compliance with the Federal Act and the State Act, and establishes the terms and conditions of an applicable financing agreement; and

WHEREAS the Recipient has applied to the State Water Board for financial assistance, for the purpose of financing or refinancing the Project described in this Agreement, and the State Water Board has reviewed and approved said application; and

WHEREAS the Recipient has incurred or will incur costs incurred in connection with the planning, design, acquisition, construction, and installation of the Project described in this Agreement; and

WHEREAS on the basis of the Recipient's application and the representations and warranties set forth herein, the State Water Board proposes to assist in financing the costs of the Project and the Recipient desires to participate as a recipient of financial assistance from the State Water Board and evidence its obligation to pay **Installment Payments**, which obligation will be secured by Net Revenues, as defined herein, upon the terms and conditions set forth in this Agreement, all pursuant to the Federal Act and the State Act.

NOW, THEREFORE, in consideration of the premises and of the mutual representations, covenants and agreements herein set forth, the State Water Board and the Recipient, each binding itself, its successors and assigns, do mutually promise, covenant, and agree as follows:

## ARTICLE I DEFINITIONS

### 1.1 Definitions.

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

"Additional Payments" means the Additional Payments described in Section 3.2(c) of this Agreement.

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

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

"Authorized Representative" means the duly appointed representative of the Recipient. A certified original of the authorizing resolution that designates the authorized representative, by title, must accompany the first disbursement request, as well as other documents submitted by the Recipient where requested by the Division.

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

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

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

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

"Code" as used in Article IV of this Agreement means the Internal Revenue Code of 1986, as amended, and any successor provisions and the regulations of the U.S. Department of the Treasury promulgated thereunder.

"Completion of Construction" means the date, as determined by the Division after consultation with the Recipient, that the work of building and erection of the Project is substantially complete.

"CWSRF" means the Clean Water State Revolving Fund.

"Days" means calendar days unless otherwise expressly indicated.

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

"Eligible Start Date" means the date set forth in Exhibit B, establishing the date on or after which construction costs may be incurred and eligible for reimbursement hereunder, subject to the 60-day look back period established in the Reimbursement Resolution.

"Enterprise Fund" means the enterprise fund of the Recipient in which Revenues are deposited.

"Fiscal Year" means the period of twelve (12) months terminating on June 30 of any year, or any other annual period selected and designated by the Recipient as its Fiscal Year in accordance with applicable law.

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

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

"Initiation of Construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and erection of the Project.

"Installment Payments" means Installment Payments due and payable by the Recipient to the State Water Board under this Agreement, the amounts of which are set forth as Exhibit C hereto.

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

"Material Event" means any event that, as determined by the Division, might cause the State Water Board to violate the terms and conditions of its agreements with USEPA or its bond covenants, including any of the following: (a) revenue shortfalls; (b) unscheduled draws on the Reserve Fund, if any, or the Enterprise Fund; (c) substitution of insurers, or their failure to perform; (d) adverse findings by the Regional Water Quality Control Board; (e) litigation related to the Revenues, the System, or the Project, whether pending or anticipated; (f) any false warranty or representation made by the Recipient relevant to this Agreement; (g) loss, theft, damage, or impairment to the Revenues or the System; (h) seizure of, or levy on any collateral securing this Agreement; (i) dissolution or cessation of operations by the Recipient, termination of Recipient's existence, insolvency of Recipient, or filing of a voluntary or involuntary bankruptcy petition by or on behalf of Recipient; (j) any event set forth in section 2.10 of this Agreement.

"Material Obligation" means (a) any senior or parity obligation of the Recipient payable from Revenues as identified as of the date of this Agreement in Exhibit F, (b) the Obligation, and (c) such additional obligations as may hereafter be issued in accordance with the provisions of such obligations and this Agreement.

"Net Revenues" means, for any Fiscal Year, all Revenues received by the Recipient less the Operations and Maintenance Costs for such Fiscal Year.

"Obligation" means the obligation of the Recipient to make Installment Payments and Additional Payments as provided herein, as evidenced by the execution of this Agreement, proceeds of such obligations being used to fund the Project as specified in the Project Description in Exhibit A and Exhibit A-FBA and in the documents thereby incorporated by reference.

"Operations and Maintenance Costs" means the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with GAAP, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses, and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement, and obsolescence charges or reserves therefor and amortization of intangibles.

"Policy" means the State Water Board's "Policy for Implementing the Clean Water State Revolving Fund," as amended from time to time.

"Project" means the Project financed by this Agreement as described in Exhibit A, Exhibit A-FBA, and in the documents incorporated by reference herein.

"Project Completion" means the date, as determined by the Division after consultation with the Recipient, that operation of the Project is initiated or is capable of being initiated, whichever comes first.

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

"Project Funds" means all moneys disbursed to the Recipient by the State Water Board pursuant to this Agreement and used to finance the Project.

"Recipient" means City of Palm Springs.

"Reimbursement Resolution" means the Recipient's reimbursement resolution identified in Exhibit A of this Agreement.

"Reserve Fund" means the reserve fund required pursuant to Exhibit D of this Agreement.

"Revenues" means, for each Fiscal Year, all gross income and revenue received or receivable by the Recipient from the ownership or operation of the System, determined in accordance with GAAP, including all rates, fees, and charges (including connection fees and charges) as received by the Recipient for the services of the System, and all other income and revenue howsoever derived by the Recipient from the ownership or operation of the System or arising from the System, including all income from the deposit or investment of any money in the Enterprise Fund or any rate stabilization fund of the Recipient or held on the Recipient's behalf, and any refundable deposits made to establish credit, and advances or contributions in aid of construction.

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

"SRF" means the Clean Water State Revolving Fund.

"State" means State of California.

"State Water Board" means the State Water Resources Control Board, an administrative and regulatory agency of the State of California.

"System" means all wastewater collection, pumping, transport, treatment, storage, and disposal facilities, including land and easements thereof, owned by the Recipient, including the Project, and all other properties, structures, or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions, or improvements to such facilities, properties, structures, or works, or any part thereof hereafter acquired and constructed.

"System Obligation" means any long-term obligation of the Recipient payable from the Enterprise Fund, including this Obligation and any obligations reflected in Exhibit F.

## 1.2 Exhibits and Appendices Incorporated.

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

## ARTICLE II REPRESENTATIONS, WARRANTIES, AND COMMITMENTS

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

### 2.1 General Recipient Commitments.

The Recipient shall comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and commitments in its application, accompanying documents, and communications filed in support of its request for financial assistance.

### 2.2 Authorization and Validity.

The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized by the Recipient. This Agreement constitutes a valid and binding obligation of the

Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.

2.3 No Violations.

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

2.4 No Litigation.

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

2.5 Solvency.

None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of Recipient. As of the date set forth on the first page hereof, Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. Recipient is able to pay its debts as they become due.

2.6 Legal Status and Eligibility.

Recipient is duly organized and existing and in good standing under the laws of the State of California, and will remain so during the term of this Agreement. Recipient shall at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. Recipient shall maintain its eligibility for funding under this Agreement for the term of this Agreement.

2.7 Financial Statements.

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

2.8 Completion of Project.

The Recipient shall expeditiously proceed with and complete construction of the Project in substantial accordance with Exhibit A and Exhibit A-FBA.

2.9 Award of Construction Contracts.

- (a) The Recipient shall award the prime construction contract no later than the date specified in Exhibit A.
- (b) The Recipient shall promptly notify the Division in writing both of the award of the prime construction contract for the Project and of Initiation of Construction of the Project. The Recipient shall make all reasonable efforts to complete construction in substantial conformance with

the terms of the contract by the Completion of Construction date established in Exhibit A. Such date shall be binding upon the Recipient unless modified in writing by the Division upon a showing of good cause by the Recipient. The Recipient shall deliver any request for extension of the Completion of Construction date no less than 90 days prior to the Completion of Construction date. The Division will not unreasonably deny a timely request, but the Division may deny requests received after this time.

2.10 Notice.

(a) The Recipient shall notify the Division in writing within five (5) working days of the occurrence of the following:

- (1) Material defaults on this Obligation;
- (2) Unscheduled draws on debt service reserves held for this Obligation, if any, reflecting financial difficulties;
- (3) Bankruptcy, insolvency, receivership or similar event of the Recipient;
- (4) Actions taken pursuant to state law in anticipation of filing for bankruptcy;
- (5) Other Material Events or Listed Events;
- (6) Change of ownership of the Project or change of management or service contracts, if any, for operation of the Project; or

(b) The Recipient shall notify the Division within 10 working days of the following:

- (1) Material defaults on System Obligations, other than this Obligation;
- (2) Unscheduled draws on debt service reserves held for System Obligations, other than this Obligation, if any, reflecting financial difficulties;
- (3) Unscheduled draws on credit enhancements on System Obligations, if any, reflecting financial difficulties;
- (4) Substitution of credit or liquidity providers, if any, or their failure to perform;
- (5) Any litigation pending or threatened against Recipient regarding its wastewater capacity or its continued existence, circulation of a petition to challenge rates, consideration of dissolution, or disincorporation, or any other material threat to the Recipient's Revenues;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service or proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of any tax-exempt bonds;
- (7) Rating changes on outstanding System Obligations, if any; or
- (8) Issuance of additional parity obligations.

(c) The Recipient shall notify the Division promptly of the following:

- (1) Any substantial change in scope of the Project. The Recipient shall undertake no substantial change in the scope of the Project until written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;

- (2) Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
- (3) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more beyond the estimated date of Completion of Construction previously provided to the Division;
- (4) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Recipient agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient shall implement appropriate actions as directed by the Division;
- (5) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
- (6) Any Project monitoring, demonstration, or other implementation activities such that the State Water Board and/or Regional Water Quality Control Board staff may observe and document such activities;
- (7) Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state and federal representatives with at least ten (10) working days' notice to both the Division and USEPA Region IX. The contact for USEPA Region IX is Josh Amaris at Amaris.josh@epa.gov (415) 972-3597; or
- (8) Completion of Construction of the Project, and actual Project Completion.

#### 2.11 Findings and Challenge

Upon consideration of a voter initiative to reduce Revenues, the Recipient shall make a finding regarding the effect of such a reduction on the Recipient's ability to satisfy the rate covenant set forth in Section 3.7 of this Agreement. The Recipient shall make its findings available to the public and shall request, if necessary, the authorization of the Recipient's decision-maker or decision-making body to file litigation to challenge any such initiative that it finds will render it unable to satisfy the rate covenant set forth in Section 3.7 and its obligation to operate and maintain the Project for its useful life. The Recipient shall diligently pursue and bear any and all costs related to such challenge. The Recipient shall notify and regularly update the State Water Board regarding any such challenge.

#### 2.12 Project Access.

The Recipient shall ensure that the State Water Board, the Governor of the State, the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, the President of the United States, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of the Obligation. The Recipient acknowledges that, except for a subset of information regarding archaeological records, the Project records and locations are public records, including but not limited to all of the submissions accompanying the application, all of the documents incorporated by Exhibit A and

Exhibit A-FBA, and all reports, disbursement requests, and supporting documentation submitted hereunder.

2.13 Project Completion; Initiation of Operations.

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

2.14 Continuous Use of Project; Lease or Disposal of Project.

The Recipient agrees that, except as provided in the Agreement, it will not abandon, substantially discontinue use of, lease, or dispose of all or a significant part or portion of the Project during the useful life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all disbursed Project Funds of all or any portion of all remaining funds covered by this Agreement together with accrued interest and any penalty assessments that may be due.

2.15 Project Reports.

(a) Status Reports. The Recipient shall provide expeditiously status reports no less frequently than quarterly, starting with the execution of this Agreement. These reports must accompany any disbursement request and are a condition precedent to any disbursement. At a minimum the reports will contain the following information:

- (1) A summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed;
- (2) A description of compliance with environmental requirements;
- (3) A listing of change orders including amount, description of work, and change in contract amount and schedule; and
- (4) Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.

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

- (1) Describe the Project,
- (2) Describe the water quality problem the Project sought to address,
- (3) Discuss the Project's likelihood of successfully addressing that water quality problem in the future, and
- (4) Summarize compliance with environmental conditions, if applicable.
- (5) If the Recipient fails to submit a timely Project Completion Report, then the State Water Board may stop processing pending or future applications for new financial assistance, withhold disbursements under this Agreement or other agreements, and begin administrative proceedings.



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

2.16 Federal Disadvantaged Business Enterprise (DBE) Reporting.

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

2.17 Records.

- (a) Without limitation of the requirement to maintain Project accounts in accordance with GAAP, the Recipient shall:
- (1) Establish an official file for the Project which adequately documents all significant actions relative to the Project;
  - (2) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;
  - (3) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;
  - (4) Establish an accounting system which will accurately depict final total costs of the Project, including both direct and indirect costs;
  - (5) Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
  - (6) If Force Account is used by the Recipient for any phase of the Project, other than for planning, design, and construction engineering and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee. Indirect Force Account costs are not eligible for funding.
- (b) The Recipient shall maintain separate books, records and other material relative to the Project. The Recipient shall also retain such books, records, and other material for itself and for each contractor or subcontractor who performed or performs work on this project for a minimum of thirty-six (36) years after Project Completion. The Recipient shall require that such books, records, and other material are subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Bureau of State Audits, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned. The Recipient shall allow and shall require its contractors to allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar duty regarding audit, interviews, and records retention in any contract or subcontract related to the performance of this Agreement. The provisions of this section shall survive the discharge of the Recipient's Obligation and the term of this Agreement.

2.18 Audit.

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

ARTICLE III FINANCING PROVISIONS

3.1 Purchase and Sale of Project.

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

3.2 Amounts Payable by the Recipient.

- (a) **Installment Payments.** Interest will accrue beginning with each disbursement. Beginning one year after Completion of Construction, repayment of the principal of the Project Funds, together with all interest accruing thereon, shall be repaid annually, and shall be fully amortized by the date specified in Exhibit B.

The Installment Payments are based on a standard fully amortized assistance amount with equal annual payments. The remaining balance is the previous balance, plus the disbursements, plus the accrued interest on both, less the Installment Payment. Installment Payment calculations will be made beginning one (1) year after Completion of Construction and shall be fully amortized not later than the date specified in Exhibit B. Exhibit C is a payment schedule based on the provisions of this article and an estimated disbursement schedule. Actual payments will be based on actual disbursements.

Upon Completion of Construction and submission of necessary reports by the Recipient, the Division will prepare an appropriate payment schedule and supply the same to the Recipient. The Division may amend this schedule as necessary to accurately reflect amounts due under this Agreement. The Division will prepare any necessary amendments to the payment schedule and send them to the Recipient.

The Recipient shall make each Installment Payment on or before the due date therefor. A ten (10) day grace period will be allowed, after which time a penalty in the amount of costs incurred by the State Water Board will be assessed for late payment. These costs may include, but are not limited to, lost interest earnings, staff time, bond debt service default penalties, if any, and other costs. For purposes of penalty assessment, payment will be deemed to have been made if payment is deposited in the U.S. Mail within the grace period with postage prepaid and properly addressed. Any penalties assessed will not be added to the assistance amount balance, but will be treated as a separate account and obligation of the Recipient. The interest penalty will be assessed from the payment due date.

The Recipient as a whole is obligated to make all payments required by this Agreement to the State Water Board, notwithstanding any individual default by its constituents or others in the payment to the Recipient of fees, charges, taxes, assessments, tolls or other charges ("Charges") levied or imposed by the Recipient. The Recipient shall provide for the punctual payment to the State Water Board of all amounts which become due under this Agreement and which are received from constituents or others in the payment to the Recipient. In the event of failure, neglect or refusal of any officer of the Recipient to levy or cause to be levied any Charge to provide payment by the Recipient under this Agreement, to enforce or to collect such Charge, or to pay over to the State Water Board any money collected on account of such Charge necessary to satisfy any amount due under this Agreement, the State Water Board may take such action in a court of competent jurisdiction as it deems necessary to compel the performance of all duties relating to the imposition or levying and collection of any of such Charges and the payment of the money collected therefrom to the State Water Board. Action taken pursuant hereto shall not deprive the State Water Board of, or limit the application of, any other remedy provided by law or by this Agreement.

Each Installment Payment shall be paid by check and in lawful money of the United States of America.

The Recipient shall not be entitled to interest earned on undisbursed funds. Upon execution of this Agreement, the State Water Board shall encumber an amount equal to the Obligation. The Recipient shall pay Installment Payments and Additional Payments from Net Revenues and/or other amounts legally available to the Recipient therefor. Interest on any funds disbursed to the Recipient shall begin to accrue as of the date of each disbursement.

- (b) **Project Costs.** The Recipient shall pay any and all costs connected with the Project including, without limitation, any and all Project Costs. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient shall nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.
- (c) **Additional Payments.** In addition to the Installment Payments required to be made by the Recipient, the Recipient shall also pay to the State Water Board the reasonable extraordinary fees and expenses of the State Water Board, and of any assignee of the State Water Board's right, title, and interest in and to this Agreement, in connection with this Agreement, including all expenses and fees of accountants, trustees, attorneys, litigation costs, insurance premiums and all other extraordinary costs reasonably incurred by the State Water Board or assignee of the State Water Board.

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

- (d) The Recipient may without penalty prepay all or any portion of the outstanding principal amount of the Obligation provided that the Recipient shall also pay at the time of such prepayment all accrued interest on the principal amount prepaid through the date of prepayment.

### 3.3 Obligation Absolute.

The obligation of the Recipient to make the Installment Payments and other payments required to be made by it under this Agreement, from Net Revenues and/or other amounts legally available to the Recipient therefor, is absolute and unconditional, and until such time as the Installment Payments and

Additional Payments have been paid in full, the Recipient shall not discontinue or suspend any Installment Payments or other payments required to be made by it hereunder when due, whether or not the System or any part thereof is operating or operable or has been completed, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part, and such Installment Payments and other payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

3.4 No Obligation of the State.

Any obligation of the State Water Board herein contained shall not be an obligation, debt, or liability of the State and any such obligation shall be payable solely out of the moneys in the SRF made available pursuant to this Agreement.

3.5 Disbursement of Project Funds; Availability of Funds.

- (a) Except as may be otherwise provided in this Agreement, disbursement of Project Funds will be made as follows:
- (1) Upon execution and delivery of this Agreement, the Recipient may request immediate disbursement of any eligible incurred planning and design allowance as specified in Exhibit B from the Project Funds through submission to the State Water Board of the Disbursement Request Form 260, or any amendment thereto, duly completed and executed.
  - (2) The Recipient may request disbursement of eligible construction and equipment costs consistent with budget amounts referenced in Exhibit B and Exhibit A-FBA. (Note that this Agreement will be amended to incorporate Exhibit A-FBA after final budget approval.)
  - (3) Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Disbursement Request Form 260, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of status reports due under Section 2.15 above.
  - (4) The Recipient shall not request disbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of disbursement request.
  - (5) Recipient shall spend Project Funds within 30 days of receipt. Any interest earned on Project Funds shall be reported to the State Water Board and may be required to be returned to the State Water Board or deducted from future disbursements.
  - (6) The Recipient shall not be entitled to interest earned on undisbursed planning funds.
  - (7) The Recipient shall not request a disbursement unless that Project Cost is allowable, reasonable, and allocable.
  - (8) Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.
- (b) The State Water Board's obligation to disburse Project Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Project Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed

as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other agency. If any disbursements due the Recipient under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the State Water Board that such disbursement will be made to the Recipient when sufficient funds do become available, but this intention is not binding.

3.6 Withholding of Disbursements and Material Violations.

- (a) The State Water Board may withhold all or any portion of the funds provided for by this Agreement in the event that:
  - (1) The Recipient has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or
  - (2) The Recipient fails to maintain reasonable progress toward completion of the Project.
- (b) For the purposes of this Agreement, the terms "material violation" or "threat of material violation" include, but are not limited to:
  - (1) Placement on the ballot of an initiative or referendum to reduce Revenues;
  - (2) Passage of such an initiative or referendum;
  - (3) Successful challenges by ratepayer(s) to the process used by Recipient to set, dedicate, or otherwise secure Revenues; or
  - (4) Any other action or lack of action that may be construed by the Division as a material violation or threat thereof.

3.7 Pledge; Rates, Fees and Charges; Additional Debt.

- (a) Establishment of Enterprise Fund and Reserve Fund. In order to carry out its Material Obligations, the Recipient covenants that it shall establish and maintain or shall have established and maintained the Enterprise Fund. All Revenues received shall be deposited when and as received in trust in the Enterprise Fund. As required in Exhibit D of this Agreement, the Recipient shall establish and maintain a Reserve Fund.
- (b) Pledge of Net Revenues, Enterprise Fund, and Reserve Fund. The Obligation hereunder shall be secured by a lien on and pledge of the Enterprise Fund, Net Revenues, and any Reserve Fund specified in Exhibit D in priority as specified in Exhibit F (senior, parity, or subordinate). The Recipient hereby pledges and grants such lien on and pledge of the Enterprise Fund, Net Revenues, and any Reserve Fund specified in Exhibit D to secure the Obligation, including payment of Installment Payments and Additional Payments hereunder. The Net Revenues in the Enterprise Fund, shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Recipient.
- (c) Application and Purpose of the Enterprise Fund. Subject to the provisions of any outstanding Material Obligation, money on deposit in the Enterprise Fund shall be applied and used first, to pay Operations and Maintenance Costs, and thereafter, all amounts due and payable with respect to the Material Obligations. After making all payments hereinabove required to be made in each Fiscal Year, the Recipient may expend in such Fiscal Year any remaining money in the Enterprise Fund for any lawful purpose of the Recipient, including payment of subordinate debt.

- (d) Rates, Fees and Charges. The Recipient shall, to the extent permitted by law, fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonable, fair, and nondiscriminatory and which will be at least sufficient to yield during each Fiscal Year Net Revenues equal to the debt service on System Obligations, including the Obligation, for such Fiscal Year, plus any coverage ratio specified in Exhibit D of this Agreement. The Recipient may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Net Revenues from such reduced rates, fees, and charges will at all times be sufficient to meet the requirements of this section.
- (e) Additional Debt Test.
  - (1) Additional Senior Debt. The Recipient's future debt that is secured by revenues pledged herein may not be senior to this Obligation, except where the new senior obligation refunds or refinances a senior obligation with the same lien position as the existing senior obligation, the new senior obligation has the same or earlier repayment term as the refunded senior debt, the new senior debt service is the same or lower than the existing debt service, and the new senior debt will not diminish the applicant's ability to repay its SRF obligations.
  - (2) Additional Parity Debt. Future debt that is secured by revenues pledged herein may be on parity with this Obligation if the reserve and coverage requirements in Exhibit D to this Agreement are met.

3.8 Financial Management System and Standards.

The Recipient shall comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Project funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Recipient shall be bound by, and to comply with, the provisions and requirements of the federal Single Audit Act of 1984, Office of Management and Budget (OMB) Circular No. A-133, and updates or revisions, thereto, including but not limited to Section 210(a)-(d). (Pub. L. 98-502.)

3.9 Accounting and Auditing Standards.

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

3.10 Other Assistance.

If federal or state funding for Project Costs is made available to the Recipient from sources other than this Agreement, the Recipient may retain such funding up to an amount which equals the Recipient's local share of Project Costs. To the extent allowed by requirements of other funding sources, any funding received in excess of the Recipient's local share, not to exceed the total amount funded under this Agreement, shall be remitted to the State Water Board to be applied to Installment Payments due hereunder, if any.

ARTICLE IV TAX COVENANTS

4.1 Purpose.

The purpose of this Article IV is to establish the reasonable expectations of the Recipient regarding the Project and the Project Funds, and is intended to be and may be relied upon for purposes of Sections

103, 141 and 148 of the Code and as a certification described in Section 1.148-2(b)(2) of the Treasury Regulations. This Article IV sets forth certain facts, estimates and circumstances which form the basis for the Recipient's expectation that neither the Project nor the Bond Funded Portion of the Project Funds is to be used in a manner that would cause the Obligation to be classified as "arbitrage bonds" under Section 148 of the Code or "private activity bonds" under Section 141 of the Code.

#### 4.2 Tax Covenant.

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

#### 4.3 Governmental Unit.

The Recipient is a state or local governmental unit as defined in Section 1.103-1 of the Treasury Regulations or an instrumentality thereof (a "Governmental Unit") and is not the federal government or any agency or instrumentality thereof.

#### 4.4 Financing of a Capital Project.

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

#### 4.5 Ownership and Operation of Project.

The Recipient exclusively owns and, except as provided in Section 4.12 hereof, operates the Project.

#### 4.6 Temporary Period.

The Recipient reasonably expects that at least eighty-five percent (85%) of the Bond Funded Portion of the Project Funds will be allocated to expenditures for the Project within three (3) years of the earlier of the effective date of this Agreement or the date the Bonds are issued ("Applicable Date"). The Recipient has incurred, or reasonably expects that it will incur within six (6) months of the Applicable Date, a substantial binding obligation (i.e., not subject to contingencies within the control of the Recipient or a related party) to a third party to expend at least five percent (5%) of the Bond Funded Portion of the Project Funds on Project Costs. The completion of acquisition, construction, improvement and equipping of the Project and the allocation of the Bond Funded Portion of the Project Funds to Project Costs will proceed with due diligence.

#### 4.7 Working Capital.

No operational expenditures of the Recipient or any related entity are being, have been or will be financed or refinanced with Project Funds.

#### 4.8 Expenditure of Proceeds.

The Bond Funded Portion of the Project Funds shall be used exclusively for the following purposes: (i) Reimbursement Expenditures (as defined in Section 4.20 below), (ii) Preliminary Expenditures (as defined in Section 4.20 below) in an aggregate amount not exceeding twenty percent (20%) of the Bond Funded Portion of the Project Funds, (iii) capital expenditures relating to the Project originally paid by the Recipient on or after the date hereof, (iv) interest on the Obligation through the later of three (3) years after the Applicable Date or one (1) year after the Project is placed in service, and (v) initial operating

expenses directly associated with the Project in the aggregate amount not more than five percent (5%) of the Bond Funded Portion of the Project Funds.

#### 4.9 Private Use and Private Payments.

None of the Project Funds or the Project is being, have been or will be used in the aggregate for any activities that constitute a Private Use (as defined below). None of the principal of or interest with respect to the Installment Payments will be secured by any interest in property (whether or not the Project) used for a Private Use or in payments in respect of property used for a Private Use, or will be derived from payments in respect of property used for a Private Use. "Private Use" means any activity that constitutes a trade or business that is carried on by persons or entities, other than a Governmental Unit. The leasing of the Project or the access by or the use of the Project by a person or entity other than a Governmental Unit on a basis other than as a member of the general public shall constitute a Private Use. Use by or on behalf of the State of California or any of its agencies, instrumentalities or subdivisions or by any local governmental unit and use as a member of the general public will be disregarded in determining whether a Private Use exists. Use under an arrangement that conveys priority rights or other preferential benefits is generally not use on the same basis as the general public. Arrangements providing for use that is available to the general public at no charge or on the basis of rates that are generally applicable and uniformly applied do not convey priority rights or other preferential benefits. For this purpose, rates may be treated as generally applicable and uniformly applied even if (i) different rates apply to different classes of users, such as volume purchasers, if the differences in rates are customary and reasonable; or (ii) a specially negotiated rate arrangement is entered into, but only if the user is prohibited by federal law from paying the generally applicable rates, and the rates established are as comparable as reasonably possible to the generally applicable rates. An arrangement that does not otherwise convey priority rights or other preferential benefits is not treated, nevertheless, as general public use if the term of the use under the arrangement, including all renewal options, is greater than 200 days. For this purpose, a right of first refusal to renew use under the arrangement is not treated as a renewal option if (i) the compensation for the use under the arrangement is redetermined at generally applicable, fair market value rates that are in effect at the time of renewal; and (ii) the use of the financed property under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business.

#### 4.10 No Sale, Lease or Private Operation of the Project.

The Project (or any portion thereof) will not be sold or otherwise disposed of, in whole or in part, to any person who is not a Governmental Unit prior to the final maturity date of the Obligation. The Project will not be leased to any person or entity that is not a Governmental Unit prior to the final maturity date of the Obligation. Except as permitted under Section 4.12 hereof, the Recipient will not enter any contract or arrangement or cause or permit any contract or arrangement to be entered with persons or entities that are not Governmental Units if that contract or arrangement would confer on such persons or entities any right to use the Project on a basis different from the right of members of the general public. The contracts or arrangements contemplated by the preceding sentence include but are not limited to management contracts, take or pay contracts or put or pay contracts, and capacity guarantee contracts.

#### 4.11 No Disproportionate or Unrelated Use.

None of the Project Funds or the Project is being, have been, or will be used for a Private Use that is unrelated or disproportionate to the governmental use of the Project Funds.

#### 4.12 Management and Service Contracts.

With respect to management and service contracts, the determination of whether a particular use constitutes Private Use shall be determined on the basis of applying Section 1.141-3(b)(4) of the Treasury Regulations, Revenue Procedure 97-13, IRS Notice 2014-67, and other applicable rules and regulations. As of the date hereof, none of the Bond Funded Portion of the Project Funds or the Project



are being used to provide property subject to contracts or other arrangements with persons or entities engaged in a trade or business (other than Governmental Units) that involve the management of property or the provision of services that do not comply with the standards of the Treasury Regulations and Revenue Procedure 97-13, as modified by IRS Notice 2014-67.

Except to the extent the Recipient has received an opinion of counsel expert in the issuance of state and local government bonds the interest on which is excluded from gross income under Section 103 of the Code ("Nationally-Recognized Bond Counsel") and satisfactory to the State Water Board and the Bank to the contrary, the Recipient will not enter into any management or service contracts with any person or entity that is not a Governmental Unit for services to be provided with respect to the Project except with respect to contracts that meet the following requirements: (i) the compensation is reasonable for the services rendered; (ii) the compensation is not based, in whole or in part, on a share of net profits from the operation of the Project; (iii) the term of the contract, including all renewal options, does not exceed five (5) years; and (iv) all of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee or all of the compensation for services is based on a stated amount, a periodic capitation fee, a capitation fee, a per unit fee, or combination of the preceding. The compensation for services may be all, or may include, a percentage of gross revenues, adjusted gross revenues, or expenses of the facility (but not both revenues and expenses). A capitation fee is a fixed periodic amount for each person for whom the service provider assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to covered persons vary substantially, e.g., a fixed dollar amount payable per month to a service provider for each member of a plan for whom the provider agrees to provide all needed services for a specified period. A capitation fee may include a variable component of up to twenty percent (20%) of the total capitation fee designed to protect the service provider against risks such as catastrophic loss.

#### 4.13 No Disposition of Financed Property.

The Recipient does not expect to sell or otherwise dispose of any portion of the Project, in whole or in part, prior to the final maturity date of the Obligation.

#### 4.14 Useful Life of Project.

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

#### 4.15 Installment Payments.

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

#### 4.16 No Other Replacement Proceeds.

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

#### 4.17 No Sinking or Pledged Fund.

Except as set forth in Section 4.18 below, the Recipient will not create or establish any sinking fund or pledged fund which will be used to pay Installment Payments on the Obligation within the meaning of Section 1.148-1(c) of the Treasury Regulations. If any sinking fund or pledged fund comes into being with respect to the Obligation before the Obligation has been fully retired which may be used to pay the Installment Payments, the Recipient will invest such sinking fund and pledged fund moneys at a yield that does not exceed the yield on the Bonds.

#### 4.18 Reserve Amount.

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

#### 4.19 Reimbursement Resolution.

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

#### 4.20 Reimbursement Expenditures.

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

#### 4.21 Change in Use of the Project.

The Recipient reasonably expects to use all Project Funds and the Project for the entire stated term to maturity of the Obligation. Absent an opinion of Nationally-Recognized Bond Counsel to the effect that such use of the Bond Funded Portion of the Project Funds will not adversely affect the exclusion from federal gross income of interest on the Bonds pursuant to Section 103 of the Code; the Recipient will use the Bond Funded Portion of the Project Funds and the Project solely as set forth in the Agreement.

#### 4.22 Rebate Obligations.

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

Regulations at such time, including the payment of any rebate amount or any yield reduction payments calculated by the State Water Board or the Bank.

4.23 No Federal Guarantee.

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

4.24 No Notices or Inquiries from IRS.

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

4.25 Amendments.

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

4.26 Reasonable Expectations.

The Recipient warrants that, to the best of its knowledge, information and belief, and based on the facts and estimates as set forth in the tax covenants in this Article, the expectations of the Recipient as set forth in this Article are reasonable. The Recipient is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation made in the provisions in this Article IV.

ARTICLE V MISCELLANEOUS PROVISIONS

5.1 Amendment.

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.

5.2 Assignability.

The Recipient consents to any pledge, sale, or assignment to the Bank or a trustee for the benefit of the owners of the Bonds, if any, at any time of any portion of the State Water Board's estate, right, title, and interest and claim in, to and under this Agreement and the right to make all related waivers and agreements in the name and on behalf of the State Water Board, as agent and attorney-in-fact, and to perform all other related acts which are necessary and appropriate under this Agreement, if any, and the State Water Board's estate, right, title, and interest and claim in, to and under this Agreement to Installment Payments (but excluding the State Water Board's rights to Additional Payments and to notices, opinions and indemnification under each Obligation). This Agreement is not assignable by the

Recipient, either in whole or in part, without the consent of the State Water Board in the form of a formal written amendment to this Agreement.

### 5.3 Bonding.

Where contractors are used, the Recipient shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Recipient in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$20,000.00.

### 5.4 Competitive Bidding

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

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

### 5.5 Compliance with Law, Regulations, etc.

The Recipient shall, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, to the extent applicable, the Recipient shall:

- (a) Comply with the provisions of the adopted environmental mitigation plan, if any, for the term of this Agreement;
- (b) Comply with the State Water Board's Policy;
- (c) Comply with and require compliance with the list of state laws attached as Exhibit H.
- (d) Comply with and require its contractors and subcontractors on the Project to comply with federal DBE requirements; and
- (e) Comply with and require its contractors and subcontractors to comply with the list of federal laws attached as Exhibit E.

### 5.6 Conflict of Interest.

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

### 5.7 Damages for Breach Affecting Tax-Exempt Status or Federal Compliance

In the event that any breach of any of the provisions of this Agreement by the Recipient shall result in the loss of tax-exempt status for any bonds of the State or any subdivision or agency thereof, including Bonds issued on behalf of the State Water Board, or if such breach shall result in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government by reason of any arbitrage profits, the Recipient shall immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach. In the event that any breach of any of the provisions of this Agreement by the Recipient shall result in the failure of Project Funds to be used pursuant to the provisions of this

Agreement, or if such breach shall result in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government, the Recipient shall immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

5.8 Disputes.

- (a) The Recipient may appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute.
- (b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.
- (c) Recipient shall continue with the responsibilities under this Agreement during any dispute.

5.9 Governing Law.

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

5.10 Income Restrictions.

The Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Recipient under this Agreement shall be paid by the Recipient to the State Water Board, to the extent that they are properly allocable to costs for which the Recipient has been reimbursed by the State Water Board under this Agreement.

5.11 Indemnification and State Reviews.

The parties agree that review or approval of Project plans and specifications by the State Water Board is for administrative purposes only and does not relieve the Recipient of its responsibility to properly plan, design, construct, operate, and maintain the Project. To the extent permitted by law, the Recipient agrees to indemnify, defend, and hold harmless the State Water Board, the Bank, and any trustee, and their officers, employees, and agents for the Bonds, if any (collectively, "Indemnified Persons"), against any loss or liability arising out of any claim or action brought against any Indemnified Persons from and against any and all losses, claims, damages, liabilities, or expenses, of every conceivable kind, character, and nature whatsoever arising out of, resulting from, or in any way connected with (1) the System or the Project or the conditions, occupancy, use, possession, conduct, or management of, work done in or about, or the planning, design, acquisition, installation, or construction, of the System or the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Safe Drinking Water Act, the California Hazardous Waste Control Law, and California Water Code Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System; or (4) any untrue statement or

alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Recipient for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement. The Recipient shall also provide for the defense and indemnification of the Indemnified Parties in any contractual provision extending indemnity to the Recipient in any contract let for the performance of any work under this Agreement, and shall cause the Indemnified Parties to be included within the scope of any provision for the indemnification and defense of the Recipient in any contract or subcontract. To the fullest extent permitted by law, the Recipient agrees to pay and discharge any judgment or award entered or made against Indemnified Persons with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section shall survive the term of this Agreement and the discharge of the Recipient's Obligation hereunder.

5.12 Independent Actor.

The Recipient, and its agents and employees, if any, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State Water Board.

5.13 Leveraging Covenants.

- (a) Tax Covenant. Notwithstanding any other provision hereof, the Recipient covenants and agrees that it will comply with the Tax Covenants set forth in Article IV of this Agreement.
- (b) Disclosure of Financial Information, Operating Data, and Other Information. The Recipient covenants to furnish such financial, operating and other data pertaining to the Recipient as may be requested by the State Water Board to: (i) enable the State Water Board to cause the issuance of Bonds and provide for security therefor; or (ii) enable any underwriter of Bonds issued for the benefit of the State Water Board to comply with Rule 15c2-12(b)(5). The Recipient further covenants to provide the State Water Board with copies of all continuing disclosure reports and materials concerning the Recipient required by the terms of any financing other than this Agreement and to submit such reports to the State Water Board at the same time such reports are submitted to any dissemination agent, trustee, nationally recognized municipal securities information repository, the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (EMMA) website or other person or entity.

5.14 Non-Discrimination Clause.

- (a) During the performance of this Agreement, Recipient and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status.
- (b) The Recipient, its contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- (c) The Recipient, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subds. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

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

#### 5.15 No Third Party Rights.

The parties to this Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation, or undertaking established herein.

#### 5.16 Operation and Maintenance; Insurance.

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

The Recipient will procure and maintain or cause to be maintained insurance on the System with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System) as are usually covered in connection with systems similar to the System. Such insurance may be maintained by a self-insurance plan so long as such plan provides for (i) the establishment by the Recipient of a separate segregated self-insurance fund in an amount determined (initially and on at least an annual basis) by an independent insurance consultant experienced in the field of risk management employing accepted actuarial techniques and (ii) the establishment and maintenance of a claims processing and risk management program.

In the event of any damage to or destruction of the System caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System. The Recipient shall begin such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the System shall be free and clear of all claims and liens. If such net proceeds are insufficient to enable the Recipient to pay all remaining unpaid principal portions of the Installment Payments if any, the Recipient shall provide additional funds to restore or replace the damaged portions of the System.

Recipient 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 the State Water Board, its officers, agents, employees, and servants as additional insured; and shall provide the Division with a copy of all such certificates prior to the commencement of construction of the Project.

#### 5.17 Permits, Subcontracting, and Remedies.

The Recipient shall comply in all material respects with all applicable federal, state and local laws, rules and regulations. Recipient shall procure all permits, licenses and other authorizations necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. Signed copies of any such permits or licenses shall be submitted to the Division before construction begins.

The Recipient shall not contract or allow subcontracting with excluded parties set forth in Exhibit G. The Recipient shall not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized. The Recipient shall not contract with any individual or organization on the State Water Board's List of Disqualified Businesses and Persons that is identified as debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen,

directed, funded, or administered by the State Water Board program for which this funding is authorized. The State Water Board's List of Disqualified Businesses and Persons is located at XXXXX.

5.18 Prevailing Wages.

The Recipient agrees to be bound by all applicable provisions of State Labor Code regarding prevailing wages. The Recipient shall monitor all agreements subject to reimbursement from this Agreement to ensure that the prevailing wage provisions of the State Labor Code are being met. In addition, the Recipient agrees to comply with the provisions of Exhibit G (Davis-Bacon).

5.19 Public Funding.

This Project is publicly funded. Any service provider or contractor with which the Recipient contracts must not have any role or relationship with the Recipient, that, in effect, substantially limits the Recipient's ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances.

5.20 Recipient's Responsibility for Work.

The Recipient shall be responsible for all work and for persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Recipient shall be responsible for responding to any and all disputes arising out of its contracts for work on the Project. The State Water Board will not mediate disputes between the Recipient and any other entity concerning responsibility for performance of work.

5.21 Related Litigation.

Under no circumstances may the Recipient use funds from any disbursement under this Agreement to pay costs associated with any litigation the Recipient pursues against the State Water Board or any Regional Water Quality Control Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Recipient agrees to repay all of the disbursed funds plus interest in the event that Recipient does not complete the project.

5.22 Rights in Data.

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

5.23 State Water Board Action; Costs and Attorney Fees.

Any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the State Water Board as a result of breach of this Agreement by the Recipient, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by the State Water Board shall not preclude the State Water Board from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Agreement, it is agreed that each party shall bear its own costs and attorney fees.

5.24 Termination; Immediate Acceleration; Interest.



- (a) This Agreement may be terminated by written notice during construction of the Project, or thereafter at any time prior to complete satisfaction of the Obligation by the Recipient, at the option of the State Water Board, upon violation by the Recipient of any material provision of this Agreement after such violation has been called to the attention of the Recipient and after failure of the Recipient to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the Division.
- (b) In the event of such termination, the Recipient agrees, upon demand, to immediately repay to the State Water Board an amount equal to Project Funds disbursed hereunder, accrued interest, penalty assessments, and Additional Payments. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Recipient to the date all monies due have been received by the State Water Board.

5.25 Timeliness.

Time is of the essence in this Agreement.

5.26 Unenforceable Provision.

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

5.27 Useful Life.

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

5.28 Venue.

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

5.29 Waiver and Rights of the State Water Board.

Any waiver of rights by the State Water Board with respect to a default or other matter arising under the Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.

Any rights and remedies of the State Water Board provided for in this Agreement are in addition to any other rights and remedies provided by law.

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

**[RECIPIENTCAPS]:**

By: \_\_\_\_\_  
Name: [Officer]  
Title: [Title1]

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

**STATE WATER RESOURCES CONTROL BOARD:**

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

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

EXHIBIT A – SCOPE OF WORK

1. The Recipient agrees to start construction no later than the estimated date of \_\_\_\_\_.
2. The Completion of Construction date is hereby established as \_\_\_\_\_.
3. The Recipient agrees to ensure that its final Request for Disbursement is received by the Division no later than six months after Completion of Construction, unless prior approval has been granted by the Division. Otherwise, the undisbursed balance of this Agreement will be deobligated.
4. Incorporated by reference into this Agreement are the following documents:
  - (a) the Final Plans & Specifications, dated \_\_\_\_\_, which are the basis for the construction contract to be awarded by the Recipient (Agreement will be amended to incorporate such document);
  - (b) the Waste Discharge Requirement Order No. \_\_\_\_\_ (and/or National Pollutant Discharge Elimination System Permit No. \_\_\_\_\_);
  - (c) the Recipient's Reimbursement Resolution No. \_\_\_\_\_ dated \_\_\_\_\_;
5. Reporting. Status Reports due at least quarterly.
6. Scope of Work.

[insert scope]

7. Signage.

The Recipient shall place a sign at least four feet tall by eight feet wide made of 3/4 inch thick exterior grade plywood or other approved material in a prominent location on the Project site and shall maintain the sign in good condition for the duration of the construction period. The sign must include the following disclosure statement and color logos (available from the Division):



"Funding for this \$x.x million [name of ]project has been provided in full or in part by the Clean Water State Revolving Fund through an agreement with the State Water Resources Control Board. California's Clean Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds."

The Project sign may include another agency's required promotional information so long as the above logos and disclosure statement are equally prominent on the sign. The sign shall be prepared in a professional manner.

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

Name of Recipient  
Agreement No.: XX-XXX-550  
Project No.: C-06-XXXX-XXX

## EXHIBIT A – SCOPE OF WORK

“Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. California’s Clean Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.”

EXHIBIT B – FUNDING AMOUNT

1. Estimated Reasonable Cost. The estimated reasonable cost of the total Project, including associated planning and design costs is Written Dollar Amount dollars and no cents (\$Dollar Amount).
2. Project Financing. Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds in the amount of up to Written Dollar Amount dollars and no cents (\$Dollar Amount). The estimated amount of principal that will be due to the State Water Board under this Agreement is Written Dollar Amount dollars and no cents (\$Dollar Amount).
3. Payment, Interest Rate, and Charges. The Recipient agrees to make all Installment Payments according to the schedule in Exhibit C at an interest rate of Written Interest Rate % (X%) per annum. The Recipient agrees to pay an Administrative Service Charge in lieu of interest as reflected in Exhibit C. The Recipient agrees to pay a Small Community Grant Fund Charge in lieu of interest as reflected in Exhibit C.
4. [reserved]
5. [Reserved]
6. The term of this agreement is from \_\_\_\_\_ (Eligible Start Date) to \_\_\_\_\_.
7. Budget costs are contained in the Project Cost Table below, which is part of Exhibit A-FBA. (This Agreement will be amended to incorporate Exhibit A-FBA.)
8. Preliminary budget costs are as follows:

Planning and design allowances: \$

Construction costs and disbursements are not available until after this Agreement has been amended to incorporate Exhibit A-FBA. Construction costs incurred prior to the Eligible Start Date on the cover page of this Agreement are not eligible for reimbursement. Failure to begin construction according to the timelines set forth in Exhibit A may require the Recipient to repay to the State Water Board all disbursed Project Funds, including planning and design allowances.

Name of Recipient  
Agreement No.: XX-XXX-550  
Project No.: C-06-XXXX-XXX

### EXHIBIT C – PAYMENT SCHEDULE

See the attached preliminary Payment Schedule dated Date. The final Payment Schedule will be forwarded to the Recipient after all disbursements have been paid and construction of the Project has been completed.

EXHIBIT D – SPECIAL CONDITIONS

Recipient acknowledges and agrees to the following special conditions:

[environmental]

[credit – coverage, reserve, conditions precedent]

[technical]

EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

The Recipient agrees to comply with the following federal conditions:

(A) Federal Award Conditions

- (1) American Iron and Steel. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient shall not purchase "iron and steel products" produced outside of the United States on this Project. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient hereby certifies that all "iron and steel products" used in the Project were or will be produced in the United States. For purposes of this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.
- (2) Wage Rate Requirements (Davis-Bacon). The Recipient shall include in full the language provided in Exhibit G of this Agreement in all contracts and subcontracts.
- (3) Signage Requirements. The Recipient shall comply with the USEPA's Guidelines for Enhancing Public Awareness of SRF Assistance Agreements, dated June 3, 2015, as otherwise specified in this Agreement.
- (4) Public or Media Events. The Recipient shall notify the State Water Board and the EPA contact as provided in the notice provisions of this Agreement of public or media events publicizing the accomplishment of significant events related to this Project and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
- (5) EPA General Terms and Conditions (USEPA GTCs). The Recipient shall comply with applicable EPA general terms and conditions found at <http://www.epa.gov/oqd>, including but not limited to the following:
  - (a) DUNS. No Recipient may receive funding under this Agreement unless it has provided its DUNS number to the State Water Board.
  - (b) Executive Compensation. The Recipient shall report the names and total compensation of each of its five most highly compensated executives for the preceding completed fiscal year, as set forth in the USEPA GTCs.
  - (c) Contractors, Subcontractors, Debarment and Suspension, Executive Order 12549; 2 CFR Part 180; 2 CFR Part 1532. The Recipient shall comply with Subpart C of 2 CFR Part 180 and shall ensure that its contracts include compliance. The Recipient shall not subcontract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension". The Recipient shall not subcontract with any individual or organization on USEPA's List of Violating Facilities. The Recipient shall certify



EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

that it and its principals, and shall obtain certifications from its contractors that they and their principals:

- i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
  - ii. Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
  - iv. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.
  - v. Suspension and debarment information can be accessed at <http://www.sam.gov>. The Recipient represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its contracts and subcontracts under this Agreement. The Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the termination, delay or negation of this Agreement, or pursuance of legal remedies, including suspension and debarment.
- (d) Conflict of Interest. Within 10 days, the Recipient shall disclose to the State Water Board any potential conflict of interest consistent with section 4.0 of USEPA's Revised Interim Financial Assistance Conflict of Interest Policy at [http://www.epa.gov/oqd/epa\\_revised\\_interim\\_financial\\_assistance\\_coi\\_policy\\_5\\_2\\_2\\_15.htm](http://www.epa.gov/oqd/epa_revised_interim_financial_assistance_coi_policy_5_2_2_15.htm) . A conflict of interest may result in disallowance of costs.
- (e) Copyright. USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement. Where an invention is made with Project Funds, USEPA and the State Water Board retain the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the Recipient. The Recipient must utilize the Interagency Edison extramural invention reporting system at <http://Edison.gov> and shall notify the Division when an invention report, patent report, or utilization report is filed.

EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

- (f) Credit. The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the following statement:

"This project has been funded wholly or in part by the United States Environmental Protection Agency and the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency or the State Water Resources Control Board, nor does the EPA or the Board endorse trade names or recommend the use of commercial products mentioned in this document."

- (g) Electronic and Information Technology Accessibility. The Recipient is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Project.
- (h) Trafficking in Persons. The Recipient, its employees, contractors and subcontractors and their employees may not engage in severe forms of trafficking in persons during the term of this Agreement, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands that failure to comply with this provision may subject the State Water Board to loss of federal funds. The Recipient agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement if the Recipient that is a private entity is determined to have violated the foregoing. Trafficking Victims Protection Act of 2000.

- (B) Super Cross-Cutters - Civil Rights Obligations. The Recipient must comply with the following federal non-discrimination requirements:

- (1) Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP). (EPA XC HB)
- (2) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities. (EPA XC HB)
- (3) The Age Discrimination Act of 1975, which prohibits age discrimination. (EPA XC HB)
- (4) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex. (EPA XC HB)
- (5) 40 CFR Part 7, as it relates to the foregoing (EPA XC HB)

(C) WRRDA Conditions

- (1) Architectural and engineering contracts. Where the Recipient contracts for program management, construction management, feasibility studies, preliminary engineering,

EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

design, engineering, surveying, mapping, or architectural related services, the Recipient shall ensure that such any such contract is negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based requirement as determined by the State Water Board.

- (2) Fiscal sustainability. The Recipient certifies that it has developed and is implementing a fiscal sustainability plan for the Project that includes an inventory of critical assets that are a part of the Project, an evaluation of the condition and performance of inventoried assets or asset groupings, a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan, and a plan for maintaining, repairing, and, as necessary, replacing the Project and a plan for funding such activities.

(D) Cross-Cutters

- (1) Executive Order No. 11246. The Recipient shall include in its contracts and subcontracts related to the Project the following provisions:

*"During the performance of this contract, the contractor agrees as follows:*

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

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

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

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

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

*"(f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or*

EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

*suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.*

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

- (2) Disadvantaged Business Enterprises (40 CFR Part 33). The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises. The DBE rule can be accessed at [www.epa.gov/osbp](http://www.epa.gov/osbp). The Recipient shall comply with, and agrees to require its prime contractors to comply with 40 CFR Section 33.301, and retain all records documenting compliance with the six good faith efforts. (IUP)
- (3) Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368. Except where the purpose of this Agreement is to remedy the cause of the violation, the Recipient may not procure goods, services, or materials from suppliers excluded under the federal System for Award Management: <http://www.sam.gov/>.
- (4) Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655. The Recipient must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105.
- (5) Debarment and Suspension Executive Order No. 12549 (1986). The Recipient certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 40 CFR Part 32 to participate in the Project. Contractors on the Project must provide a similar certification prior to the award of a contract and subcontractors on the project must provide the general contractor with the certification prior to the award of any subcontract.

**EXHIBIT F – SCHEDULE OF SYSTEM OBLIGATIONS**

Except for the following and the Obligation evidenced by this Agreement, the Recipient certifies that it has no outstanding System Obligations and that it is in compliance with all applicable additional debt provisions of the following:

The following outstanding debt is senior to the Obligation:

Title	Total Amount	End Date
NONE		

The following outstanding debt is on parity with the Obligation:

Title	Total Amount	End Date
NONE		

The following outstanding debt is subordinate to the Obligation:

Title	Total Amount	End Date
NONE		

## EXHIBIT G – DAVIS-BACON REQUIREMENTS

For purposes of this Exhibit, "subrecipient" or "sub recipient" means the Recipient as defined in this Agreement.

For purposes of this Exhibit only, "recipient" means the State Water Board.

### I. Requirements For Sub recipients That Are Governmental Entities:

If a sub recipient has questions regarding when Davis-Bacon (DB) applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State Water Board. The recipient or sub recipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>

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

DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

#### 2. Obtaining Wage Determinations.

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

(i) While the solicitation remains open, the sub recipient shall monitor [www.wdol.gov](http://www.wdol.gov) weekly to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.

(ii) If the sub recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

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

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

EXHIBIT G – DAVIS-BACON REQUIREMENTS

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

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or the DWSRF - financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or -FY 2015 Water Resource Reform and Development Act, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. Sub recipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

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

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

EXHIBIT G – DAVIS-BACON REQUIREMENTS

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

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

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

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

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

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

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

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



EXHIBIT G – DAVIS-BACON REQUIREMENTS

(3) Payrolls and basic records.

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

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

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

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

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

## EXHIBIT G – DAVIS-BACON REQUIREMENTS

Regulations, 29 CFR part 3;

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

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

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

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

### (4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

EXHIBIT G – DAVIS-BACON REQUIREMENTS

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

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

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

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

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

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

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

(10) Certification of eligibility.

#### EXHIBIT G – DAVIS-BACON REQUIREMENTS

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

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

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

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

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

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

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

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

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section. (b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen,

## EXHIBIT G – DAVIS-BACON REQUIREMENTS

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

### 5. Compliance Verification

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

(b) The sub recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

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

(d) The sub recipient shall periodically review contractors' and subcontractors' use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

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

EXHIBIT H – COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES

1. EMERGENCY DROUGHT REGULATIONS

The Recipient certifies that it complies with and shall continue to comply with the State Water Board's Drought Emergency Water Conservation regulations in Article 22.5 of Chapter 2 of Division 3 of Title 23 of the California Code of Regulations. The Recipient will include a discussion of its implementation in reports submitted pursuant to Section 2.15 of this Agreement.

2. CALIFORNIA DEBT INVESTMENT ADVISORY COMMISSION (CDIAC)

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

3. COMPLIANCE WITH STATE REQUIREMENTS

Recipient represents that is in in compliance with the following conditions precedent and agrees that it will continue to maintain compliance during the term of this Agreement:

(a) Monthly Water Diversion Reporting

If Recipient is a water diverter, Recipient must maintain compliance with Water Code section 5103, subdivision (e)(2)(A) by submitting monthly diversion reports to the Division of Water Rights of the State Water Resources Control Board.

(b) Public Works Contractor Registration with Department Of Industrial Relations

To bid for public works contracts, Recipient and Recipient's subcontractors must register with the Department of Industrial Relations as required by Labor Code sections 1725.5 and 1771.1.

(c) Volumetric Pricing & Water Meters

If Recipient is an "urban water supplier" as defined by Water Code section 10617, Recipient must charge each customer for actual water volume measured by water meter according to the requirements of Water Code sections 526 and 527. Section 527 further requires that such suppliers not subject to section 526 install water meters on all municipal and industrial service connections within their service area by 2025.

(d) Urban Water Management Plan

If Recipient is an "urban water supplier" as defined by Water Code section 10617, the Recipient certifies that this Project complies with the Urban Water Management Planning Act (Water Code, § 10610 et seq.). This shall constitute a condition precedent to this Agreement.

(e) Urban Water Demand Management

If Recipient is an "urban water supplier" as defined by Water Code section 10617, Recipient must comply with water conservation measures established by SBx7-7. (Water Code, Sec. 10608.56.)

(f) Delta Plan Consistency Findings

If Recipient is a state or local public agency and the proposed action is covered by the Delta Plan, Recipient must submit certification of project consistency with the Delta Plan to the Delta

EXHIBIT H – COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES

Stewardship Council according to the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.

(g) Agricultural Water Management Plan Consistency

If Recipient is an agricultural water supplier as defined by Water Code section 10608.12, Recipient must comply with Agricultural Water Management Planning requirements as mandated by Water Code section 10852.

(h) Charter City Project Labor Requirements

If Recipient is a charter city as defined in Labor Code section 1782, subdivision (d)(2), Recipient will comply with the requirements of Labor Code section 1782 and Public Contract Code section 2503 as discussed in the following subparts (1) and (2).

(1) Prevailing Wage

Recipient certifies that it is eligible for state funding assistance notwithstanding Labor Code section 1782.

Specifically Recipient certifies that no charter provision nor ordinance authorizes a construction project contractor not to comply with Labor Code's prevailing wage rate requirements, nor, within the prior two years (starting from January 1, 2015 or after) has the city awarded a public works contract without requiring the contractor to comply with such wage rate requirements according to Labor Code section 1782.

(2) Labor Agreements

Recipient certifies that no charter provision, initiative, or ordinance limits or constrains the city's authority or discretion to adopt, require, or utilize project labor agreements that include all the taxpayer protection antidiscrimination provisions of Public Contract Code section 2500 in construction projects, and that Recipient is accordingly eligible for state funding or financial assistance pursuant to Public Contract Code section 2503.

# **ATTACHMENT 7**



**DOCUMENT 00520  
AGREEMENT  
(CONSTRUCTION CONTRACT)**

**THIS AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Palm Springs, a charter city, organized and existing in the County of Riverside, under and by virtue of the laws of the State of California, hereinafter designated as the City, and W.M. Lyles Co., a California corporation, hereinafter designated as the Contractor.

The City and the Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1 -- THE WORK**

For and in consideration of the payments and agreements to be made and performed by City, Contractor agrees to furnish all materials and perform all work required to complete the Work as specified in the Contract Documents, and as generally indicated under the Bid Schedule(s) for the Project entitled:

**WASTEWATER TREATMENT PLANT UPGRADE  
CITY PROJECT NO. 15-14**

The Work comprises the construction of Wastewater Treatment Plant Upgrade in the city of Palm Springs for the city of Palm Springs. The project consists of a new influent junction box, a new headworks including metering structure, two mechanical screens with isolation gates, a bypass channel with isolation gates, influent pump station equipped with four vertical turbine solids handling pumps, two primary clarifiers, two scum pump stations, two sludge pump stations, one sludge dewatering station, replacement weir covers for two existing gravity thickeners, replacement of Digester No. 2 dome cover, a prefabricated electrical building, and associated piping, grading instrumentation, and electrical.

**ARTICLE 2 -- COMMENCEMENT AND COMPLETION**

The Work to be performed under this Contract shall commence on the date specified in the Notice to Proceed by the City, and the Work shall be fully completed within the time specified in the Notice to Proceed. The City and the Contractor recognize that time is of the essence of this Agreement, and that the City will suffer financial loss if the Work is not completed within the time specified in Article 2, herein, plus any extensions thereof allowed in accordance with applicable provisions of the Standard Specifications, as modified herein. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time.

The City and Contractor Owner recognize that time is of the essence of this Agreement and that the City will suffer financial loss if the Work is not completed within the times specified in the Contract/Technical Specifications, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize that it will be impracticable to determine actual damages, which City will sustain in the event of

or by reason of the delay. Accordingly, instead of requiring any such proof, City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay City \$5,000 for each calendar day that expires after the specified time stated in the Contract/Technical Specifications for substantial completion until the Work is reached substantial completion. City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay City \$5,000 for each calendar day delay incurred during suspension of the Work due to the Contractor's failure to maintain insurance policies and coverage meeting the contract specifications, and that the liquidated damages during such suspension are immediately due and payable regardless of the status of the Work (i.e. whether or not substantial completion has occurred).

After substantial completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the contract time or any proper extension thereof granted by City, Contractor shall pay City \$2,500 for each day that expires after the time specified in this Document for completion and readiness for final payment until the Work is completed and ready for final payment. It is further agreed that the amount stipulated for liquidated damages per calendar day of delay is a reasonable estimate of the damages that would be sustained by City. Contractor hereby agrees that City may deduct the amount of any liquidated damages from any money due or that may become due to Contractor from any progress payments, and Contractor agrees to pay such liquidated damages as provided in the Contract/Technical Specifications. Contractor agrees that City may recover the total amount of any liquidated damages otherwise due to the extent such total exceeds the final amount of any progress payments to be made by the City.

### **ARTICLE 3 -- CONTRACT PRICE**

The City shall pay the Contractor for the completion of the Work, in accordance with the Contract Documents, in current funds the Contract Price(s) named in the Contractor's Bid Proposal and Bid Schedule(s), and any duly authorized Construction Contract Change Orders approved by the City. The amount of the initial contract award in accordance with the Contractor's Bid Proposal is **Twenty Million Five Hundred Twenty Two Thousand Seven Hundred Thirty Seven Dollars (\$20,522,737)**. *Bid Schedules A and B*

Contractor agrees to receive and accept the prices set forth herein, as full compensation for furnishing all materials, performing all work, and fulfilling all obligations hereunder. Said compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of the Work during its progress or prior to its acceptance including those for well and faithfully completing the Work and the whole thereof in the manner and time specified in the Contract Documents; and, also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the Work, suspension or discontinuance of the Work, and all other unknowns or risks of any description connected with the Work.

## **ARTICLE 4 -- THE CONTRACT DOCUMENTS**

The Contract Documents consist of the Notice Inviting Bids, Instructions to Bidders, the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations, Federal Labor Standards Provisions, Federal Rates of Prevailing Wages, the accepted Bid and Bid Schedule(s), List of Subcontractors, Non-collusion Declaration, Certification of Non-Discrimination by Contractors, Debarment and Suspension Certification, Bid Security or Bid Bond, Bidder's General Information, EPA Form 6100-3 – DBE Sub-Contractor Performance Form, EPA Form 6100-4 – DBE Sub-Contractor Utilization Form, DBE Information – Good Faith Efforts, Worker's Compensation Certificate, Performance Bond, Payment Bond, Standard Specifications, Special Provisions, the Drawings, Addenda numbers 01 to 06, inclusive, and all Change Orders and Work Change Directives which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto.

The Contract Documents shall also incorporate Exhibit E – Programmatic Conditions & Cross-Cutters, Exhibit G – Davis-Bacon Requirements, and the American Recovery and Reinvestment Act Funding Requirements included as **Attachment "A"** attached hereto and made a part hereof. The Contractor hereby agrees to incorporate these requirements into each agreement entered into with its subcontractors.

## **ARTICLE 5 -- MUTUAL OBLIGATIONS**

For and in consideration of the payments and agreements to be made and performed by the City, the Contractor agrees to furnish all materials and perform all work required for the above stated project, and to fulfill all other obligations as set forth in the aforesaid Contract Documents.

City hereby agrees to employ, and does hereby employ, Contractor to provide the materials, complete the Work, and fulfill the obligations according to the terms and conditions herein contained and referred to, for the Contract Price herein identified, and hereby contracts to pay the same at the time, in the manner, and upon the conditions set forth in the Contract Documents.

Contractor specifically acknowledges and agrees to be bound by the Wage Rates and Labor Code requirements specified in the Contract Documents, including the requirement to furnish electronic certified payroll records directly to the Labor Commissioner (via the Division of Labor Standards Enforcement), and shall pay the general prevailing rate of per diem wages as determined by the Director of the Department of Industrial Relations of the State of California.

## **ARTICLE 6 -- PAYMENT PROCEDURES**

The Contractor shall submit Applications for Payment in accordance with the Standard Specifications as amended by the Special Provisions. Applications for Payment will be processed by the City Engineer as provided in the Contract Documents. A required retention of 5% will be withheld from all progress payments as addressed in Section 01294 1.06D.

## **ARTICLE 7 -- NOTICES**

Whenever any provision of the Contract Documents requires the giving of a written Notice between the parties, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the Notice.

## **ARTICLE 8 -- INDEMNIFICATION**

The Contractor agrees to indemnify and hold harmless the City, and all of its officers and agents from any claims, demands, or causes of action, including related expenses, attorney's fees, and costs, based on, arising out of, or in any way related to the Work undertaken by the Contractor hereunder. This Article 8 incorporates the provisions of Article 6.20 "Indemnification," of the Standard General Conditions of the Construction Contract (as further amended), which are hereby referenced and made a part hereof.

**Prevailing Wages.** Contractor agrees to fully comply with all applicable federal and state labor laws including, without limitation California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq. ("Prevailing Wage Laws"). Contractor shall bear all risks of payment or non-payment of prevailing wages under California law, and Contractor hereby agrees to defend, indemnify, and hold the City, its officials, officers, employees, agents and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

## **ARTICLE 9 -- NON-DISCRIMINATION**

Contractor represents and agrees that it shall not discriminate against any subcontractor, consultant, employee or applicant for employment because of race, religion, color, sex, age, marital status, ancestry, national origin, sexual orientation, gender identity, physical or mental disability, or medical condition. Contractor shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, marital status, ancestry, national origin, sexual orientation, gender identity, physical or mental disability, or medical condition. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

## **ARTICLE 10 -- MISCELLANEOUS**

Terms used in this Agreement which are defined in the Standard Specifications and the Special Provisions will have the meanings indicated in said Standard Specifications and the Special Provisions. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no

assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

The City and the Contractor each binds itself, its partners, successors, assigns, and legal representatives, to the other party hereto, its partners, successors, assigns, and legal representatives, in respect of all covenants, agreements, and obligations contained in the Contract Documents.

***SIGNATURES ON NEXT PAGE***

**IN WITNESS WHEREOF**, the City and the Contractor have caused this Agreement to be executed the day and year first above written.

**CITY OF PALM SPRINGS,  
CALIFORNIA**

**APPROVED BY THE CITY COUNCIL:**

By \_\_\_\_\_  
David H. Ready  
City Manager

Date \_\_\_\_\_

Agreement No. \_\_\_\_\_

**ATTEST:**

By \_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
Douglas Holland  
City Attorney

**RECOMMENDED:**

By \_\_\_\_\_  
Marcus L. Fuller, PE, PLS  
Assistant City Manager/City Engineer

**CONTRACTOR**

By: W. M. Lyles Co., a California corporation  
Firm/Company Name

By: \_\_\_\_\_  
Signature (notarized)

By: \_\_\_\_\_  
Signature (notarized)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

(This Agreement must be signed in the above space by one having authority to bind the Contractor to the terms of the Agreement.)

(This Agreement must be signed in the above space by one having authority to bind the Contractor to the terms of the Agreement.)

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )ss

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )ss

On \_\_\_\_\_  
before me, \_\_\_\_\_  
personally appeared \_\_\_\_\_

On \_\_\_\_\_  
before me, \_\_\_\_\_  
personally appeared \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

WITNESS my hand and official seal.

Notary Signature:

Notary Signature:

Notary Seal:

Notary Seal:

**ATTACHMENT "A"**

**PROGRAMMATIC CONDITIONS & CROSS-CUTTERS  
DAVIS-BACON REQUIREMENTS  
AND  
AMERICAN RECOVERY AND REINVESTMENT ACT  
FUNDING REQUIREMENTS**

**FOLLOWS THIS PAGE**



## EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

The Recipient agrees to comply with the following federal conditions:

(A) Federal Award Conditions

- (1) **American Iron and Steel.** Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient shall not purchase "iron and steel products" produced outside of the United States on this Project. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient hereby certifies that all "iron and steel products" used in the Project were or will be produced in the United States. For purposes of this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.
- (2) **Wage Rate Requirements (Davis-Bacon).** The Recipient shall include in full the language provided in Exhibit G of this Agreement in all contracts and subcontracts.
- (3) **Signage Requirements.** The Recipient shall comply with the USEPA's Guidelines for Enhancing Public Awareness of SRF Assistance Agreements, dated June 3, 2015, as otherwise specified in this Agreement.
- (4) **Public or Media Events.** The Recipient shall notify the State Water Board and the EPA contact as provided in the notice provisions of this Agreement of public or media events publicizing the accomplishment of significant events related to this Project and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
- (5) **EPA General Terms and Conditions (USEPA GTCs).** The Recipient shall comply with applicable EPA general terms and conditions found at <http://www.epa.gov/ogd>, including but not limited to the following:
  - (a) **DUNS.** No Recipient may receive funding under this Agreement unless it has provided its DUNS number to the State Water Board.
  - (b) **Executive Compensation.** The Recipient shall report the names and total compensation of each of its five most highly compensated executives for the preceding completed fiscal year, as set forth in the USEPA GTCs.
  - (c) **Contractors, Subcontractors, Debarment and Suspension, Executive Order 12549; 2 CFR Part 180; 2 CFR Part 1532.** The Recipient shall comply with Subpart C of 2 CFR Part 180 and shall ensure that its contracts include compliance. The Recipient shall not subcontract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension". The Recipient shall not subcontract with any individual or organization on USEPA's List of Violating Facilities. The Recipient shall certify

## EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

that it and its principals, and shall obtain certifications from its contractors that they and their principals:

- i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
  - ii. Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
  - iv. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.
  - v. Suspension and debarment information can be accessed at <http://www.sam.gov>. The Recipient represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its contracts and subcontracts under this Agreement. The Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the termination, delay or negation of this Agreement, or pursuance of legal remedies, including suspension and debarment.
- (d) **Conflict of Interest.** Within 10 days, the Recipient shall disclose to the State Water Board any potential conflict of interest consistent with section 4.0 of USEPA's Revised Interim Financial Assistance Conflict of Interest Policy at [http://www.epa.gov/ogd/epa\\_revised\\_interim\\_financial\\_assistance\\_coi\\_policy\\_5\\_2\\_2\\_15.htm](http://www.epa.gov/ogd/epa_revised_interim_financial_assistance_coi_policy_5_2_2_15.htm) . A conflict of interest may result in disallowance of costs.
- (e) **Copyright.** USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement.
- (f) **Credit.** The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the following statement:

## EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

"This project has been funded wholly or in part by the United States Environmental Protection Agency and the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency or the State Water Resources Control Board, nor does the EPA or the Board endorse trade names or recommend the use of commercial products mentioned in this document."

- (g) **Electronic and Information Technology Accessibility.** The Recipient is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Project.
  - (h) **Trafficking in Persons.** The Recipient, its employees, contractors and subcontractors and their employees may not engage in severe forms of trafficking in persons during the term of this Agreement, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands that failure to comply with this provision may subject the State Water Board to loss of federal funds. The Recipient agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement if the Recipient that is a private entity is determined to have violated the foregoing. Trafficking Victims Protection Act of 2000.
- (B) **Super Cross-Cutters - Civil Rights Obligations.** The Recipient must comply with the following federal non-discrimination requirements:
- (1) Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP). (EPA XC HB)
  - (2) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities. (EPA XC HB)
  - (3) The Age Discrimination Act of 1975, which prohibits age discrimination. (EPA XC HB)
  - (4) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex. (EPA XC HB)
  - (5) 40 CFR Part 7, as it relates to the foregoing (EPA XC HB)
- (C) **WRRDA Conditions**
- (1) **Architectural and engineering contracts.** Where the Recipient contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services, the Recipient shall ensure that such any such contract is negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based requirement as determined by the State Water Board.

## EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

- (2) **Fiscal sustainability.** The Recipient certifies that it has developed and is implementing a fiscal sustainability plan for the Project that includes an inventory of critical assets that are a part of the Project, an evaluation of the condition and performance of inventoried assets or asset groupings, a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan, and a plan for maintaining, repairing, and, as necessary, replacing the Project and a plan for funding such activities.

### (D) Cross-Cutters

- (1) **Executive Order No. 11246.** The Recipient shall include in its contracts and subcontracts related to the Project the following provisions:

*"During the performance of this contract, the contractor agrees as follows:*

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

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

*"(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 302 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.*

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

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

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

## EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

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

- (2) **Disadvantaged Business Enterprises (40 CFR Part 33).** The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises. The DBE rule can be accessed at [www.epa.gov/osbp](http://www.epa.gov/osbp). The Recipient shall comply with, and agrees to require its prime contractors to comply with 40 CFR Section 33.301, and retain all records documenting compliance with the six good faith efforts. (IUP)
- (3) **Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368.** Except where the purpose of this Agreement is to remedy the cause of the violation, the Recipient may not procure goods, services, or materials from suppliers excluded under the federal System for Award Management: <http://www.sam.gov/>.
- (4) **Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655.** The Recipient must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105.
- (5) **Debarment and Suspension Executive Order No. 12549 (1986).** The Recipient certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 40 CFR Part 32 to participate in the Project. Contractors on the Project must provide a similar certification prior to the award of a contract and subcontractors on the project must provide the general contractor with the certification prior to the award of any subcontract.

## EXHIBIT G – DAVIS-BACON REQUIREMENTS

For purposes of this Exhibit, "subrecipient" or "sub recipient" means the Recipient as defined in this Agreement.

For purposes of this Exhibit only, "recipient" means the State Water Board.

### I. Requirements For Sub recipients That Are Governmental Entities:

If a sub recipient has questions regarding when Davis-Bacon (DB) applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State Water Board. The recipient or sub recipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>

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

DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

#### 2. Obtaining Wage Determinations.

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

(i) While the solicitation remains open, the sub recipient shall monitor [www.wdol.gov](http://www.wdol.gov) weekly to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.

(ii) If the sub recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

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

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

## EXHIBIT G – DAVIS-BACON REQUIREMENTS

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

### 3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or the DWSRF - financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or -FY 2015 Water Resource Reform and Development Act, the following clauses:

#### (1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. Sub recipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

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

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

## EXHIBIT G – DAVIS-BACON REQUIREMENTS

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

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

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

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

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

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

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

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



## EXHIBIT G – DAVIS-BACON REQUIREMENTS

### (3) Payrolls and basic records.

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

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

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

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

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

## EXHIBIT G – DAVIS-BACON REQUIREMENTS

Regulations, 29 CFR part 3;

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

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

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

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

### (4) Apprentices and trainees

(I) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or sub contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

## EXHIBIT G – DAVIS-BACON REQUIREMENTS

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

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

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

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

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

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

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

(10) Certification of eligibility.

## EXHIBIT G – DAVIS-BACON REQUIREMENTS

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

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

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

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

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

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

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

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

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section. (b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen,

## EXHIBIT G – DAVIS-BACON REQUIREMENTS

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

### 5. Compliance Verification

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

(b) The sub recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

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

(d) The sub recipient shall periodically review contractors' and subcontractors' use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

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

DOCUMENT 00520

AMERICAN RECOVERY AND REINVESTMENT ACT FUNDING REQUIREMENTS

GENERAL

SUMMARY

Specific requirements for compliance with the American Recovery and Reinvestment Act (ARRA).

This section of the specifications provides details for compliance with the ARRA, this project must meet all requirements as included below and described at the following website California Department of Public Health Website:  
<http://www.cdph.ca.gov/services/funding/Pages/ARRABidandConstructionContractGuidance.aspx>

**ARRA BUY AMERICAN CLAUSES AND CERTIFICATION (ARRA, SECTION 1605)**

**Named vendors in technical specifications have NOT been verified as compliant with ARRA buy American requirements. Equipment material supplied as part of this contract must meet ARRA requirements. It is the responsibility of the contractor to verify compliance with ARRA and the technical specifications.**

The Contractor acknowledges to and for the benefit of CITY and the State of California, Department of Public Health (CDPH) (the "State") that it understands the goods and services under this Agreement are being funded with monies made available by the federal American Recovery and Reinvestment Act of 2009 (ARRA) and such law contains provisions commonly known as "Buy American" that requires all of the iron, steel, and manufactured goods used in the project be produced in the United States ("Buy American Requirements"), including iron, steel, and manufactured goods provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the Buy American Requirements, (b) all of the iron, steel, and manufactured goods used in the project will be and/or have been produced in the United States in a manner that complies with the Buy American requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification, or assurance of compliance with this paragraph, or information necessary to support a waiver of the Buy American Requirements, as may be requested by the Purchaser or State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense or cost (including without limitation attorney's fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

Required Use of American Iron, Steel, and Manufactured Goods-Buy American Act—  
Construction Materials MAR 2009)

(a) *Definitions.* As used in this clause—

*Construction material* means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

*Domestic construction material* means—

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States.

*Foreign construction material* means a construction material other than a domestic construction material.

*Manufactured construction material* means any construction material that is not unmanufactured construction material.

*Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

*United States* means the 50 States, the District of Columbia, and outlying areas.

*Unmanufactured construction material* means raw material brought to the construction site for incorporation into the building or work that has not been—

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(b) *Domestic preference.*

(1) This clause implements—

(i) Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) The Buy American Act (41 U.S.C. 10a–10d) by providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraph (b)(3) and (b)(4) of this clause.

(3) This requirement does not apply to the construction material or components listed by the Government as follows:

*[Contracting Officer to list applicable excepted materials or indicate “none”]*

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable.

(A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the cost of the contract by more than 25 percent;

(B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act or the Buy American Act.*



(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material is noncompliant with section 1605 of the American Recovery and Reinvestment Act or the Buy American Act.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

**Foreign and Domestic Construction Materials Cost Comparison**

<b>Construction material description</b>	<b>Unit of measure</b>	<b>Quantity</b>	<b>Cost (dollars)*</b>
Item 1:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
Item 2			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

*[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.] [Include other applicable supporting information.]*

*\* Include all delivery costs to the construction site.]*

- NOTICE OF REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS—BUY AMERICAN ACT—CONSTRUCTION MATERIALS (MAR 2009)

(a) *Definitions.* “Construction material,” “domestic construction material,” “foreign construction material,” “manufactured construction material,” “steel,” and “unmanufactured construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Required Use of Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials” (Federal Acquisition Regulation (FAR) clause 52.225–21).

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) or the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225–21.

(c) *Evaluation of offers.*

(1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies, the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American Act by adding to the offered price of the contract—

(i) 25 percent of the offered price of the contract, if foreign iron, steel, or other manufactured goods are used as construction material based on unreasonable cost of comparable manufactured domestic construction material; and

(ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on unreasonable cost of comparable domestic unmanufactured construction material.

(2) If two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(d) *Alternate offers.*

(1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225–21, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225–21 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225–21 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

- Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements MAR 2009)

(a) *Definitions. As used in this clause—*

*Bahrainian, Mexican, or Omani construction material” means a construction material that —*

(1) Is wholly the growth, product, or manufacture of Bahrain, Mexico, or Oman; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Mexico, or Oman into a new and different construction material distinct from the materials from which it was transformed.

*Construction material* means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The

term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

*Domestic construction material* means—

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States.

*Foreign construction material* means a construction material other than a domestic construction material.

*Free trade agreement (FTA) country construction material* means a construction material that—

- (1) Is wholly the growth, product, or manufacture of an FTA country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different construction material distinct from the materials from which it was transformed.

*Least developed country construction material* means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

*Manufactured construction material* means any construction material that is not unmanufactured construction material.

*Recovery Act designated country* means any of the following countries

- 1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland,

Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(2) A Free Trade Agreement country (FTA)(Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia).

*Recovery Act designated country construction material* means a construction material that is a WTO GPA country construction material, an FTA country construction material, or a least developed country construction material.

*Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

*United States* means the 50 States, the District of Columbia, and outlying areas.

*Unmanufactured construction material* means raw material brought to the construction site for incorporation into the building or work that has not been—

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

*WTO GPA country construction material* means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.*

(1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) and the Buy American Act do not apply to Recovery Act designated country construction material. Consistent with U.S. obligations under international agreements, this clause implements—

(i) Section 1605 of the Recovery Act, by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) The Buy American Act providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

*[Contracting Officer to list applicable excepted materials or indicate "none".]*

(4) The Contracting Officer may add other construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable.

(A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the overall cost of the contract by more than 25 percent;

(B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

*(c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.*

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

- (C) Quantity;
- (D) Cost;
- (E) Time of delivery or availability;
- (F) Location of the construction project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material other than that covered by trade agreements is noncompliant with the applicable Act.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

**Foreign and Domestic Construction Materials Cost Comparison**

<b>Construction material description</b>	<b>Unit of measure</b>	<b>Quantity</b>	<b>Cost(dollars)*</b>
<i>Item 1:</i>			
Foreign construction material			

Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

*[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.][Include other applicable supporting information.]*  
*[\*Include all delivery costs to the construction site.]*

**Notice of Required Use Of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements (MAR 2009)**

(a) *Definitions.* “Bahrainian, Mexican, or Omani construction material,” “Construction material,” “domestic construction material,” “foreign construction material,” “manufactured construction material,” “Recovery Act designated country construction material,” “steel,” and “unmanufactured construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Required Use of Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause 52.225–23).

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) or the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225–23.

(c) *Evaluation of offers.*

(1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies, the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American Act by adding to the offered price of the contract—

(i) 25 percent of the offered price of the contract, if foreign iron, steel, or other manufactured goods are used as construction material based on unreasonable cost of comparable manufactured domestic construction material; and

(ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on unreasonable cost of comparable domestic unmanufactured construction material.

(2) If two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(d) *Alternate offers.*



(1) When an offer includes foreign construction material, except foreign construction material from a Recovery Act designated country other than Bahrain, Mexico, or Oman that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225–23, the offeror also may submit an alternate offer based on use of equivalent domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225–23 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225–23 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations

**(e) Submittals**

(1) Each submittal must include a Buy American status box. One of the following options is selected for each submittal:

(i) Product conforms to ARRA “Buy American” requirements.

(ii) Product does not conform to ARRA “Buy American” requirements and the information required for a waiver application will be provided.

(2) Documentation to confirm compliance with the American Recovery and Reinvestment Act requirements for “Buy American” shall be provided as a Closeout Submittal.

**WHISTLEBLOWER RIGHTS (AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009)**

**NOTICE OF RIGHTS AND REMEDIES OF WHISTLEBLOWERS**

The following provisions of Section 1553 of the American Recovery and Reinvestment Act of 2009 are applicable to all entities receiving funds made available under said Act.

**SEC. 1553. PROTECTING STATE AND LOCAL GOVERNMENT AND CONTRACTOR WHISTLEBLOWERS.**

(a) PROHIBITION OF REPRISALS.--An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of--

- (1) gross mismanagement of an agency contract or grant relating to covered funds;
- (2) a gross waste of covered funds;
- (3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- (4) an abuse of authority related to the implementation or use of covered funds; or
- (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

(b) INVESTIGATION OF COMPLAINTS.--

(1) IN GENERAL.--A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint regarding the reprisal to the appropriate inspector general. Except as provided under paragraph (3), unless the inspector general determines that the complaint is frivolous, does not relate to covered funds, or another Federal or State judicial or administrative proceeding has previously been invoked to resolve such complaint, the inspector general shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the person's employer, the head of the appropriate agency, and the Board.

(2) TIME LIMITATIONS FOR ACTIONS.—

(A) IN GENERAL.--Except as provided under subparagraph (B), the inspector general shall, not later than 180 days after receiving a complaint under paragraph (1)--

(i) make a determination that the complaint is frivolous, does not relate to covered funds, or another Federal or State judicial or administrative proceeding has previously been invoked to resolve such complaint; or

(ii) submit a report under paragraph (1).

(B) EXTENSIONS.--

(i) VOLUNTARY EXTENSION AGREED TO BETWEEN INSPECTOR

**GENERAL AND COMPLAINANT.**--If the inspector general is unable to complete an investigation under this section in time to submit a report within the 180- day period specified under subparagraph (A) and the person submitting the complaint agrees to an extension of time, the inspector general shall submit a report under paragraph (1) within such additional period of time as shall be agreed upon between the inspector general and the person submitting the complaint.

(ii) **EXTENSION GRANTED BY INSPECTOR GENERAL.**--If the inspector general is unable to complete an investigation under this section in time to submit a report within the 180-day period specified under subparagraph (A), the inspector general may extend the period for not more than 180 days without agreeing with the person submitting the complaint to such extension, provided that the inspector general provides a written explanation (subject to the authority to exclude information under paragraph (4)(C)) for the decision, which shall be provided to both the person submitting the complaint and the non-Federal employer.

(iii) **SEMI-ANNUAL REPORT ON EXTENSIONS.**--The inspector general shall include in semi-annual reports to Congress a list of those investigations for which the inspector general received an extension.

**(3) DISCRETION NOT TO INVESTIGATE COMPLAINTS.--**

(A) **IN GENERAL.**--The inspector general may decide not to conduct or continue an investigation under this section upon providing to the person submitting the complaint and the non-Federal employer a written explanation (subject to the authority to exclude information under paragraph (4)(C)) for such decision.

(B) **ASSUMPTION OF RIGHTS TO CIVIL REMEDY.**--Upon receipt of an explanation of a decision not to conduct or continue an investigation under subparagraph (A), the person submitting a complaint shall immediately assume the right to a civil remedy under subsection (c)(3) as if the 210-day period specified under such subsection has already passed.

(C) **SEMI-ANNUAL REPORT.**--The inspector general shall include in semi-annual reports to Congress a list of those investigations the inspector general decided not to conduct or continue under this paragraph.

**(4) ACCESS TO INVESTIGATIVE FILE OF INSPECTOR GENERAL.--**

(A) **IN GENERAL.**--The person alleging a reprisal under this section shall have access to the investigation file of the appropriate inspector general in accordance with section 552a of title 5, United States Code (commonly referred to as the "Privacy Act"). The investigation of the inspector general shall be deemed closed for purposes of disclosure under such section when an employee files an appeal to an agency head or a court of competent jurisdiction.

(B) **CIVIL ACTION.**--In the event the person alleging the reprisal brings suit under subsection (c)(3), the person alleging the reprisal and the non-Federal employer shall have access to the investigative file of the inspector general in accordance

with the Privacy Act.

(C) EXCEPTION.--The inspector general may exclude from disclosure--

- (i) information protected from disclosure by a provision of law; and
- (ii) any additional information the inspector general determines disclosure of which would impede a continuing investigation, provided that such information is disclosed once such disclosure would no longer impede such investigation, unless the inspector general determines that disclosure of law enforcement techniques, procedures, or information could reasonably be expected to risk circumvention of the law or disclose the identity of a confidential source.

(5) PRIVACY OF INFORMATION.--An inspector general investigating an alleged reprisal under this section may not respond to any inquiry or disclose any information from or about any person alleging such reprisal, except in accordance with the provisions of section 552a of title 5, United States Code, or as required by any other applicable Federal law.

(c) REMEDY AND ENFORCEMENT AUTHORITY.--

(1) BURDEN OF PROOF.--

(A) DISCLOSURE AS CONTRIBUTING FACTOR IN REPRISAL.--

(i) IN GENERAL.--A person alleging a reprisal under this section shall be deemed to have affirmatively established the occurrence of the reprisal if the person demonstrates that a disclosure described in subsection (a) was a contributing factor in the reprisal.

(ii) USE OF CIRCUMSTANTIAL EVIDENCE- A disclosure may be demonstrated as a contributing factor in a reprisal for purposes of this paragraph by circumstantial evidence, including--

(I) evidence that the official undertaking the reprisal knew of the disclosure; or

(II) evidence that the reprisal occurred within a period of time after the disclosure such that a reasonable person could conclude that the disclosure was a contributing factor in the reprisal.

(B) OPPORTUNITY FOR REBUTTAL.--The head of an agency may not find the occurrence of a reprisal with respect to a reprisal that is affirmatively established under subparagraph (A) if the non-Federal employer demonstrates by clear and convincing evidence that the non-Federal employer would have taken the action constituting the reprisal in the absence of the disclosure.

(2) AGENCY ACTION.--Not later than 30 days after receiving an inspector general report under subsection (b), the head of the agency concerned shall determine

whether there is sufficient basis to conclude that the non-Federal employer has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief in whole or in part or shall take 1 or more of the following actions:

(A) Order the employer to take affirmative action to abate the reprisal.

(B) Order the employer to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(C) Order the employer to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency or a court of competent jurisdiction.

(3) CIVIL ACTION.--If the head of an agency issues an order denying relief in whole or in part under paragraph (1), has not issued an order within 210 days after the submission of a complaint under subsection (b), or in the case of an extension of time under subsection (b)(2)(B)(i), within 30 days after the expiration of the extension of time, or decides under subsection (b)(3) not to investigate or to discontinue an investigation, and there is no showing that such delay or decision is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant may bring a de novo action at law or equity against the employer to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

Such an action shall, at the request of either party to the action, be tried by the court with a jury.

(4) JUDICIAL ENFORCEMENT OF ORDER.--Whenever a person fails to comply with an order issued under paragraph (2), the head of the agency shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorneys fees and costs.

(5) JUDICIAL REVIEW.--Any person adversely affected or aggrieved by an order issued under paragraph (2) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency. Review shall conform to chapter 7 of title 5, United States Code.

#### (d) NONENFORCEABILITY OF CERTAIN PROVISIONS WAIVING RIGHTS AND

**REMEDIES OR REQUIRING ARBITRATION OF DISPUTES.--**

(1) **WAIVER OF RIGHTS AND REMEDIES.--**Except as provided under paragraph (3), the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

(2) **PREDISPUTE ARBITRATION AGREEMENTS.--**Except as provided under paragraph (3), no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising under this section.

(3) **EXCEPTION FOR COLLECTIVE BARGAINING AGREEMENTS.--**Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under the collective bargaining agreement.

(e) **REQUIREMENT TO POST NOTICE OF RIGHTS AND REMEDIES.--**Any employer receiving covered funds shall post notice of the rights and remedies provided under this section.

(f) **RULES OF CONSTRUCTION.--**

(1) **NO IMPLIED AUTHORITY TO RETALIATE FOR NON-PROTECTED DISCLOSURES.--**Nothing in this section may be construed to authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (a) or to modify or derogate from a right or remedy otherwise available to the employee.

(2) **RELATIONSHIP TO STATE LAWS.--**Nothing in this section may be construed to preempt, preclude, or limit the protections provided for public or private employees under State whistleblower laws.

(g) **DEFINITIONS.--**In this section:

(1) **ABUSE OF AUTHORITY.--**The term "abuse of authority" means an arbitrary and capricious exercise of authority by a contracting official or employee that adversely affects the rights of any person, or that results in personal gain or advantage to the official or employee or to preferred other persons.

(2) **COVERED FUNDS.--**The term "covered funds" means any contract, grant, or other payment received by any non-Federal employer if--

(A) the Federal Government provides any portion of the money or property that is provided, requested, or demanded; and

(B) at least some of the funds are appropriated or otherwise made available by this Act.

(3) **EMPLOYEE.--**The term "employee"--

(A) except as provided under subparagraph (B), means an individual performing

services on behalf of an employer; and

(B) does not include any Federal employee or member of the uniformed services (as that term is defined in section 101(a)(5) of title 10, United States Code).

(4) NON-FEDERAL EMPLOYER.--The term "non-Federal employer"--

(A) means any employer--

(i) with respect to covered funds--

(I) the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and

(II) any professional membership organization, certification or other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or

(ii) with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor of the State or local government; and

(B) does not mean any department, agency, or other entity of the Federal Government.

(5) STATE OR LOCAL GOVERNMENT.--The term "State or local government" means--

(A) the government of each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States; or

(B) the government of any political subdivision of a government listed in subparagraph (A).

DAVIS-BACON ACT PROVISIONS (29 CFR 5.5)

“(a)(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part

hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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



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

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

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

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

(2) Withholding. The United States Environmental Protection Agency (USEPA) or the CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the USEPA may, after written notice to the contractor or CITY take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter

for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

(1) That the payroll for the payroll period contains the information required to be provided under Sec. 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the

appropriate information is being maintained under Sec. 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

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

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

#### (4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered

program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

(10) Certification of eligibility.

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

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



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

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of

and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the USEPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.”

**ARRA CONSTRUCTION SIGNAGE REQUIREMENTS**  
 (AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009)

See below for the temporary construction sign template:

<b>Project Title</b> (Include town/water district)	
<b>Engineer:</b>	
<b>Contractor:</b>	
<b>Total Project Cost</b>	
<b>Financed by:</b> <b>The American Recovery and Reinvestment Act,</b> <b>The United States Environmental Protection Agency,</b> <b>and The California Department of Public Health</b>	
	
This institution is an equal opportunity provider	

Minimum Sign dimensions: 4'x 8' X 3/4"  
 Actual Text size should reflect the text size depicted in the example  
 Actual text style shall be Arial (normal) and the text color shall be black on a white background.  
 Actual Graphic Size should reflect the graphic size depicted in the example

**EEO AFFIRMATIVE ACTION PROVISIONS AND CLAUSES (executive order 11246 and 11375: 41 CFR part 60-4)**

The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, is 5%.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the

contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is: City of Yuba City, California, Sutter County

During the performance of this contract, the contractor agrees as follows:

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

(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, or national origin.

(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, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or

\$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Sec. 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

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

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

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

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in Sec. 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name



pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor 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 the United States to enter into such litigation to protect the interests of the United States."

#### **EEO – CERTIFICATION OF NON-SEGREGATED FACILITIES**

(41 CFR 60-1.8)

"The federally assisted construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise.

The federally assisted construction contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for specified time period) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that he will retain such certifications in his files."

#### **DISADVANTAGED BUSINESS ENTERPRISES PROVISIONS**

(EXECUTIVE ORDERS 11625, 121138, AND 12432)

Compliance with the requirements of this document and attachments satisfies the Disadvantaged Business Enterprise (DBE) requirements for this construction contract. Failure to take the six (6) affirmative steps listed under Good Faith Effort Requirements,

prior to bid opening and to submit the following forms with the bid package shall cause the bid to be rejected as a non-responsive bid.

- Disadvantaged Business Enterprise Information Form
- EPA Form 6100-03 (DBE Subcontractor Performance Form)
- EPA Form 6100-04 (DBE Subcontractor Utilization Form)

The CITY advises potential bidders that the project is funded in whole or part with federal loan or grant funds through the California Safe Drinking Water State Revolving Fund, and, therefore federal Disadvantaged Business Enterprise (DBE) regulations apply to this project. (Reference 40 Code of Federal Regulations Part 33 – Participation by Disadvantaged Business Enterprises in U.S. Environmental Protection Agency Programs).

The DBE rule requires that responsive bid shall conform with “Good Faith Efforts” to increase DBE awareness of procurement opportunities through race/gender neutral efforts. Race/gender neutral efforts are ones which increase awareness of contracting opportunities in general, including outreach, recruitment, and technical assistance. Bidder agrees that it will cooperate with and assist the CITY in fulfilling the DBE Good Faith Effort Requirement achieving “fair share objectives” and will exercise Good Faith Efforts to achieve such minimum participation of small, minority and women owned businesses. In particular, in submitting a bid, the bidder shall, in the selection of any and all contractors, subcontractors, and vendors for the procurement of equipment, supplies, construction, and services related to the project, at a minimum, undertake the following affirmative “Good Faith Effort” steps:

#### **Good Faith Effort Requirements**

- (1) Include disadvantaged business enterprises on solicitation lists;
- (2) Assure that disadvantaged business enterprises are solicited whenever they are potential sources, in a way that encourages and facilitates their participation in the competitive process.
- (3) Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by disadvantaged business enterprises.
- (4) Establish delivery schedules, when the requirements of the work permit, which will encourage participation by disadvantaged business enterprises.
- (5) Use the services and assistance of the Small Business Administration and the U.S. Minority Business Development Agency, as appropriate; and
- (6) If any contractor awards subagreements, require the contractor to take the affirmative steps in paragraphs (1) through (5) of this section.

Each bid must include submission of the Disadvantaged Business Enterprises Information Form, identifying each proposed subcontractor/supplier/ vendor for the project. Using the Disadvantaged Business Enterprises Information Form, the bidder must provide the following information for each proposed subcontractor/supplier/vendor: (1) Firm name; (2) Contact person; (3) Entity's mailing address; (4) telephone number; (5) e-mail address; (6) The procurement on which the proposed subcontractor/supplier/vendor bid or quoted,

and when; and (7) proposed subcontractor/supplier/vendor status as a disadvantaged business enterprise or non- disadvantaged business enterprise.

**Other Requirements:**

- (1) The apparent successful low bidder must submit documentation showing that, prior to bid opening, the required Good Faith Effort was made. The documentation must be received by the CITY within 15 working days following bid opening, except the Disadvantaged Business Enterprise Information Form, which is to be submitted with the bid. Failure to submit the Disadvantaged Business Enterprise Information Form with the bid will cause the bid to be rejected as non-responsive.
- (2) If the apparent successful low bidder has rejected or considered as non-responsible and or non-responsive any low DBE sub-bidder, a complete explanation must be provided to the CITY.
- (3) Using the MBE/WBE Verification of Qualification Form, apparent successful low bidder must provide evidence of certification by a federal, State, or local government entity for each Disadvantaged Business Enterprise firm to be utilized. Such certification documentation shall be submitted within 15 working days following bid opening.
- (4) If additional procurement becomes necessary after the award of the prime contract, good faith efforts shall be applied, and, if Disadvantaged Business Enterprise subcontracts are awarded, the MBE/WBE Verification of Qualification Form shall be provided to the CITY by the prime contractor within 10 working days following the award of each new subcontract.
- (5) Any deviation from the information contained in the Disadvantaged Business Enterprise Information Form shall not result in a reduction of Disadvantaged Business Enterprise participation without prior approval of the CITY.
- (6) Failure of the apparent low bidder to perform the six affirmative Good Faith Effort steps prior to bid opening and/or to submit the Disadvantaged Business Enterprise Information Form with its bid will lead to its bid being declared non-responsive by the CITY. The CITY may then award the contract to the next low responsive, responsible bidder meeting the requirements of these contract provisions.
- (7) Prime contractor must pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment.
- (8) Prime contractor must provide each proposed subcontractor/supplier/vendor copies of EPA Form 6100-02 (DBE Subcontractor Participation Form) and EPA Form 6100-03 (DBE Subcontractor Performance Form).
- (9) Each bid must include submission of EPA Form 6100-03 (DBE Subcontractor Performance Form) and EPA Form 6100-04 (DBE Subcontractor Utilization Form).

**Fair Share Objectives**

Interested bidders are advised that the following fair share objectives have been established for this project. Fulfillment of the Disadvantaged Business Enterprise requirement is based on documented completion of the Good Faith Effort Requirements, not level of Disadvantaged Business Enterprise participation proposed/achieved.

	<b>Minority Business Enterprise</b>	<b>Women's Business Enterprise</b>
<b>CONSTRUCTION</b>	14%	6%
<b>SUPPLIES</b>	22%	14%
<b>SERVICES</b>	31%	32%
<b>EQUIPMENT</b>	13%	19%

**Semiannual DBE Utilization Reporting**

In order to fulfill federal reporting requirements, the selected prime contractor must, using the MBE/WBE Utilization Form, report to CITY on a semiannual basis, their utilization of Minority Business Enterprise and Women's Business Enterprise subcontractor/supplier/vendors.

**DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION (EXECUTIVE ORDER 12549)**

- (1) The contractor certifies, by submission of this proposal, that it and its principals:
  - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal agencies;
  - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the contractor is unable to certify to any of the statements in this certification, such contractor shall attach an explanation to this proposal.

**CULTURAL RESOURCES PRESERVATION (FUNDING AGREEMENT)**

In the event that potential Historical, Archeological, or Cultural Resources, including but not limited to human remains, are discovered during subsurface excavations at the site of construction, the

contractor shall cease all construction operations at the location of the potential find and contact the water system for further direction.

**NONDISCRIMINATION CLAUSE (FAIR EMPLOYMENT AND HOUSING ACT, GOVERNMENT CODE 12900)**

During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900, set forth in Chapter 5 of Division 4 of Title 2 or the California Administrative Code are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractor shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

This contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

**\*\*\* END OF ATTACHMENT "A" \*\*\***

# **ATTACHMENT 8**

May 23, 2016

**Mr. Marcus L. Fuller, MPA, PE, PLS**  
Assistant City Manager / City Engineer  
City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

**Subject: Letter Proposal to Provide Owner's Representative Services for the WWTP Upgrade Project, City Project 15-14**

Dear Mr. Fuller,

Thank you for the opportunity to present our qualifications for the Owner's Representative Services for the City Palm Springs Wastewater Treatment Plant Upgrade Project, City Project 15-14.

It is our understanding that the City is requesting a part-time independent third party to represent the City's best interest and ensure the construction management team is appropriately administering the construction phase of the project in accordance with the specifications and safeguarding the City against claims for extra-work, unforeseen conditions and delays. We apply our experience with technical, business and legal issues to minimize our clients' risk. Design and construction projects entail lengthy, complex financial and legal transactions in which disputes often arise. We deal with such issues every day, and we utilize this experience to minimize the Owner's risk.

We are proposing Mr. Rod Warner to represent the City's interests during the construction, commissioning, and close-out of this project. Mr. Warner is a Certified Construction Manager through CMAA with over 25 years of experience in the CM field. Mr. Warner has performed construction management, design engineering, field inspections, and commissioning and start-up on over \$500M worth of water and wastewater facilities.

Mr. Warner is already extremely familiar with the technical details of the project and aware of the highest-risk areas associated with this project. Mr. Warner visited the treatment facility and spoke with the Operations staff and also reviewed most of the as-built drawings from projects previous to this one. In fact, Mr. Warner personally conducted two constructability reviews of the plans and specifications for the Headworks and Primary Clarifier Upgrades Project, helping to identify many design-related issues and reduce the City's exposure to unnecessary change order risk.

Mr. Warner has previously worked in partnership with the Design Engineer, Carollo Engineers, on multiple projects, and is very familiar with the engineer's specifications, details, outage procedures, and commissioning procedures. Mr. Warner has developed a solid professional relationship with many people within Carollo and will be able to greatly assist the City when it comes to identifying and resolving technical issues in an expedient and cost effective manner.

Mr. Warner strongly upholds the ideals of integrity and 'fair play' in all facets of construction. He is a full-time resident of the City of Palm Springs, residing within minutes of both the project site and City Hall. As a rate-payer, Mr. Warner has a personal interest in the successful outcome of this project.

We welcome the opportunity to meet with you to discuss this proposal. We are here to serve and are dedicated to the success of your project. I can be reached at (949) 439-4023 or [randy.lován@mwhglobal.com](mailto:randy.lován@mwhglobal.com).

Sincerely,



**Randy B. Lovan, Certified CM, QSP**  
Construction Management Services  
Area Manager – Inland Empire

## Letter Proposal

### Description of the Work

The City is under contract with Veolia to provide construction administration and inspection services. Veolia has retained Carollo Engineering to provide engineering support services during construction. The City has issued a Notice Invite Bid to 11 prequalified General Contractors. The current schedule shows a mandatory pre-bid meeting on June 2, 2016 at 10am at the Wastewater Treatment Plant located 4375 E. Mesquite Avenue, Palm Springs, CA. Bid are due from the prequalified General Contractors on July 14, 2016 at 3:00pm. The project duration is 609 calendar days.

The Work comprises the construction of Wastewater Treatment Plant Upgrade in the city of Palm Springs for the city of Palm Springs. The project consists of a new influent junction box, a new headworks including metering structure, two mechanical screens with isolation gates, a bypass channel with isolation gates, influent pump station equipped with four vertical turbine solids handling pumps, two primary clarifiers, two scum pump stations, two sludge pump stations, one sludge dewatering station, replacement weir covers for two existing gravity thickeners, replacement of Digester No. 2 dome cover, a prefabricated electrical building, and associated piping, grading instrumentation, and electrical system improvements, all other appurtenant work as shown in the drawings and required by the specifications.

### Scope of Services

MWHC will be your representative and advocate during construction of your facilities. As experienced construction professionals, we help you proactively manage your project to minimize risks, prevent problems and eliminate surprises to ensure on-time and on-budget completion. We monitor the entire progress, from final design, bid phase, pre-construction, construction and start-up, to ensure that you get the facility you need while receiving the best value for your money. As the Owner's Representative, MWHC will provide as-needed independent third party review, recommendations and coordination of project activities. Our core focus is the financial management of construction phases of the Wastewater Treatment Plant Upgrade Project. We will assist the City of Palm Spring to establish a comprehensive project budget, and then track expended and anticipated project costs against the budget on an ongoing basis.

During the project duration MWHC will act as the City's representative, provide clear communication and keep the City informed. We will assist the City in monitor the following:

#### Pre-Construction Phase:

- Project management plan
- CPM baseline schedule
- Project controls and procedures
- Monitor maintaining budget
- Monitor funding requirements
- Attend pre-bid conferences
- Bid review and recommend awards
- Assist with negotiations and contract
- Review final design and provide comments
- Assist and review value engineering measures
- Monitor/Review/recommend progress payment requests and contract modifications

#### Construction Phase:

- Monitor on-site construction activities
- Work to resolve disputes quickly and informally
- Coordinate formal dispute resolution actions
- Review/monitor and prepare payment recommendations for all invoices
- Assist with change order negotiation and payment amounts
- Coordinate activities of direct purchase vendors
- Monitor shop drawing submittals and RFI's to ensure timely processing and procurement
- Distribute monthly progress reports
- Review/monitor project documentation
- Review/monitor the construction CPM schedule and budget



**Construction Phase cont.:**

- Review /monitor compliance with safety plan
- Expedite the review of the contractor's recovery schedule and strategies
- Coordinate and attend project meetings as needed
- Review/monitor Project Records
- Prepare monthly reports
- Review/monitor compliance with labor standards
- Review/monitor contractor's commissioning startup testing plans
- Assist with identification of appropriate changes in scope
- Assist with validating impact of changes
- Review/Monitor documentation of changes
- Review/monitor Contractor's as-built drawings
- Review/monitor Certification of Proper Installation (COPI) from the Manufactures
- Provide commissioning and startup assistance
- Provide dispute resolution

**Post-Construction Phase:**

- Project Closeout and Warranty Phase:
- Project Closeout
- Expedite substantial completion and final inspections
- Review contractor and vendor submission of all required documents
- Coordinate transfer of spare parts and other property to the Owner
- Ensure all COPI's are validate and complete
- Ensure all warranty are submitted
- Monitor correction of punch list items

**Qualifications, Capabilities & Experience**

The MWH construction management (CM) team is a leader in providing programmatic construction management services and is currently providing construction management and inspection services for several active projects in California. The work focus includes wastewater treatment plant expansions recycled water, advanced water and wastewater treatment plant expansions, and pipeline and pumping station projects.

MWH has provided construction management and inspection services for more than 100 water/wastewater projects that have items similar in size and scope to the City of Palm Spring Wastewater Treatment plant Upgrade Project. Sample of those projects are discussed below in the project summaries. Many of the projects required rapid mobilization and strict adherence to the project plans, specification, schedule and regulatory compliance in order to ensure successful project completion on-time and within the budget.

**Eastern Municipal Water District - San Jacinto Valley Regional Water Reclamation Facility (SJVRWRF) Expansion Project – Title 22 Tertiary Treatment Upgrade and Plant 2 Facilities, San Jacinto, CA**

The \$112M Title 22 Tertiary Treatment Upgrade and Plant 2 Facilities Project is the latest upgrade and expansion project at the fully-operational SJV RWRF. The ultimate goal of the Project is to upgrade the existing tertiary treatment facilities to meet Title 22 standards and expand the existing Plant capacity from 11-MGD to 15.4-MGD (maximum 30-day average flow). The existing facility is to remain fully operational during construction of the entire project. MWH is proactively working with the District, the Engineer and the Contractor to produce effective Maintenance-of-Plant-Operations (MOPO) plans for each of the hundreds of tie-ins necessary to complete the project. MWH Constructors is currently providing third-







BUILDING A BETTER WORLD

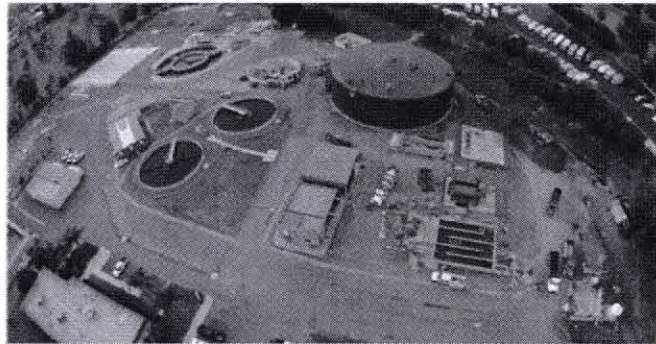
party construction management and electrical / instrumentation inspection to augment the District's construction administration staff. Services include contract administration and reporting, monitoring and inspection of electrical and instrumentation work, detailed cost estimating and negotiations, detailed schedule reviews, and other management tasks.

*"Your construction management staff has done an exceptional job coordinating the construction sequence with the Contractor and plant operation staff. The Team understands the intricate nature of working within existing treatment facility & that experience has allowed them to protect our best interest & provide cost control. The success of this project can be contributed to employee dedication, technical knowledge and the professional manner in which the project was managed"*

Mr. Bruce A. Mitzel, PE - Director of Field Engineering EMWD (951) 928-3777 x4476 [dmitzelb@emwd.org](mailto:dmitzelb@emwd.org)

#### El Toro Water District- Recycled Water Expansion Project, Lake Forest, CA

The El Toro Water District selected MWH to provided construction management & inspection services which included specialty electrical and instrumentation inspection of all upgrades. A quality assurance program was developed prior to construction to test motor control panels and PLCs prior to shipment. An effective Maintenance-of-Plant-Operations (MOPO) plan was developed and connections to the plant SCADA system were well coordinated with plant operators to not affect any of the existing facilities.



The purpose of the Recycled Water Expansion Project was to reduce the ETWD's dependence on imported water by increasing their capacity to treat and distribute recycled water for irrigation and potentially other uses. The project produces and delivers approximately 850-afy of Tertiary Treated Title 22 recycled Improvements to the water reclamation plant consisted of new tertiary filters, which processed the secondary effluent through cloth disc media filters to meet Title-22 requirements, expansion of the chemical feed systems, new pump station and a new 2.4-mg welded steel recycle water reservoir. The upgrades to the plant were done without interruption to the existing plant. This was accomplished through extensive experience with WWTP operations and close coordination with the owner's operators. MWH reviewed the contractor's schedule at the beginning of the project to plan connections and shutdowns. This close coordination resulted in a positive work environment between all parties.

Contact for Reference: Mr. Dennis Cafferty, PE – Director of Operations and Engineering. (949) 837-7050 x223 [dcafferty@etwd.com](mailto:dcafferty@etwd.com)

#### Mesa Water Reliability Facility Technology Replacement and Expansion, Costa Mesa, CA

The Mesa Water Reliability Facility removes a light brown tint from otherwise high quality potable water pumped from the lower main aquifer of the Orange County Groundwater Basin. MWH is provided third-party construction management, administration, monitoring and inspection services. The NF membrane system is housed in a new facility that includes membrane feed pumps, RO membrane trains including a concentrator membrane train, a CIP system, carbon dioxide storage and feed system, decarbonator/scrubber system, sand separators, cartridge filters and existing chemical building modifications. In addition, this project included significant site work, including demolition of the existing facilities, new yard piping, new electrical service with duct banks, instrumentation, upgrades to the high-lift pump station and extensive landscaping.

*"Like most projects, Mesa Water's project has encountered unforeseen issues, including key personnel changes by the contractor. Nonetheless, MWH worked diligently to keep the project moving forward and within budget."*

Mr. Paul E. Schoenberg, PE - General Manager Mesa Consolidated Water District (949) 631-1205

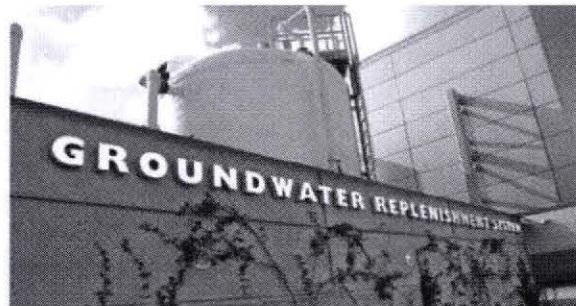




BUILDING A BETTER WORLD

Orange County Water District Advanced Water Purification Facility, Groundwater Reclamation Water Services Program (GWRS), Fountain Valley, CA

The Orange County Water District (OCWD) selected MWH to provide overall construction management and project administration services for GWRS. The \$492M project was jointly funded by Orange County Water District and the Orange County Sanitation District (OCSD). This system supports Orange County in achieving greater water independence by purifying highly treated effluent water from the neighboring OCSD treatment facility and using the water as a groundwater replenishment source and a seawater intrusion barrier.



The GWRS was built in three phases, comprised of the following major components:

- Advanced Water Purification Facility (AWPF), 70-mgd advanced water treatment plant with pumping stations
- Pipeline Units 1-3, 14-miles of 60- to 78-in-diameter welded steel pipeline through 17 micro-tunnels connecting the treatment facilities to existing recharge basins
- Seawater Intrusion Barrier Facilities - 1-mile of 30-in-diameter pipeline with 15 recharge wells
- Southeast Barrier Pipeline
- Interim Microfiltration/Site Power Distribution - an 8-mgd Pilot Plant effectiveness of the treatment process

MWH established a fully integrated team comprised of MWH construction management staff and OCWD plant staff to provide constructability reviews, master scheduling of multiple design packages, bid and award support and full construction management services including contract administration, site inspection, estimating, scheduling, field engineering, fabrication inspection, NDT inspection, hazardous materials abatement and disposal, materials sampling and testing, surveying, startup services, training and commissioning.

*"The GWRS consists of seven construction contracts and three procurement contracts ..... MWH has handled this project with the utmost professionalism; their services have been critical to the success of this project. Furthermore, their employee dedication and level of technical support have been essential for this important achievement for the residents of Orange County."*

Michael R. Markus, PE - Assistant General Orange County Water District

#### Owner's Representative Team

- A construction management company and project staff that understands the priorities of a water utility
- A diverse, multi-tasking project team that provides the best value to the City
- An experienced Owners Representative history of success on similar projects
- Wide berth of resources and vast experience with Wastewater Treatment Plant Upgrade Projects.

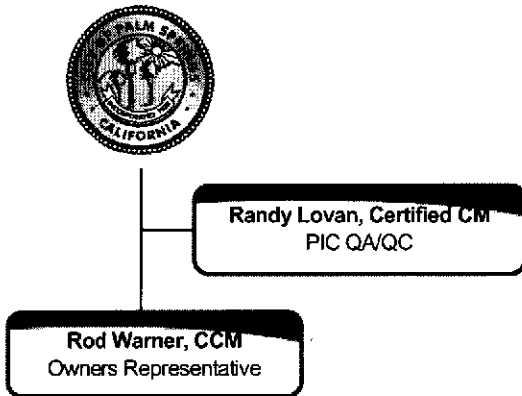
#### The Right Firm

MWH is a privately-held company with a proven history of leadership in engineering, construction management and inspection services working for owners and operators of infrastructure similar to the City of Palm Springs. Our capabilities and expertise match the needs of the City's Wastewater Treatment Plant Upgrade Project. We are focused on wet infrastructure and are consistently ranked by Engineering News Record as one of the top firms in water and wastewater. While MWH has a global presence, much of our success has been, and continues to be, built on projects within California. Our deep local resources will provide the District with experts to handle any issue that may arise during construction.

MWH has an established CM division with dedicated, career CM and inspection professionals that are currently managing over \$1B in CM and inspection projects. Our seasoned staff has comprehensive backgrounds in providing engineering during construction, construction administration and quality assurance / quality control. MWH's professional approach to CM and inspection differs from many firms who often use under-utilized engineers to perform CM and inspection services. All of our staff has focused training in quality control and construction management and inspection, making them an asset to owners in the management of complex projects.

## The Right Project Team

The following are brief biographies of the project team members with information relevant to the City of Palm Springs Wastewater Treatment Plant Upgrade Project.



### Randy Lovan, Certified CM

Principal-In-Charge

Randy Lovan has more than 24 years of experience in the construction industry with an extensive background in water and wastewater treatment plant construction. He has been instrumental in ensuring job tasks are completed on time and within budget, and has been involved with troubleshooting, plans & specifications, schedule controls, cost estimating, and change order control and claims evaluation/negotiation, claims avoidance, shop drawing review & coordination, chair weekly meeting, reviewing progress payments, prepare monthly reports. Has also provided agency, utility, field work coordination and enforcing contract and regulatory compliance.

During his career, he has served as Project Manager, Construction

Manager, Resident Engineer and Field Inspector, Construction Services Manager for a large Southern California Water District and Construction Superintendent for a utility contractor. He has managed numerous public and private sector projects totaling more than \$800M in California Infrastructure. Additionally, Mr. Lovan is a Certified Construction Manager (Ashworth College), registered Grade IV Water Distribution Operator and Grade III Water Treatment Operator, as well as a certified Cross Connection Specialist.

### Rod Warner, CCM

Owners Representative

Mr. Warner has over 25 years of experience in construction management services. He has provided construction management, design engineering and field inspections on more than \$500M in water and wastewater construction. Mr. Warner's accomplishments include on-site project management, electrical resident engineering, civil/structural field inspection, electrical and instrumentation design and inspection, equipment startup, engineering design, constructability QA/QC reviews and scheduling/cost estimating for complex construction contracts. He also has expertise in the startup and commissioning of water and wastewater treatment plants. With extensive computer skills, Mr. Warner is well versed in the use of MWH's scheduling, cost estimating and CADD programs, as well as Primavera P6.

#### Education

- BS, Construction Engineering, Oregon State University

#### Professional Registrations/Licenses/Skills

- Engineer-in-Training (EIT), WA
- Certified Construction Manager (CMAA) CA

#### Training/Certifications

- Oracle-Certified Primavera P6
- Confined Space Training
- NFPA 70E Arc Flash Electrical Training
- OSHA 30-hour
- CRP with AED, First-Aid

#### Project Experience

Assistant Construction Manager / Electrical and I/C Resident Engineer, San Jacinto Valley Regional Water Reclamation Facility Expansion - Title 22 Tertiary Treatment Upgrade and Plant 2 Facilities, Eastern Municipal Water District, San Jacinto, CA. Mr. Warner oversees the electrical inspection staff and coordinates electrical and I/C submittals, clarifications and contract changes with the design engineer for the \$113M project. The project consists of a new 8-mgd WWTP facility and the rehabilitation of the existing 6-mgd plant for a combined expanded capacity of 14-mgd. Mr. Warner is also serving the startup and commissioning coordinator, working directly with the general contractor, design engineer, plant operations and construction management team to ensure organized and thorough commissioning of all new facilities and systems.



BUILDING A BETTER WORLD

Construction Manager, Lower Tualatin Pump Station and Force Main Project, Clean Water Services, Tualatin, OR. The \$11M project consisted of a new two-story sewer pump station structure over a 47-ft deep, 45-ft diameter concrete caisson, with five 135-hp VFD-driven submersible pumps, with a total capacity of 22-mgd. Included nearly 5000-ft of combination force main and gravity sewer piping to convey pump station flows to the Durham Advanced Wastewater Treatment Plant. The pump station was constructed completely within a city park and required much coordination with the City and various layers of regulatory agencies. Involved during the design phase, providing constructability and discipline coordination reviews. The project was completed ahead of schedule and on budget. The project won the 2010 AGC Marvin Black Excellence in Partnering Award.

Resident Engineer / Electrical and I/C Inspector, Durham Advanced Wastewater Treatment Facility Phase 4 Expansion Project, Clean Water Services, Tigard, OR. The \$30.5M project consisted of a new 180-mgd raw sewage influent pump station. It included four 600-hp and two 1000-hp dry-pit centrifugal pumps, 60-in and 80-in diameter gravity sewer lines, 42-in and 54-in diameter force mains and associated structures and connections. Mr. Warner supervised the on-site inspection staff and oversaw the electrical and instrumentation/control construction. Mr. Warner worked closely with the MWH electrical and instrumentation/control design engineers in resolving on-site issues and in the design of owner-requested changes. In addition, the project became the first LEED-certified sewer pump station in the Pacific Northwest.

Resident Engineer, Odor Control Chemicals Project, Clean Water Services, Tigard, OR. The \$470k project consisted of demolition and replacement of the existing, aging sodium hypochlorite feed systems for the mist-type odor control scrubbers, as well as the addition of a caustic soda feed system. Mr. Warner provided on-site inspection and design during construction.

Construction Manager, North Clackamas County Water Commission WTP, Sunrise Water Authority, Clackamas County, OR. The \$15M fast-track project consisted of a new 15-mgd USFilter-Memcor submerged microfiltration membrane system, new treated water clearwell, modifications to the existing clearwell and finished water pump station, pre-treatment facilities, sludge lagoons and other ancillary systems, plus a complete removal and replacement of the PLC system for the existing portion of the plant. The project was one of the very first submerged microfiltration membrane plants in Oregon, and one of the largest in the U.S. An alternative delivery system of a guaranteed maximum price type was used for the construction contract and the USFilter-Memcor membrane equipment was owner-procured, but the contract and delivery was managed by MWH. The project was completed within the GMP and on-time to meet the client's high water demand period.

Project Engineer / Resident Engineer, System Capacity Improvements, South Fork Water Board, Oregon City, OR. The \$900k project involved design of new 600- and 800-hp pumps with 4160-V VFD's at existing WTP intake and distribution pump station, as well as modifications to the WTP filter gallery piping to increase flow capacity into the filters. Assisted in the drawing and specification production during the design phase, involved in every phase from pre-design through startup/testing.

Resident Engineer, Leaburg Dam Fish Screen and Tailrace Barrier Projects, Eugene Water and Electric Board (EWEB), Eugene, OR. The \$3.9M projects consisted of a new automated fish screen facility and a 450-ft long steel barrier screen at the tailrace of the Leaburg Dam Turbine Generators. Both projects were completed on-schedule despite governmental regulatory and permitting delays and both projects were part of a multi-project dam re-licensing program.

Resident Engineer, Palisades Reservoir #2 Project, City of Lake Oswego, Lake Oswego, OR. The \$1.8M project consisted of a buried 2.5-MG DYK circular pre-stressed concrete reservoir and associated connections to the distribution system.

Project Engineer / Resident Engineer, WTP Pipe Gallery and Controls System Replacement Project, South Fork Water Board (SFWB), Oregon City, OR. Mr. Warner managed the design and drawing/specification production and managed the construction after the project was bid. The design and construction of the \$500k project consisted of demolition and replacement of all filter gallery process piping, replacement of over 40 pneumatically actuated valves, with new electrically actuated valves, and installation of a new filter control system and filter instrumentation.

Assistant Project Superintendent, Willamette River Water Treatment Plant, City of Wilsonville, OR. The construction of the state-of-the-art \$43M 15-mgd state-of-the-art project was one of MWH's premier design-build projects for water treatment plants. Mr. Warner was responsible for the coordination and oversight of the plant electrical, instrumentation and SCADA systems, as well as startup and testing of the various plant processes.

Resident Engineer, WTP Filter and Process Controls Upgrade Project, City of Lake Oswego, OR, 2000. The \$1.5M project consisted of the installation of a new PLC-based SCADA system for plant control and monitoring, as well as the complete rebuild of the existing filter underdrains, surface wash system, backwash system and replacement of existing pneumatic operated valves with new electric operated valves.

Resident Engineer, Westside 2000 WWTP Contract #3, City of Vancouver, Vancouver, WA, 1998 – 2000. The \$17M project consisted of the liquid train expansion for the WWTP, including new primary clarifiers, aeration basin, blower facility, secondary clarifiers, RAS/WAS pump station, and UV disinfection facility. Mr. Warner was responsible for all contract administration, field inspection and equipment/facility startup coordination.



BUILDING A BETTER WORLD

May 23, 2016

**Mr. Marcus L. Fuller, MPA, PE, PLS**  
Assistant City Manager / City Engineer  
City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

**Subject: Cost Proposal to Provide Owner's Representative Services for the WWTP Upgrade Project, City Project 15-14**

Dear Mr. Fuller,

Thank you for the opportunity to present our qualifications for the Owner's Representative Services for the City Palm Springs Wastewater Treatment Plant Upgrade Project, City Project 15-14.

It is our understanding that the City is requesting a part-time independent third party to represent the City's best interest and ensure the construction management team is appropriately administering the construction phase of the project in accordance with the specifications and safeguarding the City against claims for extra-work, unforeseen conditions and delays.

We apply our experience with technical, business and legal issues to minimize our clients' risk. Design and construction projects entail lengthy, complex financial and legal transactions in which disputes often arise. We deal with such issues every day, and we utilize this experience to minimize the Owner's risk.

Please find included our Cost Proposal for the Owner's Representative Services for the WWTP Upgrade Project.

We welcome the opportunity to meet with you to discuss this proposal. As always, we are here to serve and are dedicated to the success of your project. Please feel free to contact me with any questions on the material provided. I can be reached at (949) 439-4023 or [randy.lovan@mwhglobal.com](mailto:randy.lovan@mwhglobal.com).

Sincerely,

**Randy Lovan**  
Construction Management Services  
Area Manager – Inland Empire



# MWH Constructors

City of Palm Springs

Wastewater Treatment Plant Upgrade Project, City Project 15-14

## Cost Proposal Summary - Part-Time Third Party Owner's Representative Services

May 23, 2016

### Cost Proposal Summary

Description	2016	2017	2018	Project
<b>TASK A - REQUIRED WORK</b>				
Labor Hours	531	1,139	377	2,047
Labor Cost	\$ 77,372	\$ 166,160	\$ 54,992	\$ 298,524
<i>Subtotal Cost</i>				\$ 298,524
<b>ODC's</b>				
Billable ODCs	LS	\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -
10% Markup		\$ -	\$ -	\$ -
<i>Subtotal Cost</i>		\$ -	\$ -	\$ -
<b>Total Cost Proposal</b>				<b>\$ 298,524</b>
Average Labor Cost / Hour / Year	\$ 145.71	145.88	145.87	\$ 145.83
<b>Inclusions</b>				
All personnel shall be assigned: laptop computer, cell phone, personal safety equipment (PPE), safety equipment to perform duties except Confined Space Entry. Cost is valid through 2016. A 2.5% escalation charge shall apply for up to three years thereafter.				
<b>Exclusions</b>				
Refer to the attached Construction Management Services - Standard Clarification for Fee Proposal				

City of Palm Springs  
Wastewater Treatment Plant Upgrade Project, City Project 15-14  
Cost Proposal - Part-Time Third Party Owners Representative Services



Labor Hour Matrix

Date: May 23, 2016

Position	Person	Hourly Rate	Calendar 2016 Owner's Rep Services						Calendar 2017 Owner's Rep Services												Calendar 2018 Owner's Rep Services				2016 Hours	2017 Hours	2018 Hours	Total Hours	Project Costs	
			July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr						
Owner's Representative			46	97	92	88	92	92	92	84	97	84	97	84	97	88	97	88	92	92	88	97	84	92	88	507	1091	361	1959	\$ 281,792.00
PIC	Randy Lovan	\$ 168.00	4	5	4	4	4	4	4	4	4	5	4	5	4	4	4	4	4	4	4	5	4	4	4	25	51	17	93	\$ 15,624.00
Owner's Representative	Rod Warner, CCM	\$ 148.00	42	92	88	84	88	88	88	80	92	80	92	86	84	92	84	88	88	84	92	80	88	84	482	1040	344	1866	\$ 275,168.00	
		\$ -																							0	0	0	0	\$ -	
Support Services			4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	24	48	16	88	\$ 6,732.00	
Accounting	Traci Guenther	\$ 85.00	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	12	24	8	44	\$ 3,740.00	
Administration	Carmen Laabs	\$ 68.00	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	12	24	8	44	\$ 2,992.00	
	<b>Total Hours</b>		<b>50</b>	<b>101</b>	<b>96</b>	<b>92</b>	<b>96</b>	<b>96</b>	<b>96</b>	<b>88</b>	<b>101</b>	<b>88</b>	<b>101</b>	<b>96</b>	<b>92</b>	<b>101</b>	<b>92</b>	<b>96</b>	<b>96</b>	<b>92</b>	<b>101</b>	<b>88</b>	<b>96</b>	<b>92</b>	<b>531</b>	<b>1139</b>	<b>377</b>	<b>2047</b>	<b>\$ 298,624.00</b>	



City of Palm Springs  
Wastewater Treatment Plant Upgrade Project, City Project 15-14  
Cost Proposal - Part-Time Third Party Owner's Representative Services



Cost Summary

Date: May 23, 2016

Position	Person	Hourly Rate	Calendar 2016 Owner's Rep Services						Calendar 2017 Owner's Rep Services												Calendar 2018 Owner's Rep Services				Project Costs	
			July 1	Aug 2	Sept 3	Oct 4	Nov 5	Dec 6	Jan 7	Feb 8	Mar 9	Apr 10	May 11	Jun 12	Jul 13	Aug 14	Sept 15	Oct 16	Nov 17	Dec 18	Jan 19	Feb 20	Mar 21	Apr 22		
Owner's Representative			\$ 6,886	\$14,456	\$13,696	\$13,104	\$13,696	\$13,696	\$13,696	\$12,512	\$14,456	\$12,512	\$14,456	\$13,090	\$13,104	\$14,456	\$13,104	\$13,696	\$13,696	\$13,104	\$14,456	\$12,512	\$13,696	\$13,104	\$	291,792
Area Manager	Randy Lovan	\$ 168.00	\$ 672	\$ 840	\$ 672	\$ 672	\$ 672	\$ 672	\$ 672	\$ 672	\$ 840	\$ 672	\$ 840	\$ 672	\$ 672	\$ 840	\$ 672	\$ 672	\$ 672	\$ 672	\$ 840	\$ 672	\$ 672	\$ 672	\$	15,624
RE / CM	Rod Warner, CCM	\$ 148.00	\$ 6,216	\$13,616	\$13,024	\$12,432	\$13,024	\$13,024	\$13,024	\$11,840	\$13,616	\$11,840	\$13,616	\$13,024	\$12,432	\$13,616	\$12,432	\$13,024	\$13,024	\$12,432	\$13,616	\$11,840	\$13,024	\$12,432	\$	276,168
Start up support		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$	-
Support Services			\$ 306	\$ 306	\$ 306	\$ 306	\$ 306	\$ 306	\$ 306	\$ 306	\$ 306	\$ 306	\$ 306	\$ 306	\$ 306	\$ 306	\$ 306	\$ 306	\$ 306	\$ 306	\$ 306	\$ 306	\$ 306	\$ 306	\$	6,732
Accounting	Traci Guenther	\$ 85.00	\$ 170	\$ 170	\$ 170	\$ 170	\$ 170	\$ 170	\$ 170	\$ 170	\$ 170	\$ 170	\$ 170	\$ 170	\$ 170	\$ 170	\$ 170	\$ 170	\$ 170	\$ 170	\$ 170	\$ 170	\$ 170	\$ 170	\$	3,740
Administration	Carmen Laabs	\$ 68.00	\$ 136	\$ 136	\$ 136	\$ 136	\$ 136	\$ 136	\$ 136	\$ 136	\$ 136	\$ 136	\$ 136	\$ 136	\$ 136	\$ 136	\$ 136	\$ 136	\$ 136	\$ 136	\$ 136	\$ 136	\$ 136	\$ 136	\$	2,992
Monthly Cost Breakdown			\$ 7,194	\$14,762	\$14,002	\$13,410	\$14,002	\$14,002	\$14,002	\$12,818	\$14,762	\$12,818	\$14,762	\$14,002	\$13,410	\$14,762	\$13,410	\$14,002	\$14,002	\$13,410	\$14,762	\$12,818	\$14,002	\$13,410	\$	296,624



## MWH Constructors

### City of Palm Springs WWTP Upgrade Project, City Project 15-14 Part-Time Third Party Owners Representative Services Cost Proposal - Hourly Rate Schedule

May 23, 2016

#### Hourly Rate Schedule

Position	Name	2016 Hourly Rate
Principal-In-Charge	Randy Lovan	\$ 168.00
Start Up Support	Rod Warner, CCM	\$ 148.00
Accounting	Traci Guenther	\$ 85.00
Administration	Carmen Laabs	\$ 68.00

Rates are shown for 2016 and are adjusted to an annual adjustment of 2.5% for each year to reflect an increase in salaries. All rates are in accordance with California Department of Industrial Relations Prevailing Wage requirements, as applicable.

#### Construction Management Services - Standard Clarification for Fee Proposal

##### General:

Our proposal is based on the construction and professional scope provided in the Request for Proposal. Our final contract budget will be based on the project assignment and the attached Fee Proposal. Field staffing will be driven by project demands, confirmed by a baseline and approved by the District. All costs are subject to negotiation.

##### Prevailing Wage:

All Prevailing Wage requirements will be followed by the team and its subconsultants. All team members are in conformance with the State of California Labor compliance requirements.

##### Rates for the Construction Management Team:

Rates for the CM team include vehicle mileage, computers, computer software, digital cameras, digital video cameras, cell phones and cell phone service, mail, telephone charges, general office supplies, technical reference materials, training and personal protective equipment (PPE) including hard hats, safety boots, work gloves, safety glasses and other PPE as required.

##### Excluded from Rates:

Items excluded from the rates are printers/copiers/scanners, paper for any and all reproduction, prints, plotting and record mapping copies, broadband service, broadband/high speed connections, delivery service, facsimile transmission, trailer rental costs, installation of utilities, cost of utilities, cost of sanitary services, janitorial, furniture, travel and per diem outside the service area for in-plant fabrication inspection. Travel costs outside the service area will be determined after receiving prior approval from the District.

##### Legal

All subconsultants will be bound to the final terms and conditions of the prime agreement.

##### Geotechnical and Materials Testing Services:

Geotechnical and Materials Testing Service fees are NOT included in the scope of services on a time and materials bases. The coordination of these services is included in our scope of services.

##### Survey Baseline Control

Survey services and fees are NOT included in the scope of services. The coordination of these services is included in our scope of services.

##### Field Office

Shall provide by others.

# **ATTACHMENT 9**

Print Form

Notice of Determination

Appendix D

To:
[ ] Office of Planning and Research
U.S. Mail: Street Address:
P.O. Box 3044 1400 Tenth St., Rm 113
Sacramento, CA 95812-3044 Sacramento, CA 95814
[X] County Clerk
County of: Riverside
Address: 2720 Gateway Drive
Riverside, CA 92507

From:
Public Agency: City of Palm Springs
Address: 3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Contact: Savat Khamphou
Phone: (760) 323.8253
Lead Agency (if different from above):
Address:
Contact:
Phone:

FILED
RIVERSIDE COUNTY
JUN 25 2014
CLERK
M. Meyer
Deput.

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse):
Project Title: City of Palm Springs Wastewater Treatment Plant Headworks and Clarifier Upgrade Project

Project Applicant: City of Palm Springs
Project Location (include county): 4376 Mesquite Drive, Palm Springs, CA Riverside County

Project Description:
Construction of new replacement facilities on the existing WWTP site influent sewer, headworks, scum pump station, influent pump station, primary clarifiers, scum pump station, primary sludge pump station, primary sludge de-gritting, gravity thickener cover, Digester No. 2 cover, foul air treatment facility, new electrical building, and a lighting system designed to minimize off-site impacts, including to the neighboring park and residential land uses.

This is to advise that the City of Palm Springs has approved the above
[X] Lead Agency or [ ] Responsible Agency
described project on June 18, 2014 and has made the following determinations regarding the above
(date)
described project.

- 1. The project [ ] will [X] will not have a significant effect on the environment.
2. [ ] An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
[X] A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [X] were [ ] were not made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [X] was [ ] was not adopted for this project.
5. A statement of Overriding Considerations [ ] was [X] was not adopted for this project.
6. Findings [ ] were [X] were not made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, or the negative Declaration, is available to the General Public at:
City of Palm Springs, 3200 East Tahquitz Canyon Way, & at the WWTP, 4375 Mesquite Drive, Palm Springs, 92262

Signature (Public Agency): [Signature] Title: PRINCIPAL CITY MANAGER
Date: 6.19.14 Date Received for filing at OPR:

STATE OF CALIFORNIA - THE RESOURCES AGENCY  
DEPARTMENT OF FISH AND GAME  
ENVIRONMENTAL FILING FEE CASH RECEIPT

Receipt #: 201400365

State Clearinghouse # (if applicable): \_\_\_\_\_

Lead Agency: CITY OF PALM SPRINGS Date: 06/25/2014

County Agency of Filing: Riverside Document No: 201400365

Project Title: WASTEWATER TREATMENT PLANT HEADWORKS & CLARIFIER UPGRADE PROJECT

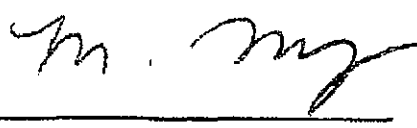
Project Applicant Name: CITY OF PALM SPRINGS Phone Number: 760 323-8253

Project Applicant Address: 3200 E. TAHQUITZ CANYON WAY PALM SPRINGS CA 92262

Project Applicant: Private Entity

CHECK APPLICABLE FEES:

- Environmental Impact Report
  - Negative Declaration 2181.25
  - Application Fee Water Diversion (State Water Resources Control Board Only)
  - Project Subject to Certified Regulatory Programs
  - County Administration Fee \$50.00
  - Project that is exempt from fees (DFG No Effect Determination (Form Attached))
  - Project that is exempt from fees (Notice of Exemption)
- Total Received** 2231.25

Signature and title of person receiving payment: 

Notes:

# **ATTACHMENT 10**

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING AN INSTALLMENT SALE AGREEMENT WITH THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD FOR PUBLICLY OWNED TREATMENT WORKS (POTW) CONSTRUCTION FINANCING FOR THE "WWTP HEADWORKS AND CLARIFIER UPGRADE PROJECT", CLEAN WATER STATE REVOLVING FUND LOAN PROJECT NO. 8122-110, CITY PROJECT NO. 15-14, AND AUTHORIZING CERTAIN ACTIONS RELATED THERETO.

**WHEREAS**, the City of Palm Springs, (the "City"), desires to finance the costs of constructing and/or reconstructing certain public facilities and improvements relating to its wastewater system, including certain treatment facilities, pipelines and other infrastructure, identified as the City of Palm Springs Wastewater Treatment Plant Upgrade, City Project No. 15-14, (the "Project"); and

**WHEREAS**, on April 1, 2015, the City Council did adopt Resolution No. 23799, declaring its intention to finance the construction and/or reconstruction of the Project or portions of the Project with moneys ("Project Funds") provided by the State of California, acting by and through the State Water Resources Control Board (the "State Water Board"); and

**WHEREAS**, Resolution No. 23799 further declared that the State Water Board may fund the Project Funds with proceeds from the sale of obligations the interest upon which is excluded from gross income for federal income tax purposes, (the "Obligations"), and that prior to either the issuance of the Obligations or the approval by the State Water Board of the Project Funds, the City desired to incur certain capital expenditures, (the "Expenditures") with respect to the Project from available moneys of the City; and

**WHEREAS**, Resolution No. 23799 further declared that the City had determined that those moneys to be advanced on and after April 1, 2015, to pay the Expenditures were available only for a temporary period and it was necessary to reimburse the City for the Expenditures from the proceeds of the Obligations; and

**WHEREAS**, by adoption of Resolution No. 23799, the City Council stated its intention and reasonably expected to reimburse Expenditures paid prior to the issuance of the Obligations or the approval by the State Water Board of the Project Funds, in an expected maximum principal amount of \$35,000,000; and

**WHEREAS**, on April 1, 2015, the City Council did also adopt Resolution No. 23800, acknowledging that the State Water Board may fund the Project Funds through its Clean Water State Revolving Fund ("CWSRF"), and that the CWSRF can provide a very low interest loan to the City for Project Funds necessary to fund the Project; and

**WHEREAS**, by adoption of Resolution No. 23800, the City Council authorized the City Manager, (the "Authorized Representative"), or his designee, to sign and file, for and on behalf of the City, a Financial Assistance Application for a financing agreement from the State Water Board for the planning, design, and construction of the Project, and to provide the assurances, certifications, and commitments required for the financial assistance application, including executing a financial assistance agreement from the State Water Board and any amendments or changes thereto; and

**WHEREAS**, the City Manager, as Authorized Representative, has filed the necessary Financial Assistance Application with the State Water Board, and has obtained approval of an Installment Sale Agreement for the Project, identified as CWSRF Project No. 8122-110, with a total approved financing amount of \$29,917,266 (the "CWSRF Agreement"); and

**WHEREAS**, the City Attorney has reviewed the terms and conditions of the draft CWSRF Agreement, and has prepared a legal opinion as required by the State Water Board confirming that the execution and delivery of the CWSRF Agreement will not conflict with or constitute a breach of any City laws or default of and City indebtedness; and

**WHEREAS**, on September 21, 2016, the City Council did also adopt Resolution No. 24096, dedicating and pledging the Net Revenues of the City's Wastewater Enterprise fund and the Wastewater Enterprise fund to payment of any and all Clean Water State Revolving Fund financing for the Project; and

**WHEREAS**, the State Water Board has provided confirmation to the City of its approval of CWSRF Project No. 8122-110, and has established an eligible start date of November 14, 2016, for reimbursable construction phase Expenditures; and

**WHEREAS**, a final form of the CWSRF Agreement will be provided by the State Water Board on or about January 15, 2017; and

**WHEREAS**, the City did previously solicit competitive bids for the construction of the Project, and on August 11, 2016, did receive six bids from qualified contractors, with the lowest responsive bid received from W. M. Lyles, Co., from Temecula, California, in the amount of \$20,522,737 with a requirement to guarantee the bid price for a period of 120 calendar days; and

**WHEREAS**, the guaranteed low bid from W. M. Lyles, Co., expires on December 9, 2016, and it is necessary to award a contract in advance of receipt of the final form of the CWSRF Agreement, and to proceed with construction of the Project on the basis of the State Water Board's express approval and establishment of an eligibility date of



November 14, 2016, for reimbursable construction phase Expenditures; and

**WHEREAS**, the City Council wishes at this time to confirm its intentions as stated in the previously adopted Resolution No. 23799 and Resolution No. 23800, and to authorize the City Manager, as the Authorized Representative to approve the CWSRF Agreement in a final form submitted by the State Water Board and approved by the City Attorney; and

**WHEREAS**, the City Council intends to award a construction contract to W. M. Lyles, Co., in the amount of \$20,522,737 for the Project, to be financed through the CWSRF Agreement hereby authorized and approved herefore.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA HEREBY RESOLVES, AS FOLLOWS:**

Section 1. Recitals. The preceding recitals are all true and correct, and hereby adopted as findings set forth herein this Resolution.

Section 2. Approval of Installment Sale Agreement. The City Council hereby approves the Installment Sale Agreement with the California State Water Resources Control Board for Publicly Owned Treatment Works (POTW) Construction Financing, for "WWTP Headworks and Clarifier Upgrade Project", Clean Water State Revolving Fund Project No. 8122-110, in substantially the form on file with the City Clerk, together with any changes therein or additions thereto provided by the State Water Resources Control Board in the final form of the agreement submitted to the City for its execution, subject to the review and approval to form by the City Attorney, and approval by the City Manager.

Section 3. Official Action. The City Manager, Assistant City Manager (as the City's Manager's designated official), the City Clerk, the Finance Director, and any and all other officers of the City are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions, which they, or any of them, may deem necessary or advisable to implement the Installment Sale Agreement. Whenever in this Resolution any officer of the City is directed to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

Section 4. Effective Date. This Resolution shall take effect from and after the date of approval and adoption thereof.

ADOPTED THIS 7th day of December, 2016

\_\_\_\_\_  
David H. Ready, City Manager

ATTEST:

\_\_\_\_\_  
James Thompson, City Clerk

CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE ) ss.  
CITY OF PALM SPRINGS )

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. is a full, true and correct copy, and was duly adopted at an adjourned meeting of the City Council of the City of Palm Springs on the 7th day of December, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
James Thompson, City Clerk  
City of Palm Springs, California.