

San Geronio Pass Water Agency

DATE: March 4, 2024

TO: Board of Directors

FROM: Lance Eckhart, General Manager

BY: Lance Eckhart, General Manager

SUBJECT: AGREEMENT TO PROVIDE GAP FUNDING TO THE SOUTH MESA WATER COMPANY RELATED TO APPROVED PROPOSITION 68 GRANT FUNDS

RECOMMENDATION

Authorize the General Manager to enter into an Agreement with the South Mesa Water Company to provide Gap funding support to utilize Proposition 68 Grant Funds through the State Water Resources Control Board.

PREVIOUS CONSIDERATION

- February 14, 2022: The Board directed staff to develop a Gap Funding Agreement with the Cabazon Water District to assist in utilizing awarded grant funding.
- March 14, 2022: The Board reviewed a draft Gap Funding Agreement with the Cabazon Water District to assist in utilizing awarded grant funding.
- March 14, 2022: The Board executed a draft Term sheet for a potential property and facility exchange project with the South Mesa Water Company to assist and support the Agency's County Line Road Project.
- July 17, 2023: The Board expands the gap funding concept to a total of four small systems in the service area, including South Mesa Water Company.

BACKGROUND

The Agency's Gap funding program was initiated in 2022 in response to an opportunity to provide grant reimbursement assistance to the Cabazon Water District (District). Despite being awarded several grants by the State Water Resources Control Board (State Board) and the Department of Water Resources (DWR), the District faced financial constraints hindering its ability to fund routine operations and fulfill obligations associated with these large grant projects. Upon confirming the District's cash flow challenges in utilizing authorized grant funds, Agency staff engaged with the District to address this issue. Recognizing the District's status as a small, disadvantaged water system, collaborative efforts ensued between Agency and District staff and the State Board and DWR grant administrators to explore potential solutions. Both State Board

and DWR representatives acknowledged that gap funding from regional entities had become increasingly common and often necessary for small disadvantaged water systems to utilize state grant funding effectively.

Upon confirming the necessity for regional grant implementation gap funding assistance, Staff started drafting a Gap Funding Agreement with the District. The Gap Funding Agreement aims to bridge the financial gap between the actual project expenses and the delayed reimbursement cycles from the State Board and DWR. The Gap Funding Agreement was presented and approved by the Board of Directors on March 14, 2022. The total project costs between the two grants awarded to the District was \$1,700,000, with the maximum amount of gap funding available of \$800,000 between reimbursement cycles. The gap funding maximum was later increased to \$1,300,000 to accelerate work.

Following the Board's approval of the Gap Funding Agreement, the initial payment was issued to the District in September 2022, and the first reimbursement was received in November 2022. Implementing the Gap Funding Program with the District has proceeded seamlessly, with payments allocated to cover project expenditures and regular reimbursements quickly returned to the Agency. To date, the Agency has provided the District with \$1,284,221 in Gap funding assistance, while the District has reimbursed the Agency with \$1,188,475.66 sourced from their grants from the State Board and DWR. The maximum Gap funding amount utilized by the District did not exceed approximately 65% of the total grant between reimbursement cycles. Currently, there is an outstanding balance of \$95,745.70 owed by the District to the Agency under this Gap Funding Agreement.

The Gap Funding Program has proven to be mutually beneficial for the Agency and the District, gaining support and generating interest at both state and regional levels. This initiative has attracted attention from various small disadvantaged water systems. The Agency has received gap funding requests from South Mesa Water Company, High Valley Water Company (SMWC), and Banning Heights Mutual Water Company.

ANALYSIS

The Agency has received a Gap Funding Program request from SMWC. SMWC was recently awarded a \$10.23 million Grant from the State Board to replace approximately 50,229 linear feet of water distribution pipelines and appurtenances (valves, vents, manhole covers, etc.) that are undersized and have exceeded their useful life. The grant also provides funding for the installation of approximately 973 linear feet of additional distribution pipelines, appurtenances, fire hydrants, and a new master meter to consolidate the Hillcrest Mobile Estates into SMWC. The SWMC has been identified as a severely disadvantaged community with a median household income of \$34,299.

Staff has collaborated with SMWC's engineering consultant, Land Engineering Consultant, Inc., to obtain project and bid schedules to estimate the appropriate amount of Gap funding required between reimbursement cycles. The anticipated grant expenditures for this project are projected to be around \$1,000,000 per month, with

quarterly expenditures ranging from approximately \$3,000,000 to a peak of about \$7,000,000. Considering the reimbursement cycles outlined in the Cabazon Water District Gap Funding Agreement, SMWC is expected to need access to a maximum of 70% of the total grant between reimbursement cycles. Grant reimbursements from the State Board typically occur within a timeframe as short as 90 days (approximately one quarter) but can extend to up to 6 months (roughly two quarters). The project duration is estimated to be slightly over a year.

A Gap Funding Agreement between the Agency and the SWMC has been drafted, which defines roles, responsibilities, and expectations between the SWMC and the Agency. The Gap Funding Agreement would also document the public purpose and interests of the Agency being served by engaging in such a transaction. The Agency and SWMC's respective counsels have reviewed the Gap Funding Agreement.

During the Gap funding period, Staff intends to work closely with the SMWC, their consultant, and the State Board grant administrators to keep reimbursement cycles as efficient as possible. Regular updates will be given at the Agency's monthly Finance and Budget Committee meetings, which will include a Gap Funding Report detailing payments issued, reimbursements received, and the current outstanding Gap funding balance.

The successful completion of this project is integral to the County Line Road Project, a joint effort involving the Agency, SMWC, and the San Bernardino Valley Municipal Water District. This collaborative project aims to facilitate the conveyance of State Water Project (SWP) water to the future recharge facility on 4th Street. By repurposing the existing pipeline utilized by SMWC, SWP water will be transported from the proposed turnout at County Line Road and Bryant Street, proceeding west along County Line Road and south at 4th Street to the Agency-owned property designated for development into a proposed recharge facility.

FISCAL IMPACT

The fiscal impact would be related to the advancement of funds and the use of Agency resources to process the Gap funding and obtain repayment. The Agency has available reserves to provide gap funding to assist with grant implementation. Some staff time will need to be allocated to this program, but it is not considered material. Gap funding is expected to be reasonably short, and Staff is not recommending any compensation or interest income at this time for ease of program administration. A maximum Gap funding amount is not expected to exceed \$7,000,000 between reimbursement cycles.

AGENCY'S STRATEGIC PLAN APPLICATION

The Gap Funding Program is consistent with the Agency's Mission Statement to support the region's quality of life through sustainable water management and with the following strategies:

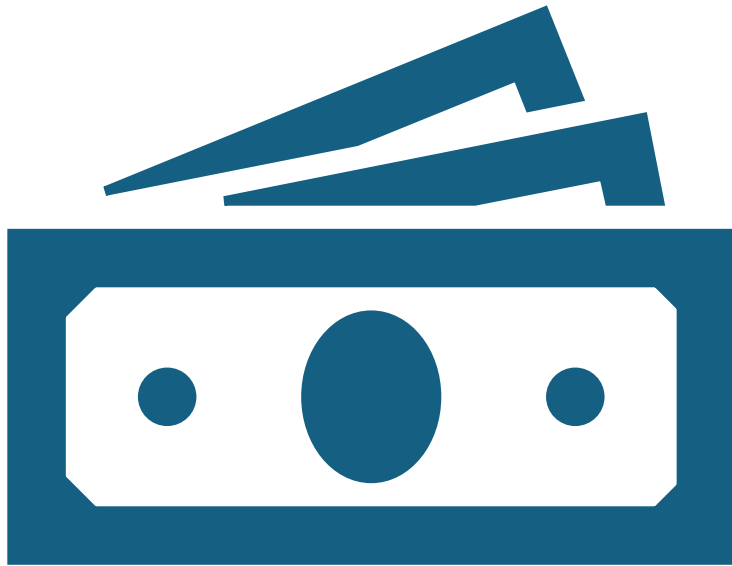
- Align with the current and future water landscape, supporting the region's long-term needs by diversifying the local supply portfolio and advancing water sustainability.
- Sustain long-term financial stability by engaging in prudent planning to guide informed decision-making.
- Maintain, foster and expand collaboration with local, regional, state and federal partners to develop strategic solutions to water supply challenges and opportunities.
- Serve the public with dedication, determination, transparency, collaboration, and a commitment to expanding knowledge.

ACTION

Authorize the General Manager to enter into an Agreement to provide Gap funding to the South Mesa Water Company to utilize Proposition 68 Grant Funds through the State Water Resources Control Board.

ATTACHMENTS

- Agreement for Providing Gap Funding Related to Approved Drinking Water Construction Grant
- South Mesa Water Company and State Water Resources Control Board Grant Agreement for County Line Pipeline and Replacement Project (No. D2202033)
- March 14, 2022, Staff Report on potential property and facility exchange between the Agency and South Mesa Water Company
- Gap Funding Program Cabazon Water District Tracking Sheet

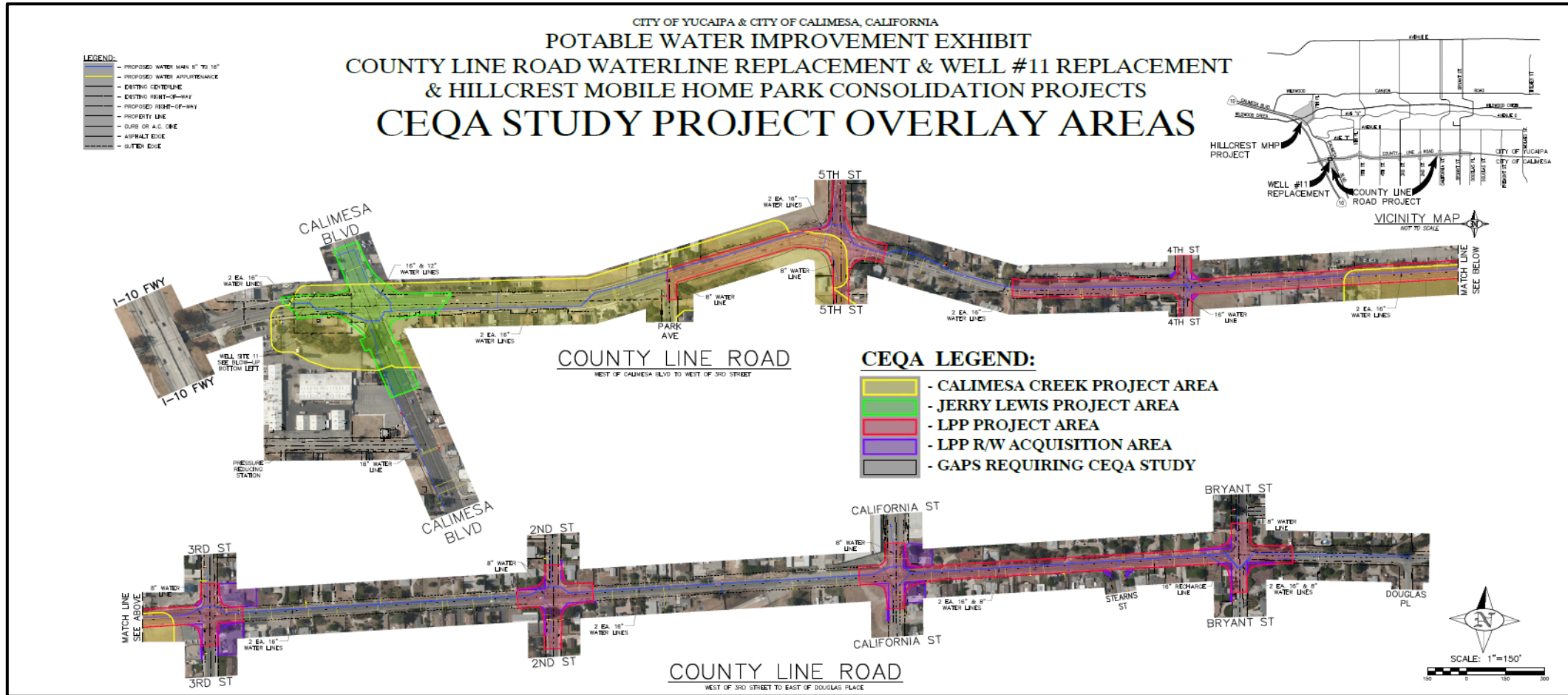


South Mesa Water Company Gap Funding Program

Board of Directors Meeting

March 4, 2024

County Line Pipeline Replacement Project



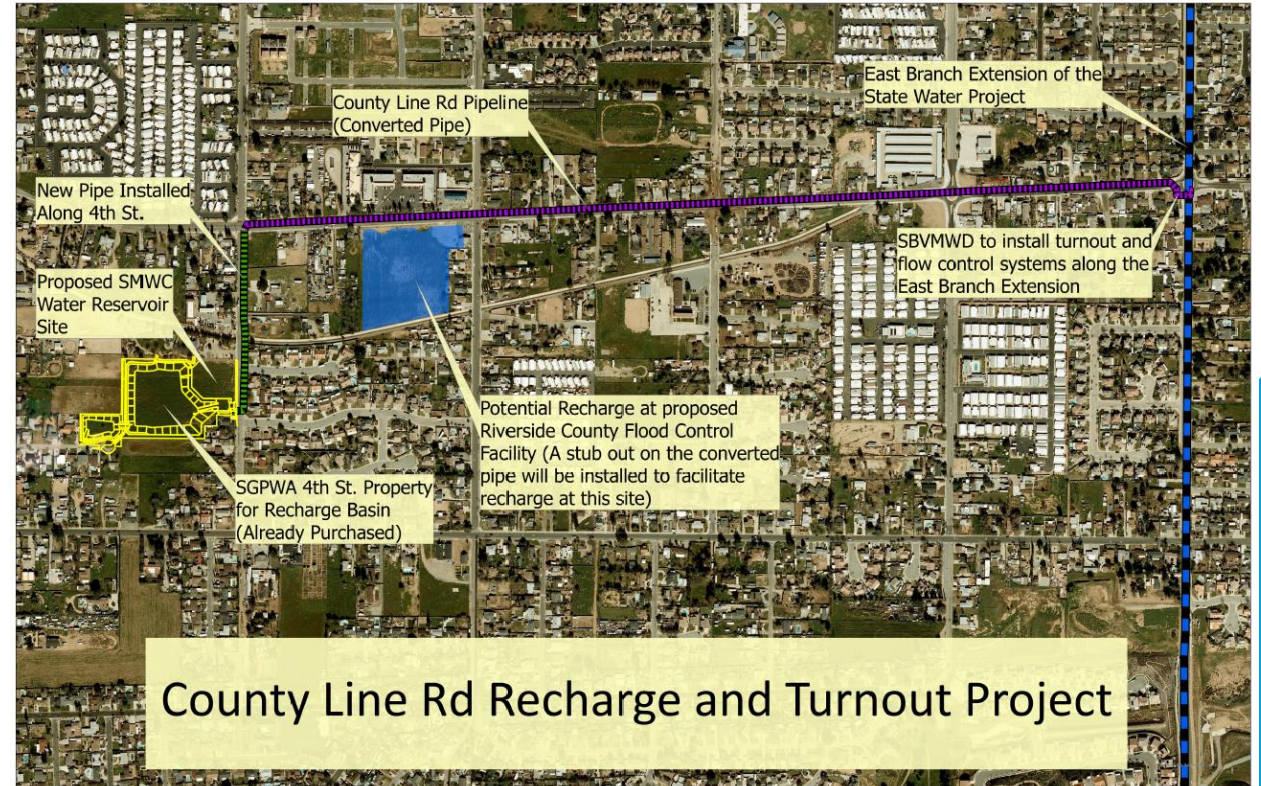
County Line Pipeline Replacement Project

- SWRCB Prop 68 Grant
 - \$10.2 Million Grant
 - Consolidation of Hillcrest Mobile Estates
 - Replacement of ~50,229 linear feet of distribution lines and appurtenances
 - Construction of ~973 linear feet of new water transmission lines
 - Borden Construction – Pipeline Replacement Portion of project
 - MCC Construction - Hillcrest Estates Consolidation
 - Quarterly Reimbursement Schedule

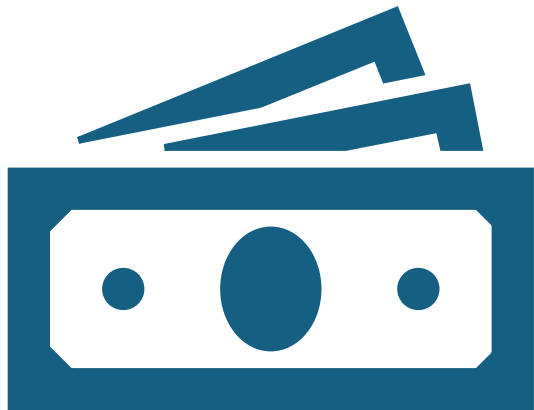
		Q2 2024		Q3 2024			
March 2024	April 2024	May 2024	June 2024	July 2024	August 2024	September 2024	October 2024
							Contract Amount \$7,852,345
	Project Cost Area 1 ~\$678,808						
		Project Cost Area 2 ~\$865,163					
			Project Cost Area 3 ~\$3,744,546				
					Project Cost Area 4 ~\$2,563,828		

Gap Funding Program Regional Benefits

- Gap Funding Regional Benefits
 - Mitigates grant funding risk
 - Community impact of completing projects
 - Long-term sustainability of local retailers
 - Enhances economic development in the Region
 - Promotes local partnerships, collaboration, and Agency presence
 - County Line Road Recharge and Turnout Project



Recommendation



- Authorize the General Manager to enter into an Agreement to provide Gap funding to the South Mesa Water Company to utilize Proposition 68 Grant Funds through the State Water Resources Control Board.

Questions



AGREEMENT FOR PROVIDING GAP FUNDING
RELATED TO APPROVED DRINKING WATER CONSTRUCTION GRANT

This AGREEMENT FOR PROVIDING GAP FUNDING RELATED TO APPROVED DRINKING WATER CONSTRUCTION GRANT (“**Agreement**”) is made and entered into as of March ___, 2024, by and between the SAN GORGONIO PASS WATER AGENCY, a public agency formed under the San Gorgonio Pass Water Agency Law set forth in Act 1100 of the Water Code Uncodified Acts (“**Agency**”) and the SOUTH MESA WATER COMPANY, a mutual water company duly formed and operating under The General Corporation Law set forth in Corporations Code Section 100 et seq. (“**Company**”). Agency and Company are sometimes individually referred to herein as a “**Party**” and collectively as the “**Parties**”.

RECITALS

A. Company and Agency are member agencies of the Yucaipa Sub-basin Groundwater Sustainability Agency (“**GSA**”)—the agency charged with managing groundwater resources in the Yucaipa Sub-basin (“**Basin**”).

B. Agency and Company participated in the preparation of, and have each adopted the Basin Groundwater Sustainability Plan (“**GSP**”), which is administered by the GSA. On January 18, 2024, the California Department of Water Resources (“**DWR**”) released its findings and determination that the GSP is approved and satisfies the objectives of SGMA.

C. Consistent with the GSP, Company has identified potential regional, multi-benefit groundwater recharge facilities in the Calimesa Management Area (“**CMA**”), which is one of the GSP defined management areas within the Basin. In connection therewith, Agency has acquired a certain 7-acre parcel overlying the CMA upon which Agency will construct a recharge basin facility (“**Recharge Facility**”) to enable the delivery of imported water to the Recharge Facility for groundwater recharge and replenishment activities. Agency will coordinate with Company to repurpose the existing Company 14-inch pipeline along County Line Road to convey water to the Recharge Facility, pursuant to a separate agreement.

D. Company succeeded in securing a California Prop 68 Drinking Water Construction Grant (“**Grant**”) from the State Water Resources Control Board (“**State Board**”) in the amount of \$10,236,913.00 (referred to in State Board’s records as Agreement No. D2202033, a copy of which is attached hereto as **Exhibit “A”**) for the purpose of the County Line Pipeline Replacement Project (“**Project**”) The Project will be implemented in phases. Contracts have been let for construction of Phase 1 of the Project to Borden Construction and MCC Construction for the replacement of Company pipelines and appurtenances and to consolidate the Hillcrest Mobile Estates water system with Company. Phase 2 comprises the drilling of a new Company groundwater well.

E. Company must submit reimbursement request forms to the State Board pursuant to the reimbursement procedure set forth in the Grant and said reimbursements are subject to certain time periods for review and payment (“**Reimbursement Cycle**”). Contractors require much shorter invoice payment turnaround in order to the undertake the Project. The Reimbursement Cycle may therefore necessitate that Company advance its own funds to pay its contractors while awaiting reimbursement. Company is a small water system servicing a severely disadvantaged community and seeks to ensure its ability to advance the necessary sums consistent with the Grant.

F. Agency is willing to consider advancing up to \$7,000,000.00 in an individual Reimbursement Cycle, and lesser amounts in other Reimbursement Cycles, to cover Project costs. Company desires to enter into a gap funding agreement with Agency to facilitate implementation of the Grant and successful completion of the Project.

G. Agency agrees to enter into this gap funding agreement with Company because the Project provides a benefit to the community by improving the Basin’s water supplies and helping to meet the objectives of the GSP in which Agency participates.

NOW THEREFORE, in consideration of the foregoing recitals and the promises and covenants contained herein, the Parties agree as follows:

1. **Incorporation of Recitals.** The above Recitals are hereby incorporated into the Agreement and made a part thereof by this reference.

2. **Purpose.** The Purpose of this Agreement is to establish: (i) the manner, terms and conditions pursuant to which Agency will advance certain funds to Company; and (ii) the purposes for which Company may use the funds so advanced.

3. **Effective Date.** The Effective Date of this Agreement shall be March 1, 2024.

4. **Term of Agreement.** Unless otherwise extended or earlier terminated, the term of this Agreement shall commence on the Effective Date and shall end on the date that is the earlier to occur of: (i) the date that Company repays the Advanced Funds (defined below) to Agency in full as required under this Agreement; and (ii) June 30, 2026 (“**Term**”). This Agreement may be terminated by either Party upon a 90-days’ notice to the other Party, at which time all Advanced Funds received by Company and not yet repaid to Agency shall become due and payable to Agency in accordance with Section 8 below.

5. **Maximum Advanced Funds.** The maximum amount that may be requested by Company and advanced by Agency (“**Advanced Funds**”) for any Reimbursement Cycle during the Term of this Agreement shall not exceed the amount of seven million dollars (**\$7,000,000.00**). If the maximum amount of Advanced Funds is reached, Agency shall have no obligation to advance any further funds to Company until the pending Reimbursement Cycle is completed and the Advanced Funds is reduced to below the maximum amount.

6. **Payment Procedures to Company.** Company will submit to Agency a copy of the invoice or invoices, and accompanying backup documentation, that Company has submitted or intends to submit to the State Board and for which Company is requesting Advanced Funds from Agency (“**Invoices**”). Subject to availability of funds as determined in Agency’s reasonable discretion and the limitations set forth in Section 5 above, and provided Company is not otherwise in breach of any term of this Agreement, Agency will issue payment to Company in the amounts so requested within seven (7) days of receiving the Invoices.

7. **Use of Advanced Funds.** Company shall use the Advanced Funds solely to pay Projects costs that are eligible for reimbursement under the terms of the Grant agreement referenced in Recital D, and for no other purpose.

8. **Repayment of Advanced Funds to Agency.** The Parties agree as follows:

a. Company shall repay to Agency the Advanced Funds, in increments, based on whichever of the following occurs first: (i) within 15 days of Company's receipt of Grant amounts from a Reimbursement Cycle; or (ii) as other general funds become available as determined within Company's reasonable discretion. Said repayment obligation shall continue until the Advanced Funds are repaid to Agency in full; provided, however, that Advanced Funds not spent by Company at the time the Project is complete shall become immediately due and payable to Agency.

b. Company's obligation to repay the Advanced Funds in full to Agency is not limited or extinguished by reason of the failure of State Board to distribute the Grant to Company. If necessary, the Parties shall negotiate in good faith a reasonable repayment schedule pursuant to which Company will repay to Agency the Advanced Funds for which Company expected but did not receive Grant disbursements from State Board.

c. Company's obligation to repay the Advanced Funds to Agency under this Agreement shall survive the expiration or earlier termination of this Agreement.

9. **Indemnification.** Company shall indemnify and hold and save Agency, its officers, agents and employees free and harmless from any and all liabilities for any liens, claims and damages that may arise out of or in any way related to this Agreement and the Projects, including without limitation any liens, claims and damages (including attorneys' fees) arising from or in any way related to planning, design, construction, maintenance and operation of the Projects and any breach of this Agreement. The indemnification obligation under this Section 9 shall survive the expiration or earlier termination of this Agreement.

10. **No Partnership, Joint Venture or Agency Relation.** Nothing in this Agreement shall be construed to render Agency in any way, or for any purpose, to be a partner, or engaged

in a joint venture, with Company, nor shall this Agreement be construed to authorize either Party to act as agent for the other.

11. Insurance. Company shall name Agency, Agency's officers, employees and agents as additional insureds on all insurance policies procured for the Project.

12. Entire Agreement; Amendment. This Agreement contains the entire understanding between the Parties with respect to its subject matter, and supersedes all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations between the Parties. This Agreement cannot be modified or amended except in a writing signed by both Parties.

13. No Waiver. Any failure or delay on the part of either Party to exercise any right under this Agreement shall not constitute a waiver of the right, and shall not preclude such Party from exercising or enforcing the right, or any other provision of this Agreement, on any subsequent occasion.

14. Notices. All notices or other communications required or desired to be given pursuant to this Agreement shall be in writing and shall be hand-delivered or sent by a reputable overnight courier service providing delivery confirmation. Each such notice or communication shall be deemed to be duly given when hand-delivered or one (1) day after being deposited for next day delivery with an overnight courier. Each such notice or communication shall be addressed to the Parties at the address noted on the signature page, or such other address as a Party notifies the other in writing.

15. Headings; Section References. Captions and headings appearing in this Agreement are inserted solely as reference aids for ease and convenience; they shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions.

16. Severability. If any provision of this Agreement is finally determined by a court to be invalid or unenforceable as written, the provision shall, if possible, be enforced to the extent reasonable under the circumstances and otherwise shall be deemed deleted from this

Agreement. The other provisions of this Agreement shall remain in full force and effect so long as the material purposes of the Agreement and understandings of the Parties are not impaired.

17. Binding Effect Assignment. This Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and permitted assigns. Company shall not have the right to assign its rights under this Agreement except with the prior written consent of Agency, which consent may be withheld at Agency's sole discretion.

18. Attorneys' Fees. In the event that any action or proceeding is brought to enforce one or more of the terms of this Agreement, to restrain an alleged violation of this Agreement, or to determine the validity of this Agreement or any part, the prevailing Party in any such action or proceeding shall be entitled to recover from the other its reasonable costs and attorneys' fees, in addition to any other remedies available to it in law or equity. If both Parties are successful in one or more causes of action during any such proceeding, the costs and fees shall be apportioned as determined by the court.

19. Governing Law and Venue. This Agreement is a contract governed in accordance with the laws of the State of California. The Parties hereby agree that venue for any action brought to enforce the terms of this Agreement shall be in a court of competent jurisdiction in the County of Riverside, California, and consent to the jurisdiction thereof.

20. Counterparts. Counterpart execution of this Agreement is hereby authorized, including electronic transmission of pdf or similar format, and each counterpart of this Agreement so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and all such counterparts together shall constitute one and the same instrument.

21. Time of Essence. Time is of the essence of each and every term, condition, obligation and provision hereof.

22. No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights or benefit upon, nor obligate any Party to any person or entity other than the Parties.

[Signatures follow on the next page]

IN WITNESS WHEREOF, the Parties have executed this agreement as of the date first written above.

COMPANY:

AGENCY:

SOUTH MESA WATER COMPANY

SAN GORGONIO PASS WATER
AGENCY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Fax: _____

Fax: _____

Phone: _____

Phone: _____

EXHIBIT "A"

STATE BOARD GRANT AGREEMENT

DRAFT



State Water Resources Control Board

October 19, 2023

South Mesa Water Company
Attn: David Armstrong – General Manager
391 West Avenue L
Calimesa, CA 92320

Agreement Number: D2202033
Project Number: 3310017-001C & 3310017-002C

Please review, and if appropriate, electronically sign the signature page of the Agreement via Adobe Sign. Once electronically signed, the Agreement will be routed automatically to the next signer. You will automatically receive a copy of the fully executed Agreement via Adobe Sign once the final signer has signed. This Agreement cannot be considered binding by either party until executed by the State Water Resources Control Board (State Water Board).

For the Funding Agreement to be executed by the State Water Board, the following items **must also be returned electronically with the signed signature pages**: The Opinion will need to be dated and signed on or after the date the agreement is signed. Counsel can file and attach the letters and submit them back to Adobe.

For the Funding Agreement to be executed by the State Water Board, the signature page **must be signed and returned electronically**.

1. Opinion of General Counsel.

Be aware that all projects receiving funding must comply with all applicable implementing guidelines and regulations adopted by the California Department of Industrial Relations (DIR), regarding state prevailing wage requirements. You must contact DIR for guidance on how to comply. Information can be found at: <http://www.dir.ca.gov/lcp.asp>.

We strive to provide superior service to our recipients and would appreciate your feedback on the application process. Please assist us in completing a 5-minute Customer Satisfaction Survey at <https://www.surveymonkey.com/s/DWSRFsatisfaction> so we can continue to improve on our service and process. Your comments are valuable to the success of the DWSRF Program. Thank you for your time and we look forward to continuing to work with you.

Mr. Carolipio Jr. may be contacted at (916) 449-5694 or noel.carolipio@waterboards.ca.gov.

Enclosures

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



DRINKING WATER CONSTRUCTION GRANT

AGREEMENT No. D2202033

BY AND BETWEEN

SOUTH MESA WATER COMPANY ("Recipient")

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD ("State Water Board")



FOR THE PURPOSE OF THE

COUNTY LINE PIPELINE REPLACEMENT PROJECT ("Project")

PROJECT NOS. 3310017-001C & 3310017-002C

-
- Senate Bill 129 (Stats. 2021, Ch. 69), Item 3940-106-0001 of Section 2.00 of the Budget Act of 2021, Provision 1, and Resolution No. 2023-0021.
 - Section 80140 of the Public Resources Code, and Resolution No. 2023-0021.

PROJECT FUNDING AMOUNT: \$10,236,913.00

GRANT COMPONENT: \$10,236,913.00

ESTIMATED REASONABLE PROJECT COST: \$10,236,913.00

ELIGIBLE WORK START DATE: AUGUST 1, 2019

ELIGIBLE CONSTRUCTION START DATE FOR PHASE 1: JULY 21, 2023

ELIGIBLE CONSTRUCTION START DATE FOR PHASE 2: JULY 21, 2023

COMPLETION OF CONSTRUCTION DATE: FEBRUARY 28, 2026

FINAL REIMBURSEMENT REQUEST DATE: MARCH 31, 2026

RECORDS RETENTION END DATE: FEBRUARY 28, 2062

1. The State Water Board and the Recipient mutually promise, covenant, and agree to the terms, provisions, and conditions of this Agreement, including the following Exhibits, which are attached hereto or are incorporated by reference:
 - EXHIBIT A – SCOPE OF WORK AND SCHEDULE
 - EXHIBIT B – FUNDING PROVISIONS
 - EXHIBIT C – GENERAL TERMS AND CONDITIONS 2019-NOV
 - EXHIBIT D – SPECIAL CONDITIONS

2. The following documents are also incorporated by reference, as well as any documents incorporated by reference in Exhibit D:
 - the Final Plans & Specifications for Phase I, dated October 3, 2022, which are the basis for the construction contract to be awarded by the Recipient;
 - the Drinking Water System Permit No. 04-14-98P-018, and any amendments thereto;

3. Party Contacts during the term of this Agreement are:

State Water Board		South Mesa Water Company	
Section:	Division of Financial Assistance		
Name:	Joel Greathouse, Project Manager	Name:	David Armstrong – General Manager
Address:	265 West Bullard Avenue, Suite 101	Address:	391 West Avenue L
City, State, Zip:	Fresno, CA 93704	City, State, Zip:	Calimesa, CA 92320
Phone:	(559) 447-3481	Phone:	(951) 805-0861
Email:	Joel.greathouse@waterboards.ca.gov	Email:	darmstrong@southmesawater.com

Each party may change its contact upon written notice to the other party. While Party Contacts are contacts for day-to-day communications regarding Project work, the Recipient must provide official communications and notices to the Division’s Deputy Director in addition to the Party Contacts.

4. Conditions precedent to this Agreement are set forth as follows:
 - (a) The Recipient must deliver to the Division a resolution authorizing this Agreement and identifying its authorized representative by title.
 - (b) The Recipient must deliver an opinion of general counsel satisfactory to the State Water Board’s counsel dated on or after the date that the Recipient signs this Agreement.

5. The Recipient represents, warrants, and commits to the following as of the Eligible Work Start Date and continuing thereafter for the term of this Agreement, which shall be at least until the Records Retention End Date:
 - (a) The Recipient agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents.
 - (b) The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized by the Recipient. Upon execution by both parties, this Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.

- (c) None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of Recipient. The Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. The Recipient is able to pay its debts as they become due. The Recipient maintains sufficient insurance coverage considering the scope of this Agreement, including, for example but not necessarily limited to, general liability, automobile liability, workers compensation and employer liability, professional liability.
 - (d) The Recipient is in compliance with all State Water Board funding agreements to which it is a party.
6. This Agreement, and any amendments hereto, may be executed and delivered in any number of counterparts, each of which when delivered shall be deemed to be an original, but such counterparts shall together constitute one document. The parties may sign this Agreement, and any amendments hereto, either by an electronic signature using a method approved by the State Water Board or by a physical, handwritten signature. The parties mutually agree that an electronic signature using a method approved by the State Water Board is the same as a physical, handwritten signature for the purposes of validity, enforceability, and admissibility.

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

SOUTH MESA WATER COMPANY:

DAVID ARMSTRONG
By: _____
Name: David Armstrong
Title: General Manager

Date: Oct 20, 2023

STATE WATER RESOURCES CONTROL BOARD:

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

Date: Dec 14, 2023

EXHIBIT A – SCOPE OF WORK AND SCHEDULE

A.1 PROJECT PURPOSE AND DESCRIPTION.

The Project is for the benefit of the Recipient and Hillcrest Mobile Estates (Hillcrest) and has a Useful Life of at least 50 years. The funding under this Agreement shall be used to bring Hillcrest into compliance with the California Code of Regulations, Title 22, Division 4, Chapter 16 Waterworks Standards, for nitrate maximum contaminant level (MCL) by consolidation with the Recipient. The funding under this Agreement shall also be used to bring the Recipient into compliance with the California Code of Regulations, Title 22, Division 4, Chapter 16 Waterworks Standards, for source capacity by drilling a new groundwater well and replacing water mains that are undersized to meet current demand and have passed their useful life.

A.2 SCOPE OF WORK.

The Recipient agrees to complete the Project in the following phases:

Phase 1- replacement of approximately 50,229 linear feet of distribution lines and appurtenances within South Mesa that are undersized and have passed their useful life; construction of approximately 973 linear feet of 8-inch and 12-inch water transmission lines, related appurtenances, three fire hydrants, and a master meter to consolidate Hillcrest.

Phase 2- drill a new groundwater well within South Mesa.

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

A.3 SIGNAGE.

The Recipient must place a professionally prepared sign at least four feet tall by eight feet wide made of ¾ inch thick exterior grade plywood or other approved material in a prominent location on the Project site and must maintain the sign in good condition for the duration of Project implementation. The sign may include another agency's required information and must include, prominently displayed, the following disclosure statement and color logos (available from the Division):



“Funding for this project has been provided in full or in part by Proposition 68 - the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2018 through an agreement with the State Water Resources Control Board.”

A.4 SCHEDULE.

Failure to provide items by the due dates indicated in the table below may constitute a material violation of this Agreement. The Project Manager may adjust the dates in the “Estimated Due Date” column of this table, but Critical Due Date adjustments will require an amendment to this Agreement. The Recipient must complete and submit all work in time to be approved by the Division prior to Project Completion. As applicable for specific submittals, the Recipient must plan adequate time to solicit, receive, and address comments prior to submitting the final submittal. The Recipient must submit the final Reimbursement Request prior to the Final Reimbursement Request Date set forth on the Cover Page.

ITEM	DESCRIPTION OF SUBMITTAL	CRITICAL DUE DATE	ESTIMATED DUE DATE
EXHIBIT A – SCOPE OF WORK			
A.	ADDITIONAL SUBMITTAL(S) TO DIVISION		
1.	Final Plans and Specifications- Phase 1	N/A	Completed
2.	Final Budget Approval Package- Phase 1	N/A	Completed
3.	Final Plans and Specifications- Phase 2	N/A	03/30/2024
4.	Final Budget Approval Package- Phase 2	N/A	06/30/2024
5.	Completion of Construction	02/28/2026	N/A
B.	REPORTS		
1.	Progress Reports	Quarterly	
2.	Final Inspection and Certification	N/A	02/28/2026
3.	Project Completion Report	N/A	02/28/2026
4.	As Needed Reports	N/A	TBD
EXHIBIT B – REIMBURSEMENTS, BUDGET DETAIL, AND REPORTING PROVISIONS			
A.	REIMBURSEMENTS		
1.	Reimbursement Requests	Quarterly	
2.	Final Reimbursement Request	03/31/2026	N/A

The Recipient must award the prime construction contract and begin construction timely. The Recipient must 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 may require corrective work to be performed prior to Project Completion. The State Water Board is not obligated to reimburse corrective work under this Agreement.

A.5 PROGRESS REPORTS.

The Recipient must provide a progress report to the Division each quarter, beginning no later than 90 days after execution of this Agreement. The Recipient must provide a progress report with each Reimbursement Request. Failure to provide a complete and accurate progress report may result in the withholding of Project Funds, as set forth in Exhibits B and C. A progress report must 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.

A.6 PROJECT COMPLETION REPORT.

(a) The Recipient must submit a Project Completion Report to the Division with a copy to the appropriate District Office 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 include the following:

- i. Description of the Project,
- ii. Description of the water quality problem the Project sought to address,
- iii. Discussion of the Project's likelihood of successfully addressing that water quality problem in the future, and
- iv. Summary of compliance with applicable environmental conditions.

(b) If the Recipient fails to submit a timely Project Completion Report, the State Water Board may stop processing pending or future applications for new financial assistance, withhold reimbursements under this Agreement or other agreements, and begin administrative proceedings.

A.7 RESERVED.

A.8 FINAL PROJECT INSPECTION AND CERTIFICATION.

Upon completion of the Project, the Recipient must provide for a final inspection and must certify that the Project has been completed in accordance with this Agreement, any final plans and specifications submitted to the State Water Board, and any amendments or modifications thereto. If the Project involves the planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, or other professionals, the final inspection and certification must be conducted by a California Registered Civil Engineer or other appropriate California registered professional. The results of the final inspection and certification must be submitted to the Project Manager.

EXHIBIT B – FUNDING PROVISIONS

B.1 ESTIMATED REASONABLE COST AND PROJECT FUNDS.

The estimated reasonable cost of the total Project is set forth on the Cover Page of this Agreement, and is greater than or equal to the funding anticipated to be provided by the State Water Board under this Agreement. Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds not to exceed the amount of the Project Funding Amount set forth on the Cover Page of this Agreement.

B.2 RECIPIENT CONTRIBUTIONS.

The Recipient must 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 must nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.

If the Recipient recovers funds from any responsible parties, the Recipient shall immediately notify the Division. The amount of this Agreement may be reduced to reflect the recovered funds.

B.3 VERIFIABLE DATA.

Upon request by the Division, the Recipient must submit verifiable data to support deliverables specified in the Scope of Work. The Recipient's failure to comply with this requirement may be construed as a material breach of this Agreement.

B.4 BUDGET COSTS

Table 1: Approved Construction Bid Amount

CONTRACTOR	AMOUNT BID	APPROVED COSTS
Phase 1 - Borden Construction	\$7,852,345	\$7,852,345
Phase 1 - MCC Construction	\$509,742	\$509,742
Phase 2 – TBD	TBD	TBD

Table 2: Approved Final Project Budget for Phase 1

PROJECT COST TABLE	
TYPE OF WORK	APPROVED BUDGET
A. Construction- Phase 1 (Borden and MCC Construction)	\$7,852,345
Construction- Phase 2 (MCC Construction)	\$509,742
B. Pre-Purchased Material / Equipment	\$0
C. Purchase of Land / Easements	\$0
D. Change Order Contingency	\$916,843
E. Force Account	\$0
F. Allowances (Soft Costs):	\$957,983
TOTAL (Subtotal A+B+C+D+E+F)	\$10,236,913

The Division's Final Budget Approval and related Form 259 and Form 260 will document a more detailed budget of eligible Project Costs and Project funding amounts. Construction of the Project may be completed in phases with written approval of the Division. If construction proceeds under separate phases, the Recipient must submit a Final Budget Approval package and receive Final Budget Approval from the Division for each phase.

The Recipient is prohibited from requesting disbursement amounts that represent Recipient's mark-ups to costs invoiced or otherwise requested by consultants or contractors.

Project Costs incurred prior to the Eligible Work Start Date on the cover page of this Agreement are not eligible for reimbursement.

Indirect Costs are ineligible for funding under this Agreement.

Reasonable indirect costs may be allowable upon approval by the Division.

The eligibility determinations and conditions of approval identified below are based on the review of:

- Stamped and Signed Final Plans and Specifications (P&S) for the Project received February 7, 2023, dated October 3, 2022;
- Addenda Nos. N/A

The eligibility determination for the bid items shown in the schedule of values provided by the Recipient are as follows:

Table 3: Eligibility Determination Agreement for Phase 1 – Borden Construction:

CONTRACTOR		AMOUNT BID	APPROVED DWSRF COST
Borden Construction		\$7,852,345	\$7,852,345
Bid Item	Description	Percent Eligibility	
1	MOBILIZATION	100%	
2	INSURANCES, LICENSES, PERMITS	100%	
3	TESTING, CHLORINATION AND DISINFECTION	100%	
4	EROSION CONTROL / NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) / STORMWATER POLLUTION PREVENTION PLAN (SWPPP)	100%	
5	PREPARE SCHEDULE, MEETINGS WITH SOUTH MESA WATER COMPANY (SMWC) AND CITY	100%	
6	TRAFFIC CONTROL PLANS, RELATED PERMITS	100%	
7	STRIPING REPAIR	100%	
8	16-INCH CEMENT-MORTAR LINED AND COATED (CML&C) STEEL PIPE - JOINT TRENCH	100%	
9	8-INCH CML&C STEEL PIPE – JOINT TRENCH	100%	
10	14-INCH POLYVINYL CHLORIDE (PVC) C-900 DIMENSION RATIO (DR)-14 WATER MAIN	100%	
11	12-INCH PVC C-900 DR-14 WATER MAIN	100%	
12	6-INCH PVC C-900 DR-14 WATER MAIN	100%	
13	16-INCH PVC C-900 DR-14 WATER MAIN	100%	
14	16-INCH PVC C-900 DR-14 WATER MAIN - JOINT	100%	
15	12-INCH PVC C-900 DR-14 WATER MAIN – JOINT	100%	
16	8-INCH PVC C-900 DR-14 WATER MAIN	100%	
17	8-INCH PVC C-900 DR-14 WATER MAIN – JOINT	100%	
18	8-INCH CML&C STEEL PIPE	100%	
19	PIPE BARRICADE	100%	
20	1-INCH SERVICE (SERV.) LINE AND CONNECT TO EXISTING (EX.) METER	100%	
21	1-INCH SERV. LINE AND CONNECT RELOCATED METER	100%	
22	2-INCH SERV. LINE AND CONNECT RELOCATED METER	100%	
23	RECONNECT EX. HOUSE SERV. TO NEW METER	100%	

Bid Item	Description	Percent Eligibility
24	6-INCH FIRE HYDRANT ASSEMBLY	100%
25	6-INCH BLOW OFF ASSEMBLY	100%
26	4-INCH BLOW OFF ASSEMBLY	100%
27	2-INCH AIR AND VACUUM VALVE ASSEMBLY	100%
28	1-INCH AIR AND VACUUM VALVE ASSEMBLY	100%
29	16-INCH BUTTERFLY VALVE	100%
30	12-INCH BUTTERFLY VALVE	100%
31	8-INCH GATE VALVE	100%
32	16-INCH CROSS	100%
33	16-INCH X 8-INCH CROSS	100%
34	16-INCH TEE	100%
35	16-INCH X 12-INCH TEE	100%
36	16-INCH X 8-INCH TEE	100%
37	16-INCH 90-DEGREE ELBOW	100%
38	16-INCH 45-DEGREE ELBOW	100%
39	16-INCH 22.5-DEGREE ELBOW	100%
40	16-INCH 11.25-DEGREE ELBOW	100%
41	16-INCH BLIND FLANCE	100%
42	16-INCH X 12-INCH REDUCER	100%
43	6-INCH 90-DEGREE ELBOW	100%
44	12-INCH 22.5-DEGREE ELBOW	100%
45	12-INCH 11.25-DEGREE ELBOW	100%
46	8-INCH CROSS	100%
47	8-INCH TEE	100%
48	14-INCH 45-DEGREE ELBOW	100%
49	8-INCH X 6-INCH REDUCER	100%
50	8-INCH 90-DEGREE ELBOW	100%
51	8-INCH 45-DEGREE ELBOW	100%
52	8-INCH 22.5-DEGREE ELBOW	100%
53	8-INCH 11.25-DEGREE ELBOW	100%
54	8-INCH BLIND FLANCE	100%
55	14-INCH 11.25-DEGREE ELBOW	100%
56	16-INCH X 14-INCH REDUCER	100%
57	JOIN EXISTING 16-INCH WATER MAIN	100%
58	JOIN EXISTING 14-INCH WATER MAIN	100%
59	JOIN EXISTING 12-INCH WATER MAIN	100%
60	JOIN EXISTING 8-INCH WATER MAIN	100%
61	JOIN EXISTING 6-INCH WATER MAIN	100%
62	2-INCH SERVICE LINE & METER BOX	100%
63	TRENCH REPAIR FOR PARALLEL WATER MAINS	100%
64	TRENCH REPAIR FOR 4-INCH TO 16-INCH WATER MAINS	100%
65	TRENCH REPAIR FOR 1-INCH TO 2-INCH WATER SERVICES	100%
66	REMOVE EX. WATER ASSEMBLY / SALVAGE TO SMWC	100%
67	SAWCUT AND REPLACE SIDEWALK FOR METER	100%
68	ABANDON EXISTING PIPELINE IN PLACE	100%

Bid Item	Description	Percent Eligibility
69	THRUST BLOCKS	100%
70	RECONNECT EXISTING DOUBLE DETECTOR CHECK VALVE (DDCV) TO NEW MAIN	100%
71	SLURRY PROTECTION WHEN < 36-INCH COVER	100%
72	SLURRY PROTECTION AT CROSSINGS	100%
73	16-INCH FLANGE X MECHANICAL JOINT (FLG X MJ) ADAPTER	100%
74	8-INCH FLG X MJ ADAPTER	100%
75	16-INCH CML&C STEEL 45-DEGREE ELBOW	100%
76	6-INCH GATE VALVE	100%
77	8-INCH X 6-INCH TEE	100%
78	16-INCH X 6-INCH TEE	100%
79	REMOVE AND REPLACE CONCRETE SIDEWALK	100%
80	REMOVE AND REPLACE CONCRETE DRIVE APPROACH	100%
81	REMOVE AND REPLACE CONCRETE CURB/GUTTER	100%
82	REMOVE AND REPLACE CONCRETE RIBBON GUTTER	100%
83	REMOVE AND REPLACE ASPHALT CONCRETE DIKE	100%
84	12-INCH 45-DEGREE ELBOW	100%
85	12-INCH BLIND FLANGE	100%
86	6-INCH PRESSURE REDUCING (PRESS. RED.) VALVE / VAULT	100%
87	1-INCH PRESS. RED. VALVE / BOX & LID	100%
88	2-INCH PRESS. RED. VALVE / BOX & LID	100%
89	FITTING AND PIPE JOINT RESTRAINTS	100%
90	3-FOOT WIDE CONCRETE ENCASMENT	100%
91	ABANDON EXISTING SERVICE AT MAIN	100%
92	1-INCH SERVICE LINE AND METER BOX	100%
93	COUNTYLINE PIPELINE SEGMENT	100%

Table 3: Eligibility Determination Agreement for Phase 1 – MCC Construction

CONTRACTOR		AMOUNT BID	APPROVED DWSRF COST
MCC Construction		\$509,742	\$509,742
Bid Item	Description	Percent Eligibility	
1	MOBILIZATION	100%	
2	INSURANCES, LICENSES, PERMITS	100%	
3	TESTING, CHLORINATION AND DISINFECTION	100%	
4	EROSION CONTROL / NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) / PREPARATION, MANAGEMENT, DEVICE INSTALL AND REMOVALS, AND SITE RESTORATION	100%	
5	PREPARE SCHEDULE, MEETINGS WITH SMWC AND CITY	100%	
6	TRAFFIC CONTROL PLANS, RELATED PERMITS	100%	
7	STRIPING REPAIR	100%	
8	12-INCH PVC C900 DIMENSION RATIO (DR) CLASS (CL) 305 WATER MAIN	100%	
9	8-INCH PVC C900 DR14 CL 305 WATER MAIN	100%	
10	8-INCH WELDED STEEL PIPE (C200-17, C206-17, C208)	100%	
11	8-INCH CEMENT LINED CL 300 WATER PIPE	100%	
12	12-INCH BUTTERFLY VALVE SMWC STANDARD (STD.) W10 & W11	100%	
13	8-INCH GATE VALVE SMWC STD. W-9 & W-11	100%	
14	12-INCH X 8-INCH FLG TEE	100%	
15	8-INCH FLG TEE	100%	
16	8-INCH TAPPING VALVE / SLEEVE (STAINLESS STEEL)	100%	
17	12-INCH BLIND FLANGE	100%	
18	8-INCH BLIND FLANGE	100%	
19	12-INCH X 8-INCH FLG REDUCER	100%	
20	8-INCH X 6-INCH FLG X MJ TEE	100%	
21	8-INCH 90-DEGREE ELBOW	100%	
22	8-INCH 45-DEGREE ELBOW	100%	
23	8-INCH 22.5-DEGREE ELBOW	100%	
24	6-INCH 45-DEGREE ELBOW	100%	
25	8-INCH WELDED STEEL 45-DEGREE ELBOW	100%	
26	8-INCH FLEX COUPLING (STEEL X PVC)	100%	
27	THRUST BLOCK SMWC STD. W-17	100%	
28	REINFORCED CONCRETE METER VAULT / LID	100%	
29	DRY BARREL FIRE HYDRANT ASSEMBLY (ASSY) SMWC	100%	
30	DRY BARREL 4-INCH BLOW-OFF ASSY SMWC STD.	100%	
31	1-INCH AIR-VACUUM VALVE ASSY SMWC STD. W-8A	100%	
32	PIPE BARRICADE SMWC STD. W-12	100%	
33	1-1/4-INCH SERVICE LINE/ RE-CONNECT TO METER	100%	
34	1-1/4-INCH LANDSCAPE SERVICE LINE AND METER BOX	100%	
35	BRIDGE CONNECTION - PIPE SUPPORT	100%	
36	TRENCH REPAIR PAVEMENT (DETAIL SHEET 4)	100%	
37	REMOVE EXISTING FIRE HYDRANT (SALVAGE TO SMWC)	100%	
38	ABANDON EXISTING WATER MAIN	100%	

Bid Item	Description	Percent Eligibility
39	SLURRY PROTECTION AT WATER CROSSING	100%
40	GRADE AREA TO RECEIVE VAULT, HYDROSEED	100%
41	6-INCH ASPHALT CONCRETE DIKE COUNTY STD. 117A	100%
42	RELOCATE EXISTING SIGN	100%
43	WATER METER (ZENNER 8 X 2 COMBO)	100%
44	FITTING AND PIPE JOINT RESTRAINTS	100%
45	6-INCH PVC C900 DR14 CL 305 WATER MAIN	100%
46	6-INCH GATE VALVE SMWC STD. W-9 & W-11	100%

Eligibility Determination Conditions of Approval are as follows:

Bid items as shown in the schedule of values provided by the Recipient.

Eligibility Determination Conditions of Approval

- 1) Necessary insurance directly related to the construction contract and extending throughout the period of the construction contract will be eligible for DWSRF financing. This includes builder risk insurance, public liability insurance, fire, and Project specific insurance.
- 2) Earthquake insurance and "Act of God" insurance are ineligible for funding.
- 3) Asphalt pavement, corresponding improvements, and excavation and refill materials due to trenching are limited to replacement of the trench width plus one foot on each side of the trench disturbed due to the construction work of the subject contract only. Full lane width paving or slurry seal is eligible only if required by ordinance or code.
- 4) The cost of local permits and licenses other than those issued by the Recipient are eligible for DWSRF financing.
- 5) The approved change order contingency may not be increased above the approved contingency shown in Table 2. Any unclaimed construction or allowance costs may also be used towards approved construction change orders. The change order approval may not: (1) increase the maximum amount of the financing agreement based on Table 2: Approved Construction Budget, (2) increase the term of the financing agreement, or (3) result in a substantial change in the Project scope.

Review of the P&S by the Division is conducted to determine eligibility and administrative compliance with the Policy. Issuance of the FBA does not relieve the Recipient and the design engineer of their legal liability for the adequacy of the design.

B.5 LINE ITEM ADJUSTMENTS.

Upon written request by the Recipient, the Division may adjust the line items of the budget at the time of Division's Final Budget Approval(s). Upon written request by the Recipient, the Division may also adjust the line items of the budget at the time of Recipient's submittal of its final claim. Any line item adjustments to the budget that are due to a change in scope of work will require an Agreement amendment. The sum of adjusted line items in the budget must not exceed the Project Funding Amount. The Division may also propose budget adjustments.

Under no circumstances may the sum of line items in the budget approved through the Final Budget Approval process exceed the Project Funding Amount. Any increase in the Project Funding Amount will require an Agreement amendment.

B.6 REIMBURSEMENT PROCEDURE.

Except as may be otherwise provided in this Agreement, reimbursements will be made as follows:

1. Upon execution and delivery of this Agreement by both parties, the Recipient may request immediate reimbursement of any eligible incurred planning and design allowance costs through submission to the State Water Board of the Reimbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed. To be eligible for reimbursement, Project Costs, including planning and design allowance costs, must have been incurred in compliance with all applicable requirements, including the cross-cutting requirements listed in Exhibits C and D.
2. The Recipient must submit a Reimbursement Request for costs incurred prior to the date this Agreement is executed by the State Water Board no later than ninety (90) days after this Agreement is executed by the State Water Board. Late Reimbursement Requests may not be honored.
3. Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Reimbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of progress reports due under this Agreement.
4. The Recipient must not request reimbursement 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 Reimbursement Request. Supporting documentation (e.g., receipts) must be submitted with each Reimbursement Request. The amount requested for Recipient's administration costs must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Reimbursement of Project Funds will be made only after receipt of a complete, adequately supported, properly documented, and accurately addressed Reimbursement Request. Upon request by the Division, supporting documents for professional and administrative services must include the employees' names, classifications, labor rates, hours worked, and descriptions of the tasks performed. Reimbursement Requests submitted without supporting documents may be wholly or partially withheld at the discretion of the Division.
5. The Recipient must spend Project Funds within 30 days of receipt. If the Recipient earns interest earned on Project Funds, it must report that interest immediately to the State Water Board. The State Water Board may deduct earned interest from future reimbursements.
6. The Recipient must not request a reimbursement unless that Project Cost is allowable, reasonable, and allocable.
7. Notwithstanding any other provision of this Agreement, no reimbursement 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.

Notwithstanding any other provision of this Agreement, the Recipient agrees that the State Water Board may retain an amount equal to ten percent (10%) of the Project Funding Amount until Project Completion. Any retained amounts due to the Recipient will be promptly disbursed to the Recipient, without interest, upon Project Completion.

Except as follows, construction costs and disbursements for Phase 2 are not available until after the Division has approved the Phase 2 final budget form submitted by the Recipient. The Deputy Director of the Division may authorize the disbursement of up to ten percent (10%) of Project Funds for the reimbursement of eligible construction costs and pre-purchased materials prior to Division approval of the final budget form submitted by the Recipient. All other construction costs for Phase 2 are not eligible for reimbursement until after the Division has approved the Phase 2 final budget form submitted by the Recipient. Construction costs incurred prior to the Eligible Construction Start Date are not eligible for reimbursement.

B.7 REVERTING FUNDS AND DISENCUMBRANCE.

In the event the Recipient does not submit Reimbursement Requests for all funds encumbered under this Agreement timely, any remaining funds revert to the State. The State Water Board may notify the Recipient that the project file is closed, and any remaining balance will be disencumbered and unavailable for further use under the Agreement.

EXHIBIT C – GENERAL TERMS AND CONDITIONS 2019-NOV

GENERAL TERMS AND CONDITIONS 2019-NOV is posted at
https://www.waterboards.ca.gov/water_issues/programs/grants_loans/general_terms.html and replicated below:

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

- “Agreement” means this agreement, including all exhibits and attachments hereto.
- “Cover Page” means the front page of this Agreement.
- “Days” means calendar days unless otherwise expressly indicated.
- “Deputy Director” means the Deputy Director of the Division.
- “Division” means the Division of Financial Assistance of the State Water Board or any other division or unit of the State Water Board authorized to administer this Agreement.
- “Event of Default” means the occurrence of any of the following events:
 - a) A representation or warranty made by or on behalf of the Recipient in this Agreement or in any document furnished by or on behalf of the Recipient to the State Water Board pursuant to this Agreement shall prove to have been inaccurate, misleading or incomplete in any material respect;
 - b) Failure by the Recipient to observe and perform any covenant, condition, or provision in this Agreement, which failure shall continue for a period of time, to be determined by the Division;
 - c) Initiation of proceedings seeking arrangement, reorganization, or any other relief under any applicable bankruptcy, insolvency, or other similar law; the appointment of or taking possession of the Recipient’s property by a receiver, liquidator, assignee, trustee, custodian, conservator, or similar official; the Recipient’s entering into a general assignment for the benefit of creditors; the initiation of resolutions or proceedings to terminate the Recipient’s existence, or any action in furtherance of any of the foregoing;
 - d) A determination pursuant to Gov. Code section 11137 that the Recipient has violated any provision in Article 9.5 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code; or
 - e) Loss of the Recipient’s rights, licenses, permits, or privileges necessary for the Project, or the occurrence of any material restraint on the Recipient’s enterprise by a government agency or court order.
- “Final Reimbursement Request Date” means the date set forth as such on the Cover Page of this Agreement, after which date, no further reimbursements or disbursements may be requested.
- “Fiscal Year” means the period of twelve (12) months terminating on June 30 of any year.
- “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, or the Uniform System of Accounts, as adopted by the California Public Utilities Commission for water utilities.

- “Material Obligation” means an obligation of the Recipient that is material to this transaction.
- “Party Contact” means, for the Recipient, the Authorized Representative of the Recipient or any designee of the Authorized Representative, and, for the State Water Board, the Division staff set forth in Section 2 of this Agreement.
- “Project” means the Project funded by this Agreement as described in Exhibits A and B and in the documents incorporated by reference herein.
- “Project Completion” means, as determined by the Division, that the Project is complete to the reasonable satisfaction of the Division.
- “Project Costs” means the incurred costs of the Recipient which are eligible for funding under this Agreement, pursuant to applicable statutes, policy, regulations, or guidelines.
- “Project Funding Amount” means the maximum amount payable under this Agreement, as set forth on the Cover Page.
- “Project Funds” means all moneys disbursed to the Recipient by the State Water Board for eligible Project Costs pursuant to this Agreement.
- “Project Manager” means the person designated by the State Water Board to manage performance of this Agreement. The Project Manager is set forth on the Cover Page.
- “Records Retention End Date” means the last date that the Recipient is obligated to maintain records related to this Agreement and is set forth on the Cover Page of this Agreement.
- “Regional Water Quality Control Board” or “Regional Water Board” means the appropriate Regional Water Quality Control Board.
- “Reimbursement Period” means the period during which Project Funds may be disbursed.
- “Reimbursement Request” means the Recipient’s request for Project Funds from the State Water Board as set forth in Exhibit B.
- “State” means State of California.
- “State Water Board” means the State Water Resources Control Board.
- “Work Completion” means the Recipient’s submittal of all work set forth under Exhibit A for review and approval by the Division.
- “Work Completion Date” means the date set forth on the Cover Page of this Agreement and is the last date on which Project Costs may be incurred under this Agreement.
- “Year” means calendar year unless otherwise expressly indicated.

1. **ACCESS, INSPECTION, AND PUBLIC RECORDS.** The Recipient must ensure that the State Water Board, the State Auditor, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times through the Records Retention End Date or useful life of the Project, whichever is longer. The Recipient acknowledges that, except for a subset of information regarding archaeological records and personally identifiable information, the Project records and locations may be public records, including but not limited to all of the submissions accompanying the application, all of the documents incorporated into this Agreement by reference, and all reports, Reimbursement Requests, and supporting documentation submitted hereunder.
2. **ACCOUNTING AND AUDITING STANDARDS; FINANCIAL MANAGEMENT SYSTEMS.** The Recipient must maintain GAAP-compliant project accounts, including GAAP requirements relating to the reporting of infrastructure assets. Without limitation of the requirement to maintain Project accounts in accordance with GAAP, the Recipient must:
 - (a) Establish an official file for the Project which adequately documents all significant actions relative to the Project;
 - (b) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all Project Funds received under this Agreement;
 - (c) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to Project Funds disbursed under this Agreement;
 - (d) Establish an accounting system which will accurately depict final total costs of the Project if authorized under this Agreement;
 - (e) 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
 - (f) If the Recipient uses its own employees, equipment, or resources for any phase of the Project, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee.
3. **AMENDMENT.** No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by both the Recipient and the Deputy Director or designee and approved as required.
4. **ASSIGNABILITY.** This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State Water Board. Amendment of the Agreement may be required.
5. **AUDIT.** 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 must be performed by a certified public accountant independent of the Recipient and at the cost of the Recipient. The audit must be in the form required by the Division. The Recipient must return, or ensure the return of, any audit disallowances within 30 days.
6. **BONDING.** Where construction contractors are used, the Recipient must not authorize construction to begin until each contractor has furnished a performance bond in favor of the Recipient in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00.

7. **COMPETITIVE BIDDING.** Recipient must adhere to any applicable State law or local ordinance for competitive bidding and applicable labor laws. If Recipient is a private entity, any construction contracts related in any way to the Project must be let by competitive bid procedures which assure award of such contracts to the lowest responsive and responsible bidders. Recipient must 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.
8. **COMPLIANCE WITH APPLICABLE LAWS, RULES, AND REQUIREMENTS.** The Recipient must, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and State laws, rules, guidelines, regulations, and requirements and with provisions of the adopted environmental mitigation plan, if any, for the useful life of the Project.
9. **COMPUTER SOFTWARE.** The Recipient certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
10. **CONFLICT OF INTEREST.** The Recipient certifies that it, its owners, officers, directors, agents, representatives, and employees are in compliance with applicable State and federal conflict of interest laws and will remain in compliance for the useful life of the Project. 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. Public entities are required to have adopted conflict of interest codes and may be required to provide documentation of those codes to the Division.
11. **DATA MANAGEMENT.** The Recipient will undertake appropriate data management activities so that Project data can be incorporated into statewide data systems.
12. **DEBARRED, DISQUALIFIED, OR EXCLUDED CONTRACTORS.** The Recipient must not contract or allow subcontracting with excluded parties. The Recipient must not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized. For any work related to this Agreement, the Recipient must not contract with any individual or organization on the State Water Board's List of Disqualified Businesses and Persons that is identified as debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which funding under this Agreement is authorized. The State Water Board's List of Disqualified Businesses and Persons is located at http://www.waterboards.ca.gov/water_issues/programs/enforcement/fwa/dbp.shtml
13. **DRUG-FREE WORKPLACE.** The Recipient certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act (Gov. Code. §§ 8350-8357). The Recipient shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Recipient's workplace and specifying the actions to be taken against employees for violations of the prohibition. The Recipient shall establish a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the Recipient's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs, and penalties that may be imposed upon employees for drug abuse violations. The Recipient shall provide that every employee who works on the Project receives a copy of the Recipient's drug-free workplace policy statement and agrees to abide by the terms of the statement as a condition of employment on the Project.

14. ENVIRONMENTAL CLEARANCE. No work that is subject to California Environmental Quality Act (CEQA) or the National Environmental Policy Act (NEPA) may proceed under this Agreement until the State Water Board has provided approval to proceed. Upon receipt and review of the Recipient's environmental documents, the State Water Board shall make the appropriate environmental findings before determining whether to approve construction or implementation funding for the Project under this Agreement. Providing approval for such construction or implementation funding is fully discretionary. The State Water Board may require changes in the scope of work or additional mitigation as a condition to providing construction or implementation funding under this Agreement. Recipient shall not perform any work subject to CEQA and/or NEPA before the State Water Board completes its environmental review and specifies any changes in scope or additional mitigation that may be required. Proceeding with work subject to CEQA and/or NEPA without approval by the State Water Board shall constitute a breach of a material provision of this Agreement. If this Project includes modification of a river or stream channel, the Recipient must fully mitigate environmental impacts resulting from the modification. The Recipient must provide documentation that the environmental impacts resulting from such modification will be fully mitigated considering all of the impacts of the modification and any mitigation, environmental enhancement, and environmental benefit resulting from the Project, and whether, on balance, any environmental enhancement or benefit equals or exceeds any negative environmental impacts of the Project.
15. FINAL REIMBURSEMENT REQUEST. The Recipient agrees to ensure that its final Reimbursement Request is received by the Division no later than the Final Reimbursement Request Date, unless prior approval has been granted by the Division. If the final Reimbursement Request is not received timely, the undisbursed balance of this Agreement may be deobligated.
16. FRAUD AND MISUSE OF PUBLIC FUNDS. All requests for disbursement must be accurate and signed by the Recipient or its Authorized Representative under penalty of perjury. All costs submitted pursuant to this Agreement must only be for the work or tasks set forth in this Agreement. The Recipient must not submit any invoice containing costs that are ineligible or have been reimbursed from other funding sources unless required and specifically noted as such (i.e., match costs). Any costs for which the Recipient is seeking reimbursement shall not be reimbursed from any other source. Double or multiple billing for time, services, or any other cost is improper and will not be compensated. Any suspected occurrences of fraud, forgery, embezzlement, theft, or any other misuse of public funds may result in suspension of disbursements and, notwithstanding any other section in this Agreement, the termination of this Agreement requiring the immediate repayment of all funds disbursed hereunder. Additionally, the Deputy Director of the Division may request an audit and refer the matter to the Attorney General's Office or the appropriate district attorney's office for criminal prosecution or the imposition of civil liability.
17. FUNDING CONTINGENCY. The State Water Board's disbursement of funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement. The State Water Board's obligation to disburse 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 funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. If this Agreement's funding for any fiscal year expires due to reversion or is reduced, substantially delayed, or deleted by the Budget Act, by Executive Order, or by order or action of the Department of Finance, the State Water Board has the option to either cancel this Agreement with no liability accruing to the State Water Board, or offer an amendment to the Recipient to reflect the reduced amount. 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 entity. 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.

18. **GOVERNING LAW.** This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
19. **RECIPIENT'S SHARE.** The Recipient agrees that it will provide for the payment of its full share, if any share is required, of Project Costs and that all costs connected with the Project will be timely paid by the Recipient.
20. **INDEMNIFICATION AND STATE REVIEWS.** The parties agree that review or approval of Project plans and specifications by the State Water Board is for administrative purposes only, including conformity with application and eligibility criteria, and expressly not for the purposes of design defect review or construction feasibility, and does not relieve the Recipient of its responsibility to properly plan, design, construct, operate, and maintain the Project. To the extent permitted by law, the Recipient agrees to indemnify, defend, and hold harmless the State Water Board 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 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 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 Project; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Recipient for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement, except those arising from the gross negligence or willful misconduct of the Indemnified Persons. The Recipient must also provide for the defense and indemnification of the Indemnified Persons in any contractual provision extending indemnity to the Recipient in any contract let for the performance of any work under this Agreement, and must cause the Indemnified Persons to be included within the scope of any provision for the indemnification and defense of the Recipient in any contract or subcontract. To the fullest extent permitted by law, the Recipient agrees to pay and discharge any judgment or award entered or made against Indemnified Persons with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section survive the term of this Agreement.
21. **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.
22. **INSPECTION.** Throughout the useful life of the Project, the State Water Board shall have the right to inspect the Project area to ascertain compliance with this Agreement.
23. **INTEGRATION.** This Agreement constitutes the complete and final agreement between the parties. No oral or written understanding or agreement not incorporated in this Agreement shall be binding on either party.
24. **LIENS.** The Recipient must not make any pledge of or place any lien on the Project or Project assets except upon consent of the Division.

25. **NO DISCRIMINATION.** The Recipient must comply with Government Code section 11135 and the implementing regulations (Cal. Code Regs, tit. 2, § 11140 et seq.), including, but not limited to, ensuring that no person is unlawfully denied full and equal access to the benefits of, or unlawfully subjected to discrimination in the operation of, the Project on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation as such terms are defined under California law, for as long as the Recipient retains ownership or possession of the Project. If Project Funds are used to acquire or improve real property, the Recipient must include a covenant of nondiscrimination running with the land in the instrument effecting or recording the transfer of such real property. The Recipient must comply with the federal American with Disabilities Act of 1990 and implementing regulations as required by Government Code section 11135(b). The Recipient's obligations under this section shall survive the term of this Agreement. During the performance of this Agreement, Recipient and its contractors and subcontractors must not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status. The Recipient, its contractors, and subcontractors must ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Recipient, its contractors, and subcontractors must comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subs. (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. The Recipient, its contractors, and subcontractors must give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The Recipient must include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.
26. **NO THIRD-PARTY RIGHTS.** This Agreement creates no rights in and grants no remedies to any third party as a beneficiary of this Agreement.
27. **NO OBLIGATION OF THE STATE.** Any obligation of the State Water Board herein contained shall not be an obligation, debt, or liability of the State and any such obligation shall be payable solely out of the moneys encumbered pursuant to this Agreement.
28. **NON-WAIVER.** Nothing in this Agreement shall affect or impair the Recipient's obligation to undertake work under this Agreement or shall affect or impair the right of the State Water Board to bring suit to enforce such work. No delay or omission of the State Water Board in the exercise of any right arising upon an Event of Default shall impair any such right or be construed to be a waiver of any such Event of Default. The State Water Board may exercise from time to time and as often as shall be deemed expedient by the State Water Board, any remedy or right provided by law or pursuant to this Agreement. Any waiver of rights by the State Water Board with respect to a default or other matter arising under this Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.
29. **OTHER FUNDING SOURCES; INCOME RESTRICTIONS.** If funding for Project Costs is made available to the Recipient from sources other than this Agreement, the Recipient must notify the Division. The Recipient may retain such funding up to an amount which equals the Recipient's contribution to Project costs. To the extent allowed by requirements of other funding sources, excess funding must be remitted to the State Water Board. The Recipient agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Recipient as related to this Agreement must be paid by the Recipient to the State Water Board, to the extent that they are properly allocable to costs for which the Recipient has been reimbursed by the State Water Board under this Agreement.

30. PERMITS AND AUTHORIZATIONS. Recipient must procure all permits, licenses and other authorizations necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. Signed copies of any such permits or licenses must be submitted to the Division before any construction or implementation begins.

Any contractors, outside associates, or consultants required by the Recipient in connection with the services covered by this Agreement shall be limited to such individuals or firms as were specifically identified and agreed to during negotiations for this Agreement, or as are specifically authorized by the State Water Board's Project Manager during the performance of this Agreement. Any substitutions in, or additions to, such contractors, associates, or consultants, shall be subject to the prior written approval of the State Water Board's Project Manager.

31. PREVAILING WAGES. If applicable, the Recipient agrees to be bound by all applicable provisions of State Labor Code regarding prevailing wages. If applicable, the Recipient must monitor all agreements subject to reimbursement from this Agreement to ensure that the applicable prevailing wage provisions of the State Labor Code are being met. Division of Industrial Relations (DIR) requirements may be found at: <http://www.dir.ca.gov/lcp.asp>. For more information, please refer to DIR's Public Works Manual at: <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>.
32. PRIOR COSTS. No costs incurred prior to the Eligible Work Start Date are eligible for reimbursement.
33. PROFESSIONALS. The Recipient agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for. All technical reports required pursuant to this Agreement that involve planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, architectural, or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to Business and Professions Code, sections 5536.1, 6735, 7835, and 7835.1. As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.
34. RECORDS, INSPECTION, AUDITS, AND INTERVIEWS; RECORDS RETENTION. The Recipient must maintain separate books, records and other material relative to the Project and retain such books, records, subcontracts, and other material until at least the Records Retention End Date set forth on the Cover Page of this Agreement. The Recipient must require that such books, records, and other material are subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Department of Finance, the California State Auditor, the Bureau of State Audits, or any authorized representatives of the aforementioned, including federal funding agencies and their auditors, if any. The Recipient must allow and must require its contractors to allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar duty regarding audit, interviews, and records retention in any contract or subcontract related to the performance of this Agreement. The provisions of this section survive the term of this Agreement.
35. RELATED LITIGATION. Under no circumstances may the Recipient use funds from any reimbursement under this Agreement to pay costs associated with any litigation the Recipient pursues against the State Water Board or any Regional Water Board. Regardless of the outcome of any such litigation, and notwithstanding any conflicting language in this Agreement, the Recipient agrees to complete the Project funded by this Agreement or to repay all of the disbursed funds plus interest.

36. **REMEDIES.** The State Water Board may enforce its rights under this Agreement by any judicial proceeding, whether at law or in equity. None of the remedies available to the State Water Board shall be exclusive of any other remedy, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. The State Water Board may exercise any remedy, now or hereafter existing, without exhausting and without regard to any other remedy. Any dispute of the Recipient is limited to the rights and remedies provided to the Recipient under this Agreement and is subject to the procedures provided to the Recipient under this Agreement.
37. **REPORTS - AS NEEDED.** The Recipient must provide expeditiously 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.
38. **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, including, but not limited to, payment disputes with contractors and subcontractors. The State Water Board will not mediate disputes between the Recipient and any other entity concerning responsibility for performance of work.
39. **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. The Recipient may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Agreement, subject to appropriate acknowledgement of credit to the State Water Board for financial support. The Recipient shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so.
40. **STATE WATER BOARD ACTION; COSTS AND ATTORNEY FEES.** 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.
41. **STATUS QUO.** If any action to enforce any right or exercise any remedy shall be brought and either discontinued or determined adversely to the State Water Board, then the State Water Board shall be restored to its former position, rights, and remedies as if no such action had been brought.
42. **TERMINATION, IMMEDIATE REPAYMENT, AND INTEREST:** This Agreement may be terminated by written notice at any time, at the option of the State Water Board, if:
- a. the Recipient has received funds as a result of a material misrepresentation in the funding application or other submitted document; or
 - b. 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 State Water Board.

In the event of such termination, the Recipient agrees, upon demand, to immediately repay to the State Water Board an amount equal to the amount of Project Funds disbursed to the Recipient prior to such termination. 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 of full repayment by the Recipient.

43. **TIMING.** Time is of the essence. The Recipient must expeditiously proceed with and complete the Project. Failure to proceed according to the timelines set forth in this Agreement may require the Recipient to repay to the State Water Board all disbursed Project Funds.
44. **TRAVEL AND PER DIEM.** No work or travel outside the State of California is permitted under this Agreement unless the Division provides prior written authorization. No work or travel outside the United States of America is authorized. Failure to comply with this restriction may constitute an Event of Default and result in termination of this Agreement. Any reimbursement for necessary travel and per diem shall be set pursuant to and at rates not to exceed those set by the California Department of Human Resources at <http://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx>, as of the date costs are incurred by the Recipient.
45. **UNDISBURSED FUNDS.** The Recipient is not entitled to interest earned on undisbursed funds.
46. **UNENFORCEABLE PROVISION; SEVERABILITY.** 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.
47. **UNION ACTIVITIES:** The Recipient hereby acknowledges the applicability of Government Code sections 16645 through 16649 to this Agreement. The Recipient certifies that none of the Project Funds will be used to assist, promote, or deter union organizing. If the Recipient incurs costs or makes expenditures to assist, promote, or deter union organizing, the Recipient will maintain records sufficient to show that no reimbursement from Project Funds has been sought for these costs and the Recipient shall provide those records to the Attorney General upon request.
48. **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.
49. **WAIVER AND RIGHTS OF THE STATE WATER BOARD.** Any waiver of rights by the State Water Board with respect to a default or other matter arising under this Agreement at any time shall not be considered a waiver of rights with respect to any other default or matter.
50. **WATER CONSERVATION AND EFFICIENCY PROGRAMS:** The Recipient acknowledges that it has appropriate water conservation and efficiency programs in place, and that this provision constitutes a condition of this Agreement. A web link with examples of water conservation and efficiency programs is available at:
http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/conservation.shtml.
51. **WATER DIVERSION AND USE:** To the extent applicable, the Recipient has complied with, and shall continue to comply with, the requirements of Water Code, division 2, part 5.1, section 5100 et seq. for filing statements of water diversion and use.
52. **WITHHOLDING OF DISBURSEMENTS AND REIMBURSEMENTS.** Notwithstanding any other provision of this Agreement, the State Water Board may withhold all or any portion of the Project Funds upon the occurrence of any of the following events:
 - a) Failure of the Recipient to maintain reasonable progress on the Project as determined by the Division;
 - b) Commencement of litigation or a judicial or administrative proceeding related to the Project, or Recipient that the State Water Board determines may impair the timely satisfaction of Recipient's obligations under this Agreement;
 - c) Any investigation by State, local, or federal investigators or auditors, or a grand jury, relating to the Recipient's financial management, accounting procedures, or internal fiscal controls;

- d) A material adverse change in the condition of the Recipient, or the Project, that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement, or any other event that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement;
- e) The Recipient's material violation of, or threat to materially violate, any provision of this Agreement;
- f) Suspicion of fraud, forgery, embezzlement, theft, or any other misuse of public funds by the Recipient or its employees, or by its contractors or agents directly or indirectly regarding the Project;
- g) An event requiring notice under this Agreement; or
- h) An Event of Default or an event that the Division determines may become an Event of Default.

EXHIBIT D – SPECIAL CONDITIONS

D.1 DEFINITIONS.

(a) Notwithstanding Exhibit C, the following terms have no meaning for the purposes of this Agreement:

- Work Completion
- Work Completion Date

(b) Each capitalized term used in this Agreement has the following meaning:

- "Allowance" means an amount based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the Project.
- "Authorized Representative" means the duly appointed representative of the Recipient as set forth in the certified original of the Recipient's authorizing resolution that designates the authorized representative by title.
- "Completion of Construction" means the date, as determined by the Division after consultation with the Recipient, that the work of building and erection of the Project is substantially complete, and is established on the Cover Page of this Agreement.
- "District Office" means District Office of the Division of Drinking Water of the State Water Board.
- "Division of Drinking Water" means the Division of Drinking Water of the State Water Board.
- "Phase 1 Eligible Construction Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which construction costs for Phase 1 may be incurred and eligible for reimbursement hereunder.
- "Phase 2 Eligible Construction Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which construction costs for Phase 2 may be incurred and eligible for reimbursement hereunder.
- "Eligible Work Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which any non-construction costs may be incurred and eligible for reimbursement hereunder.
- "Enterprise Fund" means the enterprise fund of the Recipient in which Revenues are deposited.
- "Event of Default" means, in addition to the meanings set forth in Exhibit C, the occurrence of any of the following events:
 - a) A material adverse change in the condition of the Recipient, the Revenues, or the System, which the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement.
 - b) Failure to operate the System or the Project, unless the Division has given its approval for such non-operation.
 - c) The occurrence of a material breach or event of default under any Recipient obligation that results in the acceleration of principal or interest or otherwise requires immediate prepayment, repurchase or redemption, or that the Division determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement.
 - d) Failure to obtain and keep necessary water rights for the Useful Life of the Project.
- "Phase 1 Final Budget Approval (FBA)" means the Division-approved final budget for Phase 1 of the Project, as set forth in Exhibit B.

- “Phase 2 Final Budget Approval (FBA)” means the Division-approved final budget for Phase 2 of the Project, as set forth in Exhibit B.
- “Indirect Costs” means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Project (i.e., costs that are not directly related to the Project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Recipient; non-project-specific accounting and personnel services performed within the Recipient organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; generic overhead or markup; and taxes.
- "Initiation of Construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and erection of the Project.
- "Net Revenues" means, for any Fiscal Year, all Revenues received by the Recipient less the Operations and Maintenance Costs for such Fiscal Year.
- "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 Drinking Water State Revolving Fund,” as amended from time to time, including the Intended Use Plan in effect as of the execution date 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.
- “System” means all drinking water collection, transport, treatment, storage, and delivery facilities, including land and easements thereof, owned by the Recipient, or its successor agency, 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.
- “Useful Life” means the economically useful life of the Project beginning at Project Completion and is set forth in Exhibit A.

D.2 ADDITIONAL REPRESENTATIONS AND WARRANTIES.

The Recipient represents, warrants, and covenants each of the following:

- a) **Public Purpose.** The Recipient represents and warrants that the Project has a clear and definite public purpose and will benefit customers of the System, not the investors.
- b) The Recipient has not made any untrue statement of a material fact in its application for this financial assistance or omitted to state in its application a material fact that makes the statements in its application not misleading.
- c) The Recipient agrees to fulfill all assurances, declarations, representations, and commitments in its application, accompanying documents, and communications filed in support of its request for funding under this Agreement.
- d) 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 of execution of this Agreement by the Recipient, 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 of execution of this Agreement by the Recipient.
- e) There are, as of the date of execution of this Agreement by the Recipient, no pending or, to Recipient's knowledge, threatened actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency that materially affect the financial condition or operations of the Recipient, the Revenues, and/or the Project.
- f) There are no proceedings, actions, or offers by a public entity to acquire by purchase or the power of eminent domain any of the real or personal property related to or necessary for the Project.
- g) The Recipient is duly organized and existing and in good standing under the laws of the State of California. Recipient must at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. Within the preceding ten years, the Recipient has not failed to demonstrate compliance with state or federal audit disallowances.
- h) Any financial statements or other financial documentation of Recipient previously delivered to the State Water Board as of the date(s) set forth in such financial statements or other financial documentation: (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 or other financial documentation, 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 or other financial documentation 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.
- i) The Recipient is current in its continuing disclosure obligations associated with its material debt, if any.
- j) The Recipient has no conflicting or Material Obligations.

- k) The Recipient has sufficient real or personal property rights necessary for the purposes of this Agreement, not subject to third party revocation, which rights extend at least to the Records Retention End Date of this Agreement, except as disclosed to the State Water Board. The Recipient legally possesses property access rights to any real or personal property necessary for the purposes of this Agreement for which the Recipient does not legally possess all real or personal property rights. The Recipient has disclosed to the State Water Board all proceedings, actions, or offers of which the Recipient has knowledge or belief that may in any way affect the Recipient's ability to access or legally possess all of the property necessary for the purpose of this Agreement, including any proceedings, actions, or offers to lease, purchase, or acquire by eminent domain any of the real or personal property related to or necessary for the Project.
- l) The Recipient and its principals, contractors, and subcontractors, to the best of the Recipient's knowledge and belief, are not presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized; nor have they engaged or permitted the performance of services covered by this Agreement from parties that are 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.
- m) The Recipient possesses all water rights necessary for this Project.

D.3 ACKNOWLEDGEMENTS.

The Recipient must include the following acknowledgement in any document, written report, or brochure to be shared with the general public prepared in whole or in part pursuant to this Agreement:

- "Funding for this project has been provided in full or in part under Proposition 68 – the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for all Act of 2018 and the Budget Act of 2021 through an agreement with the State Water Resources Control Board. 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."

D.4 RATES, FEES, AND CHARGES.

The Recipient must, 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 sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs, and must ensure that Net Revenues are in an amount necessary to meet its obligations under 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.

D.5 RESERVED.

D.6 RESERVED.

D.7 PROPERTY RIGHTS OPINION.

D.8 ENVIRONMENTAL, TECHNICAL, AND FINANCIAL SPECIAL CONDITIONS.

Technical:

1. The Recipient shall submit its professional engineering services contract(s) to the Division for approval prior to disbursement of funds for costs incurred under such contract(s).
2. The Recipient must submit a final water system memorandum of understanding/ consolidation agreement in a form satisfactory to the Division and receive written approval from the Project Manager to proceed before Project Funds may be disbursed for construction costs.
3. The Recipient shall not solicit bids, award a contract, or commence construction activities for Phase Two until final plans and specifications for Phase Two are approved by the Division's Project Manager and Division of Drinking Water San Diego District Office.
4. The Recipient must not supply water from the Project facilities to the distribution system prior to receiving approval from the Division of Drinking Water San Diego District Engineer.
5. Upon completion of the Project, the Recipient shall submit a water supply permit amendment request for review to the Division of Drinking Water San Diego District Office.

Environmental (specific to Project No: 3310017-001C):

1. The documents identified below are incorporated by reference and the Recipient shall comply with the conditions and recommendations therein:
 - a. The Mitigation Monitoring and Reporting Program adopted by the City of Calimesa on December 2, 2019 for the Project. The Recipient shall implement all mitigation measures therein.
2. The Recipient shall make no changes in the Project, construction area, or special conditions, without obtaining the appropriate and necessary prior approval from the State Water Board.

REPORTING TO THE STATE WATER BOARD

1. In the Recipient's Progress Reports and the Project Completion Report, submitted pursuant to this Agreement, the Recipient shall include a discussion of the status of its compliance with all environmental measures identified in this Exhibit D, with separate sections clearly labeled with section titles, discussing the status of Recipient's compliance with:
 - a. Mitigation Monitoring and Reporting Program measures adopted for the Project.

D.9 FUNDS RELATED TO CONTAMINATION.

(a) As a condition precedent to this Agreement and prior to any disbursement for construction costs, the Recipient shall (i) notify the Division of any demands made by the Recipient against third parties for monetary damages, reimbursement of costs, or other relief, including litigation, related to drinking water contamination, including but not limited to contamination by 1,2,3-trichloropropane (1,2,3-TCP), perfluoroalkyl and polyfluoroalkyl substances (PFAS), or other contaminants (Contamination-Related Demands); and (ii) unless waived by the Division, notify and provide to the Division copies of any agreements with third parties (e.g., settlement agreements, consent agreements, etc.) or court or administrative orders arising out of litigation or disputes related to contamination of the drinking water associated with the Project (Contamination-Related Agreements or Orders).

(b) After execution of this Agreement, the Recipient shall notify the Division promptly of the new occurrence of any Contamination-Related Demands or Contamination-Related Agreements or

Orders. Upon request, the Recipient shall promptly provide information and copies of documents as requested by the Division.

(c) Unless the Division provides approval to exclude certain funds, the Recipient shall place all funds received as a result of Contamination-Related Demands or Contamination-Related Agreements or Orders (Recovered Funds) into a restricted reserve account, to be used for either Operation and Maintenance costs related to addressing the associated drinking water contamination, or a capital improvement project, other than the Project, that addresses the associated drinking water contamination. Alternatively, upon consent of the Division, the Recovered Funds may be used as match funding for the Project or held in a restricted reserve account to support the financial capacity of the System. The Recipient shall provide documentation satisfactory to the Division showing the total amount of Recovered Funds deposited into a restricted reserve account prior to the start of construction. The Recipient shall provide documentation thereafter of any Recovered Funds that Recipient receives. The Recipient may seek reimbursement under this Agreement for costs previously paid by Recovered Funds, but shall place any reimbursement for such costs into a restricted reserve account in accordance with the requirements stated above.

(d) The amount of this Agreement may be reduced, and disbursements withheld, to offset the amount of any Recovered Funds to avoid double recovery. The Recipient shall ensure that no duplicative reimbursements of costs occur under this Agreement and any past or future judgment, settlement, or order. Noncompliance with these paragraphs (a), (b), (c), or (d) shall be an Event of Default.

D.10 APPOINTMENT OF RECEIVER OR CUSTODIAN.

Upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the State Water Board under this Agreement, the State Water Board may make application for the appointment of a receiver or custodian of the Revenues, pending such proceeding, with such power as the court making such appointment may confer.

D.11 RETURN OF FUNDS.

Notwithstanding any other provision of this Agreement, if the Division determines that an Event of Default has occurred, the Recipient may be required, upon demand, to immediately return to the State Water Board any grant or principal forgiveness amounts received pursuant to this Agreement and pay interest at the highest legal rate on all of the foregoing.

D.12 DAMAGES FOR BREACH OF TAX-EXEMPT STATUS.

In the event that any breach of any of the provisions of this Agreement by the Recipient results in the loss of tax-exempt status for any bonds of the State or any subdivision or agency thereof, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government by reason of any arbitrage profits, the Recipient must immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

D.13 RESERVED.

D.14 OPERATION AND MAINTENANCE.

The Recipient shall sufficiently and properly staff, operate, and maintain the facility and structures constructed or improved as part of the Project throughout the term of this Agreement, consistent with the purposes of this Agreement. The Recipient assumes all operations and maintenance costs of the facilities and structures; the State Water Board shall not be liable for any cost of such maintenance, management or operation.

D.15 INSURANCE.

The Recipient will procure and maintain or cause to be maintained insurance on the System/Project 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/Project) as are usually covered in connection with systems similar to the System/Project. 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/Project 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/Project. The Recipient must begin such reconstruction, repair or replacement as expeditiously as possible, and must pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same must be completed and the System/Project must be free and clear of all claims and liens.

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

D.16 CONTINUOUS USE OF PROJECT; NO LEASE, SALE, TRANSFER OF OWNERSHIP, OR DISPOSAL OF PROJECT.

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

D.17 NOTICE.

Upon the occurrence of any of the following events, the Recipient must notify the Division's Deputy Director and Party Contacts by phone and email within the time specified below:

- (a) Within 24 hours, the Recipient must notify (1) the Project Manager by phone and by email, (2) the Division's Senior Cultural Resources Officer, Lisa.Machado@waterboards.ca.gov or (916) 323-0626), and (3) the Division by phone at (916) 327-9978 and by email to DrinkingWaterSRF@waterboards.ca.gov, of any discovery of any potential tribal cultural resource, archaeological or historical resource, or human remains in the Project area. Should a potential tribal cultural resource or archaeological or historical resource be discovered during construction or Project implementation, the Recipient must ensure that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding

preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient must implement appropriate actions as directed by the Division. If there are any applicable provisions of a mitigation, monitoring and reporting program adopted for the Project, the Recipient shall comply with such provisions. In the event of the discovery of human remains during construction of the Project, the Recipient shall cease construction and take other action required by any applicable laws, which may include but are not limited to Health and Safety Code, section 7050.5 and Public Resources Code, section 5097.98.

- (b) The Recipient must notify the Division and Party Contacts promptly of the occurrence of any of the following events:
- i. Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
 - ii. Change of ownership of the Project (no change of ownership may occur without written consent of the Division);
 - iii. Loss, theft, damage, or impairment to Project;
 - iv. Events of Default, except as otherwise set forth in this section;
 - v. A proceeding or action by a public entity to acquire the Project by power of eminent domain.
 - vi. Any litigation pending or threatened with respect to the Project or the Recipient's technical, managerial or financial capacity or the Recipient's continued existence, or any judgment or court order relating to such litigation that has a material effect on the Project or the System;
 - vii. Consideration of dissolution, or disincorporation;
 - viii. Enforcement actions by or brought on behalf of the State Water Board or Regional Water Board.
 - ix. The discovery of a false statement of fact or representation made in this Agreement or in the application to the Division for this funding, or in any certification, report, or request for reimbursement made pursuant to this Agreement, by the Recipient, its employees, agents, or contractors;
 - x. Any substantial change in scope of the Project. The Recipient must undertake no substantial change in the scope of the Project until prompt written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;
 - xi. 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;
 - xii. 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;
 - xiii. The Recipient must promptly notify the Division and Party Contacts of the 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 implementation 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;

- xiv. Any Project monitoring, demonstration, or other implementation activities required in this Agreement;
- xv. Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division;
- xvi. Any event requiring notice to the Division pursuant to any other provision of this Agreement;
- xvii. The award of the prime construction contract for the Project; and the initiation of construction of the Project; and
- xviii. Completion of Construction, and Project Completion.

D.18 FRAUD, WASTE, AND ABUSE.

The Recipient shall prevent fraud, waste, and the abuse of Project Funds, and shall cooperate in any investigation of such activities that are suspected in connection with this Agreement. The Recipient understands that discovery of any evidence of misrepresentation or fraud related to Reimbursement Requests, invoices, proof of payment of invoices, or other supporting information, including but not limited to double or multiple billing for time, services, or any other eligible cost, may result in an administrative action by the State Water Board and/or referral to the Attorney General's Office or the applicable District Attorney's Office for appropriate action. The Recipient further understands that any suspected occurrences of false claims, misrepresentation, fraud, forgery, theft or any other misuse of Project Funds may result in withholding of reimbursements and/or the termination of this Agreement requiring the immediate repayment of all funds disbursed hereunder. A person who knowingly makes or causes to be made any false statement, material misrepresentation, or false certification in any submittal may be subject to a civil penalty, criminal fine, or imprisonment. (Wat. Code, § 13490 et seq.)

D.19 DISPUTES.

The Recipient must continue with the responsibilities under this Agreement during any dispute. The Recipient may, in writing, 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. This provision 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. This section relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.

D.20 EXECUTIVE ORDER N-6-22 — RUSSIAN SANCTIONS.

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State Water Board determine Recipient is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement. The State Water Board shall provide Recipient advance written notice of such termination, allowing Recipient at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State Water Board.

The Recipient represents that the Recipient is not a target of economic sanctions imposed in response to Russia’s actions in Ukraine imposed by the United States government or the State of California. The Recipient is required to comply with the economic sanctions imposed in response to Russia’s actions in Ukraine, including with respect to, but not limited to, the federal executive orders identified in California Executive Order N-6-22, located at <https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf> and the sanctions identified on the United States Department of the Treasury website (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>). The Recipient is required to comply with all applicable reporting requirements regarding compliance with the economic sanctions, including, but not limited to, those reporting requirements set forth in California Executive Order N-6-22 for all Recipients with one or more agreements with the State of California with an aggregated value of Five Million Dollars (\$5,000,000) or more. Notwithstanding any other provision in this Agreement, failure to comply with the economic sanctions and all applicable reporting requirements may result in termination of this Agreement.

For Recipients with an aggregated agreement value of Five Million Dollars (\$5,000,000) or more with the State of California, reporting requirements include, but are not limited to, information related to steps taken in response to Russia’s actions in Ukraine, including but not limited to:

1. Desisting from making any new investments or engaging in financial transactions with Russian institutions or companies that are headquartered or have their principal place of business in Russia;
2. Not transferring technology to Russia or companies that are headquartered or have their principal place of business in Russia; and
3. Direct support to the government and people of Ukraine.

D.21 STATE CROSS-CUTTERS.

Recipient represents that, as applicable, it complies and covenants to maintain compliance with the following with respect to all Project Costs for the term of this Agreement:

- The California Environmental Quality Act (CEQA), as set forth in Public Resources Code 21000 et seq. and in the CEQA Guidelines at Title 14, Division 6, Chapter 3, Section 15000 et seq.
- Water Conservation requirements, including regulations in Division 3 of Title 23 of the California Code of Regulations.

- Monthly Water Diversion Reporting requirements, including requirements set forth in Water Code section 5103.
- Public Works Contractor Registration with Department of Industrial Relations requirements, including requirements set forth in Sections 1725.5 and 1771.1 of the Labor Code.
- Volumetric Pricing & Water Meters requirements, including the requirements of Water Code sections 526 and 527.
- Urban Water Management Plan requirements, including the Urban Water Management Planning Act (Water Code, § 10610 et seq.).
- Urban Water Demand Management requirements, including the requirements of Section 10608.56 of the Water Code.
- Delta Plan Consistency Findings requirements, including the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.
- Agricultural Water Management Plan Consistency requirements, including the requirements of Water Code section 10852.
- Charter City Project Labor Requirements, including the requirements of Labor Code section 1782 and Public Contract Code section 2503.
- The Recipient agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with directives or orders issued pursuant to Division 7 of the Water Code.
- Regulations in Division 4 of Title 22 of the California Code of Regulations, including but not limited to California Waterworks Standards in Chapter 16, and Lead and Copper regulations in Chapter 17.5.

[DATE]

[FORM OF OPINION OF GENERAL COUNSEL – insert your letterhead]

State Water Resources Control Board
Division of Financial Assistance
Attn:
1001 I Street
Sacramento, CA 95814

Re: Recipient Entity (“Recipient”) – Name of Project –Project No. [xxxxxxxxxxxxx]
 (“Project”) – Agreement No. [xxxxxxxxxxxxxxxxxxxxx] (“Agreement”)

Ladies and Gentlemen:

I am/This firm acts as General Counsel to the Recipient in connection with the Project. This opinion is delivered to the State Water Resources Control Board (“State Water Board”) at the request of the Recipient. In connection therewith, I have examined the laws pertaining to the Recipient, originals of the Agreement between the Recipient and the State Water Board, the Recipient’s authorized representative resolution [number] adopted on [DATE], the Recipient’s rate-setting resolution [number] adopted on [DATE], (collectively, “the Resolutions”), and such other documents, legal opinions, instruments and records, and have made such investigation of law, as I have considered necessary or appropriate for the purpose of this opinion.

Based on the foregoing, it is my opinion that:

- a. The Recipient, a general law city/charter city/county/special district of the State of California duly organized, validly existing under the laws of the State of California pursuant to [INSERT SPECIFIC CODE SECTIONS], has the requisite legal right, power, and authority to execute and deliver the Agreement and carry out and consummate all transactions contemplated therein.
- b. The Resolutions have been duly adopted at meetings of the Recipient which were called and held pursuant to law with all public notice required by law and at which a quorum was present and acting when the Resolutions were adopted. The Resolutions are in full force and effect and have not been amended, modified, supplemented, or rescinded, nor has the rate-setting resolution been challenged or the rates become subject of a referendum or initiative or other similar process.

- c. To the best of my knowledge and based upon a reasonable investigation, all proceedings required by law or under the ordinances or bylaws of the Recipient to be taken by the Recipient in connection with the authorization of the Agreement and the transactions contemplated by and related thereto, and all such approvals, authorizations, consents or other orders of or filings or registrations with such public boards or bodies, if any, as may be legally required to be obtained by the Recipient prior to the date hereof with respect to all or any of such matters have been taken or obtained and are in full force and effect, except that no opinion is expressed as to any approvals, obligations or proceedings which may be required under any federal securities laws or state blue sky or securities laws.
- d. To the best of my knowledge and based upon a reasonable investigation, the execution and delivery of the Agreement and the consummation of the transactions therein will not conflict with or constitute a breach of or default (with due notice or the passage of time or both) under (i) the statutes creating the Recipient or any amendments thereto, (ii) the ordinances or by laws of the Recipient, (iii) any bond, debenture, note or other evidence of indebtedness, or any material contract, agreement or lease to which the Recipient is a party or by which it or its properties are otherwise subject or bound or (iv) any applicable law or administrative regulation or any applicable court or administrative decree or order. All material contracts, agreements, or leases are listed in Exhibit D of the Agreement.
- e. [paragraph required for construction projects; delete if solely planning and no access to property will occur during planning]: To the best of my knowledge and based upon a reasonable investigation, the Recipient has sufficient property rights in the Project property for the purposes contemplated in the Agreement and has complied with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) with respect to any property acquired for the purposes of the Project. These property rights extend for at least 50 years from today's date, as follows: [in perpetuity][date certain].
- f. To the best of my knowledge and based upon a reasonable investigation, there is no action, suit, proceeding, inquiry or investigation before any court, or by any federal, state, municipal or other governmental authority pending or threatened against or affecting the Project or the system of which the Project is a part (the System), or the assets, properties, or operations of the Recipient relating to the Project or System, which, if determined adversely to the Recipient or its interests would result in any material change in the assets or financial condition of the Recipient, the Project, or the

System; and the Recipient is not in default with respect to any order or decree of any court or any order, regulation, or demand of any federal, state, municipal, or other governmental agency which default might have consequences that would materially and adversely affect the financial condition of the Recipient, the Project, or the System.

- g. No facts have come to my attention which lead me to believe that the Recipient's authorized representative has made any untrue statement of a material fact or omitted or omits to state a material fact or has made misleading statements in the Agreement.
- h. The Agreement has been duly authorized, executed, and delivered, and assuming due authorization, execution and delivery of the Agreement by the State Water Board, constitutes legal, valid, and binding obligation of the Recipient enforceable against the Recipient in accordance with its terms, subject to the laws relating to bankruptcy, insolvency, reorganization, or creditors' rights generally and to the application of equitable principles, if equitable remedies are sought.

Sincerely,

General Counsel
[Recipient Name]

California Environmental Quality Act (CEQA) Determination

South Mesa Mutual Water Company (Applicant)
County Line Pipeline Replacement Project (Project)
Project Number: 3310017-001C

As the Deputy Director for the State Water Resources Control Board (State Water Board), Division of Financial Assistance, I have been delegated the authority to approve and execute financing agreements for projects that are routine and non-controversial. The execution of a financing agreement is an action that is subject to CEQA. The authority to make this CEQA determination necessarily accompanies the delegation to approve and execute the financing agreement for this Project.

1. The Applicant is a private mutual water company. The City of Calimesa (City) is the CEQA Lead Agency and has prepared an Initial Study/Mitigated Negative Declaration (MND) titled County Line Transportation Corridor for the Project, which was circulated through the Governor's Office of Planning and Research (OPR), State Clearinghouse (No. 2019109030) for review and comments. The City adopted the MND and a Mitigation Monitoring and Reporting Program (MMRP) and approved the Project on December 2, 2019. The City filed a Notice of Determination (NOD) with the Riverside County Clerk on December 3, 2019 and the OPR on December 3, 2019.

The City prepared an Addendum to the MND (Addendum) for the Project which was circulated through the OPR for review and comments. The City adopted the Addendum on August 22, 2022, and filed an NOD with the Riverside County Clerk on August 25, 2022 and the OPR on August 25, 2022.

2. The State Water Board is a Responsible Agency under CEQA. A Responsible Agency complies with CEQA by considering the MND, Addendum and MMRP prepared by the Lead Agency and by reaching its own conclusions on whether and how to approve the Project involved. The State Water Board has independently considered the MND, Addendum and MMRP, and pursuant to my delegated authority, I make the following determinations regarding the Project:
 - The MND, Addendum, and MMRP include mitigation measure MM HYDRO 1, to reduce the potential water quality impacts of the Project to less than significant levels as described in the final MND, Addendum and MMRP. Because of the mitigation measures identified herein and in the MND, Addendum and MMRP, the Project will not result in any significant adverse water quality impacts.
 - The MND, Addendum and MMRP also include mitigation measures for cultural resources, geology and soils, noise, transportation, and tribal cultural resources, that mitigate potential environmental impacts to less than significant levels for these impact categories. Changes or alterations to the Project based on these mitigation measures are within the responsibility and

Applicant: South Mesa Mutual Water Company
Project No: 3310017-001C

jurisdiction of other public agencies and are not within the jurisdiction of the State Water Board. Such changes either have been adopted by other relevant agencies or can and should be adopted by such other agencies.

A final copy of the MND, Addendum, MMRP, comments and responses, and records of the financing approval for the Project are available to the general public at the State Water Board, Division of Financial Assistance at 1001 I Street, 16th Floor, Sacramento, CA 95814.

 Digitally signed by Joe Karkoski
Date: 2023.10.18 10:14:15
-07'00'

Joe Karkoski, Deputy Director
Division of Financial Assistance

San Gorgonio Pass Water Agency

DATE: March 14, 2022
TO: Board of Directors
FROM: Lance Eckhart, General Manager
BY: Lance Eckhart, General Manager

SUBJECT: DRAFT TERM SHEET POTENTIAL PROPERTY AND FACILITY EXCHANGE PROJECT BETWEEN SAN GORGONIO PASS WATER AGENCY AND SOUTH MESA WATER COMPANY REAL ESTATE PURCHASE

RECOMMENDATION

The Board consider and discuss the draft Term Sheet regarding potential property and facility exchange project between San Gorgonio Pass Water Agency and South Mesa Water Company.

BACKGROUND

The Yucaipa Groundwater Sustainability Plan (GSP) has identified the need for recharge in the Calimesa Groundwater Basin (Basin). The Agency has no recharge capability within the Basin. A piece of property within the City of Calimesa has been identified as a potentially suitable location for Basin water-spreading activities along with partnering opportunities with South Mesa Water Company (SMWC) for multi-benefit uses and material infrastructure cost savings.

On March 8th, 2022, the Agency purchased a 7-acre parcel near the center of Calimesa to be used as a future recharge facility (APN No. 411-150-027). This area had been previously investigated by SMWC and found to be suitable for area recharge. The project area was also modeled as part of the GSP, and a the proposed recharge project area demonstrated regional benefit in managing the local basin.

SMWC is upgrading existing water mains along County Line Road. These mains were to be abandoned in-place, and new mains are planned to be installed. These abandoned water mains cross the East Branch Extension of the State Water Project, pass by the newly acquired 7-acre parcel, and can be repurposed to transport imported water to the prospective recharge facility. SMWC has been looking for a location to place a new reservoir facility in the area of the Agency's newly acquired parcel.

ANALYSIS

In order to more formalize a property/facility exchange agreement between the Agency and SMWC, staff worked with their respective counsels to develop a draft Term Sheet (attached) to help with the process. The draft Term Sheet outlines the relationship between the Agency and SMWC and is considered by staff as a foundational milestone in developing a multi-benefit project in the Calimesa area. Portions of the draft Term

Sheet will need refined before it is finalized, specifically the 1) Description of the property and prospective SMWC reservoir portion of the property and; 2) Description of the facilities along with any input from the Agency and SMWC Boards.

FISCAL IMPACT

The future costs of this project will include design and engineering contracts, as well as construction contracts. Once the facility is completed, there will be on-going operations and maintenance expenses.

Final project design and associated construction cost estimates are not presently completed. The project is anticipated to be highly competitive for future grants, which will help offset local costs.

ACTION

The Board consider and discuss the Draft Term Sheet regarding potential property and facility exchange project between San Gorgonio Pass Water Agency and South Mesa Water Company.

ATTACHMENTS

Draft Term Sheet for potential property and facility exchange project between San Gorgonio Pass Water Agency and South Mesa Water Company

San Gorgonio Pass Water Agency
 Gap Funding Program
 Cabazon Water District Tracking
 Report Date: February 14, 2024

Current Balance: 95,745.70 (CWD owes us)

Payments Made to CWD: 1,284,221.36

Payments Received from CWD: 1,188,475.66

Approximate Project Cost: 1,700,000.00

Approximate Remaining Amount: 400,000.00

Payments Made

Date	Request Amount	Paid Date	Check #
9/13/22	75,583.32	9/20/22	120650
11/17/22	27,699.45	11/21/22	120724
2/27/23	279,168.30	3/6/23	120844
4/26/23	796,236.63	5/4/23	120913
8/1/23	105,533.66	8/29/23	121053

Reimbursements Received

Date	Rec'd Amount	Check #
11/7/22	42,465.59	25301
1/10/23	33,117.73	25424
1/10/23	5,600.75	25425
2/7/23	22,098.70	25488
5/8/23	1,304.00	25667
6/23/23	1,523.00	25774
7/18/23	277,864.30	25848
9/11/23	794,713.63	25934
10/10/23	9,787.96	26002