



NOTICE

**THE MEETING SCHEDULED FOR
WEDNESDAY, OCTOBER 11, 2017
AT 3:30 P.M. (CLOSED SESSION) HAS
BEEN CANCELLED.**

**THE REGULAR COUNCIL MEETING
WILL BEGIN AT 4:30 P.M.**



OCTOBER 11, 2017

CITY COUNCIL CHAMBERS

3:30 P.M. Closed Session; 4:30 P.M. Regular Session

201 N. Broadway, Escondido, CA 92025

MAYOR

Sam Abed

DEPUTY MAYOR

John Masson

COUNCIL MEMBERS

Olga Diaz

Ed Gallo

Michael Morasco

CITY MANAGER

Jeffrey Epp

CITY CLERK

Diane Halverson

CITY ATTORNEY

Michael McGuinness

DIRECTOR OF COMMUNITY DEVELOPMENT

Bill Martin

DIRECTOR OF ENGINEERING SERVICES

Julie Procopio

ELECTRONIC MEDIA:

Electronic media which members of the public wish to be used during any public comment period should be submitted to the City Clerk's Office at least 24 hours prior to the Council meeting at which it is to be shown.

The electronic media will be subject to a virus scan and must be compatible with the City's existing system. The media must be labeled with the name of the speaker, the comment period during which the media is to be played and contact information for the person presenting the media.

The time necessary to present any electronic media is considered part of the maximum time limit provided to speakers. City staff will queue the electronic information when the public member is called upon to speak. Materials shown to the Council during the meeting are part of the public record and may be retained by the Clerk.

The City of Escondido is not responsible for the content of any material presented, and the presentation and content of electronic media shall be subject to the same responsibilities regarding decorum and presentation as are applicable to live presentations.



Council Meeting Agenda

**October 11, 2017
3:30 P.M. Meeting**

Escondido City Council

CALL TO ORDER

ROLL CALL: Diaz, Gallo, Masson, Morasco, Abed

ORAL COMMUNICATIONS

In addition to speaking during particular agenda items, the public may address the Council on any item which is not on the agenda provided the item is within the subject matter jurisdiction of the City Council. State law prohibits the Council from discussing or taking action on such items, but the matter may be referred to the City Manager/staff or scheduled on a subsequent agenda. (Please refer to the back page of the agenda for instructions.) Speakers are limited to only one opportunity to address the Council under Oral Communications.

CLOSED SESSION: (COUNCIL/SUCCESSOR AGENCY/RRB)

- I. CONFERENCE WITH LABOR NEGOTIATOR (Government Code §54957.6)**
 - a. **Agency Negotiator:** Sheryl Bennett and Jeffrey Epp
Employee Organization: Escondido Firefighters' Association
 - b. **Agency Negotiator:** Sheryl Bennett and Jeffrey Epp
Employee Organization: Escondido Police Officers' Association
 - c. **Agency Negotiator:** Sheryl Bennett and Jeffrey Epp
Employee Organization: Non-Sworn Police Bargaining Unit
 - d. **Agency Negotiator:** Sheryl Bennett and Jeffrey Epp
Employee Organization: Escondido City Employee Association:
Administrative/Clerical/Engineering Bargaining Unit
 - e. **Agency Negotiator:** Sheryl Bennett and Jeffrey Epp
Employee Organization: Escondido City Employee Association: Supervisory
Bargaining Unit
- II. CONFERENCE WITH LEGAL COUNSEL-- EXISTING LITIGATION (Government Code 54956.9(d)(1))**
 - a. **Case Name:** Quintero v. City of Escondido
Case No: 15-CV-2638-BTM(BLM)

ADJOURNMENT



Council Meeting Agenda

**October 11, 2017
4:30 P.M. Meeting**

Escondido City Council

CALL TO ORDER

MOMENT OF REFLECTION:

City Council agendas allow an opportunity for a moment of silence and reflection at the beginning of the evening meeting. The City does not participate in the selection of speakers for this portion of the agenda, and does not endorse or sanction any remarks made by individuals during this time. If you wish to be recognized during this portion of the agenda, please notify the City Clerk in advance.

FLAG SALUTE

ROLL CALL: Diaz, Gallo, Masson, Morasco, Abed

PROCLAMATIONS: National Fire Prevention Month - October 2017

PRESENTATIONS: Escondido Union School District Bond Presentation

ORAL COMMUNICATIONS

The public may address the Council on any item that is not on the agenda and that is within the subject matter jurisdiction of the legislative body. State law prohibits the Council from discussing or taking action on such items, but the matter may be referred to the City Manager/staff or scheduled on a subsequent agenda. (Please refer to the back page of the agenda for instructions.) NOTE: Depending on the number of requests, comments may be reduced to less than 3 minutes per speaker and limited to a total of 15 minutes. Any remaining speakers will be heard during Oral Communications at the end of the meeting.

CONSENT CALENDAR

Items on the Consent Calendar are not discussed individually and are approved in a single motion. However, Council members always have the option to have an item considered separately, either on their own request or at the request of staff or a member of the public.

1. **AFFIDAVITS OF PUBLICATION, MAILING AND POSTING (COUNCIL/SUCCESSOR AGENCY/RRB)**
2. **APPROVAL OF WARRANT REGISTER (Council/Successor Agency)**
3. **APPROVAL OF MINUTES: A) Regular Meeting of September 20, 2017 B) Regular Meeting of September 27, 2017**

4. **BID AWARD FOR THE PURCHASE OF LIVE RAINBOW TROUT -**

Request the City Council approve accepting the lowest responsive bid from Calaveras Trout Farm to purchase Live Rainbow Trout by unit price for stocking fish at Dixon Lake and Lake Wohlford and authorize the Deputy City Manager/Administrative Services to execute a Purchasing Contract with Calaveras Trout Farm, effective October 12, 2017 through June 30, 2018, with the option to renew the Contract on an annual fiscal year basis not to exceed a total of seven consecutive years. The unit price bid is \$3.89 per pound of Live Rainbow Trout, with an estimated purchase quantity of 58,500 pounds.

Staff Recommendation: **Approval (Finance Department: Sheryl Bennett)**

RESOLUTION NO. 2017-132

CONSENT – RESOLUTIONS AND ORDINANCES (COUNCIL/SUCCESSOR AGENCY/RRB)

The following Resolutions and Ordinances were heard and acted upon by the City Council/Successor Agency/RRB at a previous City Council/Successor Agency/Mobilehome Rent Review meeting. (The title of Ordinances listed on the Consent Calendar are deemed to have been read and further reading waived.)

CURRENT BUSINESS

5. **APPROVAL TO EXECUTE STATE REVOLVING FUND LOAN AGREEMENTS FOR PROJECTS WITHIN THE RECYCLED WATER AND POTABLE REUSE PROGRAM -**
Request the City Council approve authorizing the Director of Utilities to execute two loan agreements with the State Water Resources Control Board, Division of Financial Assistance. These loans will be used to fund construction of two projects within the Recycled Water and Potable Reuse Program: 1) \$8 million for the Recycled Water Easterly Main and Tanks Project, and 2) \$5 million for the Brine Line - Broadway to Hale Avenue Resource Recovery Facility Project.

Staff Recommendation: **Approval (Utilities Department: Christopher W. McKinney)**

RESOLUTION NO. 2017-131

FUTURE AGENDA

6. [FUTURE AGENDA -](#)

The purpose of this item is to identify issues presently known to staff or which members of the City Council wish to place on an upcoming City Council agenda. Council comment on these future agenda items is limited by California Government Code Section 54954.2 to clarifying questions, brief announcements, or requests for factual information in connection with an item when it is discussed.

Staff Recommendation: **None (City Clerk's Office: Diane Halverson)**

COUNCIL MEMBERS' SUBCOMMITTEE REPORTS

CITY MANAGER'S WEEKLY ACTIVITY REPORT

The most current information from the City Manager regarding Economic Development, Capital Improvement Projects, Public Safety and Community Development.

- [WEEKLY ACTIVITY REPORT -](#)

ORAL COMMUNICATIONS

The public may address the Council on any item that is not on the agenda and that is within the subject matter jurisdiction of the legislative body. State law prohibits the Council from discussing or taking action on such items, but the matter may be referred to the City Manager/staff or scheduled on a subsequent agenda. Speakers are limited to only one opportunity to address the Council under Oral Communications.

ADJOURNMENT

UPCOMING MEETING SCHEDULE

Date	Day	Time	Meeting Type	Location
October 18	Wednesday	3:30 & 4:30 PM	Regular Meeting	Council Chambers
October 25	Wednesday	3:30 & 4:30 PM	Regular Meeting	Council Chambers
November 1	Wednesday	3:30 & 4:30 PM	Regular Meeting	Council Chambers
November 8	-	-	No Meeting	-

TO ADDRESS THE COUNCIL

The public may address the City Council on any agenda item. Please complete a Speaker's form and give it to the City Clerk. Submission of Speaker forms prior to the discussion of an item is highly encouraged. Comments are generally limited to 3 minutes.

If you wish to speak concerning an item not on the agenda, you may do so under "Oral Communications." Please complete a Speaker's form as noted above.

Nomination forms for Community Awards are available at the Escondido City Clerk's Office or at <http://www.escondido.org/city-clerks-office.aspx>

Handouts for the City Council should be given to the City Clerk. To address the Council, use the podium in the center of the Chambers, STATE YOUR NAME FOR THE RECORD and speak directly into the microphone.

AGENDA, STAFF REPORTS AND BACK-UP MATERIALS ARE AVAILABLE:

- Online at <http://www.escondido.org/meeting-agendas.aspx>
- In the City Clerk's Office at City Hall
- In the Library (239 S. Kalmia) during regular business hours and
- Placed in the Council Chambers (See: City Clerk/Minutes Clerk) immediately before and during the Council meeting.

AVAILABILITY OF SUPPLEMENTAL MATERIALS AFTER AGENDA POSTING: Any supplemental writings or documents provided to the City Council regarding any item on this agenda will be made available for public inspection in the City Clerk's Office located at 201 N. Broadway during normal business hours, or in the Council Chambers while the meeting is in session.

LIVE BROADCAST

Council meetings are broadcast live on Cox Cable Channel 19 and U-verse Channel 99 – Escondido Gov TV. They can also be viewed the following Sunday and Monday evenings at 6:00 p.m. on those same channels. The Council meetings are also available live via the Internet by accessing the City's website at www.escondido.org, and clicking the "Live Streaming –City Council Meeting now in progress" button on the home page.

Please turn off all cellular phones and pagers while the meeting is in session.

**The City Council is scheduled to meet the first four Wednesdays
of the month at 3:30 in Closed Session and 4:30 in Open Session.
(Verify schedule with City Clerk's Office)**

**Members of the Council also sit as the Successor Agency to the CDC, Escondido Joint Powers
Financing Authority and the Mobilehome Rent Review Board.**

**CITY HALL HOURS OF OPERATION
Monday-Friday 8:00 a.m. to 5:00 p.m.**



If you need special assistance to participate in this meeting, please contact our ADA Coordinator at 839-4643. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility.

Listening devices are available for the hearing impaired – please see the City Clerk.



Agenda Item No.: 1
Date: October 11, 2017

A F F I D A V I T S

O F

I T E M

P O S T I N G



Agenda Item No.: 2
Date: October 11, 2017

APPROVAL

OF

WARRANT REGISTER

CITY OF ESCONDIDO
September 20, 2017
3:30 P.M. Meeting Minutes
Escondido City Council

CALL TO ORDER

The Regular Meeting of the Escondido City Council was called to order at 3:34 p.m. on Wednesday, September 20, 2017 in the City Council Chambers at City Hall with Mayor Abed presiding.

ATTENDANCE:

The following members were present: Councilmember Olga Diaz, Councilmember Ed Gallo, Deputy Mayor John Masson, Councilmember Michael Morasco, and Mayor Sam Abed. Quorum present.

ORAL COMMUNICATIONS

Roy Garrett, Escondido, suggested the City Council delay a decision regarding outsourcing library services to provide time to consider forming a Library District.

CLOSED SESSION: (COUNCIL/SUCCESSOR AGENCY/RRB)

MOTION: Moved by Councilmember Diaz and seconded by Councilmember Morasco to recess to Closed Session. Motion carried unanimously.

I. CONFERENCE WITH LABOR NEGOTIATOR (Government Code §54957.6)

- a. **Agency Negotiator:** Sheryl Bennett and Jeffrey Epp
Employee Organization: Escondido Firefighters' Association
- b. **Agency Negotiator:** Sheryl Bennett and Jeffrey Epp
Employee Organization: Escondido Police Officers' Association
- c. **Agency Negotiator:** Sheryl Bennett and Jeffrey Epp
Employee Organization: Non-Sworn Police Bargaining Unit
- d. **Agency Negotiator:** Sheryl Bennett and Jeffrey Epp
Employee Organization: Escondido City Employee Association:
Administrative/Clerical/Engineering Bargaining Unit
- e. **Agency Negotiator:** Sheryl Bennett and Jeffrey Epp
Employee Organization: Escondido City Employee Association: Supervisory
Bargaining Unit

II. CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code §54956.8)

- a. **Property:** Municipal Parking Lot #1 (APN 229-421-26) and Municipal Parking Lot
#4 (APN 233-081-26)
City Negotiator: Jeffrey Epp, City Manager
Negotiating Parties: Touchstone Communities
Under Negotiation: Price and Terms of Agreement

- b. **Property:** 901 West Washington Avenue, APNs 232-090-72, -54, and -57
 City Negotiator: Jeffrey Epp, City Manager
 Negotiating Parties: Prospective Purchasers
 Under Negotiation: Price and Terms of Agreement
- c. **Property:** 455 North Quince Street, APN 232-091-27 (Wickline Bedding)
 City Negotiator: Jeffrey Epp, City Manager
 Negotiating Parties: Prospective Purchasers
 Under Negotiation: Price and Terms of Agreement
- d. **Property:** 480 North Spruce Street, APN 232-091-28
 City Negotiator: Jeffrey Epp, City Manager
 Negotiating Parties: Prospective Purchasers
 Under Negotiation: Price and Terms of Agreement
- e. **Property:** 525 North Spruce Street, APN 232-091-06
 City Negotiator: Jeffrey Epp, City Manager
 Negotiating Parties: Prospective Purchasers
 Under Negotiation: Price and Terms of Agreement

III. CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION/SIGNIFICANT EXPOSURE (Government Code 54956.9(d)(2))

- a. Threatened litigation related to potential outsourcing contract for Library Services.

ADJOURNMENT

Mayor Abed adjourned the meeting at 4:53 p.m.

MAYOR

CITY CLERK

DEPUTY CITY CLERK

CITY OF ESCONDIDO
September 20, 2017
4:30 P.M. Meeting Minutes

Escondido City Council

CALL TO ORDER

The Regular Meeting of the Escondido City Council was called to order at 4:56 p.m. on Wednesday, September 20, 2017 in the City Council Chambers at City Hall with Mayor Abed presiding.

MOMENT OF REFLECTION

Dick Bridgeman led the Moment of Reflection.

FLAG SALUTE

Deputy Mayor Masson led the flag salute.

ATTENDANCE:

The following members were present: Councilmember Olga Diaz, Councilmember Ed Gallo, Deputy Mayor John Masson, Councilmember Michael Morasco, and Mayor Sam Abed. Quorum present.

Also present were: Jeffrey Epp, City Manager; Michael McGuinness, City Attorney; Bill Martin, Director of Community Development; Julie Procopio, Director of Engineering Services; Diane Halverson, City Clerk; and Jennifer Ekblad, Deputy City Clerk.

PROCLAMATIONS:

Jeff Murdock, Emergency and Disaster Preparedness Manager, accepted the proclamation for National Preparedness Month - September 2017.

Alicia Appel, Senior Environmental Program Specialist, accepted the proclamation for Pollution Prevention Week 2017.

ORAL COMMUNICATIONS

Roy Garrett, Escondido, recommended delaying a decision regarding a contract with Library Systems & Services (LS&S) and suggested holding community workshops to examine the possibility of forming a Library District.

Karen Tatge, President of Escondido City Employees' Association, shared concerns regarding benefits from LS&S compared to benefits from the City of Escondido for employees and requested the City Council reconsider outsourcing library services with LS&S.

Renee Glotzbach, San Marcos, shared concerns regarding alcohol and drug issues and driving under the influence.

Tom Cowan, Escondido, spoke in opposition to outsourcing library services with LS&S.

CONSENT CALENDAR

MOTION: Moved by Councilmember Gallo and seconded by Councilmember Diaz to approve all Consent Calendar items with the exception of item 5. Motion carried unanimously.

1. **AFFIDAVITS OF PUBLICATION, MAILING AND POSTING (COUNCIL/SUCCESSOR AGENCY/RRB)**
2. **APPROVAL OF WARRANT REGISTER (Council/Successor Agency)**
3. **APPROVAL OF MINUTES: A) Regular Meeting of August 16, 2017 B) Regular Meeting of August 23, 2017**

4. **NOTICE OF COMPLETION FOR THE CEMETERY AREA WATER PIPELINE REPLACEMENT PROJECT -**

Request the City Council approve authorizing the Director of Utilities to file a Notice of Completion for the Cemetery Area Water Pipeline Replacement Project. (File No. 0600-10 [A3149])

Staff Recommendation: **Approval (Utilities Department: Christopher W. McKinney)**

RESOLUTION NO. 2017-120

5. **CONSULTING AGREEMENT FOR PLANNING SERVICES FOR THE SAGER RANCH PROJECT (ALSO CALLED DALEY RANCH RESORT) AND RELATED BUDGET ADJUSTMENT -**

Request the City Council approve authorizing the Mayor and City Clerk to enter into an agreement for professional services with Rick Engineering Company in an amount not to exceed \$171,375 to serve as an extension of Planning Division staff and manage the review of the Sager Ranch development proposal and approve a related budget adjustment to increase the Planning Division budget for the same amount. Authorizing these requests does not have a legally binding effect on any possible future discretionary action. (File No. 0600-10 [A-3231])

Staff Recommendation: **Approval (Community Development Department: Bill Martin)**

RESOLUTION NO. 2017-125

Vanessa Valenzuela, Escondido, shared concerns regarding the approval of Consulting Agreement before an application has been filed by the developer

Ashley Mellor, Valley Center, shared concerns regarding the Sager Ranch project and questioned whether the consultant will address Valley Center Planning Group concerns.

MOTION: Moved by Councilmember Morasco and seconded by Deputy Mayor Masson to approve authorizing the Mayor and City Clerk to enter into an agreement for professional services with Rick Engineering Company in an amount not to exceed \$171,375 to serve as an extension of Planning Division staff and manage the review of the Sager Ranch development proposal and approve a related budget adjustment to increase the Planning Division budget for the same amount and adopt Resolution No. 2017-125. Motion carried unanimously.

6. **ALL-WAY STOP CONTROL REQUEST FOR THE INTERSECTION OF RINCON AVENUE AND NORTH ASH STREET -**

Request the City Council approve amending the City's schedule of stop signs to add all-way stop control at the intersection of Rincon Avenue and North Ash Street. (File No. 1050-50)

Staff Recommendation: **Approval (Engineering Services Department: Julie Procopio)**

RESOLUTION NO. 2017-127

7. YEAR 2018 HOLIDAYS -

Request the City Council approve designating the days that City offices will be closed in the year 2018 for holiday observances. (File No. 0740-30)

Staff Recommendation: **Approval (Human Resources Department: Sheryl Bennett)**

RESOLUTION NO. 2017-130

CONSENT – RESOLUTIONS AND ORDINANCES (COUNCIL/SUCCESSOR AGENCY/RRB)

The following Resolutions and Ordinances were heard and acted upon by the City Council/Successor Agency/RRB at a previous City Council/Successor Agency/Mobilehome Rent Review meeting. (The title of Ordinances listed on the Consent Calendar are deemed to have been read and further reading waived.)

CURRENT BUSINESS

8. CALIFORNIA CENTER FOR THE ARTS, ESCONDIDO - UPDATE -

Request the City Council receive a brief presentation and update on the California Center for the Arts, Escondido. (File No. 0137-10)

Staff Recommendation: **None (City Manager's Office: Jay Petrek)**

Jay Petrek, Assistant City Manager, Andy Washburn, Treasurer for the CCAE Board of Trustees, Cynthia Weir, Chair of the CCAE Board of Trustees, and Jerry Van Leeuwen, Executive Director for CCAE, presented a financial report utilizing a PowerPoint presentation.

NO COUNCIL ACTION, INFORMATION ONLY.

9. BID AWARD FOR THE 2017 STREET REHABILITATION AND MAINTENANCE PROJECT -

Request the City Council approve awarding the bid to Eagle Paving Company, Inc., which was determined to be the lowest responsive and responsible bidder; authorizing the Mayor and City Clerk to execute a Public Improvement Agreement in the amount of \$4,396,952.85; and adopting the Street List for Road Maintenance and Rehabilitation Account funds for the 2017 Street Rehabilitation and Maintenance Project. (File No. 0600-10 [A3230])

Staff Recommendation: **Approval (Engineering Services Department: Julie Procopio)**

RESOLUTION NO. 2017-129

Matt Souttere, Associate Engineer, presented the staff report utilizing a PowerPoint presentation.

MOTION: Moved by Deputy Mayor Masson and seconded by Councilmember Morasco to approve awarding the bid to Eagle Paving Company, Inc., which was determined to be the lowest responsive and responsible bidder; authorizing the Mayor and City Clerk to execute a Public Improvement Agreement in the amount of \$4,396,952.85; and adopting the Street List for Road Maintenance and Rehabilitation Account funds for the 2017 Street Rehabilitation and Maintenance Project and adopt Resolution No. 2017-129. Motion carried unanimously.

FUTURE AGENDA

10. FUTURE AGENDA -

The purpose of this item is to identify issues presently known to staff or which members of the City Council wish to place on an upcoming City Council agenda. Council comment on these future agenda items is limited by California Government Code Section 54954.2 to clarifying questions, brief announcements, or requests for factual information in connection with an item when it is discussed.

Staff Recommendation: **None (City Clerk's Office: Diane Halverson)**

COUNCIL MEMBERS' SUBCOMMITTEE REPORTS

Councilmember Gallo shared information from the San Diego County Water Authority regarding the water tax bill; and reported that the Metropolitan Water District will be open to the public for tours.

Deputy Mayor Masson attended the League of California Cities conference; resolutions regarding AB 109 and EMS Services were approved.

Mayor Abed reported LAFCO hired a new executive director, Keene Simonds, recruited by Peckman and McKinney; shared information regarding SANDAG's San Diego Forward Plan, Smart Growth Incentive Program, and the Active Transportation Grant Program.

CITY MANAGER'S WEEKLY ACTIVITY REPORT

The most current information from the City Manager regarding Economic Development, Capital Improvement Projects, Public Safety and Community Development.

- **WEEKLY ACTIVITY REPORT -**

ORAL COMMUNICATIONS

ADJOURNMENT

Mayor Abed adjourned the meeting at 6:56 p.m.

MAYOR

CITY CLERK

DEPUTY CITY CLERK

CITY OF ESCONDIDO
September 27, 2017
3:30 P.M. Meeting Minutes
Escondido City Council

CALL TO ORDER

The Regular Meeting of the Escondido City Council was called to order at 3:34 p.m. on Wednesday, September 27, 2017 in the City Council Chambers at City Hall with Mayor Abed presiding.

ATTENDANCE:

The following members were present: Councilmember Olga Diaz, Councilmember Ed Gallo, Deputy Mayor John Masson, Councilmember Michael Morasco, and Mayor Sam Abed. Quorum present.

ORAL COMMUNICATIONS

Kirk Effinger, Escondido, indicated a need for a full range of housing options for citizens of Escondido.

CLOSED SESSION: (COUNCIL/SUCCESSOR AGENCY/RRB)

MOTION: Moved by Councilmember Diaz and seconded by Councilmember Gallo to recess to Closed Session. Motion carried unanimously.

I. CONFERENCE WITH LABOR NEGOTIATOR (Government Code §54957.6)

- | | | | |
|----|-------------------------------|---|-------------|
| a. | Agency Negotiator: | Sheryl Bennett and Jeffrey Epp | |
| | Employee Organization: | Escondido City Employee Association: | |
| | | Administrative/Clerical/Engineering Bargaining Unit | |
| b. | Agency Negotiator: | Sheryl Bennett and Jeffrey Epp | |
| | Employee Organization: | Escondido City Employee Association: | Supervisory |
| | | Bargaining Unit | |
| c. | Agency Negotiator: | Sheryl Bennett and Jeffrey Epp | |
| | Employee Organization: | Escondido Police Officers' Association | |
| d. | Agency Negotiator: | Sheryl Bennett and Jeffrey Epp | |
| | Employee Organization: | Escondido Firefighters' Association | |
| e. | Agency Negotiator: | Sheryl Bennett and Jeffrey Epp | |
| | Employee Organization: | Non-Sworn Police Bargaining Unit | |

ADJOURNMENT

Mayor Abed adjourned the meeting at 4:25 p.m.

MAYOR

CITY CLERK

DEPUTY CITY CLERK

CITY OF ESCONDIDO
September 27, 2017
4:30 P.M. Meeting Minutes

Escondido City Council

CALL TO ORDER

The Regular Meeting of the Escondido City Council was called to order at 4:30 p.m. on Wednesday, September 27, 2017 in the City Council Chambers at City Hall with Mayor Abed presiding.

MOMENT OF REFLECTION

Tolu Peters led the Moment of Reflection.

FLAG SALUTE

Councilmember Gallo led the flag salute.

ATTENDANCE:

The following members were present: Councilmember Olga Diaz, Councilmember Ed Gallo, Deputy Mayor John Masson, Councilmember Michael Morasco, and Mayor Sam Abed. Quorum present.

Also present were: Jeffrey Epp, City Manager; Michael McGuinness, City Attorney; Bill Martin, Director of Community Development; Julie Procopio, Director of Engineering Services; Diane Halverson, City Clerk; and Jennifer Ekblad, Deputy City Clerk.

PRESENTATIONS

Shannon Brown shared a presentation regarding SANDAG I-15 Express Lanes.

ORAL COMMUNICATIONS

Jerry Swadley, Escondido, stated the Times Advocate printed false information regarding his comments on the New Urban West development.

Chance Hawkins, San Diego, requested public access be granted to Eagle Peak at Dixon Lake on behalf of the Allied Climbers of San Diego.

Julia Sousa, Escondido, representing the Escondido Resident Leadership Academy, shared information on creating change in the community and the cleaning of trash and graffiti in the Mission Park area.

Laura Hunter, referenced a memorandum from Cynthia Smith regarding Library Systems & Services and outsourcing library services.

LaRee Felan, Escondido, shared concerns regarding accessory dwelling units and setback requirements.

CONSENT CALENDAR

MOTION: Moved by Councilmember Gallo and seconded by Councilmember Morasco to approve all Consent Calendar items with the exception of item 4. Motion carried unanimously.

1. **AFFIDAVITS OF PUBLICATION, MAILING AND POSTING (COUNCIL/SUCCESSOR AGENCY/RRB)**
2. **APPROVAL OF WARRANT REGISTER (Council/Successor Agency)**
3. **APPROVAL OF MINUTES: None Scheduled**
4. **WRITE-OFF OF CITY RECEIVABLES BUDGET ADJUSTMENT - FISCAL YEAR 2016/2017 -**
Request the City Council approve the write-off of various receivables and the related budget adjustment. (File No. 0430-80)

Staff Recommendation: **Approval (Finance Department: Sheryl Bennett)**

Karen Youel, Housing and Neighborhood Services Manager, and Christina Holmes, Revenue Manager, were available to answer questions.

MOTION: Moved by Councilmember Gallo and seconded by Councilmember Morasco to approve the write-off of various receivables and the related budget adjustment. Motion carried unanimously.

5. **BUDGET ADJUSTMENT FOR NIKI DE SAINT PHALLE ENDOWMENT FUND -**
Request the City Council approve a budget adjustment to create a capital project to fund educational and other public art-related activities. (File No. 0430-80)

Staff Recommendation: **Approval (Community Development Department: Bill Martin)**

6. **UNITED STATES SECRET SERVICE TASK FORCE FUNDING AND BUDGET ADJUSTMENT -**
Request the City Council approve authorizing the Escondido Police Department to accept reimbursement from the United States Secret Service for participation in task force related activities; authorize the Chief of Police or his designee to execute memorandum of understanding documents on behalf of the City; and approve budget adjustments needed to spend task force funds. (File No. 0430-80)

Staff Recommendation: **Approval (Police Department: Craig Carter)**

7. **FISCAL YEAR 2017-18 STATE OF CALIFORNIA OFFICE OF TRAFFIC SAFETY PEDESTRIAN AND BICYCLE SAFETY PROGRAM GRANT AND BUDGET ADJUSTMENT -**
Request the City Council approve authorizing the Escondido Police Department to accept a Fiscal Year 2017-18 California Office of Traffic Safety Pedestrian and Bicycle Safety Program Grant in the amount of \$25,000; authorize the Chief of Police or his designee to execute grant documents on behalf of the City; and approve budget adjustments needed to spend grant funds. (File No. 0480-70)

Staff Recommendation: **Approval (Police Department: Craig Carter)**

CONSENT – RESOLUTIONS AND ORDINANCES (COUNCIL/SUCCESSOR AGENCY/RRB)

The following Resolutions and Ordinances were heard and acted upon by the City Council/Successor Agency/RRB at a previous City Council/Successor Agency/Mobilehome Rent Review meeting. (The title of Ordinances listed on the Consent Calendar are deemed to have been read and further reading waived.)

WORKSHOP

8. CALPERS PENSION WORKSHOP - ANALYSIS OF UNFUNDED LIABILITIES -

Request the City Council receive and file the presentation regarding unfunded liabilities. (File No. 0460-20)

Staff Recommendation: **Receive and File (Finance Department: Sheryl Bennett)**

Sheryl Bennett, Deputy City Manager, Administrative Services; Joan Ryan, Assistant Director of Finance; Patrice Russell, Human Resources Manager; and John Bartel, President of Bartel & Associates, LLC., presented the staff report utilizing a PowerPoint presentation.

Chester Mordasini, San Clemente, recommended City Council direct the City Manager to meet with the City's various bargaining units to discuss unfunded pension liabilities.

City Council directed staff to return with policy recommendations on payments from sources of one-time money, review and monitor opportunities for ongoing budgetary changes that result in savings, pursue options for employees paying a higher share of the pension cost, and explore the establishment of a Section 115 Pension Trust to address pension funding.

FUTURE AGENDA

9. FUTURE AGENDA -

The purpose of this item is to identify issues presently known to staff or which members of the City Council wish to place on an upcoming City Council agenda. Council comment on these future agenda items is limited by California Government Code Section 54954.2 to clarifying questions, brief announcements, or requests for factual information in connection with an item when it is discussed.

Staff Recommendation: **None (City Clerk's Office: Diane Halverson)**

Councilmember Diaz and Mayor Abed requested staff consider allowing dogs in all City parks and standardizing the City's policy.

COUNCIL MEMBERS' SUBCOMMITTEE REPORTS

Councilmember Gallo reported North County Transit District extended contract with Escondido Police Department to provide security at the Escondido Transit Center; and attended the Borders Committee Meeting with the new Assistant Council General.

Mayor Abed reported SANDAG approved \$3 million allocation to Escondido for the bike path and the Escondido Creek trail and was appointed to serve on the subcommittee in search of a new executive director.

CITY MANAGER'S WEEKLY ACTIVITY REPORT

The most current information from the City Manager regarding Economic Development, Capital Improvement Projects, Public Safety and Community Development.

• WEEKLY ACTIVITY REPORT -

ORAL COMMUNICATIONS

Jack Kalisavaart, Carlsbad, shared concerns regarding accessory dwelling units and 20-foot offset requirements.

Roy Garrett, Escondido, shared the CA Education Code Section 18910, 18921, and 18926 and requested the City Council gather more information regarding outsourcing library services with LS&S.

ADJOURNMENT

Mayor Abed adjourned the meeting at 7:36 p.m.

MAYOR

CITY CLERK

DEPUTY CITY CLERK

CITY COUNCIL STAFF REPORT

Consent Item No. 4

October 11, 2017

File No. 0470-35

SUBJECT: Bid Award for the Purchase of Live Rainbow Trout

DEPARTMENT: Finance Department, Purchasing Division

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2017-132 taking the following actions:

1. Accept the lowest responsive bid from Calaveras Trout Farm to purchase Live Rainbow Trout by unit price for stocking fish at Dixon Lake and Lake Wohlford.
2. Authorize the Deputy City Manager/Administrative Services to execute a Purchasing Contract ("Contract") with Calaveras Trout Farm, effective October 12, 2017, through June 30, 2018, with the option to renew the Contract on an annual fiscal year basis not to exceed a total of seven consecutive years. The unit price bid is \$3.89 per pound of Live Rainbow Trout, with an estimated purchase quantity of 58,500 pounds.

FISCAL ANALYSIS:

The Contract amount is an estimated annual cost based on anticipated quantities of trout needed for stocking Dixon Lake and Lake Wohlford. Contract renewal options are contingent upon budget appropriations and satisfactory performance by the contractor.

Contract prices are firm for the first year. Any price increases under the Contract renewal options are not to exceed three percent (3%) of the unit price per each renewal year, subject to approval by the City.

There are sufficient funds located in the Lakes Operating Budget.

CORRELATION TO THE CITY COUNCIL ACTION PLAN:

This item relates to the City Council's Action Plan regarding Neighborhood Improvement, Strategy #19: "Improve and maintain current parks through a variety of efforts."

BACKGROUND:

The City operates and maintains Dixon Lake and Lake Wohlford. These lakes offer various outdoor activities including fishing. This Contract to purchase live Rainbow Trout is necessary to stock fish at these lakes. Load sizes shall be between 1,500 and 6,000 pounds per lake and delivery will be required approximately fifteen times during the fishing season, which runs November through April. The total quantity of fish to be delivered will be up to a maximum of 58,500 pounds between the two lakes. Quantities required during renewal years may vary taking into consideration the City's needs and budget appropriations. Request for bids was duly published and emailed to six (6) prospective bidders on August 24, 2017. Three (3) competitive bids were received and opened on September 7, 2017; the bid results are as follows:

Calaveras Trout Farm	\$227,565.00	\$3.89 per pound
Mt. Lassen Trout Farm	\$244,530.00	\$4.18 per pound
Chaulk Mound Trout Ranch	\$321,750.00	\$5.50 per pound

Staff recommends awarding the Contract to Calaveras Trout Farm; the lowest responsive and responsible bidder that conformed to the City's bid specifications and requirements.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Sheryl Bennett, Deputy City Manager, Administrative Services
10/5/2017 8:46 a.m.

ATTACHMENTS:

1. Resolution No. 2017-132

RESOLUTION NO. 2017-132

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING THE DEPUTY CITY
MANAGER/ADMINISTRATIVE SERVICES,
ON BEHALF OF THE CITY, TO AWARD
THE BID TO CALAVERAS TROUT FARM
FOR THE PURCHASE OF LIVE
RAINBOW TROUT

WHEREAS, sufficient funds are available in the Lakes Operating Budget; and

WHEREAS, the City of Escondido duly published an invitation for unit price bids with detailed specifications for the purchase of Live Rainbow Trout; and

WHEREAS, request for bids for Live Rainbow Trout were emailed out to six vendors on August 24, 2017; and

WHEREAS, three bids were received, opened and evaluated on September 7, 2017; and

WHEREAS, Calaveras Trout Farm was determined to be the lowest responsive and responsible bidder that conformed to the City's bid specifications and requirements; and

WHEREAS, the Deputy City Manager/Administrative Services recommends awarding a Purchasing Contract ("Contract") to Calaveras Trout Farm effective October 12, 2017, through June 30, 2018, in the estimated amount of \$227,565.00, with six one-year renewal options for the purchase of Live Rainbow Trout; and

WHEREAS, the Contract renewal options are conditional upon budget appropriations and satisfactory performance by the contractor; and

WHEREAS, Contract unit prices are firm for the first two Contract periods; and

WHEREAS, price increases under the Contract renewal options are not to exceed three percent (3%) per each renewal year, subject to approval by the City; and

WHEREAS, the Contract amount is an estimated annual cost based on anticipated quantities; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to accept the recommendations of the Deputy City Manager/Administrative Services, and award the bid to Calaveras Trout Farm.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.
2. That the City Council determines the bid submitted by Calaveras Trout Farm to be the lowest most responsive bid which conformed to the City's bid specifications and requirements.
3. That the City Council authorizes the bid award to Calaveras Trout Farm for Live Rainbow Trout in the estimated amount of \$227,565.00, on a per unit basis, which may vary for renewal periods based on the City's needs and budget appropriations.
4. That the City Council authorizes the Deputy City Manager/Administrative Services to execute, on behalf of the City, a Contract for the remainder of this fiscal year with renewal options for the purchase of Live Rainbow Trout in a form approved by the City Attorney.

CITY COUNCIL STAFF REPORT

Current Business Item No. 5

October 11, 2017

File No. 1340-70

SUBJECT: Approval to Execute State Revolving Fund Loan Agreements for Projects within the Recycled Water and Potable Reuse Program

DEPARTMENT: Utilities Department, Wastewater Division

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2017-131, authorizing the Director of Utilities to execute two loan agreements with the State Water Resources Control Board, Division of Financial Assistance. These loans will be used to fund construction of two projects within the Recycled Water and Potable Reuse Program: 1) \$8.0 million for the Recycled Water Easterly Main and Tanks Project; and 2) \$5.0 million for the Brine Line - Broadway to HARRF (Hale Avenue Resource Recovery Facility) Project.

FISCAL ANALYSIS:

The State Revolving Fund (SRF) loans under consideration are in the amounts of:

- 1) \$8.0 million for the Recycled Water Easterly Main and Tanks Project
 - a) Includes \$2.5 million in up-front loan forgiveness, reducing the initial principal amount to \$5.5 million.
- 2) \$5.0 million for the Brine Line - Broadway to HARRF Project

The loans have a 30-year term, a 1.8 percent annual interest rate, and no prepayment penalty. If the loans are repaid over the full 30-year term (i.e., there is no prepayment), the total amount paid including interest will be \$13.7 million.

These SRF loans offer significant savings over other borrowing options. For example, repayment costs for a \$10.5 million bond at an interest rate of 4.5 percent annually would cost \$19.3 million (or \$5.6 million more than the SRF loans) over 30-years. Additionally, repayment of SRF loans begins one year after completion of construction of the projects, meaning the first payments will not be due until FY 2019 or FY 2020, depending on the construction schedule.

Debt coverage, that is the ability to collect enough revenue to cover operating costs and debt payments, is an important consideration when borrowing money. In FY 2017 the Wastewater Fund's debt coverage was 1.77, while the minimum required, (per the Fund's existing bond covenants), is 1.15. The projected annual payment for the proposed SRF loans will be \$456,000. If this payment had been added to the debt service in FY 2017, the Fund's debt coverage would be 1.64, still well in excess of the required 1.15. Two previously approved annual rate increases will take effect before

State Revolving Fund Loan Agreements for Projects within the Recycled Water and Potable Reuse Program

October 11, 2017

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the first payments on the new loans are made, so the Wastewater Fund is projected to comfortably cover the new debt.

PREVIOUS ACTION:

On February 16, 2011, the City Council approved the conceptual plan developed by the Utilities Department to address current and future wastewater capacity concerns and to ensure water reliability.

On April 2, 2014, an update was provided to the City Council on the proposed Recycled Water and Potable Reuse Program, and feedback was requested from the City Council about the future direction of the program.

On May 6, 2015, the City Council adopted Resolution No. 2015-40, authorizing the Director of Utilities to submit General, Technical, and Environmental applications for State Revolving Fund (SRF) construction loans for three projects: (1) Recycled Water Easterly Main and Tanks, (2) Recycled Water Easterly Agriculture Distribution System, and (3) Brine Line from Broadway to HARRF. The resolution also authorized the Director of Utilities to execute loan contracts and any amendments or change orders thereto on behalf of the City of Escondido.

On July 8, 2015, the City Council adopted Resolution No. 2015-108, authorizing the Director of Utilities to submit an application to participate in the Department of Water Resources (DWR) Frequent Financer Program. Projects submitted with the Frequent Financer Program application for potential future funding totaled \$180 million.

On September 23, 2015, the City Council:

- Adopted Resolution No. 2015-157, authorizing repayment of the SRF loan for construction of the Easterly Recycled Water Mains and Tank Project (\$8.0 million).
- Adopted Resolution No. 2015-158, authorizing repayment of the SRF loan for the Brine Line - Broadway to HARRF Project (\$4.0 million, later increased to \$5.0 million).

These authorizations for repayment were required as part of the application process. The action under consideration in this report will authorize execution of the actual loan agreements.

On January 13, 2016, the City Council adopted Resolution No. 2016-11, authorizing repayment of the SRF loan for the Brine Line - Broadway to HARRF Project. The repayment resolution increased the authorized application amount for the project from \$4.0 million to \$5.0 million.

State Revolving Fund Loan Agreements for Projects within the Recycled Water and Potable Reuse Program

October 11, 2017

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BACKGROUND:

Recycled Water Easterly Main Project (Phase 2)

This project extends the existing, 24-inch recycled water transmission pipeline east from the Citrus Avenue crossing of Escondido Creek to the agricultural area of Cloverdale and Mountain View. This is an extension of the already existing 24-inch recycled water transmission pipeline along Escondido Creek between Broadway and Citrus Avenue. Because the need for customers in this area is greater for recycled water than for potable water, the project also converts the existing 1.2 million-gallon potable water reservoir (Hogback Tank) to a recycled water tank, and constructs a new 350,000-gallon potable water tank.

Brine Line – Broadway to HARRF Project

This project extends the existing, 15-inch brine transmission pipeline from the Broadway crossing of Escondido Creek (near Grape Day Park) to the HARRF. Completion of this project will enable discharge of brine recovered from advanced treatment of recycled water at the membrane filtration and reverse osmosis (MFRO) facility. The MFRO treatment plant is scheduled for construction at the southeast corner of Washington Avenue and Ash Street.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Christopher W. McKinney, Director of Utilities

10/4/2017 11:49 a.m.

ATTACHMENTS:

1. Resolution No. 2017-131
2. Resolution No. 2017-131 - Exhibit A
3. Resolution No. 2017-131 - Exhibit B

RESOLUTION NO. 2017-131

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING THE DIRECTOR OF
UTILITIES, TO EXECUTE, ON BEHALF OF
THE CITY, TWO STATE REVOLVING FUND
LOAN AGREEMENTS FOR PROJECTS
WITHIN THE RECYCLED WATER AND
POTABLE REUSE PROGRAM

WHEREAS, the City of Escondido (“City”) has initiated the Recycled Water and Potable Reuse Program (“Program”) to address wastewater outfall capacity, future water supply reliability, and water availability to Escondido’s agricultural industry; and

WHEREAS, the Program is comprised of five separate projects that when constructed, will enable recycled water produced at the Hale Avenue Resource Recovery Facility (“HARRF”) to be transported, further treated, and then distributed to agricultural customers in eastern and northern Escondido; and

WHEREAS, the Director of Utilities has submitted applications to the State Water Resources Control Board, Division of Financial Assistance (“State”), requesting low-interest loans to fund construction of four of the five projects within the Program; and

WHEREAS, the State is offering loans to the City of \$8 million, with \$2.5 million in loan forgiveness, for the Recycled Water Easterly Main and Tanks Project, and \$5 million for the Brine Line – Broadway to HARRF Project, for 30-year terms and 1.8 percent annual interest.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.
2. That the City Council authorizes the Director of Utilities to execute, on behalf of the City, two loan agreements, attached as Exhibit "A" and Exhibit "B" and incorporated by this reference, with the State Water Resources Control Board, Division of Financial Assistance.



PROPOSITION 1 WATER RECYCLING

CITY OF ESCONDIDO

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



CONSTRUCTION INSTALLMENT SALE AGREEMENT

RECYCLED WATER EASTERLY MAIN AND TANKS

PROJECT NO. C-06-8113-110

AGREEMENT NO. D17-01009

AMOUNT: \$8,000,000

ELIGIBLE START DATE: JULY 25, 2017

COMPLETION OF CONSTRUCTION DATE: APRIL 8, 2019

RECORDS RETENTION DATE: APRIL 8, 2055

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City of Escondido

Agreement No.: D17-01009

Project No.: C-06-8113-110

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City of Escondido
Agreement No.: D17-01009
Project No.: C-06-8113-110

WHEREAS,

1. The State Water Board is authorized to provide financial assistance under this Agreement pursuant to the following:
 - Chapter 6.5 of Division 7 of the California Water Code (State Act)
 - Title VI of the federal Water Pollution Control Act (Federal Act)
 - Section 79765 - 79768 of the Water Code (Prop 1)
2. The State Water Board determines eligibility for financial assistance, determines a reasonable schedule for providing financial assistance, establishes compliance with the Federal Act, State Act, and Prop 1, and establishes the terms and conditions of a financial assistance agreement.
3. The Recipient has applied to the State Water Board for financial assistance for the Project described in Exhibit A of this Agreement and the State Water Board has selected the application for financial assistance.
4. The State Water Board proposes to assist in providing financial assistance for eligible costs of the Project, and the Recipient desires to participate as a recipient of financial assistance from the State Water Board and evidence its obligation to pay Installment Payments, which obligation will be secured by Net Revenues/Collateral, as defined herein, upon the terms and conditions set forth in this Agreement, all pursuant to the Federal Act, the State Act, and Prop 1.

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

ARTICLE I DEFINITIONS

1.1 Definitions.

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

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

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

"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.

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

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

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

City of Escondido

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

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

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

"CWSRF" means the Clean Water State Revolving Fund.

"Days" means calendar days unless otherwise expressly indicated.

"Disbursement Period" means the period during which Project Funds may be disbursed.

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

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

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

"Final Disbursement Request Date" means the date, after which date, no further Project Funds disbursements may be requested.

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

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

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

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

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

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

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

City of Escondido
Agreement No.: D17-01009
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"Material Event" means any event that, as determined by the Division, might cause the State Water Board to violate the terms and conditions of its agreements with USEPA or its bond covenants, including any of the following: (a) revenue shortfalls; (b) unscheduled draws on the Reserve Fund, if any, or the Enterprise Fund; (c) substitution of insurers, or their failure to perform; (d) adverse findings by the Regional Water Quality Control Board; (e) litigation related to the Revenues, the System, or the Project, whether pending or anticipated; (f) any false warranty or representation made by the Recipient relevant to this Agreement; (g) loss, theft, damage, or impairment to the Revenues or the System; (h) seizure of, or levy on any collateral securing this Agreement; (i) dissolution or cessation of operations by the Recipient, termination of Recipient's existence, insolvency of Recipient, or filing of a voluntary or involuntary bankruptcy petition by or on behalf of Recipient; (j) any event set forth in section 2.10 of this Agreement.

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

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

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

"Operations and Maintenance Costs" means costs spent or incurred for maintenance and operation of the System calculated in accordance with generally accepted accounting principles applicable to governmental agencies, including, but not limited to, the reasonable expenses of management and repair and other expenses necessary to maintain and preserve the System in good repair and working order, and including administrative costs of the Recipient that are charged directly or apportioned to the System, including but not limited to salaries and wages of employees, payments to the Public Employees Retirement System, overhead, insurance, taxes (if any), fees of auditors, accountants, attorneys or engineers and insurance premiums, and including all other reasonable and necessary costs of the Recipient or charges (other than debt service payments) required to be paid by it to comply with the terms of the 2012 Installment Purchase Agreement or of the Indenture or any Contract or of any resolution or indenture authorizing the issuance of any Bonds or of such Bonds; but excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature..

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

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

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

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

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

"Recipient" means the City of Escondido.

City of Escondido
Agreement No.: D17-01009
Project No.: C-06-8113-110

"Regional Water Quality Control Board" or "Regional Water Board" means the appropriate Regional Water Quality Control Board.

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

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

"Revenues" means all income, rents, rates, fees, charges and other moneys derived from the ownership of or operation of the System, including, without limiting the generality of the foregoing: (1) all income, rents, rates, fees, charges, business interruption insurance proceeds or other moneys derived by the Recipient from the collection, treatment and disposal of wastewater or other services or facilities provided in the conduct or operation of the business of the System; and (2) the earnings on and income derived from the investment of such income, rents, rates, fees, charges, proceeds or other moneys, including Recipient reserves, but excluding in all cases: (x) customers' deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the Recipient; (y) any proceeds of taxes or benefit assessments restricted by law to be used by the Recipient to pay amounts due on bonds or other obligations heretofore or hereafter incurred; and (z) any and all revenues derived from the ownership or operation of or in connection with, and pledged to, Separate Facilities.

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

"SRF" means the Clean Water State Revolving Fund.

"State" means State of California.

"State Water Board" means the State Water Resources Control Board.

"System" means the whole and each and every part of the wastewater system (including the recycled water storage and distribution system) of the Recipient, including all real property and buildings whether owned or operated by the Recipient or another party, including the portion thereof existing on the date hereof, and including all additions, betterments, extensions and improvements to such System or any part thereof hereafter acquired or constructed, but not including any Separate Facilities.

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

"WRF Guidelines" means the Water Recycling Funding Program Guidelines, as amended by the State Water Board on June 16, 2015.

"Year" means calendar year unless otherwise expressly indicated.

1.2 Exhibits and Appendices Incorporated.

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

ARTICLE II REPRESENTATIONS, WARRANTIES, AND COMMITMENTS

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

City of Escondido
Agreement No.: D17-01009
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2.1 General Recipient Commitments.

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

2.2 Authorization and Validity.

The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized by the Recipient. This Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.

2.3 No Violations.

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

2.4 No Litigation.

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

2.5 Solvency.

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

2.6 Legal Status and Eligibility.

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

2.7 Financial Statements and Continuing Disclosure.

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

The Recipient is current in its continuing disclosure obligations associated with its material debt.

2.8 Completion of Project.

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

2.9 Award of Construction Contracts.

- (a) The Recipient shall award the prime construction contract no later than the date specified in Exhibit A.
- (b) The Recipient shall promptly notify the Division in writing both of the award of the prime construction contract for the Project and of Initiation of Construction of the Project. The Recipient shall make all reasonable efforts to complete construction in substantial conformance with the terms of the contract by the Completion of Construction date established in Exhibit A. Such date shall be binding upon the Recipient unless modified in writing by the Division upon a showing of good cause by the Recipient. The Recipient shall deliver any request for extension of the Completion of Construction date no less than 90 days prior to the Completion of Construction date. The Division will not unreasonably deny a timely request, but the Division may deny requests received after this time.

2.10 Notice.

- (a) The Recipient shall notify the Division in writing within five (5) working days of the occurrence of the following:
 - (1) Material defaults on this Obligation;
 - (2) Unscheduled draws on debt service reserves held for this Obligation, if any, reflecting financial difficulties;
 - (3) Bankruptcy, insolvency, receivership or similar event of the Recipient;
 - (4) Actions taken pursuant to state law in anticipation of filing for bankruptcy;
 - (5) Listed Events or Material Events, except as set forth in subdivisions (b) or (c) of this section;
 - (6) Change of ownership of the Project or change of management or service contracts, if any, for operation of the Project; or
- (b) The Recipient shall notify the Division within 10 working days of the following:
 - (1) Material defaults on System Obligations, other than this Obligation;
 - (2) Unscheduled draws on debt service reserves held for System Obligations, other than this Obligation, if any, reflecting financial difficulties;
 - (3) Unscheduled draws on credit enhancements on System Obligations, if any, reflecting financial difficulties;
 - (4) Substitution of credit or liquidity providers, if any, or their failure to perform;
 - (5) Any litigation pending or threatened against Recipient regarding its wastewater capacity or its continued existence, circulation of a petition to challenge rates, consideration of dissolution, or disincorporation, or any other material threat to the Recipient's Revenues;

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- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of any tax-exempt bonds;
 - (7) Rating changes on outstanding System Obligations, if any; or
 - (8) Issuance of additional parity obligations.
- (c) The Recipient shall notify the Division promptly of the following:
- (1) Any substantial change in scope of the Project. The Recipient shall undertake no substantial change in the scope of the Project until written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;
 - (2) Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
 - (3) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more beyond the estimated date of Completion of Construction previously provided to the Division;
 - (4) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Recipient agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient shall implement appropriate actions as directed by the Division;
 - (5) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
 - (6) Any Project monitoring, demonstration, or other implementation activities such that the State Water Board and/or Regional Water Quality Control Board staff may observe and document such activities;
 - (7) Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division; or
 - (8) Completion of Construction of the Project, and actual Project Completion.
- (d) If the Recipient is regulated by the California Public Utilities Commission, the Recipient shall within three (3) days submit to the State Water Board by certified mail copies of any and all documents filed with the California Public Utilities Commission, including but not limited to applications, petitions, and investigations.

2.11 Findings and Challenge

Upon consideration of a voter initiative to reduce Revenues, the Recipient shall make a finding regarding the effect of such a reduction on the Recipient's ability to satisfy the rate covenant set forth in Section 3.7 of this Agreement. The Recipient shall make its findings available to the public and shall request, if

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necessary, the authorization of the Recipient's decision-maker or decision-making body to file litigation to challenge any such initiative that it finds will render it unable to satisfy the rate covenant set forth in Section 3.7 and its obligation to operate and maintain the Project for its useful life. The Recipient shall diligently pursue and bear any and all costs related to such challenge. The Recipient shall notify and regularly update the State Water Board regarding the status of any such challenge.

2.12 Project Access.

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

2.13 Project Completion; Initiation of Operations.

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

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

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

2.15 Project Reports.

- (a) **Status Reports.** The Recipient shall provide expeditiously status reports no less frequently than quarterly, starting with the execution of this Agreement. These reports must accompany any disbursement request and are a condition precedent to any disbursement. At a minimum the reports will contain the following information:
 - (1) A summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed;
 - (2) A description of compliance with environmental requirements;
 - (3) A listing of change orders including amount, description of work, and change in contract amount and schedule; and
 - (4) Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.
- (b) **Project Completion Report.** The Recipient shall submit a Project Completion Report to the Division with a copy to the appropriate Regional Water Quality Control Board on or before the due date established by the Division and the Recipient at the time of final project inspection. The Project Completion Report must address the following:

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- (1) Describe the Project,
 - (2) Describe the water quality problem the Project sought to address,
 - (3) Discuss the Project's likelihood of successfully addressing that water quality problem in the future, and
 - (4) Summarize compliance with environmental conditions, if applicable.
 - (5) If the Recipient fails to submit a timely Project Completion Report, then the State Water Board may stop processing pending or future applications for new financial assistance, withhold disbursements under this Agreement or other agreements, and begin administrative proceedings.
- (c) As Needed Reports. The Recipient shall provide expeditiously, during the term of this Agreement, any reports, data, and information reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the funding program or to fulfill any reporting requirements of the state or federal government.
- (d) Recycled water reports. Commencing with the date of Project Completion, the Recipient shall submit annual reports for five (5) consecutive calendar years or until the Project's actual total annual recycled water deliveries equal the Project's planned total recycled water deliveries.
- (1) The Recipient shall submit annual reports in hard copy and/or electronically.
 - (2) The first annual report is due on February 28th following the first full calendar year of operation and shall cover the period from the Project Completion through the end of the first full calendar year thereafter. Subsequent annual reports are due by February 28th following the calendar year covered. The annual reports shall be prepared in accordance with the "Water Recycling Funding Program Guidelines."
 - (3) The annual reports shall include the following:
 - (a) The planned total recycled water deliveries from the Recipient's funding application/user-connection schedule;
 - (b) A breakdown of the actual total annual recycled water deliveries by month and type of use, presented in a table showing month vs. type of use. If the Recipient supplements recycled water deliveries with potable or fresh water, the annual report shall include the monthly and total amounts;
 - (c) The Project's operation and maintenance costs for the year;
 - (d) The costs to Recipient's end users of recycled water vs. potable/fresh water during the year; and
 - (e) If the Project's actual total recycled water deliveries are less than the planned total recycled water deliveries, the Recipient shall provide a brief discussion on its progress toward achieving the remaining system capacity.

2.16 Federal Disadvantaged Business Enterprise (DBE) Reporting.

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

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2.17 Records.

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

2.18 Audit.

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

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ARTICLE III FINANCING PROVISIONS

3.1 Purchase and Sale of Project.

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

3.2 Amounts Payable by the Recipient.

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

The Installment Payments are based on a standard fully amortized assistance amount with equal annual payments. The remaining balance is the previous balance, plus the disbursements, plus the accrued interest on both, less the Installment Payment. Installment Payment calculations will be made beginning one (1) year after Completion of Construction. Exhibit C is a payment schedule based on the provisions of this article and an estimated disbursement schedule. Actual payments will be based on actual disbursements.

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

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

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

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deprive the State Water Board of, or limit the application of, any other remedy provided by law or by this Agreement.

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

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

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

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

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

3.3 Obligation Absolute.

The obligation of the Recipient to make the Installment Payments and other payments required to be made by it under this Agreement, from Net Revenues and/or other amounts legally available to the Recipient therefor, is absolute and unconditional, and until such time as the Installment Payments and Additional Payments have been paid in full, the Recipient shall not discontinue or suspend any Installment Payments or other payments required to be made by it hereunder when due, whether or not the System or any part thereof is operating or operable or has been completed, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part, and such Installment Payments and other payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

3.4 No Obligation of the State.

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

3.5 Disbursement of Project Funds; Availability of Funds.

- (a) Except as may be otherwise provided in this Agreement, disbursement of Project Funds will be made as follows:
- (1) Upon execution and delivery of this Agreement, the Recipient may request immediate disbursement of any eligible incurred planning and design allowance as specified in Exhibit B from the Project Funds through submission to the State Water Board of the Disbursement Request Form 260, or any amendment thereto, duly completed and executed.
 - (2) The Recipient may request disbursement of eligible construction and equipment costs consistent with budget amounts referenced in Exhibit B and Exhibit A-FBA. (Note that this Agreement will be amended to incorporate Exhibit A-FBA after final budget approval.)
 - (3) Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Disbursement Request Form 260, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of status reports due under Section 2.15 above.
 - (4) The Recipient shall not request disbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of disbursement request.
 - (5) Recipient shall spend Project Funds within 30 days of receipt. Any interest earned on Project Funds shall be reported to the State Water Board and may be required to be returned to the State Water Board or deducted from future disbursements.
 - (6) The Recipient shall not be entitled to interest earned on undisbursed funds.
 - (7) The Recipient shall not request a disbursement unless that Project Cost is allowable, reasonable, and allocable.
 - (8) Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.
- (b) The State Water Board's obligation to disburse Project Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Project Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other agency. If any disbursements due the Recipient under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the State Water Board that such disbursement will be made to the Recipient when sufficient funds do become available, but this intention is not binding.

3.6 Withholding of Disbursements and Material Violations.

- (a) The State Water Board may withhold all or any portion of the funds provided for by this Agreement in the event that:

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

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

- (a) Establishment of Enterprise Fund and Reserve Fund. In order to carry out its Material Obligations, the Recipient covenants that it shall establish and maintain or shall have established and maintained the Enterprise Fund. All Revenues received shall be deposited when and as received in trust in the Enterprise Fund. As required in Exhibit D of this Agreement, the Recipient shall establish and maintain a Reserve Fund.
- (b) Pledge of Net Revenues, Enterprise Fund, and Reserve Fund. The Obligation hereunder shall be secured by a lien on and pledge of the Enterprise Fund, Net Revenues, and any Reserve Fund specified in Exhibit D in priority as specified in Exhibit F (senior, parity, or subordinate). The Recipient hereby pledges and grants such lien on and pledge of the Enterprise Fund, Net Revenues, and any Reserve Fund specified in Exhibit D to secure the Obligation, including payment of Installment Payments and Additional Payments hereunder. The Net Revenues in the Enterprise Fund, shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Recipient.
- (c) Application and Purpose of the Enterprise Fund. Subject to the provisions of any outstanding Material Obligation, money on deposit in the Enterprise Fund shall be applied and used first, to pay Operations and Maintenance Costs, and thereafter, all amounts due and payable with respect to the Material Obligations. After making all payments hereinabove required to be made in each Fiscal Year, the Recipient may expend in such Fiscal Year any remaining money in the Enterprise Fund for any lawful purpose of the Recipient, including payment of subordinate debt.
- (d) Rates, Fees and Charges. The Recipient shall, to the fullest extent permitted by law, fix and prescribe, at the commencement of each Fiscal Year, rates and charges for the Wastewater Service which are reasonably expected to be at least sufficient to yield during each Fiscal Year Net Revenues equal to one hundred fifteen percent (115%) of the Debt Service and any amounts required to be paid to the provider of a reserve fund surety bond, if any, in such Fiscal Year. The Recipient may make adjustments from time to time in such rates and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates and charges then in effect unless the Net Revenues from such reduced rates and charges will at all times be sufficient to meet the requirements of this section.

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(e) Additional Debt Test.

- (1) Additional Senior Debt. The Recipient's future debt that is secured by revenues pledged herein may not be senior to this Obligation, except where the new senior obligation refunds or refinances a senior obligation with the same lien position as the existing senior obligation, the new senior obligation has the same or earlier repayment term as the refunded senior debt, the new senior debt service is the same or lower than the existing debt service, and the new senior debt will not diminish the Recipient's ability to repay its SRF obligations.
- (2) Additional Parity Debt. Future debt that is secured by revenues pledged herein may be on parity with this Obligation if the reserve and coverage requirements in Exhibit D to this Agreement are met.

3.8 Financial Management System and Standards.

The Recipient shall comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Project funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Recipient shall be bound by, and to comply with, the provisions and requirements of the federal Single Audit Act of 1984, Office of Management and Budget (OMB) Circular No. A-133 and 2 CFR Part 200, subpart F, and updates or revisions, thereto.

3.9 Accounting and Auditing Standards.

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

3.10 Other Assistance.

If funding for Project Costs is made available to the Recipient from sources other than this Agreement, the Recipient shall notify the Division. The Recipient may retain such funding up to an amount which equals the Recipient's local share of Project Costs. To the extent allowed by requirements of other funding sources, excess funding shall be remitted to the State Water Board to be applied to Installment Payments due hereunder, if any.

ARTICLE IV MISCELLANEOUS PROVISIONS

4.1 Amendment.

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

4.2 Assignability.

The Recipient consents to any pledge, sale, or assignment to the Bank or a trustee for the benefit of the owners of the Bonds, if any, at any time of any portion of the State Water Board's estate, right, title, and interest and claim in, to and under this Agreement and the right to make all related waivers and agreements in the name and on behalf of the State Water Board, as agent and attorney-in-fact, and to perform all other related acts which are necessary and appropriate under this Agreement, if any, and the State Water Board's estate, right, title, and interest and claim in, to and under this Agreement to Installment Payments (but excluding the State Water Board's rights to Additional Payments and to

notices, opinions and indemnification under each Obligation). This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State Water Board in the form of a formal written amendment to this Agreement.

4.3 Bonding.

Where contractors are used, the Recipient shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Recipient in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00.

4.4 Competitive Bidding

Recipient shall adhere to any applicable state law or local ordinance for competitive bidding and applicable labor laws.

4.5 Compliance with Law, Regulations, etc.

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

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

4.6 Conflict of Interest.

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

4.7 Damages for Breach Affecting Tax-Exempt Status or Federal Compliance

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

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4.8 Disputes.

- (a) The Recipient may appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute.
- (b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.
- (c) Recipient shall continue with the responsibilities under this Agreement during any dispute.
- (d) This section 4.8 relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.

4.9 Governing Law.

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

4.10 Income Restrictions.

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

4.11 Indemnification and State Reviews.

The parties agree that review or approval of Project plans and specifications by the State Water Board is for administrative purposes only, 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, the Bank, and any trustee, and their officers, employees, and agents for the Bonds, if any (collectively, "Indemnified Persons"), against any loss or liability arising out of any claim or action brought against any Indemnified Persons from and against any and all losses, claims, damages, liabilities, or expenses, of every conceivable kind, character, and nature whatsoever arising out of, resulting from, or in any way connected with (1) the System or the Project or the conditions, occupancy, use, possession, conduct, or management of, work done in or about, or the planning, design, acquisition, installation, or construction, of the System or the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Safe Drinking Water Act, the California Hazardous Waste Control Law, and California Water Code Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged

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

4.12 Independent Actor.

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

4.13 Leveraging Covenants.

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

4.14 Non-Discrimination Clause.

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

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

4.15 No Third Party Rights.

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

4.16 Operation and Maintenance; Insurance.

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

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

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

Recipient agrees that for any policy of 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 shall provide the Division with a copy of all such certificates prior to the commencement of construction of the Project.

4.17 Permits, Subcontracting, and Remedies.

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

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

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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.

4.18 Prevailing Wages.

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

4.19 Public Funding.

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

4.20 Recipient's Responsibility for Work.

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

4.21 Related Litigation.

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

4.22 Rights in Data.

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

4.23 State Water Board Action; Costs and Attorney Fees.

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

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4.24 Termination; Immediate Acceleration; Interest.

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

4.25 Timeliness.

Time is of the essence in this Agreement.

4.26 Unenforceable Provision.

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

4.27 Useful Life.

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

4.28 Venue.

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

4.29 Waiver and Rights of the State Water Board.

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

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

ARTICLE V TAX COVENANTS

5.1 Purpose.

The purpose of this Article V is to establish the reasonable expectations of the Recipient regarding the Project and the Project Funds, and is intended to be and may be relied upon for purposes of Sections 103, 141 and 148 of the Code and as a certification described in Section 1.148-2(b)(2) of the Treasury Regulations. This Article V sets forth certain facts, estimates and circumstances which form the basis for the Recipient's expectation that neither the Project nor the Bond Funded Portion of the Project Funds is to

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be used in a manner that would cause the Obligation to be classified as "arbitrage bonds" under Section 148 of the Code or "private activity bonds" under Section 141 of the Code.

5.2 Tax Covenant.

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

5.3 Governmental Unit.

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

5.4 Financing of a Capital Project.

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

5.5 Ownership and Operation of Project.

The Recipient exclusively owns and, except as provided in Section 5.12 hereof, operates the Project.

5.6 Temporary Period.

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

5.7 Working Capital.

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

5.8 Expenditure of Proceeds.

The Bond Funded Portion of the Project Funds shall be used exclusively for the following purposes: (i) Reimbursement Expenditures (as defined in Section 4.20 below), (ii) Preliminary Expenditures (as defined in Section 4.20 below) in an aggregate amount not exceeding twenty percent (20%) of the Bond Funded Portion of the Project Funds, (iii) capital expenditures relating to the Project originally paid by the Recipient on or after the date hereof, (iv) interest on the Obligation through the later of three (3) years after the Applicable Date or one (1) year after the Project is placed in service, and (v) initial operating expenses directly associated with the Project in the aggregate amount not more than five percent (5%) of the Bond Funded Portion of the Project Funds.

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5.9 Private Use and Private Payments.

No portion of the Project Funds or the Project is being, has been or will be used in the aggregate for any activities that constitute a Private Use (as defined below). No portion of the principal of or interest with respect to the Installment Payments will be secured by any interest in property (whether or not the Project) used for a Private Use or in payments in respect of property used for a Private Use, or will be derived from payments in respect of property used for a Private Use. "Private Use" means any activity that constitutes a trade or business that is carried on by persons or entities, other than a Governmental Unit. The leasing of the Project or the access by or the use of the Project by a person or entity other than a Governmental Unit on a basis other than as a member of the general public shall constitute a Private Use. Use by or on behalf of the State of California or any of its agencies, instrumentalities or subdivisions or by any local Governmental Unit and use as a member of the general public will be disregarded in determining whether a Private Use exists. Use under an arrangement that conveys priority rights or other preferential benefits is generally not use on the same basis as the general public. Arrangements providing for use that is available to the general public at no charge or on the basis of rates that are generally applicable and uniformly applied do not convey priority rights or other preferential benefits. For this purpose, rates may be treated as generally applicable and uniformly applied even if (i) different rates apply to different classes of users, such as volume purchasers, if the differences in rates are customary and reasonable; or (ii) a specially negotiated rate arrangement is entered into, but only if the user is prohibited by federal law from paying the generally applicable rates, and the rates established are as comparable as reasonably possible to the generally applicable rates. An arrangement that does not otherwise convey priority rights or other preferential benefits is not treated, nevertheless, as general public use if the term of the use under the arrangement, including all renewal options, is greater than 200 days. For this purpose, a right of first refusal to renew use under the arrangement is not treated as a renewal option if (i) the compensation for the use under the arrangement is redetermined at generally applicable, fair market value rates that are in effect at the time of renewal; and (ii) the use of the financed property under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business.

5.10 No Sale, Lease or Private Operation of the Project.

The Project (or any portion thereof) will not be sold or otherwise disposed of, in whole or in part, to any person who is not a Governmental Unit prior to the final maturity date of the Obligation. The Project will not be leased to any person or entity that is not a Governmental Unit prior to the final maturity date of the Obligation. Except as permitted under Section 5.12 hereof, the Recipient will not enter any contract or arrangement or cause or permit any contract or arrangement to be entered with persons or entities that are not Governmental Units if that contract or arrangement would confer on such persons or entities any right to use the Project on a basis different from the right of members of the general public. The contracts or arrangements contemplated by the preceding sentence include but are not limited to management contracts, take or pay contracts or put or pay contracts, and capacity guarantee contracts.

5.11 No Disproportionate or Unrelated Use.

No portion of the Project Funds or the Project is being, has been, or will be used for a Private Use that is unrelated or disproportionate to the governmental use of the Project Funds.

5.12 Management and Service Contracts.

The Recipient represents that, as of the date hereof, it is not a party to any contract, agreement or other arrangement with any persons or entities engaged in a trade or business (other than Governmental Units) that involve the management or operation of property or the provision of services at or with respect to the Project that does not comply with the standards of the Treasury Regulations, Revenue Procedure 97-13, as modified by Revenue Procedure 2001-39 and IRS Notice 2014-67, or Revenue Procedure 2016-

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44. The Recipient represents that it will not be party to any such contract, agreement or arrangement with any person or entity that is not a Governmental Unit for the management of property or the provision of services at or with respect to the Project, while the Obligation (including any obligation or series thereof issued to refund the Obligation, as the case may be) is outstanding, except: (a) with respect to any contract, agreement or arrangement that does not constitute "private business use" of the Project under Code §§141(b), or (b) with respect to any contract, agreement or arrangement that complies with (i) Revenue Procedure 97-13, 1997-1 C.B. 632, as amended by Revenue Procedure 2001-39, 2001-2 C.B. 38, and as amplified by Notice 2014-67, with respect to contracts entered into before August 18, 2017 and not materially modified or extended after August 18, 2017, or (ii) Revenue Procedure 2016-44, 2016-36 I.R.B., with respect to contracts entered into or materially modified or extended on or after August 18, 2017, or (c) with respect to any contract, agreement or arrangement that does not give rise to use of the Bond Funded Portion of the Project Funds or the Project by a non-Governmental Unit of more than the amount of such non-qualified use permitted by the Code, or (d) in the event that the Recipient receives an opinion of counsel, satisfactory to the State Water Board and the Bank and expert in the issuance of state and local government bonds the interest on which is excluded from gross income under Section 103 of the Code ("Nationally-Recognized Bond Counsel"), that such contract, agreement or arrangement will not adversely affect the exclusion of the interest on the Obligation from gross income for federal income taxation purposes.

5.13 No Disposition of Financed Property.

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

5.14 Useful Life of Project.

As of the date hereof, the Recipient reasonably expects that the economic useful life of the Project, commencing at Project Completion, will be at least equal to the term of this Agreement, as set forth on Exhibit B hereto.

5.15 Installment Payments.

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

5.16 No Other Replacement Proceeds.

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

5.17 No Sinking or Pledged Fund.

Except as set forth in Section 5.18 below, the Recipient will not create or establish any sinking fund or pledged fund which will be used to pay Installment Payments on the Obligation within the meaning of Section 1.148-1(c) of the Treasury Regulations. If any sinking fund or pledged fund comes into being with respect to the Obligation before the Obligation has been fully retired which may be used to pay the

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Installment Payments, the Recipient will invest such sinking fund and pledged fund moneys at a yield that does not exceed the yield on the Bonds.

5.18 Reserve Amount.

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

5.19 Reimbursement Resolution.

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

5.20 Reimbursement Expenditures.

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

5.21 Change in Use of the Project.

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

5.22 Rebate Obligations.

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

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5.23 No Federal Guarantee.

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

5.24 No Notices or Inquiries from IRS.

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

5.25 Amendments.

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

5.26 Reasonable Expectations.

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

City of Escondido
Agreement No.: D17-01009
Project No.: C-06-8113-110

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

CITY OF ESCONDIDO:

By: _____
Name: Christopher W. McKinney
Title: Director of Utilities

Date: _____

STATE WATER RESOURCES CONTROL BOARD:

By: _____
Name: Leslie Laudon
Title: Deputy Director
Division of Financial Assistance

Date: _____

City of Escondido
 Agreement No.: D17-01009
 Project No.: C-06-8113-110

EXHIBIT A – SCOPE OF WORK

1. The Recipient agrees to start construction no later than the estimated date of October 16, 2017.
2. The Completion of Construction date is hereby established as April 8, 2019.
3. The Recipient agrees to ensure that its final Request for Disbursement is received by the Division no later than six months after Completion of Construction, unless prior approval has been granted by the Division. Otherwise, the undisbursed balance of this Agreement will be deobligated.
4. Incorporated by reference into this Agreement are the following documents:
 - (a) [Reserved]
 - (b) the Waste Discharge Requirement Order No. R2-2010-0032;
 - (c) the Recipient's Reimbursement Resolution No. 2015-157 dated September 23, 2015;
 - (d) [Reserved]
 - (e) [Reserved]
5. Reporting. Status Reports due at least quarterly.
6. Project Objectives.

The objective of the Project is to achieve increases in water supply and provide local growers with a reliable recycled water source for agricultural uses. In addition, promote economic contributions to the Recipient.

7. Scope of Work.

This funded portion of the Project will include construction of approximately 3.2 miles of 24 inch recycled water transmission pipeline and a new 350,000 gallon potable water tank, and convert an existing 1.2 million gallon potable water tank to a recycled water tank.

8. Signage.

The Recipient shall place a 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 shall maintain the sign in good condition for the duration of the construction period. The sign must include the following disclosure statement and color logos (available from the Division):



"Funding for Recycled Water Easterly Main and Tanks Project has been provided in full or in part by the Proposition 1 – the Water Quality, Supply, and Infrastructure Improvement Act of 2014 and the Clean Water State Revolving Fund through an agreement with the State Water Resources Control Board. California's Clean Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds."

City of Escondido
Agreement No.: D17-01009
Project No.: C-06-8113-110

EXHIBIT A – SCOPE OF WORK

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

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

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

City of Escondido
Agreement No.: D17-01009
Project No.: C-06-8113-110

EXHIBIT B – FUNDING AMOUNT

1. **Estimated Reasonable Cost.** The estimated reasonable cost of the total Project, including associated planning and design costs is eight million dollars and no cents (\$8,000,000.00).
2. **Project Financing.** Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds in the amount of up to eight million dollars and no cents (\$8,000,000.00). A portion of this amount, two million five hundred thousand dollars and no cents (\$2,500,000.00), is anticipated to be forgiven. The estimated amount of principal that will be due to the State Water Board under this Agreement is five million five hundred thousand dollars and no cents (\$5,500,000.00).
3. **Payment, Interest Rate, and Charges.** The Recipient agrees to make all Installment Payments according to the schedule in Exhibit C at an interest rate of one and eight tenths percent (1.8%) per annum. The Recipient agrees to pay an Administrative Service Charge in lieu of interest as reflected in Exhibit C. The Recipient agrees to pay a Small Community Grant Fund Charge in lieu of interest as reflected in Exhibit C.
4. **Contingent Principal Forgiveness.** Contingent on the Recipient's performance of its obligations under this Agreement, the State Water Board agrees to forgive up to two million five hundred thousand dollars and no cents (\$2,500,000.00) of the principal under this Agreement.
5. [Reserved]
5. **Useful Life.** The useful life of this Project is at least fifty (50) years.
6. [Reserved]
7. The term of this agreement is from the Eligible Start Date of July 25, 2017 to April 8, 2049.
8. Budget costs are contained in the Project Cost Table, which is part of Exhibit A-FBA. (This Agreement will be amended to incorporate Exhibit A-FBA.)
9. Preliminary budget costs are as follows:

Planning and design allowances: \$0.00

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

EXHIBIT C – PAYMENT SCHEDULE

See the attached preliminary Payment Schedules dated July 28, 2017, representing separate Prop 1 and SRF installment Payments. The final payment schedules will be forwarded to the Recipient after all disbursements have been paid and construction of the Project has been completed.

California Clean Water SRF Payment Schedule

Project No. 8113-110 - Escondido, City of
Agreement: D1701009 - based on Actual + Projected Disbursements

Recycled Water Easterly Main and Tanks

Principal is paid over: 30 Years
Interest rate: 1.80000%

Resolution No. 2017-131
Exhibit "A"
Page 38 of 56

Ref Num	Due Date	Date Received	Principal Payment	Interest Rate%	Interest Payment	Total P and I Payment	Total Payment	Ending Balance	CPI Interest
1	4/8/2020		48,781.95	1.8	127,303.20	176,085.15	176,085.15	3,951,218.05	0.00
2	4/8/2021		104,963.23	1.8	71,121.92	176,085.15	176,085.15	3,846,254.82	0.00
3	4/8/2022		106,852.56	1.8	69,232.59	176,085.15	176,085.15	3,739,402.26	0.00
4	4/8/2023		108,775.91	1.8	67,309.24	176,085.15	176,085.15	3,630,626.35	0.00
5	4/8/2024		110,733.88	1.8	65,351.27	176,085.15	176,085.15	3,519,892.47	0.00
6	4/8/2025		112,727.09	1.8	63,358.06	176,085.15	176,085.15	3,407,165.38	0.00
7	4/8/2026		114,756.17	1.8	61,328.98	176,085.15	176,085.15	3,292,409.21	0.00
8	4/8/2027		116,821.78	1.8	59,263.37	176,085.15	176,085.15	3,175,587.43	0.00
9	4/8/2028		118,924.58	1.8	57,160.57	176,085.15	176,085.15	3,056,662.85	0.00
10	4/8/2029		121,065.22	1.8	55,019.93	176,085.15	176,085.15	2,935,597.63	0.00
11	4/8/2030		123,244.39	1.8	52,840.76	176,085.15	176,085.15	2,812,353.24	0.00
12	4/8/2031		125,462.79	1.8	50,622.36	176,085.15	176,085.15	2,686,890.45	0.00
13	4/8/2032		127,721.12	1.8	48,364.03	176,085.15	176,085.15	2,559,169.33	0.00
14	4/8/2033		130,020.10	1.8	46,065.05	176,085.15	176,085.15	2,429,149.23	0.00
15	4/8/2034		132,360.46	1.8	43,724.69	176,085.15	176,085.15	2,296,788.77	0.00
16	4/8/2035		134,742.95	1.8	41,342.20	176,085.15	176,085.15	2,162,045.82	0.00
17	4/8/2036		137,168.33	1.8	38,916.82	176,085.15	176,085.15	2,024,877.49	0.00
18	4/8/2037		139,637.36	1.8	36,447.79	176,085.15	176,085.15	1,885,240.13	0.00
19	4/8/2038		142,150.83	1.8	33,934.32	176,085.15	176,085.15	1,743,089.30	0.00
20	4/8/2039		144,709.54	1.8	31,375.61	176,085.15	176,085.15	1,598,379.76	0.00
21	4/8/2040		147,314.31	1.8	28,770.84	176,085.15	176,085.15	1,451,065.45	0.00
22	4/8/2041		149,965.97	1.8	26,119.18	176,085.15	176,085.15	1,301,099.48	0.00
23	4/8/2042		152,665.36	1.8	23,419.79	176,085.15	176,085.15	1,148,434.12	0.00
24	4/8/2043		155,413.34	1.8	20,671.81	176,085.15	176,085.15	993,020.78	0.00
25	4/8/2044		158,210.78	1.8	17,874.37	176,085.15	176,085.15	834,810.00	0.00
26	4/8/2045		161,058.57	1.8	15,026.58	176,085.15	176,085.15	673,751.43	0.00
27	4/8/2046		163,957.62	1.8	12,127.53	176,085.15	176,085.15	509,793.81	0.00
28	4/8/2047		166,908.86	1.8	9,176.29	176,085.15	176,085.15	342,884.95	0.00
29	4/8/2048		169,913.22	1.8	6,171.93	176,085.15	176,085.15	172,971.73	0.00
30	4/8/2049		172,971.73	1.8	3,113.49	176,085.22	176,085.22	0.00	0.00
			4,000,000.00		1,282,554.57	5,282,554.57	5,282,554.57		0.00

Prop 1 – Water Recycling Payment Schedule

Project No. 8113-110 - Escondido, City of
 Agreement: D1701009 - based on Actual + Projected

Disbursements Recycled Water Easterly Main and Tanks

Principal is paid over: **30 Years**

Interest rate: **1.80000%**

Resolution No. 2017-131
 Exhibit "A"
 Page 39 of 56

Ref Num	Due Date	Date Received	Principal Payment	Interest Rate%	Interest Payment	Total P and I Payment	Total Payment	Ending Balance	CPI Interest
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			4,000,000.00		1,282,554.57	5,282,554.57	5,282,554.57		0.00

City of Escondido

Agreement No.: D17-01009

Project No.: C-06-8113-110

EXHIBIT D – SPECIAL CONDITIONS

Recipient acknowledges and agrees to the following special conditions:

Environmental Special Conditions as follows:

The documents identified below are incorporated by reference and the Recipient shall comply with the conditions and recommendations therein:

The November 6, 2016 Mitigation Monitoring and Reporting Program, including but not limited to the following mitigation measures:

- BIO-1 through BIO-2 for biological resources,
- HAZ-1 through HAZ-4 for hazards/hazardous materials, and
- CUL-1 through CUL-4 for cultural resources,

The Recipient shall make no changes in the Project, construction area, or special conditions, without obtaining the appropriate and necessary prior approval(s) from State Water Board.

REPORTING TO THE STATE WATER BOARD

The Recipient shall include the status of its environmental compliance with measures identified in this Exhibit D in the Project Status Report under Section 2.15, and shall report its environmental compliance efforts with these measures identified herein in the Project Completion Report for submittal to the Water Board after the completion of the Project construction.

Financial Special Conditions as follows:

1. Recipient shall establish and maintain rates and charges sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs, and shall ensure that Net Revenues are equal to at least 1.15 times the annual debt service in each Fiscal Year.
2. Issuance of additional parity debt requires Recipient's Net Revenues, in the most recent Fiscal Year, to be a minimum of 1.15 times the maximum annual debt service for existing and proposed additional debt.
3. Recipients shall establish a restricted Reserve Fund, held in its Wastewater Enterprise Fund, equal to one year's debt service on this Obligation prior to Completion of Construction. The restricted Reserve Fund shall be maintained for the full term of the Agreement and shall be subject to lien and pledge as security for this Obligation and its use shall be restricted to payment of this Obligation during the term of this Agreement.

EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

The Recipient agrees to comply with the following federal conditions:

(A) Federal Award Conditions

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

EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

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

"This project has been funded wholly or in part by the United States Environmental Protection Agency and the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the

City of Escondido

Agreement No.: D17-01009

Project No.: C-06-8113-110

EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

Environmental Protection Agency or the State Water Resources Control Board, nor does the EPA or the Board endorse trade names or recommend the use of commercial products mentioned in this document.”

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

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

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

(C) **WRRDA Conditions**

- (1) **Architectural and engineering contracts.** Where the Recipient contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services, the Recipient shall ensure that any such contract is negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based requirement as determined by the State Water Board.
- (2) **Fiscal sustainability.** The Recipient certifies that it has developed and is implementing a fiscal sustainability plan for the Project that includes an inventory of critical assets that are a part of the Project, an evaluation of the condition and performance of inventoried assets or

City of Escondido

Agreement No.: D17-01009

Project No.: C-06-8113-110

EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

asset groupings, a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan, and a plan for maintaining, repairing, and, as necessary, replacing the Project and a plan for funding such activities.

(D) Cross-Cutters

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

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

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

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

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

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

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

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

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

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becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

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

(E) Geospatial Data Standards

All geospatial data created pursuant to this Agreement that is submitted to the State Water Board for use by USEPA or that is submitted directly to USEPA must be consistent with Federal Geographic Data Committee endorsed standards. Information on these standards may be found at www.fgdc.gov.

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EXHIBIT F – SCHEDULE OF SYSTEM OBLIGATIONS

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

The following outstanding debt is senior to the Obligation:

Title	Debt Service Coverage Requirement	Total Amount	End Date
None.			

The following outstanding debt is on parity with the Obligation:

Title	Debt Service Coverage Requirement	Total Amount	End Date
City of Escondido Refunding Revenue Bonds (Wastewater System) Series 2015A	1.15	\$14,645,000	9/1/2026
City of Escondido Refunding Revenue Bonds (Wastewater System) Series 2015B	1.15	\$5,060,000	9/1/2026
Escondido Joint Powers Financing Authority Revenue Bonds (Wastewater System Financing) Series 2012	1.15	\$27,390,000	9/1/2041
CWSRF Project No. 4156-110	1.15	\$16,461,971	4/1/2023
CWSRF Project No. 4156-210	1.15	\$8,149,807	5/25/2021
CWSRF Project No. 4156-310	1.15	\$12,352,118	4/1/2023
CWSRF Project No. 4695-110	1.15	\$1,572,306	9/1/2026
CWSRF Project No. 8115-110	1.15	\$5,000,000	7/2/2048

The following outstanding debt is subordinate to the Obligation:

Title	Debt Service Coverage Requirement	Total Amount	End Date
None.			

EXHIBIT G – DAVIS-BACON REQUIREMENTS

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

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

I. Requirements For Sub recipients That Are Governmental Entities:

If a sub recipient has questions regarding when Davis-Bacon (DB) applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State Water Board at DavisBacon@waterboards.ca.gov or phone (916) 327-7323. The recipient or sub recipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>

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

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

2. Obtaining Wage Determinations.

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

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

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

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

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

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

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF - financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR § 5.1 or, for CWSRF projects, the FY 2015 Water Resource Reform and Development Act, or for DWSRF projects, the Consolidated Appropriations Act, 2017, the following clauses:

(1) Minimum wages.

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

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

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

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

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

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

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

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

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

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

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

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contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

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

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

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

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

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either

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directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

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

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

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

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

(4) Apprentices and trainees

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

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the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

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(10) Certification of eligibility.

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

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

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

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

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

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

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

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section. (b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls

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

5. Compliance Verification

(a) The sub recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

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

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

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

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

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EXHIBIT H – COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES**1. EMERGENCY DROUGHT REGULATIONS**

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

2. CALIFORNIA DEBT INVESTMENT ADVISORY COMMISSION (CDIAC)

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

3. COMPLIANCE WITH STATE REQUIREMENTS

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

(a) Monthly Water Diversion Reporting

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

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

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

(c) Volumetric Pricing & Water Meters

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

(d) Urban Water Management Plan

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

(e) Urban Water Demand Management

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

(f) Delta Plan Consistency Findings

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

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EXHIBIT H – COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES

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

(g) Agricultural Water Management Plan Consistency

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

(h) Charter City Project Labor Requirements

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

(1) Prevailing Wage

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

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

(2) Labor Agreements

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



CITY OF ESCONDIDO
AND
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



CONSTRUCTION INSTALLMENT SALE AGREEMENT
BRINE LINE BROADWAY TO HALE AVENUE RESOURCE RECOVERY FACILITY

PROJECT NO. C-06-8115-110

AGREEMENT NO. D17-01010

AMOUNT: \$5,000,000

ELIGIBLE START DATE: JULY 25, 2017
COMPLETION OF CONSTRUCTION DATE: JULY 2, 2018
RECORDS RETENTION DATE: JULY 2, 2054

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WHEREAS,

1. The State Water Board is authorized to provide financial assistance under this Agreement pursuant to the following:
 - Chapter 6.5 of Division 7 of the California Water Code (State Act)
 - Title VI of the federal Water Pollution Control Act (Federal Act)
2. The State Water Board determines eligibility for financial assistance, determines a reasonable schedule for providing financial assistance, establishes compliance with the Federal Act and State Act, and establishes the terms and conditions of a financial assistance agreement.
3. The Recipient has applied to the State Water Board for financial assistance for the Project described in Exhibit A of this Agreement and the State Water Board has selected the application for financial assistance.
4. The State Water Board proposes to assist in providing financial assistance for eligible costs of the Project, and the Recipient desires to participate as a recipient of financial assistance from the State Water Board and evidence its obligation to pay Installment Payments, which obligation will be secured by Net Revenues/Collateral, as defined herein, upon the terms and conditions set forth in this Agreement, all pursuant to the Federal Act and the State Act.

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

ARTICLE I DEFINITIONS

1.1 Definitions.

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

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

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

"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.

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

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

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

"Bonds" means any series of bonds issued by the Bank, the interest on which is excluded from gross income for federal tax purposes, all or a portion of the proceeds of which have been, are, or will be

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applied by the State Water Board to fund all or any portion of the Project Costs or that are secured in whole or in part by Installment Payments paid hereunder.

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

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

"CWSRF" means the Clean Water State Revolving Fund.

"Days" means calendar days unless otherwise expressly indicated.

"Disbursement Period" means the period during which Project Funds may be disbursed.

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

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

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

"Final Disbursement Request Date" means the date, after which date, no further Project Funds disbursements may be requested.

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

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

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

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

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

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

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

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

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

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

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

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

"Operations and Maintenance Costs" means costs spent or incurred for maintenance and operation of the System calculated in accordance with generally accepted accounting principles applicable to governmental agencies, including, but not limited to, the reasonable expenses of management and repair and other expenses necessary to maintain and preserve the System in good repair and working order, and including administrative costs of the Recipient that are charged directly or apportioned to the System, including but not limited to salaries and wages of employees, payments to the Public Employees Retirement System, overhead, insurance, taxes (if any), fees of auditors, accountants, attorneys or engineers and insurance premiums, and including all other reasonable and necessary costs of the Recipient or charges (other than debt service payments) required to be paid by it to comply with the terms of the 2012 Installment Purchase Agreement or of the Indenture or any Contract or of any resolution or indenture authorizing the issuance of any Bonds or of such Bonds; but excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature.

"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 Grant Manager, or the Program Analyst.

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

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

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

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

"Project Director" means an employee of the Recipient designated by the Authorized Representative to be responsible for the overall management of the administrative and technical aspects of the executed Agreement. The Project Director is set forth in Section 2 of this Agreement.

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

"Recipient" means the City of Escondido.

"Regional Water Quality Control Board" or "Regional Water Board" means the appropriate Regional Water Quality Control Board.

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

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

"Revenues" means all income, rents, rates, fees, charges and other moneys derived from the ownership of or operation of the System, including, without limiting the generality of the foregoing: (1) all income, rents, rates, fees, charges, business interruption insurance proceeds or other moneys derived by the Recipient from the collection, treatment and disposal of wastewater or other services or facilities provided in the conduct or operation of the business of the System; and (2) the earnings on and income derived from the investment of such income, rents, rates, fees, charges, proceeds or other moneys, including Recipient reserves, but excluding in all cases: (x) customers' deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the Recipient; (y) any proceeds of taxes or benefit assessments restricted by law to be used by the Recipient to pay amounts due on bonds or other obligations heretofore or hereafter incurred; and (z) any and all revenues derived from the ownership or operation of or in connection with, and pledged to, Separate Facilities.

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

"SRF" means the Clean Water State Revolving Fund.

"State" means State of California.

"State Water Board" means the State Water Resources Control Board.

"System" means the whole and each and every part of the wastewater system (including the recycled water storage and distribution system) of the Recipient, including all real property and buildings whether owned or operated by the Recipient or another party, including the portion thereof existing on the date hereof, and including all additions, betterments, extensions and improvements to such System or any part thereof hereafter acquired or constructed, but not including any Separate Facilities.

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

"Year" means calendar year unless otherwise expressly indicated.

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1.2 Exhibits and Appendices Incorporated.

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

ARTICLE II REPRESENTATIONS, WARRANTIES, AND COMMITMENTS

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

2.1 General Recipient Commitments.

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

2.2 Authorization and Validity.

The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized by the Recipient. This Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.

2.3 No Violations.

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

2.4 No Litigation.

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

2.5 Solvency.

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

2.6 Legal Status and Eligibility.

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

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2.7 Financial Statements and Continuing Disclosure.

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

The Recipient is current in its continuing disclosure obligations associated with its material debt.

2.8 Completion of Project.

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

2.9 Award of Construction Contracts.

- (a) The Recipient shall award the prime construction contract no later than the date specified in Exhibit A.
- (b) The Recipient shall promptly notify the Division in writing both of the award of the prime construction contract for the Project and of Initiation of Construction of the Project. The Recipient shall make all reasonable efforts to complete construction in substantial conformance with the terms of the contract by the Completion of Construction date established in Exhibit A. Such date shall be binding upon the Recipient unless modified in writing by the Division upon a showing of good cause by the Recipient. The Recipient shall deliver any request for extension of the Completion of Construction date no less than 90 days prior to the Completion of Construction date. The Division will not unreasonably deny a timely request, but the Division may deny requests received after this time.

2.10 Notice.

- (a) The Recipient shall notify the Division in writing within five (5) working days of the occurrence of the following:
 - (1) Material defaults on this Obligation;
 - (2) Unscheduled draws on debt service reserves held for this Obligation, if any, reflecting financial difficulties;
 - (3) Bankruptcy, insolvency, receivership or similar event of the Recipient;
 - (4) Actions taken pursuant to state law in anticipation of filing for bankruptcy;
 - (5) Listed Events or Material Events, except as set forth in subdivisions (b) or (c) of this section;
 - (6) Change of ownership of the Project or change of management or service contracts, if any, for operation of the Project; or
- (b) The Recipient shall notify the Division within 10 working days of the following:
 - (1) Material defaults on System Obligations, other than this Obligation;

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- (2) Unscheduled draws on debt service reserves held for System Obligations, other than this Obligation, if any, reflecting financial difficulties;
 - (3) Unscheduled draws on credit enhancements on System Obligations, if any, reflecting financial difficulties;
 - (4) Substitution of credit or liquidity providers, if any, or their failure to perform;
 - (5) Any litigation pending or threatened against Recipient regarding its wastewater capacity or its continued existence, circulation of a petition to challenge rates, consideration of dissolution, or disincorporation, or any other material threat to the Recipient's Revenues;
 - (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of any tax-exempt bonds;
 - (7) Rating changes on outstanding System Obligations, if any; or
 - (8) Issuance of additional parity obligations.
- (c) The Recipient shall notify the Division promptly of the following:
- (1) Any substantial change in scope of the Project. The Recipient shall undertake no substantial change in the scope of the Project until written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;
 - (2) Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
 - (3) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more beyond the estimated date of Completion of Construction previously provided to the Division;
 - (4) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Recipient agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient shall implement appropriate actions as directed by the Division;
 - (5) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
 - (6) Any Project monitoring, demonstration, or other implementation activities such that the State Water Board and/or Regional Water Quality Control Board staff may observe and document such activities;
 - (7) Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division; or

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(8) Completion of Construction of the Project, and actual Project Completion.

- (d) If the Recipient is regulated by the California Public Utilities Commission, the Recipient shall within three (3) days submit to the State Water Board by certified mail copies of any and all documents filed with the California Public Utilities Commission, including but not limited to applications, petitions, and investigations.

2.11 Findings and Challenge

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

2.12 Project Access.

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

2.13 Project Completion; Initiation of Operations.

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

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

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

2.15 Project Reports.

- (a) Status Reports. The Recipient shall provide expeditiously status reports no less frequently than quarterly, starting with the execution of this Agreement. These reports must accompany any disbursement request and are a condition precedent to any disbursement. At a minimum the reports will contain the following information:
- (1) A summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed;

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- (2) A description of compliance with environmental requirements;
 - (3) A listing of change orders including amount, description of work, and change in contract amount and schedule; and
 - (4) Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.
- (b) Project Completion Report. The Recipient shall submit a Project Completion Report to the Division with a copy to the appropriate Regional Water Quality Control Board on or before the due date established by the Division and the Recipient at the time of final project inspection. The Project Completion Report must address the following:
- (1) Describe the Project,
 - (2) Describe the water quality problem the Project sought to address,
 - (3) Discuss the Project's likelihood of successfully addressing that water quality problem in the future, and
 - (4) Summarize compliance with environmental conditions, if applicable.
 - (5) If the Recipient fails to submit a timely Project Completion Report, then the State Water Board may stop processing pending or future applications for new financial assistance, withhold disbursements under this Agreement or other agreements, and begin administrative proceedings.
- (c) As Needed Reports. The Recipient shall provide expeditiously, during the term of this Agreement, any reports, data, and information reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the funding program or to fulfill any reporting requirements of the state or federal government.

2.16 Federal Disadvantaged Business Enterprise (DBE) Reporting.

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

2.17 Records.

- (a) Without limitation of the requirement to maintain Project accounts in accordance with GAAP, the Recipient shall:
- (1) Establish an official file for the Project which adequately documents all significant actions relative to the Project;
 - (2) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;
 - (3) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;

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- (4) Establish an accounting system which will accurately depict final total costs of the Project, including both direct and indirect costs;
 - (5) Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
 - (6) If Force Account is used by the Recipient for any phase of the Project, other than for planning, design, and construction engineering and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee. Indirect Force Account costs are not eligible for funding.
- (b) The Recipient shall maintain separate books, records and other material relative to the Project. The Recipient shall also retain such books, records, and other material for itself and for each contractor or subcontractor who performed or performs work on this project for a minimum of thirty-six (36) years after Project Completion. The Recipient shall require that such books, records, and other material are subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Bureau of State Audits, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned. The Recipient shall allow and shall require its contractors to allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar duty regarding audit, interviews, and records retention in any contract or subcontract related to the performance of this Agreement. The provisions of this section shall survive the discharge of the Recipient's Obligation and the term of this Agreement.

2.18 Audit.

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

ARTICLE III FINANCING PROVISIONS

3.1 Purchase and Sale of Project.

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

3.2 Amounts Payable by the Recipient.

- (a) Installment Payments. Interest will accrue beginning with each disbursement. Beginning one year after Completion of Construction, repayment of the principal of the Project Funds, together

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with all interest accruing thereon, shall be repaid annually, and shall be fully amortized by the end term date specified in Exhibit B.

The Installment Payments are based on a standard fully amortized assistance amount with equal annual payments. The remaining balance is the previous balance, plus the disbursements, plus the accrued interest on both, less the Installment Payment. Installment Payment calculations will be made beginning one (1) year after Completion of Construction. Exhibit C is a payment schedule based on the provisions of this article and an estimated disbursement schedule. Actual payments will be based on actual disbursements.

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

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

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

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

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

- (b) Project Costs. The Recipient shall pay any and all costs connected with the Project including, without limitation, any and all Project Costs. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient shall nonetheless complete the Project and pay that portion of

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the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.

- (c) Additional Payments. In addition to the Installment Payments required to be made by the Recipient, the Recipient shall also pay to the State Water Board the reasonable extraordinary fees and expenses of the State Water Board, and of any assignee of the State Water Board's right, title, and interest in and to this Agreement, in connection with this Agreement, including all expenses and fees of accountants, trustees, staff, contractors, consultants, costs, insurance premiums and all other extraordinary costs reasonably incurred by the State Water Board or assignee of the State Water Board.

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

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

3.3 Obligation Absolute.

The obligation of the Recipient to make the Installment Payments and other payments required to be made by it under this Agreement, from Net Revenues and/or other amounts legally available to the Recipient therefor, is absolute and unconditional, and until such time as the Installment Payments and Additional Payments have been paid in full, the Recipient shall not discontinue or suspend any Installment Payments or other payments required to be made by it hereunder when due, whether or not the System or any part thereof is operating or operable or has been completed, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part, and such Installment Payments and other payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

3.4 No Obligation of the State.

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

3.5 Disbursement of Project Funds; Availability of Funds.

- (a) Except as may be otherwise provided in this Agreement, disbursement of Project Funds will be made as follows:
- (1) Upon execution and delivery of this Agreement, the Recipient may request immediate disbursement of any eligible incurred planning and design allowance as specified in Exhibit B from the Project Funds through submission to the State Water Board of the Disbursement Request Form 260, or any amendment thereto, duly completed and executed.
 - (2) The Recipient may request disbursement of eligible construction and equipment costs consistent with budget amounts referenced in Exhibit B and Exhibit A-FBA. (Note that this Agreement will be amended to incorporate Exhibit A-FBA after final budget approval.)

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- (3) Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Disbursement Request Form 260, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of status reports due under Section 2.15 above.
 - (4) The Recipient shall not request disbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of disbursement request.
 - (5) Recipient shall spend Project Funds within 30 days of receipt. Any interest earned on Project Funds shall be reported to the State Water Board and may be required to be returned to the State Water Board or deducted from future disbursements.
 - (6) The Recipient shall not be entitled to interest earned on undisbursed funds.
 - (7) The Recipient shall not request a disbursement unless that Project Cost is allowable, reasonable, and allocable.
 - (8) Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.
- (b) The State Water Board's obligation to disburse Project Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Project Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other agency. If any disbursements due the Recipient under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the State Water Board that such disbursement will be made to the Recipient when sufficient funds do become available, but this intention is not binding.
- 3.6 Withholding of Disbursements and Material Violations.
- (a) The State Water Board may withhold all or any portion of the funds provided for by this Agreement in the event that:
 - (1) The Recipient has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or
 - (2) The Recipient fails to maintain reasonable progress toward completion of the Project.
 - (b) For the purposes of this Agreement, the terms "material violation" or "threat of material violation" include, but are not limited to:
 - (1) Placement on the ballot of an initiative or referendum to reduce Revenues;
 - (2) Passage of such an initiative or referendum;
 - (3) Successful challenges by ratepayer(s) to the process used by Recipient to set, dedicate, or otherwise secure Revenues; or

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- (4) Any other action or lack of action that may be construed by the Division as a material violation or threat thereof.

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

- (a) Establishment of Enterprise Fund and Reserve Fund. In order to carry out its Material Obligations, the Recipient covenants that it shall establish and maintain or shall have established and maintained the Enterprise Fund. All Revenues received shall be deposited when and as received in trust in the Enterprise Fund. As required in Exhibit D of this Agreement, the Recipient shall establish and maintain a Reserve Fund.
- (b) Pledge of Net Revenues, Enterprise Fund, and Reserve Fund. The Obligation hereunder shall be secured by a lien on and pledge of the Enterprise Fund, Net Revenues, and any Reserve Fund specified in Exhibit D in priority as specified in Exhibit F (senior, parity, or subordinate). The Recipient hereby pledges and grants such lien on and pledge of the Enterprise Fund, Net Revenues, and any Reserve Fund specified in Exhibit D to secure the Obligation, including payment of Installment Payments and Additional Payments hereunder. The Net Revenues in the Enterprise Fund, shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Recipient.
- (c) Application and Purpose of the Enterprise Fund. Subject to the provisions of any outstanding Material Obligation, money on deposit in the Enterprise Fund shall be applied and used first, to pay Operations and Maintenance Costs, and thereafter, all amounts due and payable with respect to the Material Obligations. After making all payments hereinabove required to be made in each Fiscal Year, the Recipient may expend in such Fiscal Year any remaining money in the Enterprise Fund for any lawful purpose of the Recipient, including payment of subordinate debt.
- (d) Rates, Fees and Charges. The Recipient shall, to the fullest extent permitted by law, fix and prescribe, at the commencement of each Fiscal Year, rates and charges for the Wastewater Service which are reasonably expected to be at least sufficient to yield during each Fiscal Year Net Revenues equal to one hundred fifteen percent (115%) of the Debt Service and any amounts required to be paid to the provider of a reserve fund surety bond, if any, in such Fiscal Year. The Recipient may make adjustments from time to time in such rates and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates and charges then in effect unless the Net Revenues from such reduced rates and charges will at all times be sufficient to meet the requirements of this section.
- (e) Additional Debt Test.
- (1) Additional Senior Debt. The Recipient's future debt that is secured by revenues pledged herein may not be senior to this Obligation, except where the new senior obligation refunds or refinances a senior obligation with the same lien position as the existing senior obligation, the new senior obligation has the same or earlier repayment term as the refunded senior debt, the new senior debt service is the same or lower than the existing debt service, and the new senior debt will not diminish the Recipient's ability to repay its SRF obligations.
- (2) Additional Parity Debt. Future debt that is secured by revenues pledged herein may be on parity with this Obligation if the reserve and coverage requirements in Exhibit D to this Agreement are met.

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3.8 Financial Management System and Standards.

The Recipient shall comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Project funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Recipient shall be bound by, and to comply with, the provisions and requirements of the federal Single Audit Act of 1984, Office of Management and Budget (OMB) Circular No. A-133 and 2 CFR Part 200, subpart F, and updates or revisions, thereto.

3.9 Accounting and Auditing Standards.

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

3.10 Other Assistance.

If funding for Project Costs is made available to the Recipient from sources other than this Agreement, the Recipient shall notify the Division. The Recipient may retain such funding up to an amount which equals the Recipient's local share of Project Costs. To the extent allowed by requirements of other funding sources, excess funding shall be remitted to the State Water Board to be applied to Installment Payments due hereunder, if any.

ARTICLE IV MISCELLANEOUS PROVISIONS

4.1 Amendment.

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

4.2 Assignability.

The Recipient consents to any pledge, sale, or assignment to the Bank or a trustee for the benefit of the owners of the Bonds, if any, at any time of any portion of the State Water Board's estate, right, title, and interest and claim in, to and under this Agreement and the right to make all related waivers and agreements in the name and on behalf of the State Water Board, as agent and attorney-in-fact, and to perform all other related acts which are necessary and appropriate under this Agreement, if any, and the State Water Board's estate, right, title, and interest and claim in, to and under this Agreement to Installment Payments (but excluding the State Water Board's rights to Additional Payments and to notices, opinions and indemnification under each Obligation). This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State Water Board in the form of a formal written amendment to this Agreement.

4.3 Bonding.

Where contractors are used, the Recipient shall not authorize construction to begin until each contractor has furnished a performance bond in favor of the Recipient in the following amounts: faithful performance (100%) of contract value; labor and materials (100%) of contract value. This requirement shall not apply to any contract for less than \$25,000.00.

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4.4 Competitive Bidding

Recipient shall adhere to any applicable state law or local ordinance for competitive bidding and applicable labor laws.

4.5 Compliance with Law, Regulations, etc.

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

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

4.6 Conflict of Interest.

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

4.7 Damages for Breach Affecting Tax-Exempt Status or Federal Compliance

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

4.8 Disputes.

- (a) The Recipient may appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute.

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- (b) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the State Water Board, or any official or representative thereof, on any question of law.
- (c) Recipient shall continue with the responsibilities under this Agreement during any dispute.
- (d) This section 4.8 relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.

4.9 Governing Law.

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

4.10 Income Restrictions.

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

4.11 Indemnification and State Reviews.

The parties agree that review or approval of Project plans and specifications by the State Water Board is for administrative purposes only, 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, the Bank, and any trustee, and their officers, employees, and agents for the Bonds, if any (collectively, "Indemnified Persons"), against any loss or liability arising out of any claim or action brought against any Indemnified Persons from and against any and all losses, claims, damages, liabilities, or expenses, of every conceivable kind, character, and nature whatsoever arising out of, resulting from, or in any way connected with (1) the System or the Project or the conditions, occupancy, use, possession, conduct, or management of, work done in or about, or the planning, design, acquisition, installation, or construction, of the System or the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Safe Drinking Water Act, the California Hazardous Waste Control Law, and California Water Code Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the System; or (4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Recipient for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement. The Recipient shall also provide for the defense and indemnification of the Indemnified Parties in any contractual provision extending indemnity to the Recipient in any contract let for the performance of any work under this Agreement, and shall cause the Indemnified Parties to be included within the scope of any provision for the indemnification and defense of the Recipient in any contract or subcontract. To the fullest extent permitted by law, the Recipient agrees to pay and discharge any judgment or award entered or made against Indemnified Persons with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The

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provisions of this section shall survive the term of this Agreement and the discharge of the Recipient's Obligation hereunder.

4.12 Independent Actor.

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

4.13 Leveraging Covenants.

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

4.14 Non-Discrimination Clause.

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

4.15 No Third Party Rights.

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

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4.16 Operation and Maintenance; Insurance.

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

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

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

Recipient agrees that for any policy of 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 shall provide the Division with a copy of all such certificates prior to the commencement of construction of the Project.

4.17 Permits, Subcontracting, and Remedies.

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

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

4.18 Prevailing Wages.

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

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4.19 Public Funding.

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

4.20 Recipient's Responsibility for Work.

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

4.21 Related Litigation.

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

4.22 Rights in Data.

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

4.23 State Water Board Action; Costs and Attorney Fees.

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

4.24 Termination; Immediate Acceleration; Interest.

- (a) This Agreement may be terminated by written notice during construction of the Project, or thereafter at any time prior to complete satisfaction of the Obligation by the Recipient, at the option of the State Water Board, upon violation by the Recipient of any material provision of this Agreement after such violation has been called to the attention of the Recipient and after failure of the Recipient to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the Division.

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- (b) In the event of such termination, the Recipient agrees, upon demand, to immediately repay to the State Water Board an amount equal to Project Funds disbursed hereunder, accrued interest, penalty assessments, and Additional Payments. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Recipient to the date all monies due have been received by the State Water Board.
- (c) Where the Recipient is a private entity that has been determined to have violated an applicable prohibition in this paragraph or has an employee who is determined by USEPA to have violated an applicable prohibition in this paragraph that is either associated with performance under this aware or imputed to the Recipient using the standards and due process for imputing the conduct of an individual to an organization pursuant to 2 CFR Part 180, the Recipient acknowledges and agrees that any funds disbursed under this Agreement may become immediately due and payable and that penalties up to the amount of the federal capitalization grant may be due by the Recipient to the State Water Board, in addition to any other criminal or civil penalties that may become due. The Recipient, its employees, its contractors, and any subrecipients or subcontractors may not engage in trafficking in persons, procure a commercial sex act, or use forced labor.

4.25 Timeliness.

Time is of the essence in this Agreement.

4.26 Unenforceable Provision.

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

4.27 Useful Life.

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

4.28 Venue.

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

4.29 Waiver and Rights of the State Water Board.

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

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

ARTICLE V TAX COVENANTS

5.1 Purpose.

The purpose of this Article V is to establish the reasonable expectations of the Recipient regarding the Project and the Project Funds, and is intended to be and may be relied upon for purposes of Sections 103, 141 and 148 of the Code and as a certification described in Section 1.148-2(b)(2) of the Treasury Regulations. This Article V sets forth certain facts, estimates and circumstances which form the basis for

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the Recipient's expectation that neither the Project nor the Bond Funded Portion of the Project Funds is to be used in a manner that would cause the Obligation to be classified as "arbitrage bonds" under Section 148 of the Code or "private activity bonds" under Section 141 of the Code.

5.2 Tax Covenant.

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

5.3 Governmental Unit.

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

5.4 Financing of a Capital Project.

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

5.5 Ownership and Operation of Project.

The Recipient exclusively owns and, except as provided in Section 5.12 hereof, operates the Project.

5.6 Temporary Period.

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

5.7 Working Capital.

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

5.8 Expenditure of Proceeds.

The Bond Funded Portion of the Project Funds shall be used exclusively for the following purposes: (i) Reimbursement Expenditures (as defined in Section 4.20 below), (ii) Preliminary Expenditures (as defined in Section 4.20 below) in an aggregate amount not exceeding twenty percent (20%) of the Bond Funded Portion of the Project Funds, (iii) capital expenditures relating to the Project originally paid by the Recipient on or after the date hereof, (iv) interest on the Obligation through the later of three (3) years after the Applicable Date or one (1) year after the Project is placed in service, and (v) initial operating expenses directly associated with the Project in the aggregate amount not more than five percent (5%) of the Bond Funded Portion of the Project Funds.

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5.9 Private Use and Private Payments.

No portion of the Project Funds or the Project is being, has been or will be used in the aggregate for any activities that constitute a Private Use (as defined below). No portion of the principal of or interest with respect to the Installment Payments will be secured by any interest in property (whether or not the Project) used for a Private Use or in payments in respect of property used for a Private Use, or will be derived from payments in respect of property used for a Private Use. "Private Use" means any activity that constitutes a trade or business that is carried on by persons or entities, other than a Governmental Unit. The leasing of the Project or the access by or the use of the Project by a person or entity other than a Governmental Unit on a basis other than as a member of the general public shall constitute a Private Use. Use by or on behalf of the State of California or any of its agencies, instrumentalities or subdivisions or by any local Governmental Unit and use as a member of the general public will be disregarded in determining whether a Private Use exists. Use under an arrangement that conveys priority rights or other preferential benefits is generally not use on the same basis as the general public. Arrangements providing for use that is available to the general public at no charge or on the basis of rates that are generally applicable and uniformly applied do not convey priority rights or other preferential benefits. For this purpose, rates may be treated as generally applicable and uniformly applied even if (i) different rates apply to different classes of users, such as volume purchasers, if the differences in rates are customary and reasonable; or (ii) a specially negotiated rate arrangement is entered into, but only if the user is prohibited by federal law from paying the generally applicable rates, and the rates established are as comparable as reasonably possible to the generally applicable rates. An arrangement that does not otherwise convey priority rights or other preferential benefits is not treated, nevertheless, as general public use if the term of the use under the arrangement, including all renewal options, is greater than 200 days. For this purpose, a right of first refusal to renew use under the arrangement is not treated as a renewal option if (i) the compensation for the use under the arrangement is redetermined at generally applicable, fair market value rates that are in effect at the time of renewal; and (ii) the use of the financed property under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business.

5.10 No Sale, Lease or Private Operation of the Project.

The Project (or any portion thereof) will not be sold or otherwise disposed of, in whole or in part, to any person who is not a Governmental Unit prior to the final maturity date of the Obligation. The Project will not be leased to any person or entity that is not a Governmental Unit prior to the final maturity date of the Obligation. Except as permitted under Section 5.12 hereof, the Recipient will not enter any contract or arrangement or cause or permit any contract or arrangement to be entered with persons or entities that are not Governmental Units if that contract or arrangement would confer on such persons or entities any right to use the Project on a basis different from the right of members of the general public. The contracts or arrangements contemplated by the preceding sentence include but are not limited to management contracts, take or pay contracts or put or pay contracts, and capacity guarantee contracts.

5.11 No Disproportionate or Unrelated Use.

No portion of the Project Funds or the Project is being, has been, or will be used for a Private Use that is unrelated or disproportionate to the governmental use of the Project Funds.

5.12 Management and Service Contracts.

The Recipient represents that, as of the date hereof, it is not a party to any contract, agreement or other arrangement with any persons or entities engaged in a trade or business (other than Governmental Units) that involve the management or operation of property or the provision of services at or with respect to the Project that does not comply with the standards of the Treasury Regulations, Revenue Procedure 97-13, as modified by Revenue Procedure 2001-39 and IRS Notice 2014-67, or Revenue Procedure 2016-44. The Recipient represents that it will not be party to any such contract, agreement or arrangement with any person or entity that is not a Governmental Unit for the management of property or the provision

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of services at or with respect to the Project, while the Obligation (including any obligation or series thereof issued to refund the Obligation, as the case may be) is outstanding, except: (a) with respect to any contract, agreement or arrangement that does not constitute "private business use" of the Project under Code §§141(b), or (b) with respect to any contract, agreement or arrangement that complies with (i) Revenue Procedure 97-13, 1997-1 C.B. 632, as amended by Revenue Procedure 2001-39, 2001-2 C.B. 38, and as amplified by Notice 2014-67, with respect to contracts entered into before August 18, 2017 and not materially modified or extended after August 18, 2017, or (ii) Revenue Procedure 2016-44, 2016-36 I.R.B., with respect to contracts entered into or materially modified or extended on or after August 18, 2017, or (c) with respect to any contract, agreement or arrangement that does not give rise to use of the Bond Funded Portion of the Project Funds or the Project by a non-Governmental Unit of more than the amount of such non-qualified use permitted by the Code, or (d) in the event that the Recipient receives an opinion of counsel, satisfactory to the State Water Board and the Bank and expert in the issuance of state and local government bonds the interest on which is excluded from gross income under Section 103 of the Code ("Nationally-Recognized Bond Counsel"), that such contract, agreement or arrangement will not adversely affect the exclusion of the interest on the Obligation from gross income for federal income taxation purposes.

5.13 No Disposition of Financed Property.

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

5.14 Useful Life of Project.

As of the date hereof, the Recipient reasonably expects that the economic useful life of the Project, commencing at Project Completion, will be at least equal to the term of this Agreement, as set forth on Exhibit B hereto.

5.15 Installment Payments.

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

5.16 No Other Replacement Proceeds.

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

5.17 No Sinking or Pledged Fund.

Except as set forth in Section 5.18 below, the Recipient will not create or establish any sinking fund or pledged fund which will be used to pay Installment Payments on the Obligation within the meaning of Section 1.148-1(c) of the Treasury Regulations. If any sinking fund or pledged fund comes into being with respect to the Obligation before the Obligation has been fully retired which may be used to pay the Installment Payments, the Recipient will invest such sinking fund and pledged fund moneys at a yield that does not exceed the yield on the Bonds.

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5.18 Reserve Amount.

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

5.19 Reimbursement Resolution.

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

5.20 Reimbursement Expenditures.

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

5.21 Change in Use of the Project.

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

5.22 Rebate Obligations.

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

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5.23 No Federal Guarantee.

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

5.24 No Notices or Inquiries from IRS.

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

5.25 Amendments.

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

5.26 Reasonable Expectations.

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

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

CITY OF ESCONDIDO:

By: _____
Name: Christopher W. McKinney
Title: Utilities Director

Date: _____

STATE WATER RESOURCES CONTROL BOARD:

By: _____
Name: Leslie Laudon
Title: Deputy Director
Division of Financial Assistance

Date: _____

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EXHIBIT A – SCOPE OF WORK

1. The Recipient agrees to start construction no later than the estimated date of October 16, 2017.
2. The Completion of Construction date is hereby established as July 2, 2018.
3. The Recipient agrees to ensure that its final Request for Disbursement is received by the Division no later than six months after Completion of Construction, unless prior approval has been granted by the Division. Otherwise, the undisbursed balance of this Agreement will be deobligated.
4. Incorporated by reference into this Agreement are the following documents:
 - (a) [Reserved]
 - (b) the Waste Discharge Requirement Order No. R9-2010-0032 and National Pollutant Discharge Elimination System Permit No. CS0107981;
 - (c) the Recipient's Reimbursement Resolution No. 2016-11 dated January 13, 2016;
 - (d) [Reserved]
 - (e) [Reserved]
5. Reporting. Status Reports due at least quarterly.
6. Project Objectives.

The objective of the Project is to enable transmission of brine recovered from a reverse osmosis facility treating water to provide recycled water distribution to serve eastern and northern agricultural land. This Project allows the Recipient an opportunity to work with local growers to provide them with a reliable recycled water source for agricultural uses and promote economic contributions to the Recipient.

7. Scope of Work.

The Project involves the completion of plans and specifications, associated procurement, and construction of 2.3 miles (12,000 feet) of 15-inch diameter brine pipeline with fiber optic conduit along the Escondido Creek Channel. The brine pipeline will convey the high salinity Reverse Osmosis reject water from the Membrane Filtration Reverse Osmosis facility back to Hale Avenue Resource Recovery Facility.

The Project is partial financing for Phase A, which includes new reverse osmosis facility, expansion of recycled water conveyance system, a storage pond to provide wet weather storage during storm events, and upgrades to the existing wastewater treatment plant filters.

8. Signage.

The Recipient shall place a sign at least four feet tall by eight feet wide made of $\frac{3}{4}$ inch thick exterior grade plywood or other approved material in a prominent location on the Project site and shall

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EXHIBIT A – SCOPE OF WORK

maintain the sign in good condition for the duration of the construction period. The sign must include the following disclosure statement and color logos (available from the Division):



“Funding for Brine Line Broadway to Hale Avenue Resource Recovery Facility Project has been provided in full or in part by the Clean Water State Revolving Fund through an agreement with the State Water Resources Control Board. California’s Clean Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds.”

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

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

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

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EXHIBIT B – FUNDING AMOUNT

1. **Estimated Reasonable Cost.** The estimated reasonable cost of the total Project, including associated planning and design costs is five million dollars and no cents (\$5,000,000.00).
2. **Project Financing.** Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds in the amount of up to five million dollars and no cents (\$5,000,000.00). The estimated amount of principal that will be due to the State Water Board under this Agreement is five million dollars and no cents (\$5,000,000.00).
3. **Payment, Interest Rate, and Charges.** The Recipient agrees to make all Installment Payments according to the schedule in Exhibit C at an interest rate of one and eight tenths (1.8%) per annum. The Recipient agrees to pay an Administrative Service Charge in lieu of interest as reflected in Exhibit C. The Recipient agrees to pay a Small Community Grant Fund Charge in lieu of interest as reflected in Exhibit C.
4. [Reserved]
5. **Useful Life.** The useful life of this Project is at least fifty (50) years.
6. [Reserved]
7. The term of this agreement is from the Eligible Start Date of July 25, 2017 to July 2, 2048.
8. Budget costs are contained in the Project Cost Table, which is part of Exhibit A-FBA. (This Agreement will be amended to incorporate Exhibit A-FBA.)
9. Preliminary budget costs are as follows:

Planning and design allowances: \$0.00

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

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EXHIBIT C – PAYMENT SCHEDULE

See the attached preliminary Payment Schedule dated July 28, 2017. The final Payment Schedule will be forwarded to the Recipient after all disbursements have been paid and construction of the Project has been completed.

California Clean Water SRF Payment Schedule

Project No. 8115-110 - Escondido, City of
Agreement: D1701010 - based on Actual + Projected Disbursements

Brine Line Broadway to HARRF

Principal is paid over: 30 Years
Interest rate: 1.80000%

Resolution No. 2017-131
Exhibit "B"
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Ref Num	Due Date	Date Received	Principal Payment	Interest Rate%	Interest Payment	Total P and I Payment	Total Payment	Ending Balance	CPI Interest
1	7/2/2019		100,299.80	1.8	45,264.99	145,564.79	145,564.79	3,266,364.20	0.00
2	7/2/2020		139,006.15	1.8	78,942.89	217,949.04	217,949.04	4,760,694.05	0.00
3	7/2/2021		132,256.55	1.8	85,692.49	217,949.04	217,949.04	4,628,437.50	0.00
4	7/2/2022		134,637.16	1.8	83,311.88	217,949.04	217,949.04	4,493,800.34	0.00
5	7/2/2023		137,060.63	1.8	80,888.41	217,949.04	217,949.04	4,356,739.71	0.00
6	7/2/2024		139,527.73	1.8	78,421.31	217,949.04	217,949.04	4,217,211.98	0.00
7	7/2/2025		142,039.22	1.8	75,909.82	217,949.04	217,949.04	4,075,172.76	0.00
8	7/2/2026		144,595.93	1.8	73,353.11	217,949.04	217,949.04	3,930,576.83	0.00
9	7/2/2027		147,198.66	1.8	70,750.38	217,949.04	217,949.04	3,783,378.17	0.00
10	7/2/2028		149,848.23	1.8	68,100.81	217,949.04	217,949.04	3,633,529.94	0.00
11	7/2/2029		152,545.50	1.8	65,403.54	217,949.04	217,949.04	3,480,984.44	0.00
12	7/2/2030		155,291.32	1.8	62,657.72	217,949.04	217,949.04	3,325,693.12	0.00
13	7/2/2031		158,086.56	1.8	59,862.48	217,949.04	217,949.04	3,167,606.56	0.00
14	7/2/2032		160,932.12	1.8	57,016.92	217,949.04	217,949.04	3,006,674.44	0.00
15	7/2/2033		163,828.90	1.8	54,120.14	217,949.04	217,949.04	2,842,845.54	0.00
16	7/2/2034		166,777.82	1.8	51,171.22	217,949.04	217,949.04	2,676,067.72	0.00
17	7/2/2035		169,779.82	1.8	48,169.22	217,949.04	217,949.04	2,506,287.90	0.00
18	7/2/2036		172,835.86	1.8	45,113.18	217,949.04	217,949.04	2,333,452.04	0.00
19	7/2/2037		175,946.90	1.8	42,002.14	217,949.04	217,949.04	2,157,505.14	0.00
20	7/2/2038		179,113.95	1.8	38,835.09	217,949.04	217,949.04	1,978,391.19	0.00
21	7/2/2039		182,338.00	1.8	35,611.04	217,949.04	217,949.04	1,796,053.19	0.00
22	7/2/2040		185,620.08	1.8	32,328.96	217,949.04	217,949.04	1,610,433.11	0.00
23	7/2/2041		188,961.24	1.8	28,987.80	217,949.04	217,949.04	1,421,471.87	0.00
24	7/2/2042		192,362.55	1.8	25,586.49	217,949.04	217,949.04	1,229,109.32	0.00
25	7/2/2043		195,825.07	1.8	22,123.97	217,949.04	217,949.04	1,033,284.25	0.00
26	7/2/2044		199,349.92	1.8	18,599.12	217,949.04	217,949.04	833,934.33	0.00
27	7/2/2045		202,938.22	1.8	15,010.82	217,949.04	217,949.04	630,996.11	0.00
28	7/2/2046		206,591.11	1.8	11,357.93	217,949.04	217,949.04	424,405.00	0.00
29	7/2/2047		210,309.75	1.8	7,639.29	217,949.04	217,949.04	214,095.25	0.00
30	7/2/2048		214,095.25	1.8	3,853.71	217,948.96	217,948.96	0.00	0.00
			5,000,000.00		1,466,086.87	6,466,086.87	6,466,086.87		0.00

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EXHIBIT D – SPECIAL CONDITIONS

Recipient acknowledges and agrees to the following special conditions:

Environmental Special Conditions as follows:

The documents identified below are incorporated by reference and the Recipient shall comply with the conditions and recommendations therein:

1. The November 6, 2013 Mitigation Monitoring and Reporting Program, including but not limited to the following mitigation measures:
 - BIO-1 through BIO-2 for biological resources,
 - HAZ-1 through HAZ-4 for hazards/hazardous materials, and
 - CUL-1 through CUL-4 for cultural resources,

The Recipient shall make no changes in the Project, construction area, or special conditions, without obtaining the appropriate and necessary prior approval(s) from the State Water Board.

Financial Special Conditions as follows:

1. Recipient shall establish and maintain rates and charges sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs, and shall ensure that Net Revenues are equal to at least 1.15 times the annual debt service in each Fiscal Year.
2. Issuance of additional parity debt requires Recipient's Net Revenues, in the most recent Fiscal Year, to be a minimum of 1.15 times the maximum annual debt service for existing and proposed additional debt.
3. Recipient shall establish a restricted Reserve Fund, held in its Wastewater Enterprise Fund, equal to one year's debt service on this Obligation prior to Completion of Construction. The restricted Reserve Fund shall be maintained for the full term of the Agreement and shall be subject to lien and pledge as security for this Obligation, and its use shall be restricted to payment of this Obligation during the term of this Agreement.

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EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

The Recipient agrees to comply with the following federal conditions:

(A) Federal Award Conditions

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

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- i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - ii. Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (ii) of this section; and
 - iv. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.
 - v. Suspension and debarment information can be accessed at <http://www.sam.gov>. The Recipient represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its contracts and subcontracts under this Agreement. The Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the termination, delay or negation of this Agreement, or pursuance of legal remedies, including suspension and debarment.
- (d) Conflict of Interest. To the extent applicable, the Recipient shall disclose to the State Water Board any potential conflict of interest consistent with USEPA's Final Financial Assistance Conflict of Interest Policy at <https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy>. A conflict of interest may result in disallowance of costs.
- (e) Copyright and Patent.
- i. USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement.
 - ii. Where an invention is made with Project Funds, USEPA and the State Water Board retain the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the Recipient. The Recipient must utilize the Interagency Edison extramural invention reporting system at <http://iEdison.gov> and shall notify the Division when an invention report, patent report, or utilization report is filed.
- (f) Credit. The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the following statement:
- “This project has been funded wholly or in part by the United States Environmental Protection Agency and the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency or the State Water Resources Control Board, nor

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EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

does the EPA or the Board endorse trade names or recommend the use of commercial products mentioned in this document.”

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

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

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

(C) WRRDA Conditions

- (1) Architectural and engineering contracts. Where the Recipient contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services, the Recipient shall ensure that any such contract is negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based requirement as determined by the State Water Board.
- (2) Fiscal sustainability. The Recipient certifies that it has developed and is implementing a fiscal sustainability plan for the Project that includes an inventory of critical assets that are a part of the Project, an evaluation of the condition and performance of inventoried assets or asset groupings, a certification that the recipient has evaluated and will be implementing

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water and energy conservation efforts as part of the plan, and a plan for maintaining, repairing, and, as necessary, replacing the Project and a plan for funding such activities.

(D) Cross-Cutters

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

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

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

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

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

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

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

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

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

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becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

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

(E) Geospatial Data Standards

All geospatial data created pursuant to this Agreement that is submitted to the State Water Board for use by USEPA or that is submitted directly to USEPA must be consistent with Federal Geographic Data Committee endorsed standards. Information on these standards may be found at www.fgdc.gov.

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EXHIBIT F – SCHEDULE OF SYSTEM OBLIGATIONS

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

The following outstanding debt is senior to the Obligation:

Title	Debt Service Coverage Requirement	Total Amount	End Date
None.			

The following outstanding debt is on parity with the Obligation:

Title	Debt Service Coverage Requirement	Total Amount	End Date
Escondido Joint Powers Financing Authority Revenue Bonds (Wastewater System Financing) Series 2012	1.15	\$27,390,000	9/1/2041
City of Escondido Refunding Revenue Bonds (Wastewater System) Series 2015A	1.15	\$14,645,000	9/1/2026
City of Escondido Refunding Revenue Bonds (Wastewater System) Series 2015B	1.15	\$5,060,000	9/1/2025
CWSRF Project No. 4156-110	1.15	\$16,461,971	4/1/2023
CWSRF Project No. 4156-210	1.15	\$9,779,808	5/25/2021
CWSRF Project No. 4156-310	1.15	\$14,822,601	4/1/2023
CWSRF Project No. 4695-110	1.15	\$1,572,306	9/1/2026
CWSRF Project No. 8113-110	1.15	\$8,000,000	4/8/2049

The following outstanding debt is subordinate to the Obligation:

Title	Debt Service Coverage Requirement	Total Amount	End Date
None.			

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EXHIBIT G – DAVIS-BACON REQUIREMENTS

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

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

I. Requirements For Sub recipients That Are Governmental Entities:

If a sub recipient has questions regarding when Davis-Bacon (DB) applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State Water Board at DavisBacon@waterboards.ca.gov or phone (916) 327-7323. The recipient or sub recipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>

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

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

2. Obtaining Wage Determinations.

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

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

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

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

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

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EXHIBIT G – DAVIS-BACON REQUIREMENTS

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

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF - financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR § 5.1 or, for CWSRF projects, the FY 2015 Water Resource Reform and Development Act, or for DWSRF projects, the Consolidated Appropriations Act, 2017, the following clauses:

(1) Minimum wages.

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT G – DAVIS-BACON REQUIREMENTS

contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

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

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

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

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

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either

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directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

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

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

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

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

(4) Apprentices and trainees

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

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the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

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

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(10) Certification of eligibility.

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

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

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

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

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

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

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

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section. (b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls

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

5. Compliance Verification

(a) The sub recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(3), all interviews must be conducted in confidence. The sub recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

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

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

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

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

EXHIBIT H – COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES

1. EMERGENCY DROUGHT REGULATIONS

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

2. CALIFORNIA DEBT INVESTMENT ADVISORY COMMISSION (CDIAC)

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

3. COMPLIANCE WITH STATE REQUIREMENTS

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

(a) Monthly Water Diversion Reporting

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

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

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

(c) Volumetric Pricing & Water Meters

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

(d) Urban Water Management Plan

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

(e) Urban Water Demand Management

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

(f) Delta Plan Consistency Findings

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

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

(g) Agricultural Water Management Plan Consistency

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

(h) Charter City Project Labor Requirements

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

(1) Prevailing Wage

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

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

(2) Labor Agreements

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

FUTURE CITY COUNCIL AGENDA ITEMS

Updated October 6, 2017

*AGENDA ITEMS AND CITY COUNCIL MEETING DATES ARE SUBJECT TO CHANGE.
CHECK WITH THE CITY CLERK'S OFFICE AT 839-4617*

October 18, 2017

4:30 p.m.

CONSENT CALENDAR

PUBLIC HEARINGS

Citizen Participation Plan (CPP) for HOME Investment Partnerships Funds (HOME), Community Development Block Grant Funds (CDBG), Emergency Solutions Grant Funds (ESG), and the Assessment of Fair Housing (AFH)
(B. Martin)

This is a required hearing for the Citizen Participation Plan for federal HOME, CDBG, and ESG funds for projects and programs. The City Council is being asked to adopt the Citizen Participation Plan.

CURRENT BUSINESS

Sale of 480 North Spruce, 455 North Quince, and 525 North Quince to Badiee Development
(J. Epp)

Badiee Development has submitted an offer to purchase the subject properties for the development of an industrial project. The City's appraisal validated the offer. Staff will return to Council for approval of a purchase and sale agreement once it is completed.

Year-End Financial Status Report for Fiscal Year 2016/17 and Budget Adjustment for Fiscal Year 2016/17
(S. Bennett)

Quarterly financial reports present written financial updates to Council concerning certain funds of the City based on the most recent financial information available. These quarterly financial reports include budgetary information along with the actual resources received to date and the use of these resources in fulfilling each fund's financial plan. The report provides information for the General Fund, Recreation Fund, Reidy Creek, Successor Agency, and Water and Wastewater Funds.

Library Outsourcing Contract
(J. Epp)

Request the City Council approve authorizing the Mayor and City Clerk to enter into an agreement for professional services with Library Systems & Services, LLC for the operation of the Escondido Public Library.

FUTURE AGENDA ITEMS (D. Halverson)

October 25, 2017
4:30 p.m.

CONSENT CALENDAR

Approval of CalPERS Industrial Disability Retirement for Police Officer Scott Gudehus
(S. Bennett)

Request the City Council approve the Industrial Disability Retirement for Police Office Scott Gudehus.

Approval of CalPERS Industrial Disability Retirement for Fire Engineer John Grimm
(S. Bennett)

Request the City Council approve the Industrial Disability Retirement for Fire Engineer John Grimm.

PUBLIC HEARINGS

Short-Form Rent Review Board Hearing for Town & Country Club Park
(B. Martin)

The amount requested covers a 24-month period of consideration from December 31, 2014 to December 31, 2016. The Park is requesting 75 percent of the change in the Consumer Price Index for the period of 3.339 percent of the 152 spaces subject to rent control, the park is requesting an increase for 21 spaces with new leases, vacancies, or park owned coaches. The average space rent for the 131 remaining spaces is \$505.69. The requested average monthly increase per space is approximately \$14.30.

CURRENT BUSINESS

Fiscal Year 2016 Housing Related Park Program Grant Fund Budget Adjustment
(J. Goulart)

The City of Escondido has been awarded \$1,207,000 in grant funds from the California Department of Housing and Community Development to complete park/recreation facilities projects in low-moderate income areas. A budget adjustment is necessary to accept funds and begin projects.

Solutions for Change Request for Funding
(B. Martin)

Historically, Solutions for Change has received federal funds for their family homeless program. Federal guidelines require recipients follow a "Housing First" model that Solutions for Change is fundamentally opposed. Solutions for Change has initiated the Mission: SolveIt Initiative to replace these federal funds while they work to change federal policy. Federal Housing and Urban Development (HUD) funds cannot be used to fund this request. Reprogrammed recycled Redevelopment Funds or General Funds may be used to fund this request.

FUTURE AGENDA ITEMS (D. Halverson)

Weekly Activity Report



October 5, 2017

FEATURED THIS WEEK

Friends Visiting Friends!

This week, Escondido's "Friends of the Library" volunteer organization is going to visit with the Friends of the Meniffee library system. Meniffee libraries are operated by Library Systems & Services and recently renewed their contract. The Friends are meeting to exchange ideas to and learn from Meniffee's experiences in having a great volunteer organization. City staff is helping by providing a bus and driver for the visit.

More Avocados in Escondido

In the second half of 2018, Henry Avocado plans to expand its operations, moving into a 52,000 square foot building on Harmony Grove Road. The new location will become the company's headquarters and include administrative, sales, packing, distribution and farm management personnel.

Henry Avocado's current location on East Lincoln, which was the original Henry farm, will retain most of its existing avocado groves. The offices and packinghouse will become residential development. Interior improvement plans for the new location have been submitted to the City, and construction is expected to begin later this year. "The Harmony Grove location is perfect for our operations and is large enough to handle our avocado volume for many years into the future," stated Phil Henry, the company's president.

Escondido is proud of its agricultural heritage. Henry Avocado has been on the forefront of the ag industry for decades, and the expansion in Escondido will make a positive economic impact on not just the city, but the entire region.

SPECIAL EVENTS

Saturday, October 7, 2017 – Grape Day Celebration

- *Sunrise Rotary 5K Run, Walk & Stroll*
7:30 – 10:00 a.m. through scenic, old Escondido
- *Grape Day Festival*
2:00 – 8:00 p.m. Grape Day Park

Grape Day started in 1908 as a way to celebrate Escondido's grape harvest and promote the city. This wonderful annual community event includes a 5K Run, Walk & Stroll sponsored by the Escondido Sunrise Rotary and the Grape Day Festival presented by the Escondido History Center in Grape Day Park. Join the fun at this festive day of food, games, entertainment and fun!

COMMUNITY SERVICES

The Community Services Department (CSD) Leadership Academy, a pilot program designed for part time staff interested in becoming effective leaders with in the Community Services Department, and run by CSD Supervisor Robert Rhoades, began its second 8-session course on Wednesday September 27.

The course will cover a wide range of topics designed to develop strong leaders, such as communication, personal leadership, ethics, and managing change. Attendees will become familiar with and understand the basis of leadership development, identify their individual leadership styles, and build essential skills such as communication, conflict resolution, process management, goal achievement, and leading a team.

This course meets the third Wednesday of each month, September through May (except December), 6:30 p.m. – 9:00 p.m., at the East Valley Community Center.

COMMUNITY DEVELOPMENT

Major Projects Update

The following major projects are currently being reviewed and coordinated with Planning, Engineering, Fire, Building and Utilities staff. A complete description of each project can be viewed [here](#). Updates provided below cover project milestones that occurred last week.

Commercial / Office:

1. Escondido Research and Technology Center – West (ERTC) (Developer: James McCann) –
A plan for a new two-story, 57,000 SF, 52-bed Palomar Rehabilitation Institute was submitted on July 31, 2017 and a letter indicating the application is incomplete was sent to the applicant on August 10, 2017. The applicant submitted revised grading and landscape plans and a storm water management plan two weeks ago. Revised elevations were submitted to Planning on October 3, 2017.
2. Centre City Commercial Center (Developer: Todd Dwyer) SE corner Centre City/Mission –
The expedited plan check process for the grading, building and landscape plans and the final parcel map started on July 25, 2017. All department comments for the second check were returned to the applicant on September 27. Minor comments remain so coordination with Engineering is underway to try to avoid the need for a third plan check. Comments on the carwash building plans were sent by Planning on October 2, 2017.

Industrial

1. Escondido Self-Storage Facility (Developer: Brandywine Homes, Inc.) 2319 Cranston Dr. –
Revised grading, landscape, and street and improvement plans were submitted by the applicant on July 14, 2017. Engineering and Planning comments on those plans were returned to the applicant on August 11, 2017. The applicant resubmitted revised grading, landscape, and street improvement plans on September 15, 2017. The applicant continues to work on resolving existing easement issues on the site.
2. Exeter Harmony Grove Industrial Development (Developer: John Couvillion, Badiie Development) 1925 and 2005 Harmony Grove Road – This proposed combination of the

previously approved Victory and Innovative Industrial Projects into an 11.04-acre site for a single-tenant 212,000 square foot industrial building was submitted as a modified Master and Precise Plan on September 25, 2017. Plans were distributed to all departments the following day for initial review and comments. Initial comments were returned to the applicant on September 29, 2017, with the remaining department comments sent on October 5, 2017.

3. North American Self-Storage (Developer: Russ Colvin) 852 S. Metcalf – This project is participating in the expedited plan check program. The demo has been completed. Building plans were approved by Esgil, Planning and Fire the last week of June. The grading permit was issued two weeks ago. The applicant has not started construction and is now proposing changes to the plans that would remove the basement level and potentially increase the building height.

City Projects

1. Micro-Filtration Reverse Osmosis (Developer: City of Escondido Utilities Department) SE corner Ash/Washington – The lawsuit challenging the project approval has been settled and it is expected that a contract for engineering design will be considered soon.
2. Lake Wohlford Replacement Dam (Developer: City of Escondido Utilities Department) – A Draft EIR was prepared and issued for a 45-day public review period that began on October 4, 2016 and closed on November 17, 2016. A field visit with staff from the state and federal wildlife agencies took place on May 11, 2017, to review biological mitigation requirements. Staff sent a follow-up letter to the wildlife agencies on June 29, 2017, seeking clarification on the proposed biological mitigation requirements. Staff is now coordinating with the consultant to final the EIR and start the decision-making process.

Institutional

1. Escondido United Reformed Church (Developer: Brent Cooper) 1864 N. Broadway – The grading permit for the new sanctuary building was issued in February of 2016 and then the applicant went through a CUP modification process with Planning to modify the building design. The building permit was issued on October 3, 2017, and the project is ready to start construction.
2. Self-Realization Fellowship Center (Developer: John Pyjar, Domusstudio Architecture 1840 Del Dios Rd. – The CUP application was submitted on November 14, 2016. The applicant resubmitted revised plans and technical studies on May 19, 2017, and staff has been issuing comments on the various documents. Another resubmittal from the applicant was received on August 22, 2017. Comments from Engineering and Utilities were sent to the applicant last week and a follow-up meeting with the applicant occurred on October 4, 2017.
3. Chalice Unitarian Universalist Congregation (Developer: Pete Bussett, Bussett Architecture) 2324 Miller Avenue – This CUP to expand an existing 3,300 square foot religious facility by adding approximately 3,100 square feet of multi-purpose building and foyer was originally submitted in November of 2015. The applicant has been revising the project to respond to staff comments and meet the needs of the congregation. The Mitigated Negative Declaration is now in a public review period that extends from September 29, 2017 to October 18, 2017.

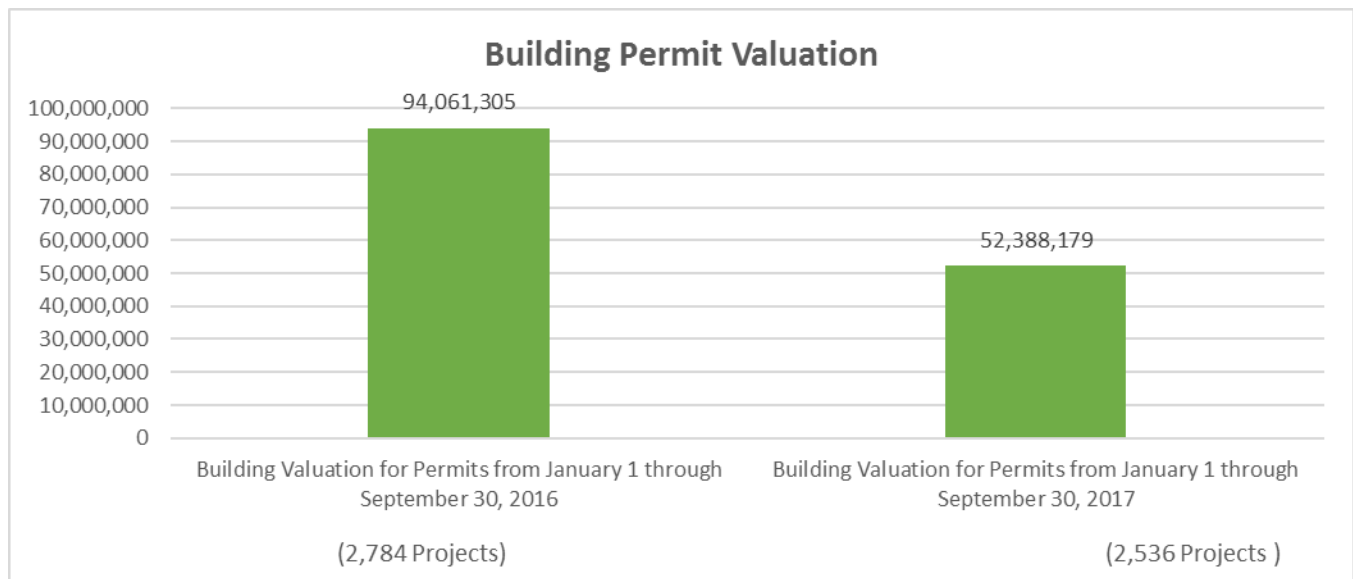
Residential

1. Citron (formerly Stella Park) (Developer: William Lyon Homes) 63 condo units at 2516 S. Esc. Blvd. – Building plans were submitted on April 6, 2017. Esgil and Planning have provided comments. Fire has approved the building plans. The rough grading has been completed on the site. The applicant resubmitted the precise grading plan on July 14, 2017. Engineering returned comments on August 15, 2017. The applicant submitted revised grading plans last week and discussions are on-going regarding potential storm water solutions.
2. Wohlford (Developer: Jack Henthorne) 55 lots at 661 Bear Valley Pkwy. –City staff is currently working to complete negotiations on the terms for the Development Agreement and schedule the item with the Planning Commission for review and consideration, most likely in January of 2018.
3. Safari Highlands Ranch (SHR) (Developer: Jeb Hall, Concordia Homes) 550 lots east of Rancho San Pasqual – A second revised tentative map depicting various minor changes and clarifications to roads, easements and drainage facilities was submitted on April 25, 2017. Revised technical engineering reports as well as responses to staff comments also have been submitted for review. The revised studies have been loaded on the City's website at the following link: [Safari Highlands Ranch Specific Plan - City of Escondido](#). The applicant filed revised emergency access plans on September 15, 2017. These plans are currently being reviewed by Fire, Engineering and Planning.
4. 18 lots at 701 San Pasqual Valley Rd (Developer: Bob Stewart) – A three-year extension of time for the previously approved ten-lot subdivision (Tract 895) was approved by the City Council on June 7, 2017. Staff comments on the revised tentative map were issued the last week of July. Staff met with the applicant last week regarding unresolved project design issues.
5. Escondido Gateway (Developer: Carolyn Hillgren, Lyon Living) 126 condo units at 700 W. Grand – Building plans have been approved by Esgil, Planning and Fire. Grading plans have been approved by Utilities, Planning and Fire. A street vacation for right-of-way frontage along Grand Avenue is pending. Demolition is complete and permits are nearly ready to be issued.
6. The Villages at Escondido Country Club (Developer: Jason Han, New Urban West, Inc.) 392 residences – Planning staff has provided a location on the city's website for ECC project-related documents and plans. A 45-day public review period for the Draft EIR ended on August 18, 2017. The EIR consultant is currently drafting responses to the comments that were received. The Draft EIR and appendices have been placed on the city website. It is anticipated that the Planning Commission will review and consider the Project application on October 24th to make a recommendation to City Council. This information along with project status and other related information can be accessed at the following link: [ECC - City of Escondido](#)
7. Ivy/Valley Parkway Mixed-Use Development (Developer: Abad Rahan Pars Inc./ Norm Wieme, Architect) 20 condo units at 113 N. Ivy - The applicant has indicated that grading and building plans are expected to be submitted into plan check soon. The reimbursement

agreement for new water infrastructure that will be installed by the project in the adjoining alley is being readied for City Council approval.

8. North Avenue Estates (Developer: Casey Johnson) 34 lots at North Ave./Conway Dr. – A new annexation survey of surrounding property owners was mailed out at the request of LAFCO. A neighborhood meeting hosted by staff and the project applicant occurred on August 9, 2017. The applicant has reviewed drainage issues with the Engineering Division and a revised tentative map was submitted last week.
9. Aspire (106 condo units on Municipal Lot 1) and The Ivy (95 condo units at 343 E. 2nd) (Developer: Addison Garza, Touchstone Communities) – The proposal consists of three separate downtown project sites proposed for mixed-use, residential and parking garage components on Parking Lot 1, Parking Lot 4 and the former Escondido Surgery Center property. Applications were submitted for entitlement processing on June 23, 2017. A project kick-off meeting with the applicant and city staff occurred on July 13, 2017. On July 24, 2017, staff sent a letter to the applicant indicating the project application submittal was incomplete. Subsequent meetings with the applicant and staff have been on-going.
10. Grand Avenue Apartments (Developer: Norm LaCaze, Escondido Venture 99, LLC) 15 apt. units at 1316 E. Grand Ave. – A planned development application proposing 15 multi-family units in one three-story building on a vacant 0.51-acre lot was submitted for entitlement processing on September 22, 2017.

Building Division



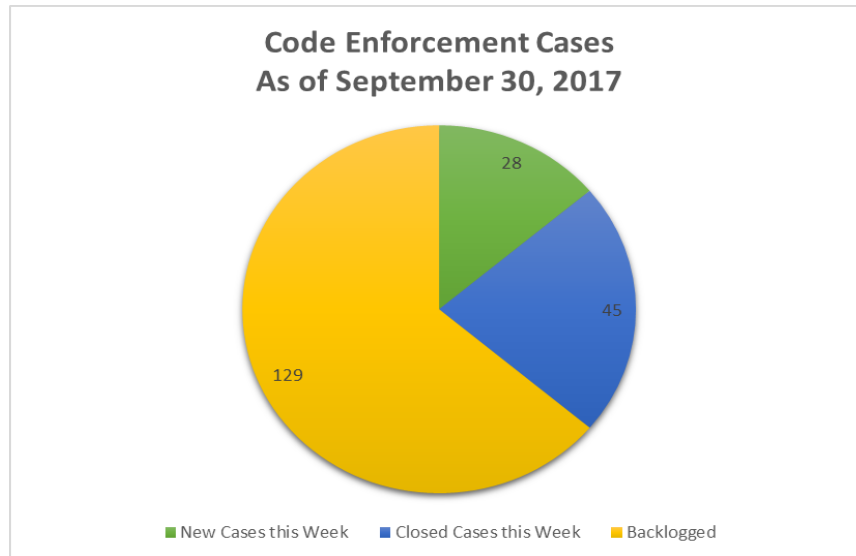
Building Permits Issued Last Week	Total Valuation
78	\$2,385,256

1. A total of 25 solar photovoltaic permits were issued for the week. The Building Division has issued 716 solar permits this year, to date, compared to 958 issued during the same time last year.
2. Our building inspectors responded to 220 inspection requests for the week.

3. Building has issued 174 single family dwelling permits this year and 224 multi-family units. This compares with 56 single family dwellings and 88 multi-family dwellings for the same time last year.
4. Projects nearing permit issuance are:
 - a. 917 W Lincoln, 3 new apartment buildings, 9 units.
 - b. 700 W Grand Ave Gateway project (former police building)
 - c. Storquest – four-story self-storage facility, 222 W. Mission Ave.
 - d. Tract 877 – 13 new single-family homes on Bernardo Avenue near I-15.
5. The construction of the City Plaza three-story mixed use building at 300 S. Escondido Blvd. continues with a request for temporary meter releases in preparation for building completion the first part of 2018.
6. The Meadowbrook, three-story apartment building with underground garage at 2081 Garden Valley Glen is preparing the building for final inspection.
7. Escondido Disposal is requesting inspection for site walls and framing of the weigh station.
8. The medical office building at 2125 Citracado Pkwy is now installing drywall and exterior lath.
9. The medical office building at 1951 Citracado Pkwy has received inspection approval for drywall and interior shell. Plans have been approved for the tenant improvement portion of the project. Exterior stucco is being applied.
10. The Westminster Seminary at 1725 Bear Valley Pkwy is preparing for exterior shear wall and framing inspections.
11. The children's building for Emanuel Faith Church at 639 E 17th Ave has received inspection approval for the framing of the building. The Church of Resurrection at 1445 Conway has received inspection approval for roof sheathing.
12. The new Veterans Village project at 1540 S Escondido Blvd has received underground plumbing, partial foundation and masonry inspections for the residential buildings.
13. The third and fourth lift of the exterior masonry walls are being erected at 999 N. Broadway for the new supermarket shell building.
14. The Ford dealership at 1717 Auto Park Way has commenced on the second phase of construction which includes the interior remodel and new showroom addition.
15. Permits were issued last week for six new single-family dwellings in the Canyon Grove development by Shea Homes.

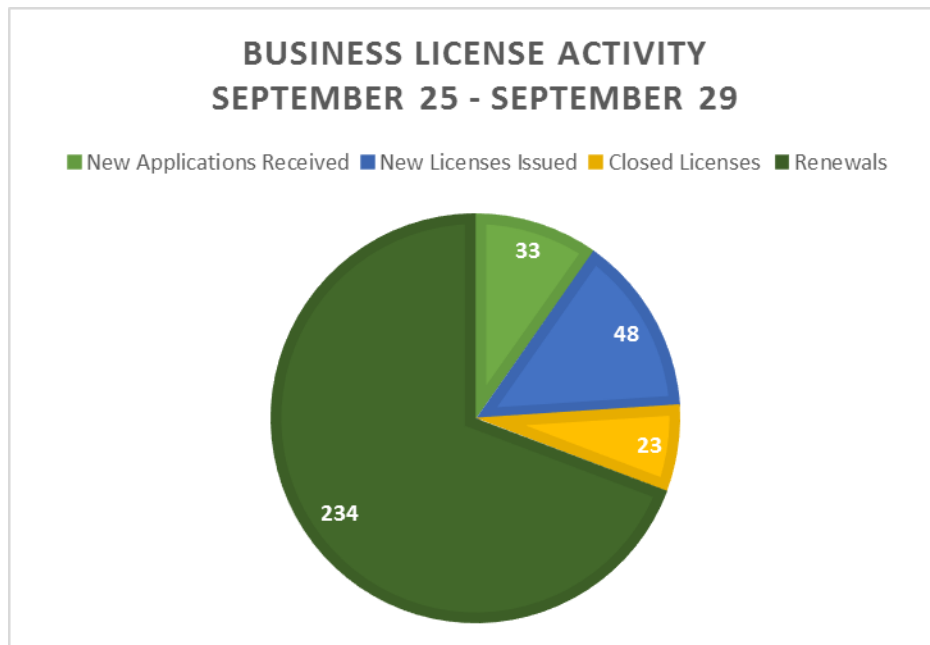
16. The Latitude II multi-family residential development at 650 N. Centre City Parkway has received foundation inspection approval for Building 1.

Code Enforcement

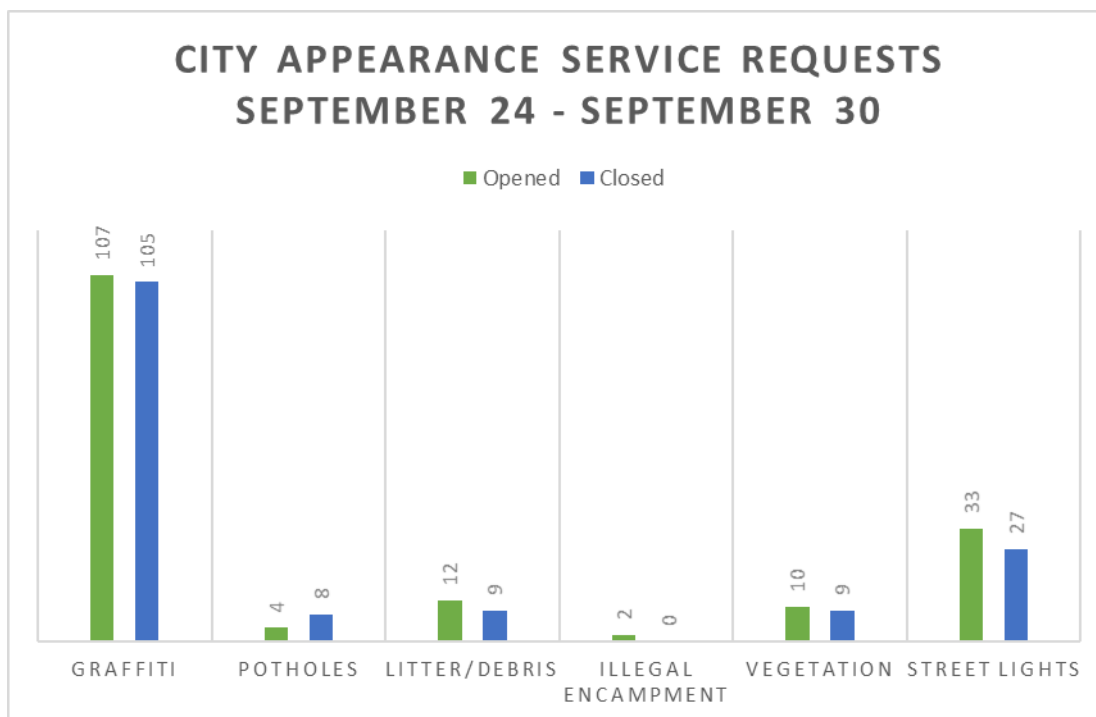
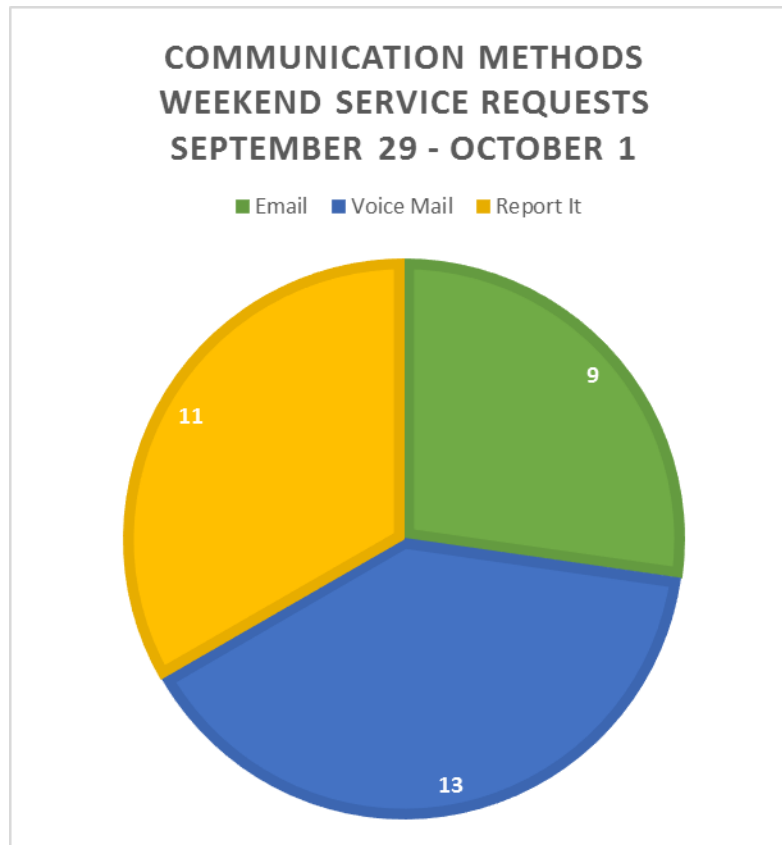


Total Open Code Cases	Illegal Signs Confiscated over the Previous Weekend
339	183

Business Licensing



Public Works Operations



Graffiti Restitution

Collected This Week	Collected Year to Date
\$358.95	\$6933.71

ENGINEERING

Capital Improvements

Valley Pkwy/Valley Center Road Widening Project

The contractor has begun to excavate for the new roadway along the east side of the project, new storm drain pipe was delivered to the site this week. Staff is continuing to monitor the traffic impact in the corridor and are making adjustments to the traffic signal timing to accommodate the best travel time for the Valley Parkway portion of the roadway. Wohlford Drive at East Valley Parkway which serves as one of the entrances to Mayflower Dog Park, Caballo Trail and Escondido Human Society is now closed. Access to these facilities is permanently transferred to the Beven Drive signalized intersection. Existing notification signs have been relocated to the Bevin Drive intersection. The project information signs will be installed this week, the web site link and funding information is provided.

Neighborhood Lighting Project

The preconstruction meeting was held September 28th. The materials submittals for the construction material are under review, the poles for the project have a six week lead time for delivery. The scope of work for the project includes the installation of 44 new street poles along with the replacement of 22 existing street light fixtures with the latest L.E.D. fixtures in 5 neighborhood areas.

2017 Street Rehabilitation and Maintenance Project

The preconstruction meeting is scheduled for next week. Material submittals for the project is presently under review.

Corrugated Metal Storm Drain Pipe Assessment Study

This project televises all City-maintained corrugated metal pipes (CMP) and assesses their condition to allow proactive and efficient pipe maintenance. To date, approximately 45% of the CMP storm drains have been televised. The review of the televised lines has shown pipe condition as well as one large turtle and a cat that have taken up residence in two pipe sections.

Transit Center Pedestrian Crossing

This project adds a pedestrian crossing over the creek adjacent to the Transit Center. 60% design plans are due October 2017.

Private Development

Pradera - Lennar Communities

No changes from that reported last week. Phase 7 homes are being released for occupancy this week

Lexington Model Homes - KB Homes

Construction of surface improvement along Ash Street is ongoing this week in anticipation of the first occupancies expected in October. Day time closures of Ash Street between Lehner Avenue and Vista Avenue will be in effect until Friday, October 13. The work will be permitted between the 8:00 a.m. and 2 p.m. time period when school is in session. Electronic message boards have been placed prior to the closure and the developer and City will work closely with the Rincon Middle School representative.

Citron Project by William Lyon Homes

The project is idled this week. The project is located at 2516 S. Escondido Boulevard.

Tract 932 - Canyon Grove Shea Homes Community

Installation of additional concrete curb and gutter improvements along interior streets is being completed this week. Work on the installation and testing of water mains is ongoing this week.

Latitude II Condominiums by a Lyon Homes Partnership: Washington Avenue at Centre City Parkway

The construction of offsite storm drain is continuing this week. No traffic interruption will be experienced along Centre City Parkway with all construction occurring along the shoulder of the parkway.

Veterans Village

No changes from that reported last week: The project's water improvement is continuing this week, with work being performed onsite.

Victory Industrial Park

The grading operation is continuing with the importing of material. The project is located at 2005 Harmony Grove Road and is 5.4 acres in size.

Centerpoint Project

No changes from that reported last week: The existing offsite public improvements, which include concrete curb and gutter, sidewalks and driveway approaches along the project boundaries, have been demoed. The project is located at 999 Broadway.

Spring Hill Suites Hotel/ La Terraza Boulevard

The grading operation is continuing this week with the construction of the block wall along La Terraza Boulevard. The remaining elements of the large retaining wall are being completed this week.

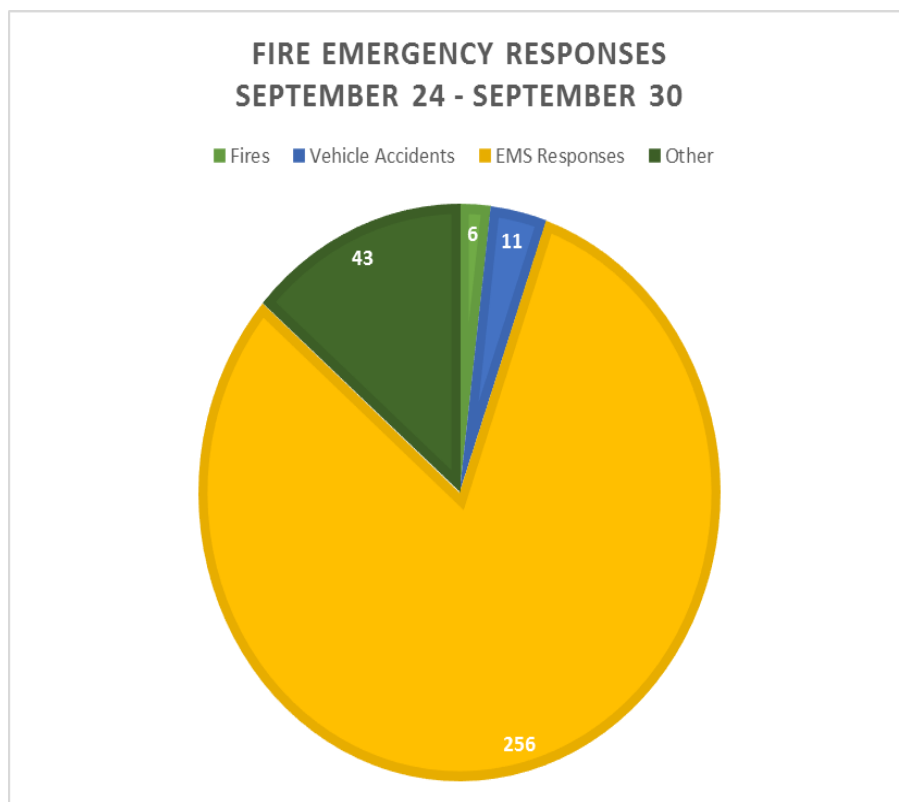
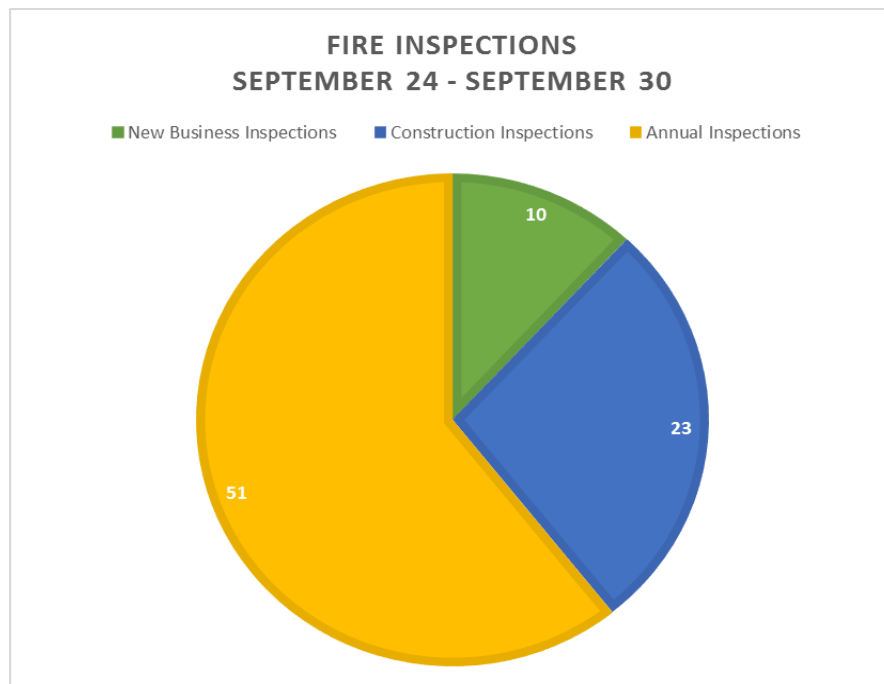
Centre City Parkway Shopping Center

The project is idled at this time. The project is located at the corner of Mission Avenue and Centre City Parkway.

Escondido Disposal Facility

No changes from that reported last week: The onsite construction of storm drain and water quality basins is proceeding this week.

FIRE
Inspections:



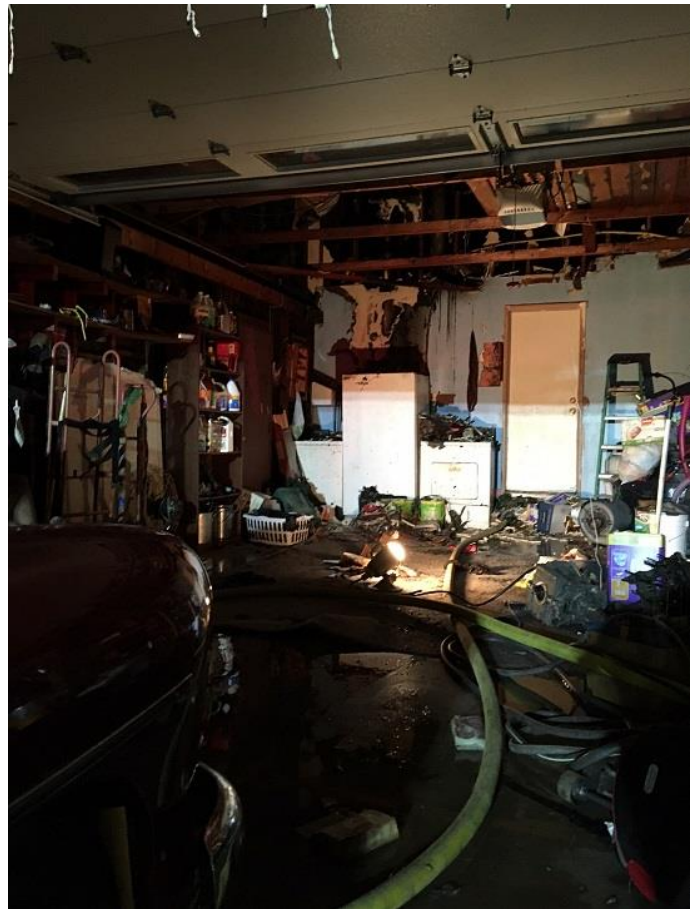
Total Emergency Responses (Year To Date)	12,400
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News:

- On September 26th, 2017 Escondido Fire Brush Rig 133 and OES 8632 were both deployed to the Canyon Fire in Corona, CA at 4:00a. Both crews returned home on Thursday, September 28th.



- On September 29th, 2017 at approximately 11:11 PM, the Escondido Police and Fire Communication Center received a report of smoke coming from single family home at 1150 Beverly Way. A structure fire response was dispatched to the location. The first arriving engine reported a moderate amount of smoke coming from garage, eaves and roof vents. Aggressive action by the firefighters contained and controlled the fire in approximately 15 minutes. The garage sustained moderate damage with minor smoke damage to the interior of residence. There were no injuries to firefighter's or civilians. In all, four fire engines, one truck, one rescue ambulance and one Battalion Chief responded to the fire. The cause of the fire is under investigation. Safety Message: Ensure fire door from garage to residence is self-closing.



POLICE

INCIDENTS:

- On 9/24/17 at 05:39 hours, a San Diego Sheriff Office deputy was in pursuit of a possible DUI down the Lake Wohlford grade into Escondido. The vehicle almost struck an Escondido Police Officer while on his way into work. SDSA requested that we take over the pursuit as they entered Escondido. The vehicle ultimately crashed into a tree at the intersection of W. 3rd Ave and Broadway. The driver was taken into custody without further incident. SDSA took the arrest, and EPD completed the collision and pursuit reports.
- On 9/26/17 at 03:16 hours officers responded to 632 N. Grape St referencing a hot-prowl residential burglary. The address is a boarding home for adults with special needs. One of the residents confronted two Hispanic Male Adult suspects and they fled the location. Officers later discovered that one of the residents was buying street drugs from local gangsters. The loss was cash and food items.
- On 9/26/17 at 03:38 hours, officers respond to 723 N. Grape referencing a robbery and arrived on scene at 03:40 hours. Two suspects forced entry into the home and robbed a couple of their cash. Suspects are described as two Hispanic Male Adults armed with a pistol and a knife.
- On 9/27/17 at 19:30 hours, a 32-year-old male employee of Sprouts left work and walked to the Subway (1611 S. Centre City Pkwy) for his lunch break. He was confronted by two Hispanic Male Adults approx. 18 years old. One suspect produced a knife while the 2nd suspect struck the victim across the head with a stick or pole. While the victim was dazed, the suspects rifled through his pockets and took his cell phone. The suspects then fled. After officers cleared the call, the suspects returned to the Subway a short time later and the manager recognized them and called police. The suspects were detained and a curbside line up was conducted with both suspects positively identified and arrested for Armed Robbery.
- On 9/28/17 at 11:25 hours, a female suspect was in a dispute with another female at Grape Day Park because she was talking to her boyfriend. The suspect began screaming and threatening to kill the female victim, leaving the area momentarily and returning armed with a large 10" inch long knife. Witnesses stated the suspect attempted to cut her boyfriend and the female victim with the knife, but her boyfriend was able to disarm her. An Escondido Park Ranger stated he responded to the disturbance and observed the suspect screaming and threatening to cut the victim with a box cutter razor. The suspect was arrested by police for Assault with a Deadly Weapon and later booked into Vista Detention Facility.
- On 9/29/17 at 18:31 hours, Gang Enforcement Team officers responded to a fight call at 301 E. Washington Ave. It was later determined that there had been a strong arm robbery. The suspects were located a short distance away and arrested.
- On 9/30/17 around 01:24 hours, several people called in stating a shooting just occurred at Elmwood/Washington Ave. Several units arrived on scene and located a victim on the corner with a gunshot wound to his leg (non-life threatening). Simultaneously, an officer sees a dark colored passenger car fleeing the scene north on

Fig St. The car attempted to evade the officer but then stopped in front of 707 N. Grape St. Officers detained the driver and noted that a passenger likely fled prior to arrival. After further investigation, the driver was arrested for being involved in the shooting. The investigation is on-going.

COPPS:

The EPD COPPS (Community Oriented Policing and Problem-Solving) Unit is dedicated to increasing the quality of life for the residents of Escondido through pro-active responses to crime trends and community issues. Addressing crime and public nuisance in Grape Day Park is one project the Unit has been tasked with, along with patrolling the Downtown Business District and surrounding areas.

- 8 arrests were made
- 23 citations were issued
- Personnel from City Shops and the COPPS Unit traveled to the City of Temecula to see how they are dealing with homeless camp clean-ups, hazardous materials they come across, etc. in an effort to maximize efficiency and safety

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