AGENDA
BUDGET/PERSONNEL COMMITTEE (BPC)

Dennis Allion, Chair
Linda Grier, Gloria De La Rosa, Tom Moore
[Ron Stefani – Alternate]

DATE: Friday, July 14, 2017
TIME: 12:30 pm
LOCATION: Admin Conference Room
5 Harris Court, Building D
Monterey, CA 93940

1. CALL TO ORDER
2. ROLL CALL
3. PUBLIC COMMENTS
   Anyone wishing to address the Committee on matters not appearing on the Agenda may do so now for not more than three (3) minutes. Comments on any other matter listed on the Agenda are welcome at the time the matter is being considered by the Committee.
4. APPROVE BPC MINUTES FOR MAY 22, 2017 1-5
5. BUDGET AMENDMENTS AND RESERVE UPDATE 6-7
6. RECEIVE FARMWORKER HOUSING FINAL EXECUTED AGREEMENT 8-53
7. CONSIDER RECOMMENDATION TO INCLUDE ADDITIONAL CRITERIA FOR AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS 54-70
8. STAFF REPORTS
9. COMMITTEE MEMBER COMMENTS/REPORTS
   Committee Members may ask a question for clarification, make a brief announcement or make a brief comment or report on his or her own activities within the jurisdiction of the committee. No discussion or action is appropriate other than referral to staff for consideration or setting a matter as a future agenda item.
10. CLOSED SESSION
    As permitted by Government Code Section 54956 et seq., the Board may adjourn to a Closed or Executive Session to consider specific matters dealing with pending or potential litigation, certain personnel matters, real property negotiations, or confer with the MRWPCA’s Meyers-Milias-Brown representative.
    A. Public Employee Performance Evaluation
       Pursuant to Government Code §54957
       Title: General Manager
11. ADJOURNMENT
1. CALL TO ORDER
2. ROLL CALL
3. PUBLIC COMMENTS
4. APPROVE BPC MINUTES FOR APRIL 7, 2017
5. BUDGET AMENDMENTS AND RESERVE UPDATE
6. RECEIVE REPORT REGARDING MISCELLANEOUS FEES AND PROVIDE RECOMMENDATIONS RELATED TO ANY PROPOSED FEE UPDATES
7. RECEIVE UPDATE ON THE PROPOSED FISCAL YEAR 2017/18 BUDGET
8. RECEIVE UPDATE ON PROPOSED REVISIONS TO THE AGENCY’S PURCHASING POLICY
9. RECEIVE INFORMATION REGARDING CREDIT CARD ACCEPTANCE FEES AND CONSIDER RECOMMENDING ANY CHANGES TO THE AGENCY’S EXISTING PRACTICE
10. CONSIDER RECOMMENDING APPROVAL OF PHASE 2 FOR PUMP STATION AND CONVEYANCE SYSTEM CONDITION OPTIMIZATION ANALYSIS PROJECT WITH GHD INC.
11. CONSIDER RECOMMENDING APPROVAL OF AN AMENDMENT TO PINNACLE ADVANCED RELIABILITY TECHNOLOGIES CONTRACT TO ASSIST STAFF WITH CREATING A COMPREHENSIVE MAINTENANCE PLAN FOR THE SALINAS GENERATOR SYSTEM
12. STAFF REPORTS
13. COMMITTEE MEMBER COMMENTS/REPORTS
14. ADJOURNMENT

PRESENT: Budget/Personnel Committee
Dennis Allion, Chair
Gloria De La Rosa (arrived at 12:35 pm)
Linda Grier
3. PUBLIC COMMENTS
Alex Miller, spoke in support of having more options for paying MRWPCA bill online without a service fee.

4. APPROVE BPC MINUTES FOR APRIL 7, 2017
Chair Allion stated that the April 7, 2017 draft Budget/Personnel Committee Minutes are presented to the Committee for their approval.

ACTION TAKEN: It was moved by Member Grier, seconded by Member Allion, to approve the April 7, 2017 BPC Minutes and carried by the following vote:

Ayes: Allion, Grier, Moore
Noes: None
Absent: De La Rosa

5. BUDGET AMENDMENTS UPDATE
Ms. Hannah provided the Committee with a list of the budget amendments that were approved during the month of March. She reminded the Committee that there is no fiscal impact because staff is only allowed to move money between items that have already been budgeted for.

With regard to Agency reserves, Ms. Hannah stated that the preliminary combined reserve balance is within the policy levels of $2.5 million, for the period ending January 2017.

➢ Information Only – No Action Required.

Ms. De La Rosa arrived at 12:35 pm

6. RECEIVE REPORT REGARDING MISCELLANEOUS FEES AND PROVIDE RECOMMENDATIONS RELATED TO ANY PROPOSED FEE UPDATES
Alex Handlers, Principal for Bartle Wells and Associates, presented to the Committee on the second phase of this project which focused on evaluating and determining costs associated with Miscellaneous Fees. He stated that this included a review of capacity fees, interruptible rates, billable wages, and the Agency’s overhead calculation.

Mr. Handlers went over the proposed miscellaneous fee schedules with the Committee in great detail. In response to questions from the Committee regarding proposed fees, he stated that the staff provided him with estimates of time and materials for several of the flat fees, as well as fees that are based on the amount of discharged or treated waste.

After a lengthy discussion, it was the consensus of the Committee that staff present this to the Board at the May 22 Board meeting, followed by a public hearing at the June 5 Budget workshop.

Public Comments:
Alex Miller, stated that a Public Outreach staff person is needed to perform public outreach to the community. He requested a copy of legal fees paid to Legal Counsel.

ACTION TAKEN: It was moved by Member Moore, seconded by Member Grier, to direct staff to include the Committees recommendation regarding update to the Miscellaneous Fee Schedule, with Capacity Fees to be updated in the Agency’s Codified Ordinance for sewer service, and carried by the following vote:

Ayes: Allion, Grier, Moore, De La Rosa
Noes: None
Absent: None

7. RECEIVE UPDATE ON THE PROPOSED FISCAL YEAR 2017/18 BUDGET
Ms. Hannah provided the Committee with an update on the proposed Fiscal Year 2017/18 Budget. She provided an overview of operating revenues, operating expenditures, staffing, capital purchases and capital improvements, and the Pure Water Monterey/GWR Budget. She stated that a presentation would be made in detail to the Board at the June 5 Budget Workshop.

Member Moore left at 1:54 pm

➢ Information Only – No Action Required.

8. RECEIVE UPDATE ON PROPOSED REVISIONS TO THE AGENCY’S PURCHASING POLICY
Ms. Hannah stated that at the last BPC meeting she presented information on the current maximum approval level for certain agency staff. At the direction of the Committee, she updated approval levels for the General Manager and other Agency
staff. She stated that it has been a challenge trying to update this policy and she was hoping to have this on the May 22 Board agenda for consideration by the Board. Mr. Allion asked if there was urgency to approve this or if it could be considered for approval at the June 26 Board meeting. Mr. Sciuto stated that it would be his preference to have this considered for approval at the May 22 Board meeting as he would like to have Ms. Hannah have higher signing authority to streamline the amount of approvals that go through him. It was the consensus of the Board that this item be brought for consideration by the Board to the May 22 or June 5 Budget Workshop.

**ACTION TAKEN:** It was moved by Member Grier, seconded by Member De La Rosa, to receive an update on proposed revisions to the Agency’s Purchasing Policy, and directed staff to put this item for Board consideration at the May 22 Board meeting or June 5 Budget Workshop meeting, and carried by the following vote:

- **Ayes:** Allion, Grier, De La Rosa
- **Noes:** None
- **Absent:** Moore

**9. RECEIVE INFORMATION REGARDING CREDIT CARD ACCEPTANCE FEES AND CONSIDER RECOMMENDING ANY CHANGES TO THE AGENCY’S EXISTING PRACTICE**

Ms. Hannah made a presentation to the Committee on the ease of making a payment using a new system for online bill payments. She stated that this system would allow customers to make payments online and see their usage history, which our current system does not currently allow. With this new system, the Agency can pick up the cost to allow customers to make payments for free or pass the cost to the customer.

After lengthy discussion from the Committee it was the consensus of the Committee that staff presents a banking option to the Board where the Agency absorbs the cost for online bill payments.

**ACTION TAKEN:** It was moved by Member Grier, seconded by Member De La Rosa, to present to the Board a banking option where the Agency absorbs the cost of online bill payments, and carried by the following vote:

- **Ayes:** Allion, De La Rosa, Grier
- **Noes:** None
- **Absent:** Moore

**10. CONSIDER RECOMMENDING APPROVAL OF PHASE 2 FOR PUMP STATION AND CONVEYANCE SYSTEM CONDITION OPTIMIZATION ANALYSIS PROJECT WITH GHD INC.**
Ms. Gonzalez presented this item and asked the Committee to consider recommending authorizing staff to move forward with Phase 2 of the Pump Station and Conveyance System Optimization Analysis with GHD Inc. in the amount of $400,000 contingent on the Board approving FY 17/18 Budget.

ACTION TAKEN: It was moved by Member De La Rosa, seconded by Member Grier, to authorize staff to move forward with Phase II of the Pump Station and Conveyance System Optimization Analysis with GHD Inc. in the amount of $400,000, contingent on the Board approving the FY 17/18 budget, and carried by the following vote:

Ayes: Allion, De La Rosa, Grier
Noes: None
Absent: Moore

11. CONSIDER RECOMMENDING AMENDMENT TO PINNACLE ADVANCED RELIABILITY TECHNOLOGIES CONTRACT TO ASSIST STAFF WITH CREATING A COMPREHENSIVE MAINTENANCE PLAN FOR THE SALINAS GENERATOR SYSTEM

Ms. Gonzalez presented this item and stated that this amendment to the Pinnacle Advanced Reliability Technologies Contract would assist staff in creating a complete Reliable Centered Maintenance (RCM) program throughout the Agency.

ACTION TAKEN: It was moved by Member De La Rosa, seconded by Member Grier, to recommend that the Board approve an amendment to the contract with Pinnacle Advanced Reliability Technologies to assist staff in creating a complete RCM Package for the Salinas Pump Station Emergency Generator system, and carried by the following vote:

Ayes: Allion, De La Rosa, Grier
Noes: None
Absent: Moore

12. STAFF REPORTS (None)

13. COMMITTEE MEMBER COMMENTS/REPORTS (None)

14. ADJOURNMENT

At 2:37 pm, with no further business, Chair Allion adjourned the Budget/Personnel Committee meeting to the next regularly scheduled Budget/Personnel Committee meeting on Friday, June 9, 2017 at 12:30 pm.
The Agency’s Budget Amendment Policy allows staff to approve transfers between line items and projects when a transfer is below $35,000. The chart below represents budget amendments that were approved during the months of May and June as there was no BPC meeting in June.

<table>
<thead>
<tr>
<th>May and June Budget Adjustments</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>MAY AND JUNE</td>
<td></td>
</tr>
<tr>
<td>Transfer funds from Capital Outlay to Control Panels &amp; Instrument Repair to replace the voltage control panel at the SVRP</td>
<td>$33,029</td>
</tr>
<tr>
<td>Moved funds to the Engineering Technical Support budget from Engineering Studies and Ferric Chloride accounts to support the Pinnacle Emergency Generator Study</td>
<td>27,355</td>
</tr>
<tr>
<td>Transferred funds from Chemical Polymer and Carbon accounts to the Sludge Collection Equipment Maintenance account to purchase Geotubes for dewatering digested sludge</td>
<td>15,000</td>
</tr>
<tr>
<td>Transferred funds from the Biosolids Disposal Fees account to Building and Grounds Repair to fund additional snail removal and bird abatement services</td>
<td>29,508</td>
</tr>
<tr>
<td>Reallocated funds from the Chlorine account to Pump Repair to purchase a new pump</td>
<td>2,385</td>
</tr>
<tr>
<td>Transfer from Electricity account to Pump Repair to cover the costs of unbudgeted repairs</td>
<td>8,740</td>
</tr>
<tr>
<td>Transfer of funds from the Electricity account to Pump Repair budget to purchase a new motor for the SVRP</td>
<td>$7,000</td>
</tr>
<tr>
<td>Moved funds from Chlorine to General Equipment Repair to purchase new level indicators</td>
<td>7,000</td>
</tr>
</tbody>
</table>
Reserve Update

The preliminary combined reserve balance for the period ending May 2017 is within the policy levels of $2.5 million.

Fiscal Impact

This item is informational only. All administrative adjustments reflect transfers between budgeted line items in the approved FY 16/17 Budget.

Information only – no action needed.
RECEIVE FARMWORKER HOUSING FINAL EXECUTED AGREEMENT

From: Mike McCullough, Government Affairs Administrator

Approval: GM ☑️ Legal ☑️ CFO ☑️

Background:

The Agency has been working with General Farm Investment and the City of Salinas since 2016 to connect a farmworker housing complex located on Hitchcock Road to the Agency’s Salinas Pump Station also located on Hitchcock Road.

The Agency signed a MOU with General Farm Investment in July 2016 to investigate the connection of the farmworker housing complex to the Regional System. The Agency pursued a grant opportunity with the State Water Resources Control Board Small Community Wastewater Grant program. Agency staff received competitive proposals from professional engineering firms to design the necessary infrastructure to connect the complex to the Regional System. The contract for design services was awarded to Schaaf and Wheeler (S&W) back in February 2017. S&W has provided a draft Basis of Design Report and will be moving to complete the design by the end of the summer. Construction of the project is anticipated to begin in late Fall with a completion date of early spring 2018.

Net Impact:

The Agency received the final executed agreement from the State Board on July 6, 2017. The estimated cost to connect the farmworker housing complex to the Regional System is approximately $1,730,945 with $258,945 set aside for planning and design. The Agency has included an amount close to the $1.7M in their FY17-18 budget.

A Budget adjustment will be requested if the Fiscal Year 17/18 costs exceed the budgeted amount.

All costs associated with this project are eligible for reimbursement from the State. The farmworker housing complex qualified as a severely disadvantaged community which resulted in a 100% grant program from the state.
Recommendation:
Informational Item only. Staff recommends the BPC receive this report and forward onto the full Board of Directors.

Attachments:
A. Final Executed Agreement with the State Board
PROPOSITION 1 SMALL COMMUNITY WASTEWATER

MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

CONSTRUCTION GRANT

FARMWORKER HOUSING COMPLEX CONNECTION TO MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY REGIONAL TREATMENT SYSTEM

PROJECT NO. C-06-8279-110

AGREEMENT NO. D16-04029

AMOUNT: $1,730,945

ELIGIBLE START DATE: MARCH 13, 2017
COMPLETION OF CONSTRUCTION DATE: JANUARY 31, 2018
FINAL DISBURSEMENT REQUEST DATE: JULY 31, 2018
RECORDS RETENTION TERM END DATE: JANUARY 31, 2054

ATTACHMENT A
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Monterey Regional Water Pollution Control Agency
Agreement No.: D16-04029
Project No.: C-06-8279-110

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EXHIBIT F - RESERVED
EXHIBIT G - DAVIS-BACON REQUIREMENTS
EXHIBIT H - COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES
WHEREAS,

1. The State Water Board is authorized to provide funding 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 79723 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 funding agreement.

3. The Recipient has applied to the State Water Board for funding for the Project described in Exhibit A of this Agreement and the State Water Board has selected the application for funding.

4. The State Water Board proposes to assist in funding the costs of the Project, and the Recipient desires to participate as a recipient of financial assistance from the State Water Board, upon the terms and conditions set forth in this Agreement, all pursuant to the Federal Act and 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 Grant, 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.

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

"CWSRF" means the Clean Water State Revolving Fund.

"Days" means calendar days unless otherwise expressly indicated.

"Division" means the Division of Financial Assistance of the State Water Board or any other segment of the State Water Board authorized to administer this Agreement.
"Eligible Start Date" means the date set forth in Exhibit B, establishing the date on or after which construction costs may be incurred and eligible for reimbursement hereunder.

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

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

"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.

"Indirect Costs" means those costs that are incurred for a common or joint purpose benefitting more than one cost objective and are not readily assignable to the Project (i.e., costs that are not directly related to the Project).

"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.

"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, including any of the following: (a) revenue shortfalls; (b) unscheduled draws on 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) 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; (i) any event set forth in section 2.10 of 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.

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

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

"Project" means the Project financed by this Agreement as described in Exhibit A, Exhibit A-FBA, and in the documents incorporated by reference herein.
"Project Completion" means the date, as determined by the Division after consultation with the Recipient, that operation of the Project is initiated or is capable of being initiated, whichever comes first.

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

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

"Recipient" means Monterey Regional Water Pollution Control Agency.

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

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

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

"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.

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) Bankruptcy, insolvency, receivership or similar event of the Recipient;

(2) Actions taken pursuant to state law in anticipation of filing for bankruptcy;

(3) Other Material Events, except as set forth in subdivisions (b) or (c) of this section;

(4) 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;

(2) Unscheduled draws on debt service reserves held for System obligations, if any, reflecting financial difficulties;

(3) Unscheduled draws on credit enhancements on System obligations, if any, reflecting financial difficulties;

(4) Substitution of credit or liquidity providers, if any, or their failure to perform;

(5) Any litigation pending or threatened against Recipient regarding its wastewater capacity or its continued existence, circulation of a petition to challenge rates, consideration of dissolution, or disincorporation, or any other material threat to the Recipient's Revenues;

(6) Adverse tax opinions, the issuance by the Internal Revenue Service or proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of any tax-exempt bonds;

(7) Rating changes on outstanding System obligations, if any;

(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.

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;

(2) A description of compliance with environmental requirements;

(3) A listing of change orders including amount, description of work, and change in contract amount and schedule; and

(4) Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.

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

(1) Describe the Project,

(2) Describe the water quality problem the Project sought to address,

(3) Discuss the Project’s likelihood of successfully addressing that water quality problem in the future, and

(4) Summarize compliance with environmental conditions, if applicable.

(5) If the Recipient fails to submit a timely Project Completion Report, then the State Water Board may stop processing pending or future applications for new financial assistance, withhold disbursements under this Agreement or other agreements, and begin administrative proceedings.
(c) As Needed Reports. The Recipient shall provide expeditiously, during the term of this Agreement, any reports, data, and information reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the funding program or to fulfill any reporting requirements of the state or federal government.

2.16 Federal Disadvantaged Business Enterprise (DBE) Reporting.

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

2.17 Records.

(a) Without limitation of the requirement to maintain Project accounts in accordance with GAAP, the Recipient shall:

(1) Establish an official file for the Project which adequately documents all significant actions relative to the Project;

(2) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;

(3) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;

(4) Establish an accounting system which will accurately depict final total costs of the Project, including both direct and indirect costs;

(5) Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and

(6) If Force Account is used by the Recipient for any phase of the Project, other than for planning, design, and construction engineering and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee. Indirect Force Account costs are not eligible for funding.

(b) The Recipient shall maintain separate books, records and other material relative to the Project. The Recipient shall also retain such books, records, and other material for itself and for each contractor or subcontractor who performed or performs work on this project for a minimum of thirty-six (36) years after Completion of Construction. The Recipient shall require that such books, records, and other material be 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 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 Contingent Disbursement.

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) Repayments. Repayments are waived, as provided in Exhibit B.

(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. The Recipient shall 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.

3.3 Reserved.

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:

(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 Rates, Fees and Charges.

The Recipient shall, to the extent permitted by law, fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonable, fair, and nondiscriminatory and which will be at least sufficient to yield during each Fiscal Year Net Revenues in an amount necessary to meet its obligations under this Agreement. The Recipient may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Net Revenues from such reduced rates, fees, and charges will at all times be sufficient to meet the requirements of this section.

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.

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.

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 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, 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.

(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.

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 Reserved.

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, subsd. (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.

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.

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/ustcf/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.

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

MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY:

By: [Signature]
Name: Paul Sciuto
Title: General Manager
Date: 5/30/17

STATE WATER RESOURCES CONTROL BOARD:

By: [Signature]
Name: Leslie Laudon
Title: Deputy Director
Division of Financial Assistance
Date: 6/27/17
EXHIBIT A – SCOPE OF WORK

1. The Recipient agrees to start construction no later than the estimated date of September 15, 2017.

2. The Completion of Construction date is hereby established as January 31, 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) the Final Plans & Specifications, which are the basis for the construction contract to be awarded by the Recipient (Agreement will be amended to incorporate such document);

5. Reporting. Status Reports due at least quarterly.


   (a) **Project Objectives**:

   The desired objective of this Project is to reduce the nutrient loading to underlying aquifers from the existing septic system. The Project will improve the quality of life for the residents of the farmworker housing complex by eliminating leach fields adjacent to their sleeping and eating facilities. The Project will convey the wastewater to the Recipient’s wastewater collection system and treat the wastewater at its Regional Treatment Plant to enable water to be beneficially reused.

   (b) **Project Description**:

   The Project is the abandonment of the existing septic system and the connection to the Recipient’s regional collection system. The Project will improve local groundwater quality by eliminating nutrients generated from the septic leach fields and dramatically improve the quality of the life for the farmworkers.

   The existing leach fields are in the proximity of the potable well with a distance of approximately 200 feet between the two facilities. Nutrients leaching down through the soil profile could be a potential of contamination for the potable well in the future. The leach field is also directly behind some of the barracks for the workers.

   The septic system has no failures to date and the complex has not been cited by the local County Environmental Health Department or the Regional Water Board. The leach fields are closely monitored as the owners are required to maintain daily records of nitrogen loading data for the Regional Water Board. In occurrences where there appears to be a surface saturation, the flows are switched to a different leach field. Potential failure of the septic system can be detrimental to the quality of the drinking water well that is in close proximity.

   Approximately 191 people reside at the complex during the growing season. Farmworker housing in and out around Salinas is in very short supply. In the future, the per capita usage may increase from the current low values and the future site may want to utilize vacant areas for additional housing. Accommodating any future increase in flows would not be a problem, however, the upsizing of pumps may need to occur. There are no changes to be made to the waste discharge requirement permits for the Recipient.
EXHIBIT A – SCOPE OF WORK

The proposed sewer collection anticipates constructing approximately 1.48 miles of force main and other pressure systems, in addition to approximately 0.04 miles of gravity sewer.

7. Signage.

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

- [Image of logos]

“Funding for this Farmworker Housing Complex Connection to Monterey Regional Water Pollution Control Agency Regional Treatment System 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.”

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.”
EXHIBIT B – FUNDING AMOUNT

1. Estimated Reasonable Cost. The estimated reasonable cost of the total Project, including associated planning and design costs is one million seven hundred thirty thousand nine hundred forty-five dollars and no cents ($1,730,945.00).

2. Project Financing. Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds as a grant in the amount of up to one million seven hundred thirty thousand nine hundred forty-five dollars and no cents ($1,730,945.00). The estimated amount of principal that will be due to the State Water Board under this Agreement is zero dollars and no cents ($0.00).

3. The term of this agreement is from the Eligible Start Date of March 13, 2017 to January 31, 2054.

4. The useful life of this Project is at least fifty (50) years.

5. 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.)

6. Preliminary budget costs are as follows:

   Planning and design allowances: $258,945

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 D – SPECIAL CONDITIONS

Recipient acknowledges and agrees to the following special conditions:

Financial Special Conditions as follows:

Recipient shall establish and maintain rates and charges sufficient to generate Revenues in the amounts necessary to cover Operations and Maintenance Costs; and to meet covenants and requirements of Recipient’s outstanding System obligations.
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 the foregoing paragraph; 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://Edison.gov and shall notify the Division when an invention report, patent report, or utilization report is filed.
EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

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

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

(g) Electronic and Information Technology Accessibility. The Recipient is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Project.

(h) Trafficking in Persons. The Recipient, its employees, contractors and subcontractors and their employees may not engage in severe forms of trafficking in persons during the term of this Agreement, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontract 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
EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

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 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.
EXHIBIT E - PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

(2) Disadvantaged Business Enterprises (40 CFR Part 33). The Recipient agrees to comply with the requirements of USEPA’s Program for Utilization of Small, Minority and Women’s Business Enterprises. The DBE rule can be accessed at www.epa.gov/osbp. 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/.


(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.
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. 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.
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.


(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 CWRSF 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 § 5.1 or the Consolidated Appropriations Act, 2016, 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:
EXHIBIT G – DAVIS-BACON REQUIREMENTS

(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 http://www.dol.gov/whd/forms/wh347.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
EXHIBIT G – DAVIS-BACON REQUIREMENTS

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,
EXHIBIT G – DAVIS-BACON REQUIREMENTS

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 by 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.
EXHIBIT G – DAVIS-BACON REQUIREMENTS

(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).


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

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

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

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

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

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)(6), all interviews must be conducted in confidence. The sub recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

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

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

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

(e) Sub recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.
EXHIBIT H – COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES

1. EMERGENCY DROUGHT REGULATIONS

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

2. 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 Stewardship Council according to the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.
EXHIBIT H – COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES

(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.
BUDGET/PERSONNEL COMMITTEE
JULY 14, 2017

CONSIDER RECOMMENDATION TO INCLUDE ADDITIONAL CRITERIA FOR AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS

From: Tori Hannah, Chief Financial Officer

Approval: GM ☑ Legal ☑ CFO ☑

Background

On June 26, 2017, the Agency approved MRWPCA’s Investment Policy and Guidelines for Fiscal Year 2017/18 with a recommendation that staff and the Budget and Personnel Committee consider additional criteria for qualifying financial institutions. This included a statement excluding firms that have participated in predatory lending practices, and inclusion of firms that have only had a positive track record in the region. A reference was made to applying language that was similar to terms that are included in responsible banking ordinances. The proposed statement would be included in the Authorized Financial Dealers and Institutions section of the Policy (Attachment A); and included in any Request for Qualifications or Requests for Proposals for investment services or broker/dealers.

Discussion

The National Community Reinvestment Coalition produces a document titled Summary of Local Responsible Banking Ordinances (Attachment B) and the City of Monterey has a Responsible Banking Ordinance (Attachment C). The City of Monterey’s Ordinance applies to depositories that maintain a least $3 million in City deposits on an annual basis. While a large portion of the documents relates to banking services and community reinvestment, there is reference to predatory lending practices. The definitions of predatory lending practices vary; however in general, it could be described as an unfair credit practice that harms the borrower and eventually affects the credit or ownership of the borrower. It could also be defined as practices prohibited by State or Federal law, including such practices as the frequent making of new loans to refinance existing loans, the selling of additional products without the borrower’s informed consent and the charging of excessive fees.
Staff is recommending a clause indicating that the Agency will not invest in stocks or securities of financial institutions that make predatory loans; however additional consideration may need to be given to limiting the selection of firms that have a positive track record in the region. Staff is conducting additional research to determine if this could limit the Agency’s selection. For example, some local municipalities may only invest in the California Local Agency Investment, while others may take advantage of broker/dealer relationships or investment management services. The distribution and number of local entities may not provide an adequate selection. As an alternative, language could be added to a request for proposal or a request for qualifications a listing of active or prior clients within the region or similar entities. This could be a consideration in the evaluation process. Additional topics of discussion could include solicitation of investments in certificates of deposits at local banks if the Agency is seeking a similar investment on the open market.

Recommendation
Consider recommending additional criteria for authorized financial dealers and institutions.

Attachments:
1. Agency Investment Policy
2. National Community Reinvestment Coalition Summary of Local Responsible Banking Ordinances
3. City of Monterey Responsible Banking Ordinance
It is the policy of the Monterey Regional Water Pollution Control Agency (MRWPCA) to invest public funds in a manner that will provide a high level of safety and security of principal. Given this level of safety, the investment return will be maximized while meeting the cash flow demands of the entity and conforming to all state and local statutes governing the investment of funds.

**Scope**

The investment policy applies to activities of the MRWPCA with regard to investing the financial assets of all funds, including the following:

- General Fund;
- Capital Improvement Fund;
- Capitalized Equipment Fund;
- Major O&M Repair Fund;
- Debt Service Reserve Fund;
- Pure Water Monterey/GWR Fund;
- Any new fund created by the Board.

**Delegation of Authority**

The Chief Financial Officer is designated as the MRWPCA Treasurer. The Board hereby delegates its authority to invest funds of the MRWPCA to the Treasurer, who shall thereafter assume full responsibility for those transactions until the delegation of authority is revoked. The Treasurer shall develop and maintain written administrative procedures for the operation of the investment program, consistent with these policies. In order to optimize total return through active portfolio management and consistent with safety of principal, resources shall be allocated to the cash management program. This commitment of resources shall include financial and staffing considerations.

**Management Coordination and Review**

The Treasurer will coordinate and periodically brief the General Manager on overall investment activities. In addition, the Treasurer, at a minimum, will provide to Senior Management a quarterly status update on investments. Prior to making new investments, the Treasurer will assure that sufficient short-term funds are available for Project O&M and Capital Expenditures.
Prudence

Pursuant to California Government Code Section 53600.3, all persons authorized to make investment decisions on behalf of the MRWPCA are trustees, and therefore fiduciaries subject to the prudent investor standard: “When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency.” The prudent investor rule shall be applied in the context of managing the overall portfolio.

Authorized individuals acting in accordance with written procedures and exercising due diligence, shall not be held personally responsible for a specific security's credit risk or market price changes, provided that these deviations are reported immediately and that appropriate action is taken to control adverse developments.

Overall Investment Objectives

The primary objectives, in order of priority, of the MRWPCA’s investment activities shall be:

Safety

Safety of principal is the foremost objective of the investment program. The MRWPCA's investments shall be undertaken in a manner that seeks to ensure preservation of capital in the overall portfolio.

Liquidity

The MRWPCA's investment portfolio will remain sufficiently liquid to enable the Agency to meet its reasonably anticipated cash flow requirements.

Yield

The MRWPCA seeks to attain a market rate of return on its investment portfolio, consistent with constraints imposed by its safety and liquidity objectives.

Ethics and Conflicts of Interest

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Employees and officials shall disclose to the General Manager any material financial interests in financial institutions that conduct business within this jurisdiction, and they shall further disclose any large personal financial/investment positions that could be related to the performance of this jurisdiction's portfolio. Employees and officers shall subordinate their personal investment transactions to those of this jurisdiction, particularly with regard to the timing of purchases and sales.
Authorized Financial Dealers and Institutions

The Treasurer will maintain a list of financial institutions authorized to provide investment services. When the MRWPCA has funds available to invest, contact is made by phone with those institutions requesting bids.

An annual review of the financial condition and registrations of qualified bidders will be conducted by the Treasurer. A current audited financial statement is required to be on file for each financial institution and broker/dealer in which the MRWPCA invests.

Before accepting funds or engaging in investment transactions with the MRWPCA, the supervising officer at each depository and recognized securities broker/dealer shall submit a certification. The document will certify that the officer has reviewed the investment policies and objectives and agrees to disclose potential conflicts or risks to public funds that might arise out of business transactions between the firm/depository and the MRWPCA. All financial institutions shall agree to undertake reasonable efforts to preclude imprudent transactions involving this entity's funds.

The supervising officer shall agree to exercise due diligence in monitoring the activities of: other officers and subordinate staff members engaged in transactions with this entity. Employees of any firm or financial institution offering securities or investments to the MRWPCA shall be trained in the precautions appropriate to public-sector investments and shall be required to familiarize themselves with our investment objective, policies and constraints.

For transactions initiated through an investment manager, the investment manager may use their own list of approved broker/dealers and financial institutions, which it will maintain and review periodically.

Investment Reports

The Treasurer will render a monthly investment report to the MRWPCA Board showing the type of investment, institution, dollar amount invested, and current market value. Long-Term Investments (more than 1 year) may also include credit rating, date of maturity, par, rate of interest, and current annual yield. The monthly report shall also state that the schedule of investments is in compliance with the MRWPCA's investment policy, or the manner in which the portfolio is not in compliance; and that there are adequate funds available to meet budgeted and actual expenditures for the MRWPCA, which complies with the Agency's reserve policy, or provide an explanation as to why sufficient money shall, or may, not be available. In addition, the Treasurer will provide the Board a monthly list of investment transactions.

The Treasurer will provide at minimum, an annual report of the Agency's investments showing the actual return of each investment and a comparison of Agency investments to overall market rates during the same year (i.e., LAIF, Prime Rate, Treasury Bills). The Agency's investment information will be reviewed annually by the independent external auditor and presented in the Comprehensive Annual Financial Report.
Internal Controls

The Treasurer shall establish a system of written internal controls to regulate the Agency’s investment activities. The internal controls shall be reviewed by the General Manager and the independent external auditor. The controls shall be designed to prevent losses of public funds arising from fraud, employee error, misrepresentation by third parties, or imprudent actions. As part of the annual financial audit, the Agency’s external auditor will perform a review of the investment transactions to assure compliance with policies and procedures.

Allowable Investment Instruments

The MRWPCA’s investments are governed by Government Code, Sections 53600 et seq. Within the investments permitted by the Government Code, the MRWPCA seeks to further restrict eligible investment to the investments listed below. In the event an apparent discrepancy is found between this Policy and the Government Code, the more restrictive parameters will take precedence. Credit criteria listed in this section refers to the credit quality of the issuing organization at the time the security is purchased. The maturity limits are applied at the time of purchase.

1. United States Treasury Issues. United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest. There is no limitation as to the percentage of the portfolio that may be invested in this category.

2. Federal Agency Obligations. Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises. There is no limitation as to the percentage of the portfolio that may be invested in this category.

3. State/local Agency Debt Issues. Bonds, notes, warrants, or other evidences of indebtedness of the State or any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the State or local agency, or by a department, board, agency, or authority of the State or local agency. Purchases are limited to securities rated “AA” or better by a nationally recognized rating service. A maximum of twenty-five (25) percent of the portfolio may be invested in this category.

4. Bankers Acceptances. Bankers’ acceptances, otherwise known as bills of exchange or time drafts, that are drawn on and accepted by a commercial bank. Purchasers are limited to issuers whose short-term debt is rated A-1/P-1. Bankers’ acceptances cannot exceed a maturity of one hundred and eighty (180) days. A maximum of twenty-five (25) percent of the portfolio may be invested in this category. The amount invested in bankers’ acceptances with any one financial institution in
combination with any other securities from that financial institution shall not exceed ten (10) percent of the portfolio.

5. **Commercial Paper.** Commercial paper of “prime” quality of the highest ranking or of the highest letter and number rating as provided for by a nationally recognized statistical-rating organization. The entity that issues the commercial paper shall meet all of the following conditions in either paragraph (A) or paragraph (B):

(A) The entity meets the following criteria: (i) Is organized and operating in the United States as a general corporation. (ii) Has total assets in excess of five hundred million dollars ($500,000,000). (iii) Has debt other than commercial paper, if any, that is rated “A” or higher by a nationally recognized statistical-rating organization.

(B) The entity meets the following criteria: (i) Is organized within the United States as a special purpose corporation, trust, or limited liability company. (ii) Has program-wide credit enhancements including, but not limited to, over collateralization, letters of credit, or surety bond. (iii) Has commercial paper that is rated “A-1” or higher, or the equivalent, by a nationally recognized statistical-rating organization.

Eligible commercial paper shall have a maximum maturity of two hundred and seventy (270) days or less and not represent more than ten (10) percent of the outstanding paper of an issuing corporation. A maximum of twenty (20) percent of the portfolio may be invested in this category. The amount invested in commercial paper of any one issuer in combination with any other securities from that issuer shall not exceed ten (10) percent of the portfolio.

6. **Negotiable Certificates of Deposit.** Negotiable certificates of deposit (NCDs) issued by a nationally or state-chartered bank, a savings association or a federal association, a state or federal credit union, or by a state-licensed branch of a foreign bank. Purchases are limited to institutions which have long-term debt rated “A” or higher from a nationally recognized rating service; and/or have short-term debt rated at least A1 from a nationally recognized rating service. A maximum of thirty (30) percent of the portfolio may be invested in this category. The amount invested in NCDs with any one financial institution in combination with any other securities from that financial institution shall not exceed ten (10) percent of the portfolio.

7. **Time Certificates of Deposit.** Time Certificates of Deposit (TCDs) placed with commercial banks and savings and loans. The purchase of TCDs from out-of-state banks or savings and loans is prohibited. The amount on deposit shall not exceed the shareholder’s equity in the financial institution. To be eligible for purchase, the financial institution must have received a minimum overall satisfactory rating for meeting the credit needs of California Communities in its most recent evaluation, as provided in Government Code Section 53635.2. TCDs are required to be collateralized as specified under Government Code Section 53630 et. seq. The Treasurer, at his discretion, may waive the collateralization requirements for any
portion that is covered by federal insurance. The Corporation shall have a signed agreement with the depository per Government Code Section 53649. TCDs may not exceed one (1) year in maturity. A maximum of 10 percent of the portfolio may be invested in this category. The amount invested in TCDs with any one financial institution in combination with any other securities from that financial institution shall not exceed 10 percent of the portfolio.

8. **Passbook Savings Account and Demand Deposit Accounts.** Short-term deposits to enable the maximum investment of remaining inactive funds. Investments will be made with the MRWPCA’s contract banker in conjunction with banking services. The amount on deposit shall not exceed the shareholder’s equity in the financial institution. To be eligible to receive deposits, the financial institution must have received a minimum overall satisfactory rating for meeting the credit needs of California Communities in its most recent evaluation. Deposits are required to be collateralized as specified under Code 53630 et. seq.. The Treasurer, at his discretion, may waive the collateralization requirements for any portion that is covered by federal insurance. The MRWPCA shall have a signed agreement with the depository per Code 53649. There is no limitation as to the percentage of the portfolio that may be invested in this category.

9. **Money Market Funds.** Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 and following). The company shall have met either of the following criteria: (A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations. (B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five (5) years’ experience managing money market mutual funds with assets under management in excess of five hundred million dollars ($500,000,000). A maximum of twenty (20) percent of the portfolio may be invested in this category.

10. **State of California Local Agency Investment Fund (LAIF).** For due diligence, a copy of LAIF’s current investment policy and its requirements for participation, including limitations on deposits or withdrawals shall be maintained on file. In addition, the Treasurer shall report to the Board quarterly the percentage amount LAIF has invested in each investment sector. There is no limitation as to the percentage of the portfolio that may be invested in this category. However, the amount invested may not exceed the maximum allowed by LAIF.

11. **County Pool.** The MRWPCA may invest in County Pools. Participation in a County pool requires adoption of an enabling resolution by the Board. If any funds are invested in a County Pool, the Treasurer shall obtain a copy of the County’s current investment policy and its requirements for participation, including limitations on deposits or withdrawals shall be maintained on file. In addition, the Treasurer shall report to the Board quarterly the percentage amount the County Pool has invested in
each investment sector. A maximum of twenty (20) percent of the portfolio may be invested in this category.

State/local Agency Debt Issues - Eligible Investments for Bond Proceeds

Bond proceeds shall be invested in securities permitted by the applicable bond documents. If the bond documents are silent as to permitted investments, bond proceeds will be invested in securities permitted by this Policy. With respect to maximum maturities, the Policy authorizes investing bond reserve fund proceeds beyond the five (5) years if prudent in the opinion of the Treasurer.

Prohibited Investments

No investments shall be authorized in margin transactions, reverse repurchase agreements, or other speculative investments, which involve unhedged positions on the direction of interest rates. As provided in California Government Code Section 53601.6, the Agency shall not invest any funds in inverse floaters, range notes, mortgage derived interest-only strips or in any security that could result in zero interest accrual if held to maturity.

The purchase of any security not listed above, but permitted by the California Government Code, is prohibited unless the Board approves the investment either specifically or as a part of an investment program approved by the Board.

Maximum Maturity

The maturity criteria should be considered in this investment policy to provide for appropriate liquidity in anticipating cash needs, thereby obviating the need for forced liquidation, as well as to reflect prevalent yield curves in the market. The maximum maturity of individual investments shall not exceed the limits set forth above. However, no investment shall exceed a maturity of five (5) years from the date of purchase unless the Board has granted express authority to make that investment either specifically or as a part of an investment program approved by the Board no less than three (3) months prior to the investment.

Safekeeping and Custody

To protect against potential fraud and embezzlement, all security transactions entered into by the MRWPCA shall be conducted on a delivery-versus-payment (DVP) basis. All cash and securities in the MRWPCA’s portfolio shall be held in safekeeping in the MRWPCA’s name by a third-party bank trust department, acting as agent for the MRWPCA under the terms of a custody agreement executed by the bank and the MRWPCA. The only exception to the foregoing shall be depository accounts and securities purchases made with: (i) local government investment pools; (ii) time certificates of deposit, and, (iii) money market mutual funds, since the purchased securities are not deliverable. Evidence
of each these investments will be held by the MRWPCA. Safekeeping procedures shall be reviewed annually by the independent auditor.

**Investment Policy Adoption**

The Treasurer will annually render a Statement of Investment Policy to the MRWPCA Board for their approval. Any change in this policy shall also be reviewed and approved by the Board at a public meeting.
Summary of Local Responsible Banking Ordinances

JULY 2012
Summary of Local Responsible Banking Ordinances

Local responsible banking ordinances seek to leverage responsible loans, investments, and services from financial institutions receiving municipal deposits and other city business. The ordinances require these institutions to demonstrate a commitment to serving modest income and minority neighborhoods. The ordinances establish oversight bodies, data reporting requirements, evaluation methods, and public input mechanisms. These features hold financing institutions publicly accountable and increase their responsible lending and investing in neighborhoods.

Cleveland's law, enacted in 1991, was one of the earliest responsible banking ordinances. The City of Philadelphia enacted an ordinance in 2002. These laws were followed by ordinances in San Jose in 2010, Seattle in 2011, and Pittsburgh, New York City, Los Angeles, Portland, Kansas City in 2012. The laws differ in their level of comprehensiveness. For example, Cleveland has detailed data reporting requirements and established a review committee while San Jose's states that a bank's federal Community Reinvestment Act (CRA) rating and its level of participation in federal foreclosure prevention programs will be used as a factor for deciding in which banks to place deposits.

The following text summarizes the major components of the ordinances including oversight bodies, annual data disclosure, reinvestment plan requirements, evaluation methods, public participation, affidavits, anti-predatory safeguards, and branch closure notices. NCRC's model bill adopts these components and chooses innovative aspects from each of the recently enacted bills.

Oversight Body: Following Cleveland's approach, New York's and Pittsburgh's ordinances establish an oversight body, typically called a Reinvestment Review Committee, whose role is to gather data, evaluate the banks, and then issue recommendations as to which banks should receive deposits. The proposed ordinance in Boston has this type of oversight body as well. The committees generally have a mix of elected officials, municipal staff, community representatives, and representatives from the small business community. By contrast, Philadelphia's and Los Angeles' ordinances vest power in the City Treasurer to enforce the statute.

Annual Data Submission: Except for Portland's, Seattle's, Kansas City's, and San Jose's ordinances, the enacted and proposed ordinances require annual data disclosure requirements for the City as a whole and for specific neighborhoods and/or census tracts. Most of the ordinances require Home Mortgage Disclosure Act (HMDA) data, small business loan data, community development loan and investment data, and data on branches and deposits. New York's, Pittsburgh's, and Boston's (proposed) ordinances require data on loan performance and/or foreclosures and loan modifications. Los Angeles' also requires data disclosure from investment banks regarding their level of philanthropy. Some ordinances, like Philadelphia's and Pittsburgh's, prohibit banks from receiving municipal deposits if they do not submit annual data and/or reinvestment plans.

Reinvestment Plans: Ordinances such as Cleveland's, Philadelphia's, Pittsburgh's, and New York's, require banks seeking deposits to indicate their reinvestment goals and plans for the upcoming year or a multi-year time period. The goals are to respond to community needs by setting targets for loans, investments, and services available in minority and low- and moderate-income neighborhoods. Philadelphia and Pittsburgh requires the banks to indicate how they will match or exceed the performance of their peer banks. The oversight bodies hold banks accountable for meeting the goals in their reinvestment plans.

Evaluation Method: Pittsburgh's and Boston's (proposed) ordinances would create scores for banks, disallowing banks with low scores on their community reinvestment performance from receiving municipal deposits. Philadelphia commissions a study that assesses the extent to which banks seeking deposits addressed lending disparities present in the City. New York's requires its oversight body to assess the extent to which banks are meeting community needs. Los Angeles' ordinance is vague, requiring the City Administrator to create a matrix using the annual data submissions; the matrix is to be considered when the City is conducting financial transactions. Portland's requires the City Treasurer to research methods and best practices for selecting banks in which to make deposits.

Public Participation: New York's ordinance has the most extensive public participation requirements. The oversight body is to conduct hearings in each borough, and public comments are to be considered by the oversight body as it is writing its evaluation of banks. Los Angeles', Cleveland's, and Boston's (proposed) ordinances posts bank data and information on City websites.

Affidavit: Banks seeking deposits from Cleveland, Pittsburgh, and Boston (proposed) sign an affidavit, pledging to make responsible loans, provide loan officers trained in neighborhood development, and affirmatively market their products to minority and low- and moderate-income neighborhoods.

Anti-Predatory Safeguards: Cleveland, Philadelphia, and Pittsburgh will not deposit funds or make investments in financial institutions that make predatory loans.

Branch Closure Notices: Banks receiving municipal deposits are required to submit either 120 day (Cleveland) or 90 day (Philadelphia and Pittsburgh) advance notice of branch closures and reasons for the branch closure.
<table>
<thead>
<tr>
<th>Provision</th>
<th>City Law</th>
<th>National Community Reinvestment Coalition</th>
<th>City Law</th>
<th>National Community Reinvestment Coalition</th>
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<tbody>
<tr>
<td>Year Passed</td>
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<tr>
<td>Community Reinvestment Review Committee - 11 members, City Treasurer, Directors of Housing &amp; Comm Development and Econ Development; two city council members; six members from community organizations.</td>
<td>Reinvestment Review Committee has 8 members: Director of Finance; members from Dept of Econ Dev and Dept of Comm Dev.; one member from citywide bank clearinghouse; 2 members from City Council; 2 members from community orgs.</td>
<td>City Treasurer certifies to City Council whether banks have complied with statutory requirements including disclosure, affidavit, and strategic plan requirements.</td>
<td>City Treasurer receives annual data and statements.</td>
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<td>HMDA; home equity loans; loan performance; loan mods; CRA small business loan also race and gender of owner; community development loan &amp; Invest data.; branch &amp; deposits by tract; minority and female employment data for banks. Investment banks: data on community development loans &amp; investments.</td>
<td>HMDA (Home Mortgage Disclosure Act); small business loans incl. race and gender of owner; consumer loans; multifamily loans; home equity loans.</td>
<td>Annual statement of reinvestment goals including number of home, small business loans, &amp; community development investments to be made in low- &amp; moderate-income neighborhoods.</td>
<td>Commercial banks: small business loans, home loans, comm. dev loans and investments; loan mods &amp; principal reduction by census tract. Investment bank: annual data related to their goals regarding philanthropy, scholarships, etc.</td>
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<td>Two year plan for loans, investments, and services (branches and basic banking incl. alternatives to payday). Bank describes how it will match or exceed peer CRA performance. Investment banks focus on community development lending and investments in their plan.</td>
<td>A written initiative (a “Community Reinvestment Initiative” or CRI) regarding community reinvestment within the City containing provisions acceptable to the Director of Community Development.</td>
<td>Provide a long term strategic plan to address disparities in lending and investment activities, including how the depository will match or exceed peer lending performance. Strategic plan to address disparities identified in disparity studies commissioned by the City.</td>
<td>Annually, commercial banks provide reinvestment goals incl. loans and investments by census tract and participation in City’s foreclosure program; Investment banks discuss philanthropy, scholarships, subcontracts with women and minority businesses.</td>
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<td>Community Reinvestment Review Committee commissions a study once every two years. Study assesses and ranks banks’ CRA performance. Review Committee uses study, reinvestment plans, and public input in making recommendations about which banks receive how much city deposits and other business.</td>
<td>Reinvestment Review Committee will review annual data and CRI and issue a report analyzing this information and make recommendation to City Council about which banks are in compliance with their affidavit.</td>
<td>NA</td>
<td>City Administrative officer will produce a matrix based on bank data when Council considers approval of financial transactions.</td>
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<tr>
<td>Comm. Reinv. Review Comm holds a 60 day public comment period and public hearings as part of review of bank performance. Data and reinvestment plans of banks to be made publicly available.</td>
<td>Annual data and Community Reinvestment Initiative (CRI) shall be available for public inspection.</td>
<td>NA</td>
<td>Bank statements made public via City website within 90 days of filing.</td>
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<td>Bank attests that it will offer responsible products, make best efforts to execute its reinvestment plan; have loan officers &amp; other professionals trained in neighborhood development; and affirmatively market products.</td>
<td>Bank attests it will make best efforts to undertake neighborhood lending programs; have trained loan officers in n’hood dev.; affirmatively market products; not make predatory loans.</td>
<td>Depository provides affidavit attesting that it is not a predatory lender as defined in City law.</td>
<td>NA</td>
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<tr>
<td>City Treasurer will not deposit funds in bank that makes predatory loans; City Treasurer shall not invest in stocks or securities of financial institution that makes predatory loans.</td>
<td>City Treasurer will not deposit funds in bank that makes predatory loans; City Treasurer shall not invest in stocks or securities of financial institution that makes predatory loans.</td>
<td>Depository provides affidavit attesting that it is not a predatory lender as defined in City law.</td>
<td>NA</td>
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<tr>
<td>Depository provides 120 day notice to City about branch closures, and is required to participate in public meetings to explore alternatives to closure.</td>
<td>Depository sends notice to Mayor and Director of Finance 120 days in advance of closure; identify branch location, and reason for closure.</td>
<td>Depository provides notice to Mayor, City Council, &amp; City Treasurer 90 days before branch closure including detailed reasons for closure.</td>
<td>NA</td>
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<tr>
<td>Commercial or investment bank that does not sign affidavit and does not comply with data disclosure or Reinvestment Plan requirements shall not be eligible to receive City business.</td>
<td>Data submission and Community Reinvestment Initiative used to determine whether institution is in compliance with its affidavit and whether it will be deemed eligible to receive City business.</td>
<td>No funds shall be deposited in a bank that has not submitted its annual statement of reinvestment goals. City Treasurer certifies compliance with this provision.</td>
<td>Data disclosure required when institution applies to receive City business and shall be updated annually as long as institution receives City business.</td>
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National Community Reinvestment Coalition | http://www.ncrc.org | 202-628-8866
<table>
<thead>
<tr>
<th>Provision</th>
<th>New York</th>
<th>Pittsburgh</th>
<th>Seattle</th>
<th>Portland</th>
<th>Boston</th>
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<tr>
<td><strong>Oversight Body</strong></td>
<td>Community Investment Advisory Board has 8 members: Mayor; comptroller; speaker of city council; commissioners of dept of housing and dept of finance; 1 community organization; a representative of small businesses; a representative of city’s banking industry.</td>
<td>Reinvestment Review Committee (RRC) has 9 members incl. Director of Finance, City Controller, Urban Redevelop Auth., Mayor’s Office of N’hood Initiatives, Finance Com Chair of City Council, 2 other members of City Council, two community organizations.</td>
<td>City will review banking &amp; investment practices to ensure funds are invested in responsible institutions.</td>
<td>Council directs City Treasurer to seek opportunities to place 10 deposits with local institutions, incl one credit union, during 2012</td>
<td>Municipal Banking &amp; Community Reinvestment Commission will analyze data &amp; make recons; 6 members appointed by Mayor; 1 member by Council President, 3 ex-officio members. Members are Treasurer; 2 City Council; 2 from community orgs; 1 individual from redlined n’hood; 1 public agency; 1 from business community; 1 from union; 1 from public appointed by council president.</td>
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<tr>
<td><strong>Annual Data Disclosure</strong></td>
<td>Annual data on census tract, borough, community district level regarding financial services &amp; products; community development loans &amp; investments; loan performance; loan modifications or other foreclosure prevention efforts.</td>
<td>HMIDA, home equity loans, loan modifications, loan performance, small business loans including race of owner, community development loans &amp; investments, branch &amp; deposits, consumer loans.</td>
<td></td>
<td>Census tract &amp; citywide: HMIDA; loan mods HAMP and non-HAMP; loan performance, foreclosures and REOs; small business loans incl those to minority women; community development loans and investments; consumer loans; student loans; branches &amp; deposits; workforce composition</td>
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<tr>
<td><strong>Reinvestment Plan</strong></td>
<td>Banks issue annual plan describing how bank will respond to credit, financial, and banking needs identified by City’s needs assessment. A bank’s plan is tailored to its size and type. To extent not deemed confidential, the banks’ plans or sections of plan are shared publicly.</td>
<td>Every two years, depositories submit a plan of how it will meet community financial needs, offer alternatives to payday loans, provide full service banking, engage in neighborhood development, &amp; meet or exceed peer performance.</td>
<td></td>
<td>Community Reinvestment goals for loans, investments, and services; policies for addressing credit needs; goals for reasonable account fees and interest rates; goals for loan mods for unemployed; for REO purchase by nonprofit.</td>
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<tr>
<td><strong>Evaluation Method</strong></td>
<td>Advisory Board will conduct a needs assessment every two years, use bank data, establish benchmarks, and will assess how banks performed in meeting needs and benchmarks and areas of improvement for each bank. Board issues an annual report that considers banks’ applications to become depositories in light of needs assessment.</td>
<td>City Controller shall prepare an annual report of bank performance. Banks with Satisfactory or higher Fed CRA ratings shall receive a score of 1 to 5 with 3 to 5 qualifying as a depository and 1 or 2 not qualified. Banks receive draft scores for 30 days; RRC also has input; report presented to Director of Finance and City Council, and is one factor along with health of bank that determines with whom City does business.</td>
<td>Council will identify effective approaches to access to banking &amp; other financial services.</td>
<td>Treasurer will research national best practices for selecting banks including evaluations of their local lending and community investments, workforce data, &amp; small business lending.</td>
<td>Commission shall conduct an annual evaluation; use a scoring system of 1 to 100 points to rank the banks seeking contracts. Categories to be scored include lending, investments, Boston resident hiring, loan performance, compliance with state usury laws, proper foreclosure procedures, fair lending practices. Banks scoring in the top 25% can receive increase in contracts; terminate contracts for those in bottom 25%.</td>
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<tr>
<td><strong>Public Participation</strong></td>
<td>Hearings in each borough; public comments considered by Board for its annual reports; bank data to be made publicly available.</td>
<td>Not specified.</td>
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<td>Data and reinvestment plans shall be posted on City’s website.</td>
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<tr>
<td><strong>Affidavit</strong></td>
<td>Banks pledge to make best efforts to provide responsible loans; provide loan officers trained in neighborhood development, and affirmatively market their products.</td>
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<td>Make best efforts to undertake a defined lending program in support of neighborhoods; to establish whistle blowing protections; to abide by state usury laws; to refrain from making predatory loans; to avoid discrimination and redlining.</td>
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<tr>
<td><strong>Anti-Predatory Safeguards</strong></td>
<td>Director of Finance shall not keep deposits with financial institutions that make predatory loans and shall not invest in securities of businesses that make predatory loans.</td>
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<td>No contract for banking services shall be awarded to a bank that has engaged in discrimination or other illegal credit practices or committed past criminal or civil violations harming Boston residents.</td>
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<tr>
<td><strong>Branch Closures</strong></td>
<td>Depository shall provide a 90 day notice to City regarding branch closures &amp; reasons for closing branch; and a 30 day notice of a branch opening.</td>
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<td>Institution to give 120 day notice to Mayor, City Council, Treasurer of branch closure and reasons for the closing.</td>
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<tr>
<td><strong>Penalties for Non-Disclosure</strong></td>
<td>The Advisory Board in its report notes the failure of any deposit bank to submit requested data.</td>
<td>No institution shall be eligible to receive City business unless it has executed a Community Reinvestment Plan.</td>
<td></td>
<td>If institution refuses to submit data, sign pledge, or issue community reinvestment goals, City Council and Mayor may withdraw designation of institution as eligible to receive city business. Treasurer is to make publicly available a list of institutions that fail to provide this information.</td>
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<tr>
<td><strong>Other</strong></td>
<td>Bank investing in Northern Ireland businesses must determine if such companies do not discriminate on basis of ethnicity or race.</td>
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<tr>
<td>Provision</td>
<td>Chicago</td>
<td>Minneapolis - Hennepin County</td>
<td>Kansas City</td>
<td>San Jose</td>
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<tr>
<td>Provision</td>
<td>Provision</td>
<td>Office of Budget and Finance proposal.</td>
<td>City Manager</td>
<td>NA</td>
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<tr>
<td>Oversight Body</td>
<td>Department of Finance on behalf of City and Board of Education issues a request for proposal (RFP) for depository services.</td>
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<tr>
<td>Annual Data Disclosure</td>
<td>When banks bid to become depositories, submit HMDA data enhanced with data on interest rates, points and fees. Disclosures of multifamily lending including purchase, improvement, and refinance loans. Citywide data on foreclosures. Data on consumer lending, savings accounts, &amp; checking accounts by tract.</td>
<td>At time of RFP, on MSA level: submit HMDA data, % of loans in default that received HAMP or non-HAMP mod; loan modification requests, completions, and denials; CRA small business loan data. On county level: branches, customers, and bank employee data.</td>
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<td>NA</td>
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<tr>
<td>Reinvestment Plan</td>
<td>NA</td>
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<td>NA</td>
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<tr>
<td>Evaluation Method</td>
<td>NA</td>
<td>NA</td>
<td>City Manager</td>
<td>To the extent that competing institutions offer the City substantially equal liquidity and safety, the City will use the extent of participation in HAMP and a CRA rating of Satisfactory and above as criteria for deciding in which institutions to invest.</td>
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<tr>
<td>Public Participation</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
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<tr>
<td>Affidavit</td>
<td>Bank bidding must pledge to avoid predatory lending as defined by the City, must pledge to avoid redlining, and will adhere to reporting requirements concerning vacant property and will maintain vacant property in compliance with City Code.</td>
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<td>NA</td>
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<tr>
<td>Anti-Predatory Safeguards</td>
<td>Bank bidding must pledge to avoid predatory lending as defined by the City, must pledge to avoid redlining, and will adhere to reporting requirements concerning vacant property and will maintain vacant property in compliance with City Code.</td>
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<tr>
<td>Branch Closures</td>
<td>NA</td>
<td>NA</td>
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<td>NA</td>
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<tr>
<td>Penalties for Non-Disclosure</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>Other</td>
<td>N/A</td>
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ARTICLE 3.
RESPONSIBLE BANKING. (Ord. 3526, 10/15)

Sec. 12-18. Purpose.
The purpose of the responsible banking ordinance is to ensure that financial institutions that hold City funds on deposit are responsive to community financial needs, provide services that reflect fair business practices, and promote economic growth and community reinvestment within the City of Monterey. Nothing in this article shall limit the authority of the Finance Director/City Treasurer as provided in Section 12-2 or State law. (Ord. 3526 § 3, 2015)

a. “Affordable” means low- or moderate-income individuals as provided in the CRA.
b. “Community development” means: (i) affordable housing for low- or moderate-income individuals; (ii) community services targeted to low- or moderate-income individuals; and (iii) activities that promote economic development by financing small businesses.
d. “Depository” means a financial institution that is selected by the City Finance Director/City Treasurer and designated to receive deposits of Monterey’s funds.
e. “Low-income” means individual income that is less than 50% of the area median income, or a median family income that is less than 50% of the area median family income.
f. “Moderate-income” means an individual income that is at least 50% and less than 80% of the area median income, or a median family income that is at least 50% and less than 80% of the area median family income.
g. “Predatory lending practices” are practices that are specifically prohibited by State or Federal law, including such practices as: (i) the frequent making of new loans to refinance existing loans; (ii) the selling of additional products without the borrower’s informed consent; and (iii) the charging of excessive fees. (Ord. 3526 § 3, 2015)

Sec. 12-20. Applicable financial institutions.
The provisions of this chapter shall apply to depositories that maintain at least $3 million in City deposits on an annual basis. (Ord. 3526 § 3, 2015)

Sec. 12-21. Responsible banking.
The Finance Director/City Treasurer, in selecting qualified depositories for City moneys, shall:
a. Include local banks in any request for proposals for depository services.
b. Require prospective bidders to provide the City with data on their responsible banking practices.
c. Include in contracts for depository services a statement of work that provides a framework for responsible banking.
d. Establish relevant reporting criteria and time frames to validate the statement of work.
e. Incorporate responsible banking bid criteria requiring any bidder to describe current or proposed programs that address the financial needs for the City's residents and businesses including: community involvement and reinvestment; meeting community banking needs; supporting small business lending and community development; providing for home ownership and consumer credit; assisting distressed homeowners; residential lending including affordable mortgage programs, new construction and rehabilitation lending and investment; and allowing for products and services that are advantageous for the City and its residents.

f. Include in contracts for depository services that financial institutions shall provide the City with an annual report of their community involvement and reinvestment; meeting community banking needs; supporting small business lending and community development; providing for home ownership and consumer credit; assisting distressed homeowners; residential lending including affordable mortgage programs, new construction and rehabilitation lending and investment; and allowing for products and services that are advantageous for the City and its residents.

g. Require, as part of that year's annual data disclosure, that financial institutions shall provide a two-year plan for loans and services. Institutions shall describe how they will match or exceed peer Community Reinvestment Act (CRA) performance.

h. Include in contracts for depository services that depositories sign an annual affidavit that they have incorporated the terms and conditions of the responsible banking ordinance.

i. Include in contracts for depository services that the City shall not keep deposits with depositories that have been the subject of a court judgment that they have engaged in predatory lending practices to residents of Monterey County.

j. Include in contracts for depository services that depositories shall provide 120-day notice to the City for branch closures and shall identify branch location and reason for closure.

k. Include in contracts for depository services that if the Finance Director/City Treasurer determines that a depository has failed to meet the requirements for reporting and compliance, such depository shall be prohibited from holding City funds. (Ord. 3526 § 3, 2015)

The City as part of its evaluation of proposals for depository services shall utilize the following criteria as a component of the overall rating/ranking of proposals: community investment, loan modifications, small business loans, affordable home loans, number of locations of branches and services and services provided at branches. (Ord. 3526 § 3, 2015)

Sec. 12-23. Public participation/disclosure.
The Finance Department shall make an annual compliance report to the City Council and shall maintain on the City’s website the annual report(s) submitted by depositories. (Ord. 3526 § 3, 2015)