

Napa County Agreement No. _____

**Agreement Between Napa Sanitation District and County of Napa
Regarding the Construction, Operation and Maintenance of a
Recycled Water Pipeline in the MST Area**

This Agreement (“AGREEMENT”) is entered into and effective as of June 3, 2014 by and between the County of Napa, a political subdivision of the state of California (“County”) and the Napa Sanitation District, a County sanitation district, formed pursuant to Health & Safety Code Sections 4700, et seq. (“District”).

WHEREAS, NSD produces and conveys recycled water from its Soscol Water Recycling Facility; and

WHEREAS, there is a desire among residents and land owners of the County in the area known as the Milliken-Sarco-Tulocay (MST) Groundwater Area to obtain the benefits of having recycled water made available to this area for appropriate uses to help offset water deficiencies in the MST area; and

WHEREAS, the District has expressed an interest and ability to provide recycled water to the MST Groundwater Area subject to certain terms and conditions (“the MST Project”); and

WHEREAS, the District and the County are signatory to the Memorandum of Understanding establishing the North Bay Water Reuse Authority (“NBWRA”); and the NBWRA has prepared an environmental analysis (EIR/EIS) of a project, which includes the MST Project, and successfully pursued and obtained federal funding assistance from the United State Bureau of Reclamation (USBR) through its WaterSMART grant program; and

WHEREAS, the County and the District have approved an addendum to the NBWRA EIR/EIS for the recycled water booster pump station that is part of the MST Project; and

WHEREAS, the District and the County entered into an agreement (County Agreement No. 7350) to fund and build the extension of the District’s recycled water pipeline from the Napa State Hospital along Imola Avenue to Penny Lane and adjacent to Skyline Park; and

WHEREAS, the County and the District entered into a Joint Community Facilities Agreement (County Agreement No. 7858) in December 2012, establishing duties and obligations associated with the County’s Community Facilities District and the District’s agreement to build and maintain the Project; and

WHEREAS, the District and the County now desire to more specifically set forth their agreement regarding the construction, operation, and maintenance of the MST Project.

NOW, THEREFORE, in consideration of the foregoing, the mutual agreements of the parties and other valuable consideration the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Project Definition.

- A. The Project. The MST Recycled Water Pipeline Project (“the Project”) is the construction of a recycled water pipeline from the terminus of the existing recycled water pipeline on Imola Avenue at Skyline Park through the MST area, terminating at Hagen Road, according to the Project Map (“Exhibit A”) and project plans and specifications approved by the Napa Sanitation District Board of Directors at its meetings on November 6, 2013 (pipeline approval) and February 5, 2014 (booster pump station and modified pipeline approval).

- B. Project Modification. The District may modify the Project during construction as necessary to effectuate the completion of the Project based on unforeseen circumstances. The modifications shall be in the form of Construction Change Orders, and will be approved in accordance with the District’s Procurement Policies (District Code Section 2.03, et seq.). It is acknowledged that such construction change orders may or may not increase or decrease the overall construction cost of the project. The estimated project costs, as described in Section 4 below, identify construction costs including a construction contingency. The District shall have full authority to authorize payment requests and construction change orders that result in payment requests up to the estimated project costs, including the project contingency. The District and the County agree that all construction change orders will be discussed at regularly scheduled project meetings, and that any construction change orders that increase the cost of the Project beyond the estimated project cost, including project contingency, shall be approved by the District only after discussion with and approval of additional authority to spend beyond the Total Estimated Costs is provided by the County Director of Public Works.

2. Construction of the Project.

- A. Procurement. The District will conduct and be responsible for the procurement of all contracts associated with the construction of the Project, including selecting the lowest responsive and responsible bidder for construction, and selecting the construction management firm and all other associated consultants including but not limited to the design engineer during construction and environmental consultants. Procurements shall follow District Code Section 2.03, et seq., and all requirements of the United States Bureau of Reclamation and/or other requirements derived from federal or state funding of the Project. County may participate in the vendor selection process by reviewing proposals and bids, providing timely comments to District, participating in any interviews of potential contractors, and providing input during deliberative sessions, but the final selection of contractors and consultants shall be made by the District.

- B. Construction Management. The District shall be responsible for all construction management, oversight and inspection services. The District may conduct this work on its own or it may hire third party contractors to provide these services. Costs associated with construction management shall be considered Project costs and subject to payment and reimbursement to the District and under any grants, loans or CFD revenues as appropriate.

- C. Connection of New Recycled Water Customers. The District shall be responsible for working with new recycled water customers that are identified by County to make physical connection to the Project, including inspection of connections and use agreements. Recycled Water customers are responsible for all costs associated with the installation of a water meter and all improvements made on the recycled water customer’s side of the meter, except for those costs identified in the Project that are associated with providing customer connection to the Project.

3. State Revolving Fund Loan and Community Facilities District.

- A. State Revolving Fund Loan. The project will be financed using Revolving Fund Loans from the California State Water Resources Control Board (“SRF Loan”). County shall be solely responsible for acquiring any and all financing associated with the Project. County shall be responsible for all covenants, interim reports, post-project completion reports and other requirements imposed under the SRF Loan. In connection with the SRF Loan, the District hereby makes the covenants and representations contained in Exhibit B hereto, which is incorporated herein by this reference. Following the execution of this Agreement, the parties hereto shall, by administrative action not requiring governing board approval, complete the terms of Exhibit B to reflect the actual date, agreement number and construction commencement date contained in the final SRF Loan agreement.
- B. Joint Community Facilities Agreement. Rights and obligations associated with the “Joint Community Facilities Agreement related to Napa County Community Facilities District No. 2012-1 (MST Recycled Water Line Project)”, hereby attached as “Exhibit C”, shall be controlled by that Agreement.
- C. Connection of Future Users. District does not impose a Connection Fee (as described in California Government Code Section 66013) for new users of its recycled water system, and the District agrees not to impose one in the future for new users connecting to the Project. County shall be responsible for managing how to account for any connection fee or user fees that may be imposed by the County, and for determining how that fee relates to the CFD tax levy, SRF loan, or any reimbursements owed to the County or CFD participants. Future users shall be responsible for all direct and indirect costs associated with future connections to the Project, including connection to the recycled water main, public lateral installation, water meters, inspections and all private infrastructure improvements.

4. Project Cost, Payments and Grant Reimbursements.

- A. Project Cost Paid by County. County agrees to be responsible for and pay all Project costs, not reimbursed by the United State Department of Interior Bureau of Reclamation (“USBR”) under the Title XVI WaterSMART grant program, or other grants or loans obtained for the Project. However, in no event shall the amount to be paid to the District by the County exceed \$9,859,000, without County Board of Supervisors approval. The District shall not be responsible for any Project costs. Project costs include construction cost, construction management, labor compliance services associated with construction, design services during construction, environmental services associated with permit, CEQA and NEPA compliance, District staff costs, permit fees, and other direct costs related to construction and oversight of the Project.
- B. Project Construction Budget. This Agreement authorizes the County to pay all actual Project expenses as defined above. The Total Project Budget is \$13,145,333 with 25% to be reimbursed to the District under the USBR WaterSMART grant program and the remaining 75% to be paid by the County or from other grant sources. Any amounts over the Total Project Budget shall be agreed to between the parties prior to encumbrance of those costs. County agrees not to withhold its agreement for reasonable expenses related to implementation of the project. County asserts and District understands that the County will not commit resources to the Project beyond those available through grants and the SRF loan financed through assessments in the Community Facilities District. Both parties agree to proceed with the project

acknowledging that if Project costs exceed resources available to the County, the Project may not be completed.

- C. Payment Upon Invoice. County shall pay the District upon presentation by District to County's Public Works Director an invoice for costs to District for the Project. Such invoices shall be no more frequent than monthly. County shall use said invoices to seek reimbursement from the State under the terms of its SRF loan. County and District recognize that this process may be time consuming, and as such County shall pay District as soon as practical after receipt of funds from the state, but no later than forty five (45) calendar days of the presentation of an invoice by District provided the invoice is sufficiently documented. Invoiced amounts shall be net of those expenses the District requests for reimbursement from the USBR or other sources.
- D. Interest on Overdue Invoices. County agrees that invoices that are not paid within the time established in Section 4 (C) above shall be assessed a one percent (1%) per month interest charge, and that County agrees to pay and shall be financially responsible for such interest charges. Interest charges shall not accrue if County reasonably disputes an invoice. In such event, interest shall begin to accrue forty five (45) days after the parties reach agreement on the invoiced amount, or forty five (45) days after the parties have engaged in Dispute Resolution as provided in Paragraph 15 herein and the matter determined.
- E. Breach for Non-Payment of Invoices. County agrees that nonpayment of reimbursable expenses in a timely fashion, notwithstanding nonpayment of expenses that are protested in good faith, may be considered a material breach of contract that can result in stop work orders issued by the District to the contractors. County agrees that, any actions taken in association with a material breach of contract due to non-payment of invoices that result in increased costs to the Project are the responsibility of the County.
- F. Format of Invoices. District shall provide invoices in a format needed by County for management and reporting of its SRF Loan, including any necessary backup or supplemental information needed as justification of expenses.
- G. Grant Management. District shall contract with Sonoma County Water Agency as a subrecipient of any USBR WaterSMART grants designated toward construction of the Project. Grant funding from other sources is anticipated. District shall use the revenues from the grants to offset the County's financial obligations under this AGREEMENT. District shall be responsible for all reimbursement requests under the grant programs and will assume responsibility for all reporting requirements under them.

5. Ownership, Maintenance and Operation of the Project.

- A. Ownership of the Project. District will accept ownership of the Project upon completion and Project Acceptance.
- B. Operation of the Project. District will accept responsibility for operation of the Project upon completion. The District will determine based on its own operational requirements when to begin delivery of recycled water.
- C. Maintenance of Environmental Mitigation Areas. District shall build, construct, install, and/or rehabilitate the Project in accordance with any environmental mitigation requirements of the

Project, as defined in the environmental permits for the Project. District shall contract with a third party(ies) for the ongoing maintenance of and reporting on the environmental mitigation areas. District intends to contract with the Napa County Flood Control District for this work. County agrees to be financially responsible for the expenses associated with maintenance of and reporting on the environmental mitigation areas.

- D. Renewal, Rehabilitation and Replacement. The District shall assume and accept all responsibility for all future renewal, rehabilitation and replacement expenses associated with the Project.

6. Provision of Recycled Water.

- A. District provides Recycled Water. District shall be responsible for providing recycled water to customers along the Project, including all costs associated with purveying the water, activities associated with invoicing customers for water usage and collecting those revenues, and collection of user reports as required in user agreements.
- B. Recycled Water Fees. County agrees that all revenue collected by District for recycled water is the property of District to use any way District determines to be appropriate.

7. Ongoing Recordkeeping and Reporting.

- A. Annual Report. District shall provide County with an annual report of recycled water usage along the Project alignment.
- B. Interim Reports. District will provide to County interim reports upon request, along with any information necessary for the County to comply with SRF loan covenants or other reporting requirements.
- C. Document Retention. District will maintain Project construction drawings and other information deemed necessary and important by the District regarding the construction of the Project for at least twenty (20) years following completion of the project. Financial records associated with the Project, including payables records, receivable records and grants receivable records, shall be maintained at least five (5) fiscal years after the transactions are recorded. Grant reports shall be maintained in accordance with the USBR funding agreement.

8. Additional NBWRA Cost Sharing

County and District will share NBWRA participation costs attributable to District identified for Fiscal Years 2014/15, 2015/16 and 2016/17 as described below. These costs include the following activities:

- Program Development
- Federal Legislative Advocacy
- Grant Applications and Management

These activities are part of the “Phase 1 Support” component of the NBWRA Third Memorandum of Understanding.

Total estimated costs to the District under Phase 1 Support – during the next 3 fiscal years – are estimated to be \$161,086, although the NBWRA Memorandum of Understanding (MOU) allows for these costs to increase by as much as 15% without unanimous approval of the NBWRA Board of Directors. County agrees to reimburse District fifty per cent (50%) of the District’s costs for the

“Phase 1 Support” category during these three fiscal years, or an estimated maximum of \$93,236. Pursuant to the above, County shall pay the District upon presentation by District to County’s Public Works Director an invoice for costs of District’s Phase 1 NBWRA membership expenses. County shall pay District its share of these costs within forty five (45) days of the presentation of invoices by the District to the County. These costs are over and above those described in Section 4.

ADDITIONAL TERMS AND CONDITIONS

- 9. Hold Harmless By County.** County agrees to defend, indemnify and hold District, its elected officials, officers, employees and agents and successors and assigns of each of them (collectively, “Indemnified Parties”) harmless from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, proceedings and judgments including, without limitation, reasonable attorneys’ fees arising from or in any way connected with any claims against the Indemnified Parties for damages or violation of any law resulting from any act, omission, or other action taken by the County in performance of its duties under this AGREEMENT.
- 10. Hold Harmless By District.** District agrees to defend, indemnify and hold County, its elected officials, officers, employees and agents and successors and assigns of each of them (collectively, “Indemnified Parties”) harmless from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, proceedings and judgments including, without limitation, reasonable attorneys’ fees arising from or in any way connected with any claims against the Indemnified Parties for damages or violation of any law resulting from any act, omission, or other action taken by the District in performance of its duties under this AGREEMENT.
- 11. Ongoing Duties and Responsibilities.** In addition to the parties’ duties and responsibilities as described in other sections of this AGREEMENT, the parties acknowledge and agree to perform the following on an ongoing basis during the time that the Project is under construction:

 - A. Regular Staff Meetings. The respective staffs of County and District, and their retained consultants or contractors, will meet as needed to address matters contained in this AGREEMENT.
 - B. Commitment of Staff and Resources. To provide sufficient staff and/or resources to this process to efficiently meet the goals and tasks set forth in this AGREEMENT.
- 12. Warranty of Legal Authority.** Each party warrants and covenants that it has the present legal authority to enter into this AGREEMENT and to perform the acts required of it hereunder. If any party is found to lack the authority to perform the acts required of it hereunder or is prevented from performing the acts by a court of competent jurisdiction, this AGREEMENT shall be void.
- 13. Assignment/Delegation.** Neither party hereto shall assign, or transfer any benefit or obligations of this AGREEMENT without the prior written consent of the other, and no assignment shall be of any force or effect whatsoever unless and until the other party shall have so consented.
- 14. Severability.** In the event any provision of this AGREEMENT is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining provisions of this AGREEMENT will remain in full force and effect.

15. **Dispute Resolution.** The parties agree to negotiate in good faith any disputes or disagreements arising from this AGREEMENT. In the event that the parties cannot come to agreement within a reasonable period of time, the parties agree to the use of a third party, independent mediator to help the parties come to mutual agreement. The parties agree not to seek remedy or dispute resolution through the courts without first attempting in good faith to resolve the dispute through negotiation or mediation, but in no way does this requirement limit the rights of either party to seek redress through legal action.
16. **Attorneys' Fees.** The prevailing party in any legal action brought by one party against any other party and arising out of this AGREEMENT shall be entitled to reimbursement for its expenses, including court costs and reasonable attorneys' fees.
17. **Waiver.** Any waiver (express or implied) by any party of any breach of this AGREEMENT shall not constitute a waiver of any other or subsequent breach.
18. **Exercise of Discretion.** The parties recognize and agree that nothing in this AGREEMENT is intended to nor shall be interpreted to limit the ability of the individual members of the District Board of Directors and the Board of Supervisors to exercise their discretion in whatever manner appropriate.
19. **Notices.** Whenever notice is to be given, it shall be in writing and delivered by personal, overnight express or courier service, with a written receipt, or sent by registered or certified mail in a sealed envelope, postage prepaid, return receipt requested and addressed as follows:

Napa Sanitation District:

General Manager
P.O. Box 2480
Napa, California 94558

County of Napa:

Director of Public Works
1195 Third Street, Suite 101
Napa, CA 94559

Changes may be made in addresses to where notices are to be delivered by giving notice pursuant to this provision.

20. **Entire Agreement.** This document is intended both as the final expression of the agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the AGREEMENT.
21. **Amendment.** This AGREEMENT may only be amended in writing by an amendment authorized by the District Board of Directors and County Board of Supervisors.
22. **Recitals Adopted.** The parties hereby agree to and adopt the AGREEMENT recitals as portions of the AGREEMENT.
23. **Termination for Cause.** Any party may terminate this AGREEMENT for cause of non-performance. Such termination shall be based upon sixty (60) days' notice given to the other party in the manner

set forth in Section 19 Notices, provided however that no such termination shall occur if the defaulting party cures its non-performance within 30 days of notice of such nonperformance.

24. Joint Defense in Event of Third Party Challenges to the Agreement. In the event of a third party challenge of any type to this AGREEMENT, the parties agree to jointly defend the validity and implementation of the AGREEMENT.

25. Counterparts Signature. This AGREEMENT may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one AGREEMENT.

IN WITNESS WHEREOF, this AGREEMENT was executed by the parties hereto as of the date first above written.

<p>NAPA COUNTY, a political subdivision of the State of California</p> <p>By: _____ MARK LUCE, Chair of the Board of Supervisors</p>	<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <i>Robert Paul</i> (e-signature)</p> <p>Date: May 23, 2014</p>
<p>ATTEST: GLADYS I. COIL Clerk of the Board of Supervisors</p> <p>By: _____</p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Office of County Counsel</p> <p>Date: _____</p> <p>Processed by: _____ Deputy Clerk of the Board</p>
<p>NAPA SANITATION DISTRICT</p> <p>By: _____ JILL TECHEL, Chair of the Board</p>	<p>APPROVED AS TO FORM: JOHN BAKKER, District Counsel</p> <p>By: _____</p>
<p>ATTEST: CHERYL SCHUH NSD Board Secretary</p> <p>By: _____</p>	

EXHIBIT A

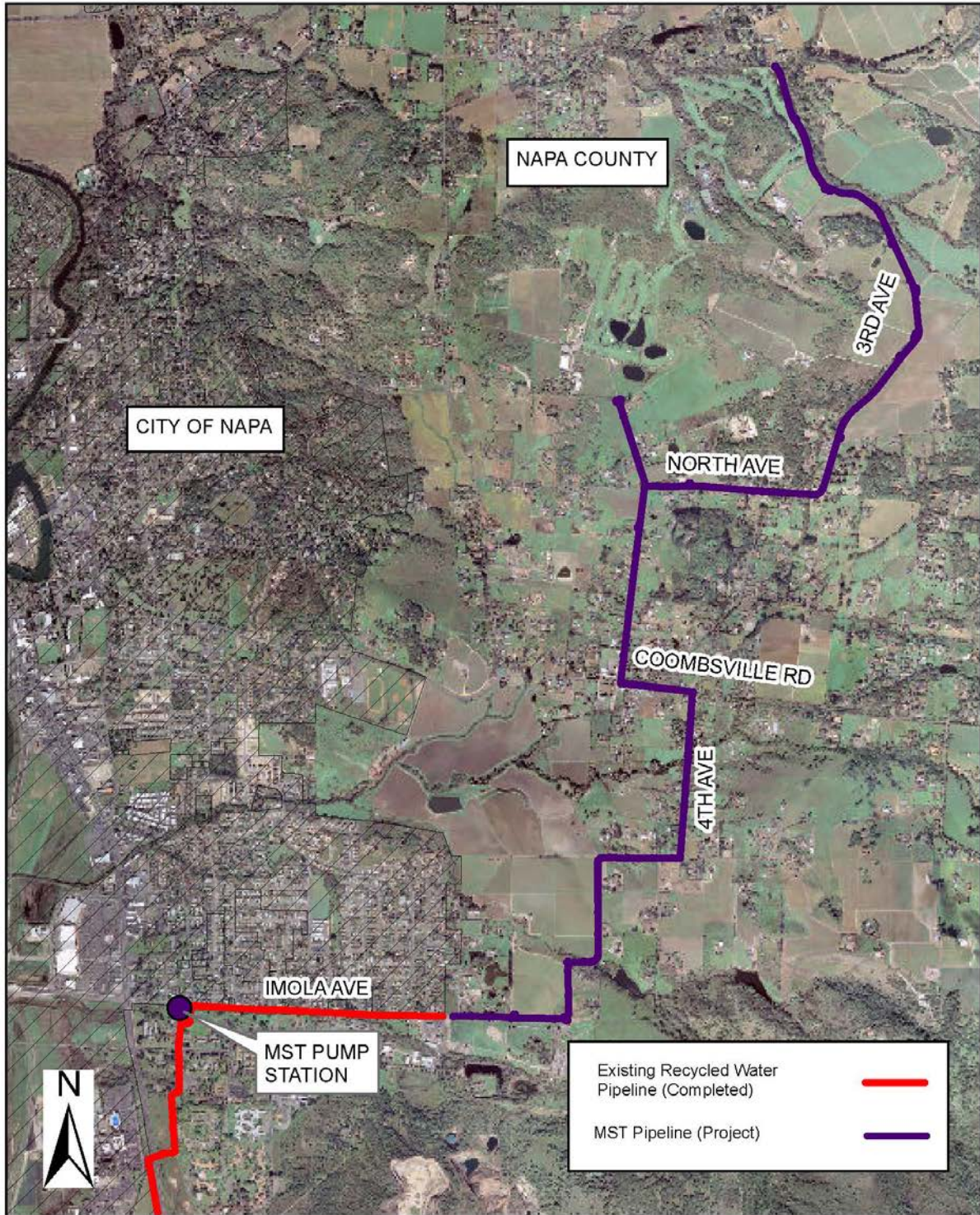


Exhibit A

Exhibit B

The District hereby agrees to the following representations and covenants in order to allow the County to comply with the agreement entitled "LOAN AGREEMENT, PUBLICLY OWNED TREATMENT WORKS (POTW) CONSTRUCTION FINANCING, MST RECYCLED WATER PROJECT, CLEAN WATER STATE REVOLVING FUND PROJECT NO. C-06-5210-110, AGREEMENT NO. _____" (the "SRF Loan Agreement"), dated as of _____, 2014, by and between the County and the State Water Resources Control Board, an administrative and regulatory agency of the State of California (the "State Water Board").

A. REPRESENTATIONS, WARRANTIES AND COMMITMENTS

1. Litigation.

There are no pending or, to the District's knowledge, threatened actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency which affect the Community Facilities District, the Special Taxes or the MST Project.

2. Completion of Project.

The District agrees to expeditiously proceed with and complete construction of the MST Project in substantial accordance with this Agreement and Exhibit A and Exhibit A-FBA to the SRF Loan Agreement.

3. Project Completion Report.

The District shall cooperate with the County to submit a Project Completion Report to the Division of Financial Assistance of the State Water Board or any other segment of the State Water Board authorized to administer the Clean Water State Revolving Fund (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 County at the time of final project inspection. The Project Completion Report must address the following:

- (a) describe the MST Project,
- (b) describe the water quality problem the MST Project sought to address,
- (c) discuss the MST Project's likelihood of successfully addressing that water quality problem in the future, and
- (d) summarize compliance with environmental conditions, if applicable.

The District acknowledges that, where the County fails to submit a timely Project Completion Report, the State Water Board may stop processing pending or future applications for new financial assistance, withhold disbursements under the SRF Loan Agreement or other agreements, and begin administrative proceedings.

4. Award of Construction Contracts

- (a) The District agrees to award the prime construction contract no later than the date specified in Exhibit A to the SRF Loan Agreement.
- (b) The District agrees to cooperate with the County to promptly notify the Division in writing both of the award of the prime construction contract for the MST Project and of Initiation of Construction of the Project (as defined in the SRF Loan Agreement). The District agrees to 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 of the SRF Loan Agreement.

5. Notices

(a) The District agrees to cooperate with the County to promptly notify the Division in writing within 5 days of the occurrence of any change of ownership of the MST Project or change of management or service contract for operation of the MST Project.

(b) The District agrees to cooperate with the County to notify the Division promptly of any of the following:

(i) Any substantial change in scope of the MST Project. The District agrees that no substantial change in the scope of the MST Project will be undertaken until written notice of the proposed change has been provided to the Division and the Division has given written approval for such change.

(ii) Cessation of all major construction work on the MST Project where such cessation of work is expected to or does extend for a period of 30 days or more.

(iii) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction (as defined in the SRF Loan Agreement) for a period of 90 days or more beyond the estimated date of Completion of Construction previously provided to the Division.

(iv) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the MST Project, the District 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 District agrees to implement appropriate actions as directed by the Division.

(v) 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 MST Project, the District agrees to cooperate with the County to promptly notify the Division. This notification is in addition to the District's obligations under the federal Endangered Species Act.

(vi) Any 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.

(vii) Any public or media event publicizing the accomplishments and/or results of the SRF Loan Agreement and provide the opportunity for attendance and participation by state and federal representatives with at least 10 working days' notice to both the Division and USEPA Region IX. The contact for USEPA Region IX is Josh Amaris at Amaris.josh@epa.gov (415) 972-3597.

(viii) Completion of Construction of the MST Project, and actual MST Project Completion (as defined in the SRF Loan Agreement).

6. Project Access

The District agrees to 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 MST Project site at all reasonable times during MST Project construction and thereafter for the term of the SRF Loan Agreement.

The District acknowledges that, except for a subset of archeological records, the MST Project records and locations are public records, including all of the submissions accompanying the application, all of the documents incorporated by Exhibit A to the SRF Loan Agreement, and all reports, disbursement requests, and supporting documentation submitted thereunder.

7. Project Completion; Initiation of Operations

Upon Completion of Construction of the MST Project, the District will expeditiously initiate MST Project operations.

Except as provided in the SRF Loan Agreement, the District will not abandon, substantially discontinue use of, lease, or dispose of the Project or any significant part or portion thereof during the useful life of the MST 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 or any portion of all remaining funds covered by the SRF Loan Agreement together with accrued interest and any penalty assessments which may be due.

8. Reports

(a) Quarterly Reports. The District agrees to cooperate with the County to expeditiously provide status reports to the Division no less frequently than quarterly, starting with the execution of the SRF Loan Agreement and ending with Completion of Construction. At a minimum the reports will contain the following information:

- 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;
- a description of compliance with environmental requirements;
- a listing of change orders including amount, description of work, and change in contract amount and schedule; and
- any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.

(b) As Needed Reports. The District agrees to cooperate with the County to expeditiously provide, during the term of the SRF Loan Agreement, such reports, data, and information as may be reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the Clean Water State Revolving Fund Program or to fulfill any reporting requirements of the federal government.

9. Federal Disadvantaged Business Enterprise (DBE) Reporting

The District agrees to cooperate with the County to report DBE utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334 semiannually within 10 calendar days following April 1 and October 1 until such time as the "Notice of Completion" is issued. The District agrees to comply with 40 CFR § 33.301.

10. Records

(a) The District agrees to cooperate with the County to maintain MST Project accounts in accordance with generally accepted accounting principles, and

- (i) establish an official file for the MST Project which shall adequately document all significant actions relative to the MST Project;
- (ii) establish separate accounts which will adequately and accurately depict all amounts received and expended on the MST Project, including all assistance funds received under the SRF Loan Agreement;

(iii) establish separate accounts which will adequately depict all income received which is attributable to the MST Project, specifically including any income attributable to assistance funds disbursed under the SRF Loan Agreement;

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

(v) 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

(vi) if a Force Account (as defined in the SRF Loan Agreement) is used by the County or the District for any phase of the MST Project, other than for planning, design, and construction engineering and administration provided for by Allowance as set forth in Exhibit B to the SRF Loan Agreement, accounts will be established which reasonably document all employee hours charged to the MST Project and the associated tasks performed by each employee. The District Acknowledges that Indirect Force Account costs (as defined in the SRF Loan Agreement) are not eligible for funding under the SRF Loan Agreement.

(b) The District agrees to cooperate with the County to maintain separate books, records and other material relative to the MST Project. The District will retain such books, records, and other material for itself and for each contractor or subcontractor who performed work on this project for a minimum of 36 years after Project Completion. 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 District will allow interviews during normal business hours of any employees who might reasonably have information related to such records. The District will include a similar right regarding audit, interviews, and records retention in any subcontract related to the construction of the MST Project.

11. Signage

The District will place a sign at least four feet tall by eight feet wide made of ¾ inch thick exterior grade plywood or other approved material in a prominent location on the MST Project site and shall maintain the sign in good condition for the duration of the construction period. The sign shall include the following color logos (available from the Division) and the following disclosure statement:



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

The MST 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 District will include the following disclosure statement in any document, written report, or brochure prepared in whole or in part in connection with the MST Project:

“Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the State Water Resources Control Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use. (Gov. Code § 7550, 40 CFR § 31.20.)”

B. FINANCING PROVISIONS

1. Financial Management System and Standards

The District agrees to cooperate with the County to comply with federal standards for financial management systems.

The District agrees to maintain its fiscal control and accounting procedures so that they will be sufficient at a minimum to permit preparation of reports required by the federal government and tracking of MST 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 the SRF Loan Agreement. To the extent applicable, the District agrees to be bound by and comply with the provisions and requirements of the federal Single Audit Act of 1984, Office of Management and Budget (OMB) Circular No. A-133, and updates or revisions, thereto. (Pub. L. 98-502.)

2. Accounting and Auditing Standards

The District agrees to cooperate with the County to maintain separate MST Project accounts in accordance with generally accepted accounting principles, and comply with "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" promulgated by the U.S. General Accounting Office. (40 CFR § 35.3135, subd. (l).)

C. TAX COVENANTS

1. Tax Covenants.

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

2. Governmental Unit

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

3. Financing of a Capital Project

The District will use the Project Funds (as defined in the SRF Loan Agreement) to finance costs previously incurred or to be incurred for the construction, reconstruction, installation or acquisition of the Project, none of which have previously been financed with the proceeds of any other issue of tax-exempt obligations.

4. Ownership and Operation of Project

The District exclusively owns and, except as provided in Section 4.12 of the SRF Loan Agreement, operates the MST Project.

5. Temporary Period

The District reasonably expects that at least 85% of the Project Funds will be allocated to expenditures for the Project within 3 years of the earlier of the effective date of the SRF Loan Agreement or the date the Bonds (as defined in the SRF Loan Agreement) are issued ("Applicable Date").

The District has incurred, or reasonably expects that it will incur within 6 months of the Applicable Date, a substantial binding obligation (i.e., not subject to contingencies within the control of the District or a related party) to a third party to expend at least 5% of the Project Funds on the costs of the MST Project.

The District reasonably expects that the completion of acquisition, construction, improvement and equipping of the MST Project and the allocation of Project Funds to expenditures for the MST Project will proceed with due diligence.

6. Working Capital

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

7. Expenditure of Proceeds

The District agrees that Project Funds shall be used exclusively for the following purposes: (i) architectural, engineering, surveying, soil testing, and similar costs paid with respect to the MST Project incurred prior to the commencement of construction and in an aggregate amount not exceeding 20% of the Project Funds, (ii) capital expenditures relating to the MST Project originally paid by the District or the County on or after the date hereof, (iii) interest on the Obligation (as defined in the SRF Loan Agreement) through the later of 3 years after the Applicable Date or 1 year after the MST Project is placed in service, and (iv) initial operating expenses directly associated with the MST Project in the aggregate amount not more than 5% of the Project Funds.

8. Private Payments

The District represents that none of the Project Funds or the MST Project are, have been or will be used in the aggregate for any activities that constitute a Private Use (as defined below).

"Private Use" means any activity that constitutes a trade or business that is carried on by persons or entities, other than a Governmental Unit. The leasing of the MST Project or the access by or the use of the MST Project by a person or entity other than a Governmental Unit on a basis other than as a member of the general public shall constitute a Private Use. Use by or on behalf of the State of California or any of its agencies, instrumentalities or subdivisions or by any local governmental unit and use as a member of the general public will be disregarded in determining whether a Private Use exists. Use under an arrangement that conveys priority rights or other preferential benefits is generally not use

on the same basis as the general public. Arrangements providing for use that is available to the general public at no charge or on the basis of rates that are generally applicable and uniformly applied do not convey priority rights or other preferential benefits. For this purpose, rates may be treated as generally applicable and uniformly applied even if (i) different rates apply to different classes of users, such as volume purchasers, if the differences in rates are customary and reasonable; or (ii) a specially negotiated rate arrangement is entered into, but only if the user is prohibited by federal law from paying the generally applicable rates, and the rates established are as comparable as reasonably possible to the generally applicable rates. An arrangement that does not otherwise convey priority rights or other preferential benefits is not treated, nevertheless, as general public use if the term of the use under the arrangement, including all renewal options, is greater than 200 days. For this purpose, a right of first refusal to renew use under the arrangement is not treated as a renewal option if (i) the compensation for the use under the arrangement is redetermined at generally applicable, fair market value rates that are in effect at the time of renewal; and (ii) the use of the financed property under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business.

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

The District represents that: (a) the Project will not be sold or otherwise disposed of, in whole or in part, to any person who is not a Governmental Unit prior to the final maturity date of the Obligation; the MST Project will not be leased to any person or entity that is not a Governmental Unit prior to the final maturity date of the Obligation; the District will not enter any contract or arrangement or cause or permit any contract or arrangement to be entered (to the extent of its reasonable control) with persons or entities that are not Governmental Units if that contract or arrangement would confer on such persons or entities any right to use the MST Project on a basis different from the right of members of the general public. The contracts or arrangements contemplated by the preceding sentence include but are not limited to management contracts, take or pay contracts or put or pay contracts, and capacity guarantee contracts.

10. No Disproportionate or Unrelated Use

The District represents that none of the Project Funds or the MST Project are, have been, or will be used for a Private Use that is unrelated or disproportionate to the governmental use of the Project Funds.

11. Management and Service Contracts

With respect to management and service contracts, the determination of whether a particular use constitutes Private Use shall be determined on the basis of applying Section 1.141-3(b)(4) of the Treasury Regulations, Revenue Procedure 97-13, and other applicable rules and regulations.

The District agrees that as of the date hereof, none of the Project Funds or the MST Project are being used to provide property subject to contracts or other arrangements with persons or entities engaged in a trade or business (other than Governmental Units) that involve the management of property or the provision of services that do not comply with the standards of the Treasury Regulations and Revenue Procedure 97-13.

Except to the extent the District has received an opinion of counsel expert in the issuance of state and local government bonds the interest on which is excluded from gross income under Section 103 of the Code ("Nationally-Recognized Bond Counsel") and satisfactory to the State Water Board and the Bank to the contrary, the District will not enter into any management or service contracts with any person or entity that is not a Governmental Unit for services to be provided with respect to the MST Project

except with respect to contracts where the following requirements are complied with: (i) the compensation is reasonable for the services rendered; (ii) the compensation is not based, in whole or in part, on a share of net profits from the operation of the MST Project; (iii) not more than 20% of the voting power of the District in the aggregate may be vested in the service provider and its directors, officers, shareholders, and employees and vice versa; (iv) any overlapping board members between the District and the service provider must not include the chief executive officer or executive director of either, or their respective governing bodies; and (v) each management or services contract complies with one of the following:

(a) At least 95% of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee which is a stated dollar amount for services rendered for a specified period of time. The stated dollar amount may automatically increase according to a specified objective external standard that is not linked to the output or efficiency of a facility, e.g., the Consumer Price Index and similar external indices that track increases in prices in an area or increases in Revenues or costs in an industry are objective external standards. A fee shall not fail to qualify as a periodic fixed fee as a result of a one-time incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense target (but not both) is reached if that award is a single stated dollar amount. The term of the contract, including all renewal options, must not exceed the lesser of 80% of the reasonably expected useful life of the financed property and 15 years (20 years for "public utility property" within the meaning of Section 168(i)(10) of the Code).

(b) At least 80% of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee. The term of the contract, including all renewal options, must not exceed the lesser of 80% of the reasonably expected useful life of the financed property and 10 years. A one-time incentive award during the term of the contract similar to the award described in subsection (a) above is permitted under this option as well.

(c) At least 50% of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee or all of the compensation for services is based on a capitation fee or combination of a periodic fixed fee and a capitation fee. A capitation fee is a fixed periodic amount for each person for whom the service provider or the District assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to covered persons vary substantially; e.g., a fixed dollar amount payable per month to a service provider for each member of a plan for whom the provider agrees to provide all needed services for a specified period. A capitation fee may include a variable component of up to 20% of the total capitation fee designed to protect the service provider against risks such as catastrophic loss. The term of the contract, including all renewal options, must not exceed 5 years. The contract must be terminable by the District on reasonable notice without penalty or cause, at the end of the third year of the contract.

(d) All of the compensation for services is based on a per-unit fee or a combination of a per-unit fee and a periodic fee. A per-unit fee is defined to mean a fee based on a unit of service provided as specified in the contract or otherwise specifically determined by an independent third party, such as the administrator of the program or the District; e.g., a stated dollar amount for each specified procedure performed, car parked or passenger mile is a per-unit fee. The term of the contract, including all renewal options, must not exceed 3 years. The contract must be terminable by the District on reasonable notice, without penalty or cause, at the end of the second year of the contract term.

(e) All of the compensation for services is based on a percentage of fees charged or a combination of a per-unit fee and a percentage of revenue or expense fee. During the start up period, however, compensation may be based on a percentage of gross Revenues, adjusted gross Revenues, or expenses of a facility. The term of the contract, including renewal options, must not exceed 2 years. The contract must be terminable by the District on reasonable notice without penalty or cause, at the

end of the first year. This type of contract is permissible only with respect to contracts under which the service provider primarily provides services to third parties, and management contracts involving a facility during an initial start-up period for which there have been insufficient operations to establish a reasonable estimate of the amount of the annual gross Revenues and expenses (e.g., a contract for general management services for the first year of the operations).

If the compensation terms of a management or service contract are materially revised, the requirements for compensation terms must be retested as of the date of the material revision and the management or service contract is treated as one that was newly entered into as of the date of the material revision.

A renewal option, for purposes of the foregoing, is defined to mean a provision under which the service provider has a legally enforceable right to renew the contract. Thus, for example, a provision under which a contract is automatically renewed for one-year periods absent cancellation by either party is not a renewal option, even if it is expected to be renewed.

A cancellation penalty is defined to include a limitation on the District's ability to compete with the service provider, a requirement that the District purchase equipment, goods, or services from the service provider, and a requirement that the District pay liquidated damages for cancellation of the contract; in comparison, a requirement effective on cancellation that the District reimburse the service provider for ordinary and necessary expenses or a restriction against the District hiring key personnel of the service provider is generally not a contract termination penalty. Another contract between the service provider and the District, such as an installment sale agreement or guarantee by the service provider, is treated as creating a contract termination penalty if that contract contains terms that are not customary or arm's length, or that could operate to prevent the District from terminating the contract (e.g., provisions under which the contract terminates if the management contract is terminated or that places substantial restrictions on the selection of a substitute service provider).

The service provider must not have any role or relationship with the District, that, in effect, substantially limits the ability of the District to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances.

12. No Disposition of Financed Property

The District does not expect to sell or otherwise dispose of any portion of the MST Project, in whole or in part, prior to the final maturity date of the SRF Loan Agreement.

13. Useful Life of Project

The District represents that the economic useful life of the MST Project, commencing at Project Completion, is at least equal to the term of the SRF Loan Agreement, as set forth on Exhibit B thereto.

14. Change in Use of the Project

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

15. Reasonable Expectations

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

D. MISCELLANEOUS PROVISIONS

1. Covenants

Disclosure of Financial Information, Operating Data, and Other Information. The District covenants to furnish such financial, operating and other data pertaining to the District as may be requested by the State Water Board to: (i) enable the State Water Board to cause the issuance of Bonds and provide for security therefor; or (ii) enable any underwriter of Bonds issued for the benefit of the State Water Board to comply with Rule 15c2-12(b)(5).

2. State Reviews and Indemnification

The District acknowledges and agrees that review or approval of MST Project plans and specifications by the State Water Board is for administrative purposes only and does not relieve the District of its responsibility to properly plan, design, construct, operate, and maintain the MST Project.

To the extent permitted by law, the District 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 MST 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 MST Project or any part thereof;

(2) the carrying out of any of the transactions contemplated by the SRF Loan Agreement or any related document;

(3) any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Safe Drinking Water Act, the California Hazardous Waste Control Law, and California Water Code Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the Project; or

(4) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the District for use in any disclosure document utilized in connection with any of the transactions contemplated by the SRF Loan Agreement.

To the fullest extent permitted by law, the District 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 discharge of the County's Obligation under the SRF Loan Agreement.

3. Prevailing Wages

The District agrees to be bound by all the provisions of State Labor Code Section 1771 regarding prevailing wages, and to monitor all agreements subject to reimbursement from the SRF Loan Agreement to assure that the prevailing wage provisions of State Labor Code Section 1771 are being met, to the extent that such provisions are more restrictive than the provisions of Davis-Bacon required under Section G below.

4. Bonding

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

5. Compliance with Law, Regulations, etc.

The District will 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, the District agrees that, to the extent applicable, it will:

- (a) comply with the provisions of the adopted environmental mitigation plan for the term of the SRF Loan Agreement;
- (b) comply with the State Water Board's "Policy for Implementing the Clean Water State Revolving Fund," dated May 7, 2013;
- (c) comply with and require its contractors and subcontractors on the MST Project to comply with federal DBE requirements; and
- (d) comply with and require its contractors and subcontractors to comply with the list of federal laws attached as Exhibit E to the SRF Loan Agreement.

6. Conflict of Interest

The District certifies that it is in compliance with applicable state and/or federal conflict of interest laws.

7. Damages for Breach Affecting Tax Exempt Status or Federal Compliance

In the event that any breach of any of the provisions of this Exhibit A by the District results in the loss of tax-exempt status for any bonds of the State or any subdivision or agency thereof, including Bonds issued on behalf of the State Water Board, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government by reason of any arbitrage profits, the District 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 Exhibit A by the District results in the failure of Project Funds to be used pursuant to the provisions of this Exhibit A, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government, the District 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.

8. Non-Discrimination Clause

(a) During the performance of the SRF Loan Agreement, the District 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, and denial of family care leave.

(b) The District, its contractors, and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

(c) The District, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subds. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Exhibit A by reference and made a part hereof as if set forth in full.

(d) The District, 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 District shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work on the MST Project.

9. Operation and Maintenance; Insurance

(a) The District will sufficiently and properly staff, operate and maintain all portions of the MST Project during its useful life in accordance with all applicable state and federal laws, rules and regulations.

(b) The District will procure and maintain or cause to be maintained insurance on the MST Project with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the MST Project) as are usually covered in connection with systems similar to the MST Project. Such insurance may be maintained by the maintenance of a self-insurance plan so long as any such plan provides for (i) the establishment by the District of a separate segregated self-insurance fund funded 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.

(c) In the event of any damage to or destruction of the MST Project caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the MST Project. The District 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 MST Project shall be free and clear of all claims and liens.

10. Permits, Subcontracting, and Remedies

The District shall comply in all material respects with all applicable federal, state and local laws, rules and regulations, shall procure all permits, licenses and other authorizations necessary to accomplish the work contemplated in the SRF Loan 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.

11. Rights in Data

The District agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of the SRF Loan 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 District may copyright the same, except that, as to any work which is copyrighted by the District, 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 District upon request. (40 CFR 31.34, 31.36)

12. Useful Life.

The District agrees that the economic useful life of the MST Project, commencing at Project Completion, is at least equal to the term of the SRF Loan Agreement, as set forth in Exhibit B thereto.

E. SCOPE OF WORK

The District agrees to award the construction contract/start construction no later than _____.

F. FEDERAL CONDITIONS & CROSS-CUTTERS

The District agrees to comply with the following conditions required by the US Environmental Protection Agency ("USEPA"):

1. Unless the County or the District has obtained a waiver from USEPA on file with the State Water Board, the District shall not purchase "iron and steel products" produced outside of the United States on this Project. Unless the County or the District has obtained a waiver from USEPA on file with the State Water Board, the District 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.

2. No Recipient or subrecipient may receive funding under this Agreement unless it has provided its DUNS number to the State Water Board. (2011 Cap Grant)

3. Executive Compensation. Where the District received 80 percent or more of its annual gross revenues from federal procurement contracts (and subcontracts) and \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), the Recipient agrees to notify the State Water Board. The District agrees to provide information regarding executive compensation to the State Water Board upon request, in order for the State Water Board to comply with USEPA requirements.

4. Trafficking in Persons. The District, 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 District must include this provision in its contracts and subcontracts under this Agreement. The District must inform the County and the State Water Board

immediately of any information regarding a violation of the foregoing. The District understands that failure to comply with this provision may subject the State Water Board to loss of federal funds in the amount of \$101,065,000. The District 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 the SRF Loan Agreement and full repayment will be due immediately, if a Recipient or subrecipient that is a private entity is determined to have violated the foregoing. Trafficking Victims Protection Act of 2000.

5. Contractors, Subcontractors, Debarment and Suspension, Executive Order 12549; 2 CFR Part 180; 2 CFR Part 1532. The District 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 District shall not subcontract with any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35, Gov. Code 4477)

The District certifies to the best of its knowledge and belief, that District and its Governing Board members:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
- (b) Have not within a three (3) year period preceding the SRF Loan 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;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three (3) year period preceding the SRF Loan Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

Suspension and debarment information can be accessed at <http://www.sam.gov>. The District 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 for the MST Project. The District acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the termination, delay or negation of the SRF Loan Agreement, or pursuance of legal remedies, including suspension and debarment.

6. Anti-Lobbying Provisions (40 CFR Part 34) & Anti-Litigation Provisions (2 CFR 220, 225, or 230). The District shall ensure that no funds under the SRF Loan Agreement are used to engage in lobbying of the federal government or in litigation against the United States unless authorized under existing law. The District shall abide by 2 CFR 225 (OMB Circular A-87) (or, if not applicable, other parallel requirements), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities. The District agrees to comply with 40 CFR Part 24, New Restrictions on Lobbying. The District agrees to submit certification and disclosure forms in accordance with these provisions. In accordance with the Byrd Anti-Lobbying Amendment, any recipient of such funds who makes a prohibited expenditure under 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure. The District shall abide by its respective 2 CFR 200,

225, or 230, which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

7. Disadvantaged Business Enterprises. 40 CFR Part 33. The District 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 District 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.

8. The District agrees to comply with the Davis-Bacon provisions set forth below.

The District agrees to comply with the following federal laws, as applicable to recipients of CWSRF funding:

Environmental Authorities

1. Archeological and Historical Preservation Act of 1974, Pub. L. 86-523, as amended, Pub. L. 93-291 16 USC § 469a-1.
2. Clean Air Act, Pub. L. 84-159, as amended.
3. Coastal Barrier Resources Act, Pub. L. 97-348, 96 Stat. 1653; 16 USC § 3501 et seq.
4. Coastal Zone Management Act, Pub. L. 92-583, as amended; 16 USC § 1451 et seq.
5. Endangered Species Act, Pub. L. 93-205, as amended; 16 USC § 1531 et seq..
6. Environmental Justice, Executive Order 12898.
7. Floodplain Management, Executive Order, 11988 as amended by Executive Order 12148.
8. Protection of Wetlands, Executive Order 11990, as amended by Executive Order No. 12608.
9. Farmland Protection Policy Act, Pub. L. 97-98; 7 USC § 4201 et seq.
10. Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended.
11. National Historic Preservation Act of 1966, Pub. L. 89-665, as amended, 80 Stat. 917 (1966) 16 USC § 470 et seq.
12. Safe Drinking Water Act, Pub. L. 93-523, as amended; 42 USC § 300f et seq.
13. Wild and Scenic Rivers Act, Pub. L. 90-542, as amended, 82 Stat. 913; 16 USC § 1271 et seq.
14. Essential Fish Habitat Consultation. Pub. L. 94-265, as amended, 16 USC § 1801 et seq.
15. Recycled Materials. Executive Order 13101; Section 6002 Resource Conservation and Recovery Act – 42 USC § 6962.

Economic and Miscellaneous Authorities

1. Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended, Executive Order 12372/ 42 USC § 3331 et seq.
2. 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; 40 CFR Part 31.
3. Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655

4. Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects, EO 13202, as amended by EO 13208.

5. Hotel and Motel Fire Safety Act of 1990 (PL 101-391, as amended). All conference, meeting, convention, or training funded in whole or in part with federal funds shall comply with the protection and control guidelines of this act. Recipients may search <http://www.usfa.dhs.gov/applications/hotel/>.

6. Records and financial reporting requirements. 40 CFR Part 31.

7. Copyright requirements. 40 CFR Part 31.

Social Policy Authorities

1. Age Discrimination Act of 1975, Pub. L. 94-135; 42 USC § 6102.

2. Race Discrimination. Title VI of the Civil Rights Act of 1964, Pub. L. 88-352.1; 42 USC § 2000d; 40 CFR Part 7.

3. Sex Discrimination. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act); 33 USC § 1251; 40 CFR Part 7.

4. Disability Discrimination. Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250); 29 USC § 794; 40 CFR Part 7.

5. Equal Employment Opportunity, Executive Order 11246.

6. Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590.

G. DAVIS BACON REQUIREMENTS

The District agrees to comply with the following requirements:

1. Contract and Subcontract provisions

(a) The District shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF 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.

Recipients and subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

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

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (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 District 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 District 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 District 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 District, shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(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 District, as 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 or EPA. As to each payroll copy received, the District 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/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the District for transmission to the State Water Board or EPA if requested by EPA, the State Water Board, 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 District.

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

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

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

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

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

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

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

required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees.

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

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the

wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

(a) Contract Work Hours and Safety Standards Act. The District 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 Section 1, 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 District, 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 Section 1, 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 District shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, 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 District 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 United States Environmental Protection Agency, the Department of Labor, or the

State Water Resources Control Board, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

3. Compliance Verification

(a) The District 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 District 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 District 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. At a minimum, the District should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. The District must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. The District shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The District 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 District 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 District 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. The District 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 District shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The District 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) The District 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/esa/contacts/whd/america2.htm>.

2271680.1

JOINT COMMUNITY FACILITIES AGREEMENT

Relating To:

**COUNTY OF NAPA
Community Facilities District No. 2012-1
(MST Recycled Water Line Project)**

This Joint Community Facilities Agreement (this "Agreement"), dated as of December 11, 2012, is made by and between the County of Napa (the "County"), on behalf of itself and its Community Facilities District No. 2012-1 (MST Recycled Water Line Project) (the "CFD"), and the Napa Sanitation District (the "Sanitation District").

BACKGROUND

A. The County is conducting proceedings for the establishment of the CFD and the authorization and issuance of special tax bonds or other evidence of indebtedness of the CFD (the "Loan") under the Mello-Roos Community Facilities Act of 1982, as amended, Part 1 (commencing with Section 53311) of Division 2 of Title 5 of the California Government Code (the "Act") for the financing, among other things, of the recycled water pipeline facilities (the "Facilities") described in Exhibit A attached hereto and by this reference made a part hereof, which are intended to be owned, operated and maintained by the Sanitation District.

B. Under the Act, the County, through the CFD, may finance public facilities to be owned and operated by the Sanitation District only pursuant to a joint community facilities agreement between the County and the Sanitation District.

C. The Facilities, when completed to the satisfaction of the Sanitation District and accepted by the Sanitation District, will become a part of the Sanitation District's municipal wastewater and recycled water system, to be owned, operated and maintained by the Sanitation District.

D. The Sanitation District intends to provide for the construction of the Facilities using a portion of the proceeds of the Loan.

E. The County and the Sanitation District have determined that it would be of benefit to the residents of each of their respective jurisdictions and the property owners within the CFD to enter into this Agreement to provide for the financing of the Facilities by the County, and the construction of the Facilities by the Sanitation District.

AGREEMENTS

In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Sanitation District agree as follows:

1. Agreement. This Agreement constitutes a "joint community facilities agreement" within the meaning of Section 53316.2 of the Act, under which the County and the CFD will be authorized to finance the construction and installation of the Facilities by the Sanitation District.

8. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

9. Amendments. Amendments to this Agreement shall be made only by written instrument executed by each of the parties hereto.

10. Notices. Under this Agreement, notices shall be sent by first class mail or messenger as follows:

To the County:

County of Napa
1195 Third Street, Suite 210
Napa, CA 94559
Attn: Phillip M. Miller, PE
Deputy Director of Public Works

To the Sanitation District:

Napa Sanitation District
935 Hartle Court
Napa, California 94559
Attention: Jeff Tucker
Director of Administrative Services/Chief Financial Officer

11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

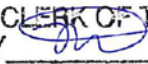
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first-above written.

<p>COUNTY OF NAPA, for and on behalf of its Community Facilities District No. 2012-1 (MST Recycled Water Line Project)</p> <p>By: <u></u></p> <p>Name: <u>Keith Caldwell</u></p> <p>Title: <u>Chairman, Board of Supervisors</u></p> <p>APPROVED AS TO FORM: Office of County Counsel</p> <p>By: <u>Robert W. Paul</u> (by e-signature) Deputy County Counsel</p> <p>Date: <u>November 7, 2012</u></p>	<p>NAPA SANITATION DISTRICT</p> <p>By: <u></u></p> <p>Name: <u>Jill Tecchel</u></p> <p>Title: <u>Board Chair</u></p> <p>APPROVED AS TO FORM: District Counsel</p> <p>By: <u></u> (by e-signature) District Counsel</p> <p>Date: <u>11/20/2012</u></p>
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ATTEST:
Clerk of the Board of Supervisors

cc:DDISTMSTJointFacilitiesAgmt(2)
By: 

3

APPROVED 12/11/12
BOARD OF SUPERVISORS
COUNTY OF NAPA
GLADYS I. COIL
CLERK OF THE BOARD
BY  Deputy

**EXHIBIT A
DESCRIPTION OF FACILITIES**

The Facilities shown below are proposed to be financed or funded in whole or in part by the CFD. The Facilities shall be owned and operated by the County, the Napa Sanitation District or another public agency, and shall be constructed, whether or not acquired in their completed states, pursuant to the plans and specifications approved by the County, the Napa Sanitation District or such other public agency.

- (a) Approximately 4.5 miles of recycled water pipeline and appurtenances.
- (b) A recycled water pumping station and appurtenances.

The Facilities to be financed or funded shall include, without limitation, the following costs: earthwork related to the Facilities; appurtenances to and improvements related to the Facilities; related landscaping and irrigation; acquiring rights-of-way (including any right-of-way intended to be dedicated by the recording of a final map); design, architecture, engineering and planning; any environmental review or environmental studies, traffic studies, surveys, geotechnical studies, soils testing, or other studies related to the Facilities; permits, plan check and inspection fees; insurance, legal and related overhead costs; project management, coordination and supervision; and any other costs or appurtenances related to any of the foregoing.

The CFD may also finance or fund, and the special taxes may also be used, for any of the following purposes:

1. To pay for the purchase, construction, expansion, improvement or rehabilitation of any of the Facilities, and to reimburse the County, the Napa Sanitation District or any third parties for advances made to purchase, construct, expand, improve or rehabilitate any of the Facilities.
2. To pay principal of, interest on, and any premium due with respect to, any bonds or other indebtedness issued or entered into by the County with respect to the CFD, and to pay lease payments or installment sale payments with respect to any of the Facilities.
3. To pay all expenses related to the issuance of bonds or other indebtedness by the County with respect to the CFD, including without limitation: underwriter's discount; reserve fund; capitalized interest; fees, expenses and premium associated with any letter of credit or other credit enhancement; fees and expenses of bond counsel, disclosure counsel and issuer's general counsel; fees and expenses of the County's financial advisors, engineers and special tax consultants, and other City consultants; and all other incidental expenses.
4. To pay annual or periodic administrative fees of the County and the bond trustee or fiscal agent related to the CFD and the bonds or other indebtedness of the CFD, and to reimburse the County for its costs and expenses related to the administration of the CFD and the bonds or other indebtedness.
5. To reimburse the County, the Napa Sanitation District or any third parties for actual costs advanced that are related to the formation of the CFD.