



**RESOURCE
MANAGEMENT AGENCY
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

KUYLER CROCKER
District One

PETE VANDER POEL
District Two

AMY SHUKLIAN
District Three

EDDIE VALERO
District Four

DENNIS TOWNSEND
District Five

AGENDA DATE: February 26, 2019

| | | |
|---|---|---|
| Public Hearing Required | Yes <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| Scheduled Public Hearing w/Clerk | Yes <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| Published Notice Required | Yes <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| Advertised Published Notice | Yes <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| Meet & Confer Required | Yes <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| Electronic file(s) has been sent | Yes <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| Budget Transfer (Aud 308) attached | Yes <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| Personnel Resolution attached | Yes <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s) | Yes <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| CONTACT PERSON: Celeste Perez PHONE: 559-624-7010 | | |

SUBJECT: Grant Agreement with Water Resources Control Board for Phase 1 of the Seville & Yettem Water System Improvements Project

REQUEST(S):
That the Board of Supervisors:

1. Ratify and approve Agreement No. D17-02094 with the California State Water Resources Control Board, also known as Tulare County Agreement No. 28938, for a construction grant for Phase 1 of the Seville & Yettem Water System Improvements Project in the amount of \$4,028,896, retroactive from March 27, 2018 to November 1, 2020. The agreement is retroactive due to the State Water Resources Control Board providing the final agreement after the term had commenced, but the agreement was executed on November 15, 2018 because the former Chairman was authorized and directed to do so under Resolution 2018-0276.
2. Find that the Board had authority to enter into the proposed agreement as of March 27, 2018, and that it was in the County's best interest to enter into the agreement on that date; and
3. Ratify the former Chairman's signature on the Agreement; and
4. Authorize the Resource Management Agency Director, or his designee, to certify disbursement requests on behalf of the County.

SUMMARY:
Tulare County is the lead agency for the Seville and Yettem Water System

SUBJECT: Grant Agreement with Water Resources Control Board for Phase 1 of the Seville & Yettem Water System Improvements Project

DATE: February 26, 2019

Improvements Project (the "Project"). Under Resolution 2018-0276, the Chairman was authorized and directed to execute a financial assistance agreement for the construction of Phase 1 of the Seville & Yettem Water System Improvements Project, which consists of the construction of a replacement water system in the Community of Seville, with the understanding that the final executed agreement would be presented to the Board for review and ratification. On November 15, 2018, the Chairman executed Agreement No. D17-02094, also known as Tulare County Agreement No. 28938, with the California State Water Resources Control Board for this purpose. On November 28, 2018, the State Water Resources Control Board executed the agreement as well. Here, staff request that your Board ratify the agreement that the Chairman was previously authorized and directed to sign.

Staff are also requesting that the Resource Management Agency Director, or his designee, be allowed to certify disbursement requests on behalf of the County to expedite the reimbursement process and receive prompt payment by the state in a timelier manner. Under Resolution 2018-0276, the Chairman or his designee is authorized to certify disbursement requests on behalf of the County.

The County has been Court-appointed Receiver of the Seville Water System since 2009 (extended most recently through June 30, 2019 under Resolution 2017-0388). The receivership was always intended to be temporary, and the court orders granting receivership included a provision that the water system may eventually be replaced. The new system in Phase 1 of the Project will replace the existing water distribution system, which has excessive leaks and has necessitated that the community be in a continuous "boil water" status for several years.

Funding for the design of the Project was provided by Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, originally through the California Department of Public Health and now through the California Water Resources Control Board, under Tulare County Agreement No. 25774 as amended. The Project has been designed by Provost and Pritchard Consulting Group (Provost and Pritchard) under Tulare County Agreement No. 26005 as amended. The design of Phase 2 of the Project is substantially complete and consists of a new well, an interconnection pipeline between the water systems in Yettem and Seville, and water meters in Yettem. Provost and Pritchard will also provide construction management and related services for Phase 1 of the Project under Tulare County Agreement No. 28813.

Bidding for the Construction of Phase 1 was authorized under Resolution 2018-0040 and began on February 16, 2018. The Project will be constructed by Brough Construction, Inc. of Arroyo Grande, California under Tulare County Agreement No. 28656 and has commenced as of January 2, 2019 with major construction work to begin in early March 2019. It was necessary to bid the project and submit the bids to the Water Board as part of the grant application for construction funding.

SUBJECT: Grant Agreement with Water Resources Control Board for Phase 1 of the Seville & Yettem Water System Improvements Project

DATE: February 26, 2019

The overall Project also includes a separate governance component to establish a special district for the operations of this water system as well as the Yettem Zone of Benefit Water System, which may also ultimately take over both the sewer systems for the Yettem Zone of Benefit and Seville Zone of Benefit. This governance formation was presented as Tulare County Measure Y, and on November 6, 2018 voters approved the creation of a new Community Service District (CSD) in Yettem and Seville and elected their initial board members. LAFCO filed the Notice of Completion for the formation of the CSD on January 9, 2019. Staff will work with the new CSD Board to discuss outstanding issues between the County and the CSD, including options for funding and constructing Phase 2 of the project and undergoing a Proposition 218 process to change the rates in the system to a metered rate structure as required by the grant.

A groundbreaking event for the construction of Phase 1 of the project is scheduled for March 5, 2019 at 3:00 PM. The event will include various project stakeholders, including CSD Board Members and the grant funding agencies.

FISCAL IMPACT/FINANCING:

No Net County Cost.

Funding for the construction project will be \$4,028,895 under Water Board Agreement No. D17-02094, which includes the following components:

| | |
|-------------------|---|
| \$ 41,411 | Reimbursement for previous expenditures for purchase of land for the Seville well site (Resolution No. 2017-0197) |
| \$ 3,208,508 | Construction (Agreement No. 28656) |
| \$ 172,925 | Construction Contingencies (Resolution No. 2018-0463) |
| \$ 55,096 | Other Project Contingencies |
| \$ 405,850 | Construction Management including Permit Fees (including \$292,200 under the proposed agreement) |
| <u>\$ 145,106</u> | Project Administration and Staff Time |
| \$ 4,028,896 | |

Further, the completion of this project may decrease the annual operating expenses of the Seville Water Company's system, for which the County currently serves as the court-appointed receiver.

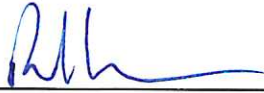
LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

This program links to Strategic Initiative 1: Safety and Security, which includes a goal to provide a safe and adequate water supply. This new system will greatly improve the safety of the water distribution system for the community of Seville and is a step towards the overall project, which will increase the adequacy of the water supply for Seville and the safety of the water supply for Yettem.

SUBJECT: Grant Agreement with Water Resources Control Board for Phase 1 of
the Seville & Yettem Water System Improvements Project

DATE: February 26, 2019

ADMINISTRATIVE SIGN-OFF:



Reed Schenke, P.E.
Director

cc: County Administrative Office

Attachment(s) Agreement No. D17-02094 with the California State Water Resources
Control Board (Tulare County Agreement No. 28938)

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

**IN THE MATTER OF GRANT AGREEMENT) Resolution No. _____
WITH WATER RESOURCES CONTROL) Agreement No. 28938
BOARD FOR PHASE 1 OF THE SEVILLE)
& YETTEM WATER SYSTEM)
IMPROVEMENTS PROJECT)**

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE BOARD
OF SUPERVISORS, AT AN OFFICIAL MEETING HELD FEBRUARY 26, 2019, BY
THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JASON T. BRITT
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

1. Ratified and approved Agreement No. D17-02094 with the California State Water Resources Control Board, also known as Tulare County Agreement No. 28938, for a construction grant for Phase 1 of the Seville & Yettem Water System Improvements Project in the amount of \$4,028,896, retroactive from March 27, 2018 to November 1, 2020. The agreement is retroactive due to the State Water Resources Control Board providing the final agreement after the term had commenced, but the agreement was executed on November 15, 2018 because the former Chairman was authorized and directed to do so under Resolution 2018-0276.
2. Found that the Board had authority to enter into the proposed agreement as of March 27, 2018, and that it was in the County's best interest to enter into the agreement on that date; and
3. Ratified the former Chairman's signature on the Agreement; and
4. Authorized the Resource Management Agency Director, or his designee, to certify disbursement requests on behalf of the County.

Attachment

Agreement No. D17-02094 with the California State Water Resources Control Board
(Tulare County Agreement No. 28938)



DRINKING WATER

COUNTY OF TULARE

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



CONSTRUCTION GRANT

REPLACE SEVILLE WATER DISTRIBUTION SYSTEM

PROJECT NO. 5400550-001C

AGREEMENT NO. D17-02094

AMOUNT: \$4,028,896.00

ELIGIBLE START DATE: MARCH 27, 2018
COMPLETION OF CONSTRUCTION DATE: MAY 1, 2020
FINAL DISBURSEMENT REQUEST DATE: NOVEMBER 1, 2020
RECORDS RETENTION END DATE: MAY 1, 2056

Tulare County Agreement No. 28938

THIS PAGE INTENTIONALLY LEFT BLANK

TABLE OF CONTENTS

ARTICLE I DEFINITIONS 1

1.1 Definitions..... 1

1.2 Exhibits Incorporated..... 4

ARTICLE II REPRESENTATIONS, WARRANTIES, AND COMMITMENTS 4

2.1 Application and General Recipient Commitments. 4

2.2 Authorization and Validity..... 4

2.3 No Violations. 4

2.4 No Litigation. 4

2.5 Solvency..... 4

2.6 Legal Status and Eligibility. 5

2.7 Financial Statements and Continuing Disclosure. 5

2.8 Completion of Project..... 5

2.9 Award of Construction Contracts. 5

2.10 Notice..... 5

2.11 Findings and Challenge..... 7

2.12 Project Access..... 7

2.13 Project Completion; Initiation of Operations. 7

2.14 Continuous Use of Project; Lease, Sale, Transfer Ownership, or Disposal of Project. 7

2.15 Project Reports..... 7

2.16 Reserved. 8

2.17 Records..... 8

2.18 Audit..... 9

ARTICLE III FINANCING PROVISIONS..... 9

3.1 Contingent Disbursement..... 9

3.2 Amounts Payable by the Recipient. 9

3.3 [Reserved.]..... 10

3.4 No Obligation of the State..... 10

3.5 Disbursement of Project Funds; Availability of Funds..... 10

3.6 Withholding of Disbursements and Material Violations..... 11

3.7 Rates, Fees and Charges. 12

3.8 Financial Management System and Standards. 12

3.9 Accounting and Auditing Standards. 12

3.10 Other Assistance. 12

ARTICLE IV MISCELLANEOUS PROVISIONS 12

4.1 Amendment and Integration..... 12

4.2 Assignability. 12

4.3 Bonding. 12

4.4 Competitive Bidding 13

4.5 Compliance with Law, Regulations, etc. 13

4.6 Conflict of Interest. 13

4.7 Damages for Breach Affecting Tax-Exempt Status or Federal Compliance..... 13

4.8 Disputes. 13

4.9 Governing Law. 14

4.10 Income Restrictions. 14

4.11 Indemnification and State Reviews. 14

4.12 Independent Actor. 15

4.13 Reserved. 15

4.14 Non-Discrimination Clause..... 15

4.15 No Third Party Rights. 15

4.16 Operation and Maintenance; Insurance. 16

4.17 Permits, Subcontracting, and Remedies. 16

4.18 Prevailing Wages..... 16

4.19 Public Funding. 17

4.20 Recipient’s Responsibility for Work. 17

4.21 Related Litigation. 17

4.22 Rights in Data. 17
4.23 State Water Board Action; Costs and Attorney Fees. 17
4.24 Termination; Repayment; Interest. 17
4.25 Timeliness..... 18
4.26 Unenforceable Provision. 18
4.27 Useful Life..... 18
4.28 Venue. 18
4.29 Waiver and Rights of the State Water Board. 18

- EXHIBIT A - SCOPE OF WORK & INCORPORATED DOCUMENTS
- EXHIBIT A – FBA – FINAL BUDGET APPROVAL
- EXHIBIT B - FUNDING AMOUNT
- EXHIBIT C - RESERVED
- EXHIBIT D - SPECIAL CONDITIONS
- EXHIBIT E - RESERVED
- EXHIBIT F - RESERVED
- EXHIBIT G - RESERVED
- EXHIBIT H - COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES

WHEREAS,

1. The State Water Board is authorized to provide financial assistance under this Agreement pursuant to the following:
 - Chapter 4.5 of Part 12 of Division 104 of the California Health and Safety Code (State Act)
 - Section 79724 of the Water Code (Prop 1)
2. The State Water Board determines eligibility for financial assistance, determines a reasonable schedule for providing financial assistance, establishes compliance with Prop 1, and establishes the terms and conditions of a financial assistance agreement.
3. The Recipient has applied to the State Water Board for financial assistance for the Project described in Exhibit A of this Agreement and the State Water Board has selected the application for financial assistance.
4. The State Water Board proposes to assist in funding the costs of the Project, and the Recipient desires to participate as a recipient of financial assistance from the State Water Board, upon the terms and conditions set forth in this Agreement, all pursuant to Prop 1.

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

Subject to the satisfaction of any conditions precedent to this Agreement, this Agreement shall become effective upon the signature of both the Recipient and the State Water Board.

Upon execution, the term of the Agreement shall begin on the Eligible Start Date and extend through the Records Retention End Date.

ARTICLE I DEFINITIONS

1.1 Definitions.

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

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

"Agreement" means this Grant, including all exhibits and attachments.

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

"Authorized Representative" means the duly appointed representative of the Recipient as set forth in the certified original of the Recipient's authorizing resolution that designates the authorized representative by title.

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

"Days" means calendar days unless otherwise expressly indicated.

"Deputy Director" means the Deputy Director of the Division.

"District Office" means District Office of the Division of Drinking Water of the State Water Resources Control Board.

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

"Division of Drinking Water" means the Division of Drinking Water of the State Water Board.

"Eligible Start Date" means the date set forth in Exhibit B, establishing the date on or after which construction costs may be incurred and eligible for reimbursement hereunder.

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

"Event of Default" means the occurrence of any one or more of the following events:

- a) A representation or warranty made by or on behalf of the Recipient in this Agreement or in any document furnished by or on behalf of the Recipient to the State Water Board pursuant to this Agreement shall prove to have been inaccurate, misleading or incomplete in any material respect;
- b) Failure to operate the System or the Project without the Division's approval;
- c) Failure by the Recipient to observe and perform any covenant, condition, or provision in this Agreement, which failure shall continue for a period of time, to be determined by the Division;
- d) Initiation of proceedings seeking arrangement, reorganization, or any other relief under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect; or the appointment of or taking possession of the Recipient's property by a receiver, liquidator, assignee, trustee, custodian, conservator, or similar official; or the Recipient's entering into a general assignment for the benefit of creditors; or any action in furtherance of any of the foregoing;
- e) Initiation of resolutions or proceedings to terminate the Recipient's existence;
- f) A determination pursuant to Gov. Code § 11137 that the Recipient has violated any provision in Article 9.5 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

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

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

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

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

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

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

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

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

"Policy" means the State Water Board's "Policy for Implementing the Drinking Water State Revolving Fund," as amended from time to time, and including the Intended Use Plan in effect as of the Eligible Start Date.

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

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

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

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

"Recipient" means County of Tulare.

"Records Retention End Date" means the last date that the Recipient is obligated to maintain records pursuant to Section 2.17 of this Agreement.

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

"State" means State of California.

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

"System" means all drinking water collection, transport, treatment, storage, and delivery facilities, including land and easements thereof, owned by the Recipient or the Seville Water Company, including the Project, and all other properties, structures, or works hereafter acquired and constructed by the Recipient and determined to be a part of the water system that serves the community of Seville, together with all additions, betterments, extensions, or improvements to such facilities, properties, structures, or works, or any part thereof hereafter acquired and constructed.

“System Obligation” means any debt obligation payable from Revenues.

“Year” means calendar year unless otherwise expressly indicated.

1.2 Exhibits Incorporated.

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

ARTICLE II REPRESENTATIONS, WARRANTIES, AND COMMITMENTS

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

2.1 Application and General Recipient Commitments.

The Recipient has not made any untrue statement of a material fact in its application for this financial assistance, or omitted to state in its application a material fact that makes the statements in its application not misleading.

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

2.2 Authorization and Validity.

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

2.3 No Violations.

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

2.4 No Litigation.

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

2.5 Solvency.

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

2.6 Legal Status and Eligibility.

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

2.7 Financial Statements and Continuing Disclosure.

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

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

2.8 Completion of Project.

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

2.9 Award of Construction Contracts.

- (a) The Recipient shall award the prime construction contract timely in order to meet the start of construction date specified in Exhibit A.
- (b) The Recipient shall promptly notify the Division in writing both of the award of the prime construction contract for the Project and of Initiation of Construction of the Project. The Recipient shall make all reasonable efforts to complete construction in substantial conformance with the terms of the contract by the Completion of Construction date established in Exhibit A.

2.10 Notice.

- (a) The Recipient shall notify the Division in writing to the Deputy Director of the Division within five (5) working days of the occurrence of any of the following events:
 - 1) Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
 - 2) Change in the status of the Recipient as the appointed receiver of the Seville Water Company as stated in the Order Granting Petition for Order Further Extending Appointment of Tulare County as Receiver of Seville Water Company, case No. 09-233080, Superior Court, County of Tulare;
 - 3) Change of ownership of the System or change of management or service contracts, if any, for operation of the System;
 - 4) Loss, theft, damage, or impairment to the Revenues or the System;
 - 5) Listed Events or Events of Default, except as set forth in subdivisions (b) or (c) of this section; or

- 6) Failure to observe or perform any covenant in this Agreement.
- (b) The Recipient shall notify the Division in writing within ten (10) working days of the following:
- 1) Material defaults on System Obligations;
 - 2) Unscheduled draws on debt service reserves held for System Obligations, other than this Obligation, if any, reflecting financial difficulties;
 - 3) Unscheduled draws on credit enhancements on System Obligations, if any, reflecting financial difficulties;
 - 4) Any litigation pending or threatened with respect to the Project or the Recipient's technical, managerial or financial capacity to operate the System or the Recipient's continued existence, circulation of a petition to repeal, reduce, or otherwise challenge the Recipient's rates for services of the System, consideration of dissolution, or disincorporation, or any other event that could materially impair the Revenues;
 - 5) Adverse tax opinions, the issuance by the Internal Revenue Service or proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of any tax-exempt bonds;
 - 6) Rating changes on outstanding System Obligations; or
 - 7) Enforcement actions by the Division of Drinking Water;
- (c) The Recipient shall notify the Division promptly of the following:
- (1) The discovery of a false statement of fact or representation made in this Agreement or in the application to the Division for this financial assistance, or in any certification, report, or request for disbursement made pursuant to this Agreement, by the Recipient, its employees, agents, or contractors;
 - (2) Any substantial change in scope of the Project. The Recipient shall undertake no substantial change in the scope of the Project until prompt written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;
 - (3) Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
 - (4) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more beyond the estimated date of Completion of Construction as specified in Exhibit A;
 - (5) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
 - (6) Any Project monitoring, demonstration, or other implementation activities required in Exhibit A or Exhibit D of this Agreement, if any;
 - (7) Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division; or

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

(d) [Reserved].

(e) The Recipient shall notify the Division within 24 hours of any discovery of any potential tribal cultural resource and/or archeological or historical resource. Notice shall be addressed to the Deputy Director of the Division and contact via phone at (916) 327-9978 or email to CleanWaterSRF@waterboards.ca.gov and/or DrinkingWaterSRF@waterboards.ca.gov. Should a potential tribal cultural resource and/or archeological or historical resource be discovered during construction, the Recipient shall ensure that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient shall implement appropriate actions as directed by the Division.

2.11 Findings and Challenge

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

2.12 Project Access.

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

2.13 Project Completion; Initiation of Operations.

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

2.14 Continuous Use of Project; Lease, Sale, Transfer Ownership, or Disposal of Project.

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

2.15 Project Reports.

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

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

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

2.16 Reserved.

2.17 Records.

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

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

2.18 Audit.

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

ARTICLE III FINANCING PROVISIONS

3.1 Contingent Disbursement.

The State Water Board's disbursement of funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement.

3.2 Amounts Payable by the Recipient.

- (a) Repayments. Repayments are waived, as provided in Exhibit B.
- (b) Project Costs. The Recipient shall pay any and all costs connected with the Project including, without limitation, any and all Project Costs. If the Project Funds are not sufficient to pay the

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

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

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

3.3 [Reserved.]

3.4 No Obligation of the State.

Any obligation of the State Water Board herein contained shall not be an obligation, debt, or liability of the State and any such obligation shall be payable solely out of the moneys encumbered pursuant to this Agreement. If this Agreement's funding for any fiscal year is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an amendment to the Recipient to reflect the reduced amount.

3.5 Disbursement of Project Funds; Availability of Funds.

- (a) Except as may be otherwise provided in this Agreement, disbursement of Project Funds will be made as follows:
- (1) Upon execution and delivery of this Agreement, the Recipient may request immediate disbursement of any eligible incurred planning and design allowance as specified in Exhibit B from the Project Funds through submission to the State Water Board of the Disbursement Request Form 260, or any amendment thereto, duly completed and executed. The Recipient must submit a disbursement request for costs incurred prior to the date this Agreement is executed by the State Water Board no later than ninety (90) days after this Agreement is executed by the State Water Board. Late disbursement requests may not be honored.
 - (2) The Recipient may request disbursement of eligible construction and equipment costs consistent with budget amounts referenced in Exhibit B and Exhibit A-FBA. (Note that this Agreement will be amended to incorporate Exhibit A-FBA after final budget approval.)
 - (3) Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Disbursement Request Form 260, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of status reports due under Section 2.15 above.

- (4) The Recipient shall not request disbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of disbursement request.
 - (5) Recipient shall spend Project Funds within 30 days of receipt. Any interest earned on Project Funds shall be reported to the State Water Board and may be required to be returned to the State Water Board or deducted from future disbursements.
 - (6) The Recipient shall not be entitled to interest earned on undisbursed funds.
 - (7) The Recipient shall not request a disbursement unless that Project Cost is allowable, reasonable, and allocable.
 - (8) Notwithstanding any other provision of this Agreement, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.
- (b) The State Water Board's obligation to disburse Project Funds is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. If sufficient funds are not available for any reason, including but not limited to failure of the federal or State government to appropriate funds necessary for disbursement of Project Funds, the State Water Board shall not be obligated to make any disbursements to the Recipient under this Agreement. This provision shall be construed as a condition precedent to the obligation of the State Water Board to make any disbursements under this Agreement. Nothing in this Agreement shall be construed to provide the Recipient with a right of priority for disbursement over any other agency. If any disbursements due the Recipient under this Agreement are deferred because sufficient funds are unavailable, it is the intention of the State Water Board that such disbursement will be made to the Recipient when sufficient funds do become available, but this intention is not binding.

3.6 Withholding of Disbursements and Material Violations.

Notwithstanding any other provision of this Agreement, the State Water Board may withhold the disbursement of all or any portion of the Project Funds upon the occurrence of any of the following events:

- a. The Recipient's failure to maintain reasonable progress on the Project;
- b. Placement on the ballot or passage of an initiative or referendum to repeal or reduce the Recipient's taxes, assessments, fees, or charges levied for operation of the System or repayment of debt service on System Obligations;
- c. Commencement of litigation or a judicial or administrative proceeding related to the System, Project, or Revenues that the State Water Board determines may impair the timely completion of the Project;
- d. Any investigation by the District Attorney, California State Auditor, Bureau of State Audits, United States Environmental Protection Agency's Office of Inspector General, the Internal Revenue Service, Securities and Exchange Commission, a grand jury, or any other state or federal agency, relating to the Recipient's financial management, accounting procedures, or internal fiscal controls;
- e. A material adverse change in the condition of the Recipient, the Revenues, or the System, which the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement, or any other event that the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement,
- f. The Recipient's material violation of, or threat to materially violate, any term of this Agreement;
- g. An Event of Default;

3.7 Rates, Fees and Charges.

The Recipient shall, to the extent permitted by law, fix, prescribe and collect rates, fees and charges for the use of the System during each Fiscal Year that are reasonable, fair, and nondiscriminatory and that will be at least sufficient to yield Revenues during each Fiscal Year in an amount sufficient to cover Operations and Maintenance Costs and to meet the covenants and requirements of the Recipient's outstanding System Obligations and the Recipient's obligations under this Agreement. The Recipient may from time to time make adjustments of such rates, fees, and charges as it deems necessary, but shall not reduce such rates, fees or charges then in effect unless the Revenues from such reduced rates, fees, and charges will at all times be sufficient to meet the requirements of this section.

3.8 Financial Management System and Standards.

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

3.9 Accounting and Auditing Standards.

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

3.10 Other Assistance.

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

ARTICLE IV MISCELLANEOUS PROVISIONS

4.1 Amendment and Integration.

No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by both the Recipient and the Deputy Director or designee.

This Agreement constitutes the complete and final agreement between the parties. No prior oral or written understanding or agreement not incorporated in this Agreement shall be binding on either party.

4.2 Assignability.

This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State Water Board in the form of a formal written amendment to this Agreement.

4.3 Bonding.

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

4.4 Competitive Bidding

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

4.5 Compliance with Law, Regulations, etc.

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

- (a) Comply with the provisions of the adopted environmental mitigation plan, if any, for the term of this Agreement;
- (b) Comply with the State Water Board's Policy;
- (c) Comply with and require compliance with the list of state laws attached as Exhibit H.

4.6 Conflict of Interest.

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

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

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

4.8 Disputes.

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

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

4.9 Governing Law.

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

4.10 Income Restrictions.

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

4.11 Indemnification and State Reviews.

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

4.12 Independent Actor.

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

4.13 Reserved.

4.14 Non-Discrimination Clause.

- a) The Recipient shall comply with Government Code section 11135 and the implementing regulations (Cal. Code Regs, tit. 2, § 11140 et seq.), including, but not limited to, ensuring that no person is unlawfully denied full and equal access to the benefits of, or unlawfully subjected to discrimination in the operation of, the Project or System on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation as such terms are defined under California law, for as long as the Recipient retains ownership or possession of the Project.
- b) If Project Funds are used to acquire or improve real property, the Recipient shall include a covenant of nondiscrimination running with the land in the instrument effecting or recording the transfer of such real property.
- c) The Recipient shall comply with the federal American with Disabilities Act of 1990 and implementing regulations as required by Government Code section 11135(b).
- d) The Recipient's obligations under this section shall survive the term of this Agreement.

During the performance of this Agreement, Recipient and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status.

The Recipient, its contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

- e) The Recipient, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subds. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
The Recipient, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- f) The Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

4.15 No Third Party Rights.

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

4.16 Operation and Maintenance; Insurance.

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

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

In the event of any damage to or destruction of the System caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System. The Recipient shall begin such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the System shall be free and clear of all claims and liens.

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

4.17 Permits, Subcontracting, and Remedies.

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

The Recipient shall not contract or allow subcontracting with excluded parties. The Recipient shall not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized. For any work related to this Agreement, the Recipient shall not contract with any individual or organization on the State Water Board's List of Disqualified Businesses and Persons that is identified as debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which funding under this Agreement is authorized. The State Water Board's List of Disqualified Businesses and Persons is located at http://www.waterboards.ca.gov/water_issues/programs/enforcement/fwa/dbp.shtml.

4.18 Prevailing Wages.

The Recipient agrees to be bound by all applicable provisions of State Labor Code regarding prevailing wages. The Recipient shall monitor all agreements subject to reimbursement from this Agreement to ensure that the prevailing wage provisions of the State Labor Code are being met.

4.19 Public Funding.

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

4.20 Recipient's Responsibility for Work.

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

4.21 Related Litigation.

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

4.22 Rights in Data.

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

4.23 State Water Board Action; Costs and Attorney Fees.

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

4.24 Termination; Repayment; Interest.

- (a) This Agreement may be terminated by written notice during construction of the Project, or thereafter at any time during the term of this Agreement, at the option of the State Water Board, upon an Event of Default.
- (b) In the event of such termination, the Recipient agrees, upon demand, to immediately repay to the State Water Board an amount equal to Project Funds disbursed hereunder, accrued interest, penalty assessments, and Additional Payments. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Recipient to the date all monies due have been received by the State Water Board.

(c) [Reserved].

4.25 Timeliness.

Time is of the essence in this Agreement.

4.26 Unenforceable Provision.

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

4.27 Useful Life.

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

4.28 Venue.

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

4.29 Waiver and Rights of the State Water Board.

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

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

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

COUNTY OF TULARE:

APPROVED AS TO FORM:
COUNTY COUNSEL

By: M. Gaudin 11/14/18
20161759 Deputy

By: J. Steven Worthley
Name: J. Steven Worthley
Title: Chairman of the Board

Date: Nov. 15, 2018

STATE WATER RESOURCES CONTROL BOARD:

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

Date: 11/28/18

EXHIBIT A – SCOPE OF WORK

1. Eligible Start Date. The Eligible Start Date is March 27, 2018.
2. Start of Construction Date. The Recipient agrees to start construction no later than the estimated date of February 1, 2019.
3. Completion of Construction Date. The Completion of Construction date is hereby established as May 1, 2020. The Recipient shall deliver any request for extension of the Completion of Construction date no less than 90 days prior to the Completion of Construction date.
4. The Recipient agrees to ensure that its final Request for Disbursement is received by the Division no later than six months after Completion of Construction, unless prior approval has been granted by the Division. Otherwise, the undisbursed balance of this Agreement will be deobligated.
5. Records Retention End Date is May 1, 2056.
6. Incorporated by reference into this Agreement are the following documents:
 - (a) the Final Plans & Specifications, dated February 12, 2018 and; Addenda Nos. 1, 2, and 3 issued March 13, 2018; March 16, 2018; and March 19, 2018, respectively, which are the basis for the construction contract to be awarded by the Recipient to Brough Construction, Inc.
 - (b) the Drinking Water System Permit No. PT0005467;
7. Reporting. Status Reports due at least quarterly.
8. Project Objective.

The Project objective is to replace the existing water distribution system within the community of Seville. The existing distribution system serving the community of Seville is approximately 100 years old and far beyond its estimated useful life. Recent drought conditions have exacerbated the situation and the community continues to experience water outages. Seville's residents are on an indefinite boil water notice due to the depressurizing of the water system and potential introduction of bacteriological contamination via broken pipes. The long-term solution of the community consists of two phases. This Project, Phase 1, includes the replacement of Seville's distribution system, including the storage tank and other appurtenances. Phase 2 will consist of the infrastructure needed to consolidate into the neighboring Yettem Water System.

9. Scope of Work.

Approximately 14,540 feet of 8-inch pipe will be installed within the community, along with water supply meters, gate valves, and fire hydrants. The Project's scope includes a 211,000-gallon storage tank and a new Supervisory Control and Data Acquisition (SCADA) system.

10. Signage.

The Recipient shall place a sign at least four feet tall by eight feet wide made of ¾ inch thick exterior grade plywood or other approved material in a prominent location on the Project site and shall maintain

EXHIBIT A – SCOPE OF WORK

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



“Funding for this Replace Seville Water Distribution System Project has been provided in full or in part by the Proposition 1 – the Water Quality, Supply, and Infrastructure Improvement Act of 2014 and through an agreement with the State Water Resources Control Board.

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

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

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

EXHIBIT A-FBA – FINAL BUDGET APPROVAL

Table 1: Approved Construction Bid Amount

| CONTRACTOR | AMOUNT BID | APPROVED COSTS |
|---------------------------|-------------|----------------|
| Brough Construction, Inc. | \$3,208,508 | \$3,208,508 |

1 - BUDGET

Table 2: Approved Final Project Budget

| PROJECT COST TABLE | |
|---|----------------------|
| TYPE OF WORK | APPROVED BUDGET (\$) |
| A. Construction | |
| Brough Construction, Inc. | 3,208,508.00 |
| Construction Subtotal | 3,208,508.00 |
| B. Pre-Purchased Material/Equipment | 0.00 |
| C. Land Purchase | 41,411.00 |
| D. Contingency | 228,021.00 |
| E. Allowances | |
| Planning | 0.00 |
| Design | 0.00 |
| Bid Documents and Project Advertisement | 0.00 |
| Construction Management | 405,850.00 |
| Administration | 145,106.00 |
| Value Engineering | 0.00 |
| Labor Compliance | 0.00 |
| Allowances Subtotal | 550,956.00 |
| TOTAL (Subtotal A+B+C+D+E) | \$4,028,896.00 |

Note: Adjustments may be made between line items on the final disbursement.

EXHIBIT A-FBA – FINAL BUDGET APPROVAL

2 - PROJECT ELIGIBILITY DETERMINATION

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

- Stamped and Signed Final Plan and Specifications (P and S) for the Project received 5/8/2018 (stamped by engineer 2/12/2018); and
- Addenda Nos. 1, 2, and 3 issued March 13, 2018; March 16, 2018; and March 19, 2018, respectively.

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

Table 3: Eligibility Determination Agreement:

| Bid Item | Description | Percent Eligibility |
|---------------------|--|---------------------|
| 1 | Mobilization, Insurance and Bonds | 100% ^{1,2} |
| 2 | Prepare Implement Stormwater Pollution Prevention Plan | 100% |
| 3 | Prepare and Implement Dust Control Plan | 100% |
| 4 | Worker Protection | 100% |
| 5 | Traffic Control | 100% |
| 6 | Utility Potholing and New Water Service Locating | 100% |
| 7 | Exclusionary Fencing | 100% |
| 8 | Miscellaneous Facilities and Operations | 100% |
| 9 | 8" Polyvinyl Chloride (PVC), C-900, DR-18, Water Main | 100% |
| 10 | 6" PVC, C-900, DR-18 Water Main | 100% |
| 11 | Install 18" Steel Casing | 100% |
| 12 | 8" Gate Valve | 100% |
| 13 | 6" Gate Valve | 100% |
| 14 | 1" Water Service and Meter | 100% |
| 15 | 1" Water Service | 100% |
| 16 | 2" Water Service | 100% |
| 17 | 2" Water Service, Meter and Reduced Pressure Backflow Preventer | 100% |
| 18 | Fire Hydrant Assembly | 100% |
| 19 | Air Valve Assembly | 100% |
| 20 | Permanent Blow-Off Assembly | 100% |
| 21 | Temporary Blow-Off Assembly | 100% |
| 22 | Bacteriological Sampling Station | 100% |
| 23 | Seville Well Site Improvements | 100% |
| 24 | Water Distribution System Testing | 100% |
| 25 | Temporary Trench Resurfacing (Main) | 100% ³ |
| 26 | Type "A" Permanent Trench Resurfacing (Main) | 100% ³ |
| 27 | Type "B" Permanent Trench Resurfacing (Main) | 100% ³ |
| 28 | Abandon Existing Water System | 100% |
| 29 | Trenchless Installation of 8" High-Density Polyethylene (HDPE) Water Main (at Alta Irrigation District Crossing) | 100% |
| 30 | Trenchless Installation of 6" HDPE Water Main (at Alta Irrigation District Crossing) | 100% |
| Add Alternate No. 1 | | |
| 31 | Mobilization, Insurance and Bonds | 100% ^{1,2} |
| 32 | Clearing and Grubbing | 100% |

EXHIBIT A-FBA – FINAL BUDGET APPROVAL

| Bid Item | Description | Percent Eligibility |
|---------------------|---------------------------------------|---------------------|
| 33 | Site Grading | 100% |
| 34 | Chain Link Fence and Access Gates | 100% |
| Add Alternate No. 2 | | |
| 35 | Mobilization, Insurance and Bonds | 100% |
| 36 | Standby Portable Generator | 100% |
| Add Alternate No. 3 | | |
| 37 | Mobilization, Insurance and Bonds | 100% |
| 38 | Site Piping, Valves and Appurtenances | 100% |
| 39 | 211,000-Gallon Water Storage Tank | 100% |
| 40 | High Service Pump Station | 100% |
| 41 | Hydro-Pneumatic Tank | 100% |
| 42 | Chlorination Equipment and Enclosure | 100% |
| 43 | Class 2 Aggregate Base Surfacing | 100% |
| 44 | Electrical, Controls and Lighting | 100% |
| 45 | Startup and Testing | 100% |
| 46 | Operations and Maintenance Manuals | 100% |
| 47 | Record Drawings | 100% |

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

Eligibility Determination Conditions of Approval

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

EXHIBIT A-FBA – FINAL BUDGET APPROVAL

3 – PROJECT COMPLETION

Project Completion Report

The project completion report shall contain the following:

1. A description of the final constructed project.
2. A description of the water quality or quantity problem the project sought to address.
3. A discussion of the project's likelihood of successfully addressing that water quality or quantity problem in the future, and
4. Summarize compliance with environmental conditions, if applicable.

Project Completion Reporting

1. The recipient must notify the appropriate Division of Drinking Water (DDW) District Office and the Division of Financial Assistance that its project was completed by submitting a Project Completion Report to the Division with a copy to the DDW District Office.
2. The Project Completion Report must be submitted on or before the due date established per Section XIV.B.2 of the ~~DWSRF~~ Policy.

EXHIBIT B – FUNDING AMOUNT

1. Estimated Reasonable Cost. The estimated reasonable cost of the total Project, including associated planning and design costs is four million twenty-eight thousand eight hundred ninety-six dollars and no cents (\$4,028,896.00).
2. Project Financing. Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds in the amount of up to four million twenty-eight thousand eight hundred ninety-six dollars and no cents (\$4,028,896.00), all of which is anticipated to be a grant. The estimated amount of principal that will be due to the State Water Board under this Agreement is zero dollars and no cents (\$0.00).
3. Budget costs are contained in the Project Cost Table, which is part of Exhibit A-FBA.
4. The useful life of this Project is at least 30 years.

EXHIBIT C – RESERVED

EXHIBIT D – SPECIAL CONDITIONS

Recipient acknowledges and agrees to the following special conditions:

Technical:

1. If deemed necessary, the Recipient shall submit a water supply permit/permit amendment application to the Division of Drinking Water Tulare District Office prior to operation of the new distribution system and/or storage tank.
2. Recipient shall implement volumetric pricing and begin charging volumetric rates no later than one year following the project completion date.

Environmental:

1. Recipient shall implement the Action Items identified in the letter titled Response to Comments, Project Design Recommendations for Phase 1 of Seville and Yettem Water System Improvements Project, Tulare County, California, dated February 21, 2018.
2. If archaeological features or materials are unearthed during any phase of project activities, all work in the immediate vicinity of the find shall halt until Recipient has contacted the Division and the significance of the resource has been evaluated. Any mitigation measures that may be deemed necessary must have the approval of the Division, and shall be implemented, pursuant to the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, 48 CFR 44716, by a qualified archaeologist representing the Recipient prior to the resumption of construction activities.
3. If human remains are exposed by activity related to the Project, the Recipient must comply with California State Health and Safety Code, Section 7050.5, which states that no further disturbance shall occur until the County Coroner has made the necessary findings as to origin and disposition pursuant to California Public Resources Code, Section 5097.98.

EXHIBIT E – RESERVED

EXHIBIT F – RESERVED

EXHIBIT G – RESERVED

EXHIBIT H – COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES

Recipient represents that complies with the following conditions precedent and shall continue to maintain compliance:

(a) Monthly Water Diversion Reporting

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

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

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

(c) Volumetric Pricing & Water Meters

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

(d) Urban Water Management Plan

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

(e) Urban Water Demand Management

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

(f) Delta Plan Consistency Findings

If Recipient is a state or local public agency and the proposed action is covered by the Delta Plan, Recipient must submit certification of project consistency with the Delta Plan to the Delta Stewardship Council according to the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.

(g) Agricultural Water Management Plan Consistency

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

(h) Charter City Project Labor Requirements

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

EXHIBIT H – COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES

(1) Prevailing Wage

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

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

(2) Labor Agreements

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