

**AGREEMENT NUMBER: 07-833-550**  
**PROJECT NUMBER: C-06-4111-220**  
**REGISTRATION NUMBER: 39400608309509**

1 This Agreement is entered into between the State Agency and the Contractor named below:  
STATE AGENCY'S NAME (Hereafter referred to as "SWRCB")

**State Water Resources Control Board**  
CONTRACTOR'S NAME (Hereafter referred to as "Agency" or "Contractor")  
**Chico Urban Area Joint Powers Financing Authority**

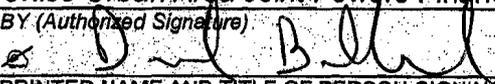
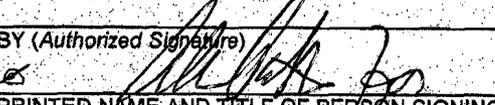
2 The term of this Agreement is: **December 4, 2007 through November 1, 2037**

3 The maximum amount of this Agreement is: **\$ 38,000,000.00**  
**Thirty-eight million dollars and no cents**

4 The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope Of Work	10 page(s)
Exhibit B – Budget Detail And Payment Provisions	5 page(s)
Exhibit C – General Terms And Conditions	3 page(s)
Exhibit D – Special Conditions	1 page(s)
Exhibit E – Approval To Award Letter	1 page(s)
Exhibit F – Applicable Effluent Limitations And Approved Final Plans And Specifications	1 page(s)
Exhibit G – Final Plans And Specifications Approval Letter	1 page(s)
Exhibit H – Facilities Plan Approval Letter	9 page(s)
Exhibit I – SRF Installment Sale Agreement Payment Schedule	1 page(s)
Exhibit J – Schedule Of System Obligations	1 page(s)
Exhibit K – Tax Covenants	5 page(s)
Exhibit L – Agency Reimbursement Resolution	1 page(s)
Exhibit M – SWRCB Special Terms And Conditions	5 page(s)

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

CONTRACTOR	
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) <b>Chico Urban Area Joint Powers Financing Authority</b>	
BY (Authorized Signature) 	DATE SIGNED (Do not type) <b>05/28/08</b>
PRINTED NAME AND TITLE OF PERSON SIGNING <b>David Burkland, Executive Director</b>	
ADDRESS <b>P.O. Box 3420 Chico, CA 95927</b>	
Authorized Pursuant to CUAJPFA Resolution No. JPFA 02-06 Adopted 06/06/08; Amended 03/03/08	
STATE OF CALIFORNIA	
AGENCY NAME <b>State Water Resources Control Board</b>	
BY (Authorized Signature) 	DATE SIGNED (Do not type) <b>6/3/08</b>
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Barbara L. Evoy, Deputy Director, Division of Financial Assistance</b>	
ADDRESS <b>1001 I Street, Sacramento, CA 95814</b>	

*California Department of General Services Use Only*

*OCC SWRCB 4/3/08*

Exempt per:

State of California  
STANDARD AGREEMENT  
STD. 213 (Rev 12/03)

AGREEMENT NUMBER 07-833-550  
PROJECT NUMBER: C-06-4111-220  
REGISTRATION NUMBER:

APPROVED AS TO FORM on May 27, 2008:

A handwritten signature in black ink, appearing to read 'L. Rosenthal', written over a horizontal line.

LEE C. ROSENTHAL, Counsel to the Chico  
Urban Area Joint Powers Financing Authority

## EXHIBIT A — SCOPE OF WORK

### SECTION 1. PROJECT DESCRIPTION.

The Project, commonly known as the Chico Urban Area Nitrate Compliance Project generally consists of design and construction of sewer improvements in the City of Chico and adjacent unincorporated areas of Butte County that are currently served by private septic systems, as more particularly described in the Phase 2 Sewer Feasibility Study included in the financial assistance application of the Agency. The project will be designed and constructed in six Stages as outlined in the Facilities Plan Approval letter dated September 21, 2007 and amendments thereto (see Exhibit H). The Agency will submit plans and specifications for each Stage of the Project for Division approval prior to construction. The approved final plans and specifications for each Stage of the Project will be incorporated in this Agreement (see Exhibits F and G).

### SECTION 2. OFFICIAL REPRESENTATIVES.

- (1) The SWRCB Assistance Coordinator shall be the Deputy Director of the Division of Financial Assistance.
- (2) The SWRCB Assistance Coordinator shall be the SWRCB's representative for administration of the Agreement and shall have authority to make determinations and findings with respect to any controversy arising under or in connection with interpretation of this Agreement.
- (3) The Agency's Authorized Representative shall be the **Executive Director** or his/her designee, who shall administer the Agreement and who shall have full authority to act on behalf of the Agency, including authority to execute disbursement requests. All communications given to the Agency representative shall be as binding as if given to the Agency.
- (3) Either party may change its official representative upon written notice to the other party.

### SECTION 3. DEFINITIONS.

"Additional Payments" means the Additional Payments described in **Exhibit B** Section **2.3(C)** of this Agreement.

"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 Executive Director, as designated by the Agency.

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

"Bonds" means any series of bonds issued by the Bank all or a portion of the proceeds of which may be applied to fund the Project in whole or in part or that are secured in whole or in part by Installment Payments paid hereunder.

"City" means the City of Chico, a charter City.

"Code" means the Internal Revenue Code of 1986, as amended, and any successor provisions and the regulations of the U.S. Department of the Treasury promulgated thereunder.

## EXHIBIT A — SCOPE OF WORK

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

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

"County" means the County of Butte, a charter county.

"CRA" means the Chico Redevelopment Agency, a public body corporate and politic formed and existing pursuant to the Community Redevelopment Law (Health & Safety Code Sections 33000 et seq.)

"CWSRF" means Clean Water State Revolving Fund.

"Division" means the Division of Financial Assistance of the SWRCB, or any other segment of the SWRCB authorized to administer the CWSRF.

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

"Force Account" means the use of the Agency's own employees or equipment for construction of the Project.

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

"Installment Payments" means Installment Payments due and payable by the Agency to the SWRCB under this Agreement to repay the Project Costs, the amounts of which are set forth as **Exhibit I** hereto.

"JPA" means the Amended and Restated Joint Exercise of Powers Agreement dated as of August 1, 2007 by and between the County and the CRA.

"Obligation" means the obligation owed by the Agency to make Installment Payments and Additional Payments as provided herein, as evidenced by the execution of this Agreement, to be used to fund the Project as specified in the Project Description attached hereto as **Exhibits F and G**.

"Pledged Revenues" means and includes the Revenues and any income or return earned by the Agency on the Revenues.

"Policy" means the SWRCB's "Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities," adopted on February 16, 1995, as amended.

"Project" means the Project as described in **Exhibit A**, Section 1 and **Exhibits F and G**.

"Project Completion" means the date, as determined by the Division after consultation with the Agency, that operation of the Project is initiated or is capable of being initiated, whichever comes first. This date shall be synonymous with the date specified in the "Initiation of Operation" form submitted as part of the ATA package.

## EXHIBIT A — SCOPE OF WORK

"Project Costs" means the incurred costs of the Agency which are eligible for financial assistance from the CWSRF under the Statute, which are allowable costs as defined under the Policy and which are reasonable, necessary and allocable by the Agency to the Project under generally accepted accounting principles plus capitalized interest.

"Project Funds" mean the proceeds provided to the Agency by the SWRCB from the CWSRF for the purposes set forth in this Agreement.

"Revenue Program" means a system of charges, fees, or other means of income production which provides for recovery of appropriate capital costs of the Project, generates adequate income to reasonably assure repayment of the Obligation under this Agreement, generates adequate income to provide for reasonable operation and maintenance of the Project, and provides adequate income for reasonable future expansion and improvement of the Project.

"Revenues" means, for each Fiscal Year, all gross income and revenue received or receivable by the Agency, determined in accordance with generally accepted accounting principles, including payments and income received from the CRA pursuant to the JPA.

"Stage" means a portion of the Project, all of which in the aggregate constitute the Project, but separately do not constitute phases or segments.

"State" means State of California.

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

"System Obligations" means all senior, parity and subordinate obligations of the Agency payable from Revenues as identified as of the date of this Agreement in **Exhibit J** and such additional obligations as may hereafter be issued in accordance with the provisions of such obligations.

### SECTION 4. GENERAL AGENCY COMMITMENTS.

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

### SECTION 5. STATE MATCH ACCOUNT.

The Agency will establish a local state match account. The Agency will deposit sufficient funds in the account to make payments to its contractor(s) [understood to be the City] in an amount equal to the percentage of federal contributions required by the Federal Clean Water Act to be matched with state funds currently sixteen and six hundred sixty seven thousandths percent (16.667%) and will include the required state match amount in all payments made to the contractor(s).

### SECTION 6. COMPLETION OF PROJECT.

The Agency agrees to expeditiously proceed with and complete construction of the Project in substantial accordance with Project plans and specifications approved by the SWRCB.

## EXHIBIT A — SCOPE OF WORK

### SECTION 7. PROJECT CERTIFICATION.

One (1) year after initiation of operation, the Agency shall certify to the SWRCB whether or not the Project, as of that date, meets applicable design specifications and effluent limitations. If the Agency cannot certify that the Project meets such specifications and limitations at that time, the Agency shall submit a corrective action report. The corrective action report shall include an estimate of the nature, scope, and cost of the corrective action, and a time schedule to expeditiously make all needed corrections, at the Agency's expense, to allow affirmative certification for the Project.

The Agency shall submit a draft certification (and corrective action report, where necessary) one (1) year after initiation of operation of the initial Stage, and shall update this draft following initiation of operation of each new Stage.

Failure to submit an affirmative certification, or a corrective action report that meets the above requirements and is satisfactory to the Division within fifteen (15) months of the Project Completion date will cause the State Water Resources Control Board to stop processing any pending or future applications for new loans or grants, withhold payments on any existing loans and grants, and begin administrative proceedings pursuant to sections 13267 and 13268 of the Water Code. Failure to submit the draft certifications within fifteen (15) months of completion of each Stage will carry the same consequences as in the foregoing sentence.

### SECTION 8. FEDERAL OR STATE ASSISTANCE.

If federal or state funding for Project Costs is made available to the Agency from sources other than the CWSRF, the Agency may retain such funding up to an amount which equals the Agency's local share of Project Costs. To the extent allowed by requirements of other funding sources, any funding received in excess of the Agency's local share, not to exceed the total amount of the CWSRF financing assistance, shall be remitted to the SWRCB to be applied to Installment Payments due hereunder.

### SECTION 9. REVENUE PROGRAM.

The Agency agrees to prepare and provide an acceptable final Revenue Program to the Division at the time of ninety percent (90%) disbursement of Project Costs. Further disbursements may be withheld until an acceptable final Revenue Program is submitted. The Agency further agrees to periodically review and modify the Revenue Program as necessary to assure reasonable adequacy of the Revenue Program. The final Revenue Program and all modifications thereof shall be consistent with applicable guidelines and shall be to the reasonable satisfaction of the Division. The Division may review the Agency's records to assure compliance with the approved Revenue Program at any time during the useful life of the Project.

### SECTION 10. USER CHARGE SYSTEM.

The Agency shall cause to be adopted and maintained in effect a user charge system which at all times complies with the requirements of Section 204(b)(1) of the federal Clean Water Act and applicable federal and state rules, regulations and guidelines.

### SECTION 11. OPERATION AND MAINTENANCE; INSURANCE.

The Agency agrees to ensure that all portions of the Project are properly staffed, operated and maintained during the Project's useful life in accordance with all applicable state and federal laws, rules and regulations.

## EXHIBIT A — SCOPE OF WORK

The Agency shall 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 the maintenance of a self-insurance plan so long as any such plan provides for (i) the establishment by the Agency 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.

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 Agency shall ensure that such reconstruction, repair or replacement is begun as expeditiously as possible, and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the System shall be free and clear of all claims and liens. If such net proceeds are insufficient to enable the Agency to pay all remaining unpaid principal portions of the Installment Payments, the Agency shall provide additional funds to restore or replace the damaged portions of the System.

### SECTION 12. USEFUL LIFE OF PROJECT.

For purposes of this Agreement, the parties agree that the useful life of the Project is at least twenty (20) years from and after Project Completion.

### SECTION 13. AWARD OF CONSTRUCTION CONTRACTS; NOTIFICATION OF AWARD AND INITIATION OF CONSTRUCTION.

- (A) The Agency agrees that it shall ensure to the award of the prime construction contract occurs within one hundred eighty (180) days after issuance of this Agreement. An extension may be granted by the Division.
- (B) The Agency agrees to promptly notify the Division in writing both of the award of the prime construction contract and Initiation of Construction for each Stage of the Project. At the time Approval to Award is issued by the Division, the Agency shall establish a reasonable Completion of Stage date for that Stage of the Project. The Agency agrees to make all reasonable efforts to meet the date so established for each Stage. Since the project construction is scheduled for ten years, the estimated Completion of Construction date for the Project is **November 1, 2017**. Such date shall be binding upon the Agency unless modified in writing by the Division upon a showing of good cause by the Agency. Extension of the Completion of Construction date by the Division shall not be unreasonably withheld.
- (C) The later Stages of the Project shall be constructed in accordance with the schedule shown in the Facilities Plan Approval letter dated September 21, 2007 and amendments thereof (see Exhibit H) subject to the provisions of Section 14. The date of Project Completion shall be established pursuant to Section 16 below.
- (D) Prior to Approval to Award for any Stage beyond the first Stage of the Project, the Agency shall cause to be submitted to the Division for review and approval plans and specifications for the Stage in question. Such plans shall be of the type prepared and approved for the first Stage of the Project and referenced in Exhibit G to this Agreement and shall be generally consistent with the scope of the Project as described in Phase II Sewer Feasibility Study included in the financial

### EXHIBIT A — SCOPE OF WORK

assistance application of the Agency. The Division will not unreasonably withhold approval of the plans and specifications for a Stage of the Project.

#### SECTION 14. CONSTRUCTION ACTIVITIES; NOTIFICATIONS; PROTECTION OF ARCHEOLOGICAL AND HISTORICAL RESOURCES; PROTECTION OF ENDANGERED AND THREATENED SPECIES.

- (A) The Agency agrees to promptly notify the Division in writing of:
- (1) Any substantial change in scope of the Project. The Agency agrees that no substantial change in the scope of the 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;
  - (2) Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
  - (3) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction or Completion of Stage for a period of ninety (90) days or more beyond the date of Completion of Construction previously provided to the Division;
  - (4) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Agency 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 Agency agrees to implement appropriate actions as directed by the Division;
  - (5) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Agency agrees to promptly notify the Division. This notification is in addition to the Agency's obligations under the federal Endangered Species Act; and
  - (6) Completion of Stages, Completion of Construction of the Project, and actual Project Completion.

#### SECTION 15. PROJECT ACCESS.

The Agency agrees to insure that the SWRCB, or any authorized representative thereof, will have suitable access to the Project site at all reasonable times during Project construction and thereafter for the term of the Obligation.

#### SECTION 16. PROJECT COMPLETION; INITIATION OF OPERATIONS.

Upon Completion of Stage, the Agency agrees to ensure expeditious initiation of Project operations for that Stage. At the time Approval to Award for the last Stage is given by the Division, the Agency shall establish a reasonable estimated Project Completion date. The Agency agrees to make all reasonable efforts to meet the date so established. Such date shall be binding upon the Agency unless modified in

## EXHIBIT A — SCOPE OF WORK

writing by the Division upon a showing of good cause by the Agency. Extension of the Project Completion date by the Division shall not be unreasonably withheld.

### SECTION 17. WASTEWATER CAPITAL RESERVE FUND.

The Agency agrees to ensure the establishment and maintenance of a Wastewater Capital Reserve Fund (WCRF) for expansion, major repair, or replacement of the wastewater facilities and to maintain the WCRF for the term of the Agreement. The WCRF shall be maintained in compliance with the "Policy For Implementing The State Revolving Fund For Construction Of Wastewater Treatment Facilities" in effect at the time the Agreement is signed by the Authorized Representative of the Agency. The Agency agrees to submit a report on WCRF activities and status five (5) years after the date of the final revenue program approval by the Division. Updated WCRF reports will be submitted every five (5) years thereafter until all Installment Payments and Additional Payments hereunder has been fully discharged. Thereafter, the WCRF will no longer be subject to the requirements of this Agreement or the above referenced policy. Certification by legal counsel of unused bonding capability for the wastewater enterprise may be used to offset required cash deposits to the WCRF.

### SECTION 18. CONTINUOUS USE OF PROJECT; LEASE OR DISPOSAL OF PROJECT.

The Agency may transfer ownership of a completed Stage or Stages to the City. The Agency agrees that such a transfer does not relieve it of any of its duties under this Agreement. The Agency agrees that, except as provided in the Agreement, it 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 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 this Agreement together with accrued interest and any penalty assessments which may be due. Where the Agency has transferred ownership of a Stage to the City, the Agency shall incorporate the requirements of this section (and all other relevant portions of this Agreement) into its agreement with the City.

### SECTION 19. REPORTS.

The Agency agrees to expeditiously provide, during construction of the Project and thereafter during the useful life of the Project, 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 CWSRF Program or to fulfill any reporting requirements of the federal government.

The Agency agrees to expeditiously provide, during construction of the Project, status reports on the construction of the project no less frequently than quarterly, starting with the issuance of the Notice To Proceed to the construction contractor. 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 listing of change orders including amount, description of work, and change in contract amount and schedule; any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions. During the useful life of the Project, the Agency agrees to expeditiously provide 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 CWSRF Program or to fulfill any reporting requirements of the federal government.

**EXHIBIT A — SCOPE OF WORK**

**SECTION 20. RECORDS.**

- (A) Without limitation of the requirement to maintain Project accounts in accordance with generally accepted accounting principles, the Agency agrees to:
- (1) Establish an official file for the Project which shall adequately document 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 a local state match account prior to issuance of the Project Funds, from which the state match portion of the project shall be paid. The Agency must deposit sufficient funds in the account as necessary to make payments to the contractor.
  - (6) 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
  - (7) If Force Account is used by the Agency 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 may be paid with prior written approval by the Division of the Agency's indirect cost proposal.
- (B) Notwithstanding Exhibit C, the Agency shall be required to maintain books, records and other material relative to the Project in accordance with generally accepted accounting principles. The Agency shall also be required to retain such books, records, and other material for each subcontractor who performed work on this project for a minimum of thirty-six (36) years after Project Completion. The Agency shall require that such books, records, and other material be subject at all reasonable times to inspection, copying, and audit by the SWRCB and by state auditors, or any authorized representatives thereof.
- (C) Notwithstanding Exhibit C, the Agency agrees to retain its Project records for a minimum of thirty-six (36) years from the date of Project Completion, and for such longer period as may be required for the State to fulfill federal reporting requirements under federal tax statutes and regulations. All Agency records relative to the Project shall be subject at all reasonable times to inspection, copying and audit by the SWRCB and the U.S. Environmental Protection Agency, or any authorized representatives thereof.
- (D) The Agency agrees to furnish the SWRCB with copies of cancelled checks paid to its contractors at least each quarter documenting payment of the state match amount.

## EXHIBIT A — SCOPE OF WORK

### SECTION 21. FINAL PROJECT REPORTS; AUDIT.

- (A) Within one hundred twenty (120) days after Completion of Stages 1 through 5, the Agency agrees to provide to the Division a draft cost summary report on the Project for Stage 1 through Stage 5. The summary shall include at a minimum the items listed below under paragraph (B) of this section for the period through the Completion of Stages 1 through 5.
- (B) Within one hundred twenty (120) days after Project Completion, the Agency agrees to provide to the Division a final cost summary report on the Project. The summary shall include at a minimum, a statement of:
- (1) Total Project Costs;
  - (2) Total Project Costs which are eligible for assistance under this Agreement;
  - (3) The total amount of assistance funds received;
  - (4) The amount of interest earned, if any, on funds before disbursement on account of incurred Project costs. If no interest has been earned, this fact shall be expressly stated.
  - (5) The report shall be accompanied by such other financial information as may be reasonably required by the Division to verify Agency entitlement to assistance, to assure program integrity of the CWSRF Program, and to comply with any federal requirements. The report shall be certified as correct by a duly Authorized Representative of the Agency.
- (C) The Division, at its option, may call for an audit of financial information relative to the Project, where the Division determines that an audit is desirable to assure program integrity or where such an audit becomes necessary because of federal requirements. Where such an audit is called for, the audit shall be performed by a certified public accountant independent of the Agency and at the cost of the Agency. The audit shall be in the form required by the Division.
- (D) Audit disallowances will be returned to the SWRCB.

### SECTION 22. NO OBLIGATION OF THE STATE.

Any obligation of the SWRCB 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 in the CWSRF made available pursuant to this Agreement.

### SECTION 23. SIGNAGE

The Agency shall place a sign at least four feet tall by eight feet wide made of ¾ inch thick exterior grade plywood in a prominent location on the Project site. The sign shall include the SWRCB logo (available from the Program Analyst) and the following disclosure statement:

Funding for this project has been provided in full or in part 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 SWRCB's logo and disclosure statement are equally prominent on the sign. The sign shall be painted in a professional manner.

**EXHIBIT A — SCOPE OF WORK**

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 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)

## EXHIBIT B — BUDGET DETAIL AND PAYMENT PROVISIONS

### SECTION 1. ESTIMATED COST OF PROJECT.

The estimated reasonable cost of the total Project at the time of SWRCB Approval, including associated planning and design costs, is **thirty-eight million** dollars and no cents (**\$38,000,000.00**).

### SECTION 2. MAXIMUM LOCAL MATCH AMOUNT AND FINANCING PROVISIONS.

#### Section 2.1. Project Funds; Repayment from Installment Payments.

The maximum funding amount will be established by the Approvals to Award (ATAs) budgets issued by the SWRCB. This agreement will be amended accordingly at the time of the ATA issuance.

Subject to the conditions and in accordance with the terms of this Agreement, the SWRCB hereby agrees to provide the Project Funds and the Agency hereby agrees to accept the Project Funds in the maximum principal component of **thirty-eight million** dollars and no cents (**\$38,000,000.00**) and to repay the Project Funds in Installment Payments as set forth in **Exhibit I** attached hereto. The Agency agrees that it shall not be entitled to interest earned on undisbursed project funds. The interest rate shall be set at zero (0) percent per annum. Upon execution of this Agreement, the SWRCB shall encumber an amount equal to the Obligation. The Agency hereby agrees to pay Installment Payments solely from Net Revenues and/or any other amounts legally available to the Agency. This amount includes **thirty-one million six hundred sixty-six thousand five hundred forty** dollars and no cents (**\$31,666,540.00**) from the State Revolving Fund ISA Account and **six million three hundred thirty-three thousand four hundred sixty** dollars and no cents (**\$6,333,460.00**) from the Agency described in **Exhibit A**, Section 5, State Match Account.

Section 2.2. Purchase and Sale of Project. The Agency hereby sells to the SWRCB and the SWRCB hereby purchases from the Agency the Project. Simultaneously therewith, the Agency hereby purchases from the SWRCB, and the SWRCB hereby sells to the Agency, the Project in accordance with the provisions of this Agreement. All right, title and interest in the Project shall immediately vest in the Agency on the date of execution and delivery of this Agreement without further action on the part of the Agency or the SWRCB.

#### Section 2.3. Amounts Payable by the Agency.

(A) Installment Payments. Repayment of the Project Funds shall be repaid in annual installments commencing on the date that is one (1) year after Completion of Construction, and terminating twenty (20) years thereafter until the Project Funds have been paid in full.

The repayment amount is based on a standard fully amortized assistance amount with equal annual repayments. The remaining balance is the previous balance, plus the disbursements, less the repayment. Repayment calculations will be made beginning one (1) year after Completion of Construction and continuing each year thereafter for twenty (20) years. **Exhibit I** is a SRF Installment Sale Agreement Payment Schedule based on the provisions of this article and an estimated disbursement schedule. The actual repayments will be based on actual disbursements.

**EXHIBIT B — BUDGET DETAIL AND PAYMENT PROVISIONS**

Upon Completion of Construction and submission of necessary reports, the Division will prepare an appropriate SRF Installment Sale Agreement Payment Schedule and supply the same to the Agency. The SRF Installment Sale Agreement Payment Schedule may be amended as necessary to accurately reflect amounts due under this agreement. Any amended SRF Installment Sale Agreement Payment Schedule that is necessary will be prepared by the Division and furnished to the Agency.

The Agency agrees to make each installment payment on or before the due date therefor. A ten (10) day grace period will be allowed. A penalty in the amount of one-tenth of one percent (0.1%) of the amount due will be due for each day of nonpayment. For purposes of penalty assessment, repayment will be deemed to have been made if repayment is deposited in the U.S. Mail within the grace period with postage prepaid and properly addressed. Any penalties assessed will not be added to the assistance amount balance, but will be treated as a separate account and obligation of the Agency. The interest penalty will be assessed from the repayment due date.

The Agency as a whole is obligated to make all payments required by this agreement to the SWRCB, notwithstanding any default in payments to the Agency by CRA. The Agency shall provide for the punctual payment to the SWRCB of all amounts which become due under this agreement. In the event of failure, neglect or refusal of any officer of the Agency to provide payment by the Agency under this agreement, the SWRCB may take such action in a court of competent jurisdiction as it deems necessary to compel the performance of all duties relating to this Agreement. Action taken pursuant hereto shall not deprive the SWRCB of, or limit the application of, any other remedy provided by law or by this agreement.

Attached as **Exhibit I** is a SRF Installment Sale Agreement Payment Schedule based on the provisions of this section and an estimated disbursement schedule. The SRF Installment Sale Agreement Payment Schedule will be revised based on actual disbursements following Project Completion.

Each SRF Installment Sale Agreement Payment Schedule shall be paid by check, wire transfer or electronic transfer and in lawful money of the United States of America.

- (B) Project Costs. The Agency agrees to 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 Agency 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 SWRCB.
- (C) Additional Payments. In addition to the Installment Payments required to be made by the Agency, the Agency shall also pay to the SWRCB the reasonable extraordinary fees and expenses of the SWRCB, and of any assignee of the SWRCB's right, title and interest in and to this Agreement, in connection with this Agreement, including all expenses and fees of accountants, trustees, attorneys, litigation costs, insurance premiums and all other extraordinary costs reasonably incurred by the SWRCB or assignee of the SWRCB.
- (D) Agency may without penalty prepay all or any portion of the outstanding principal amount of the Obligation.

## EXHIBIT B — BUDGET DETAIL AND PAYMENT PROVISIONS

Additional Payments shall be billed to the Agency by the SWRCB from time to time, together with a statement executed by a duly authorized representative of the SWRCB, stating that the amounts billed pursuant to this section have been incurred by the SWRCB 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 Agency within thirty (30) days after receipt of the bill by the Agency.

Section 2.4. **Obligation Absolute.** The obligation of the Agency to make the Installment Payments and other payments required to be made by it under this Agreement, solely from Net Revenues, is absolute and unconditional, and until such time as the Installment Payments and Additional Payments have been paid in full, the Agency shall not discontinue or suspend any Installment Payments or other payments required to be made by it hereunder when due, whether or not the System or any part thereof is operating or operable or has been completed, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part, and such Installment Payments and other payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

Section 2.5. **Disbursement of Local Match Project Funds; Availability of Funds.**

(A) Except as may be otherwise provided in this Agreement, disbursement of Local Match Project Funds will be made as follows:

- (1) Upon execution and delivery of this Agreement, the Agency may request immediate disbursement of any incurred planning and design allowance as specified in **Exhibit A** from the Project Funds through submission to the SWRCB of the Disbursement Request Form 260, or any amendment thereto, duly completed and executed. The planning and design allowance will be disbursed promptly upon request after approval of this Agreement by the State Department of General Services;
- (2) Additional Project Funds will be promptly disbursed to the Agency upon receipt of Disbursement Request Form 260, or any amendment thereto, duly completed and executed by the Agency for incurred costs consistent with **Approval to Award letters for each Stage.**

Disbursement shall not be made more frequently than every thirty (30) days. The Agency agrees that it will not request disbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Agency, although the actual payment of such cost by the Agency is not required as a condition of disbursement request or before payment of the portion of the eligible invoice amount has been paid to the Project contractors prior to submitting the progress payment request to the Division. Certification of payments must be submitted to the Division with each payment request. The Division will then authorize the disbursement of the federal share of the eligible payment amount.

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, rules, or regulations.

(B) The SWRCB's obligation to disburse any sum to the Agency under any provision of this Agreement is contingent upon the availability of sufficient funds to permit the

## EXHIBIT B — BUDGET DETAIL AND PAYMENT PROVISIONS

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 ISA amounts, the SWRCB shall not be obligated to make any disbursements to the Agency under this Agreement. Nothing in this Agreement may be construed to provide the Agency with a right of priority for disbursement over any other ISA recipient. If any disbursements due the Agency under this contract are deferred because sufficient funds are unavailable, such disbursement will be made to the Agency when sufficient funds do become available.

### SECTION 3. WITHHOLDING OF LOCAL MATCH DISBURSEMENTS.

- (A) The SWRCB may withhold all or any portion of the funds provided for by this Agreement in the event that:
- (1) The Agency has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement;
  - (2) The Agency fails to maintain reasonable progress toward completion of the Project; or
  - (3) An acceptable Revenue Program is not submitted at the time of ninety percent (90%) disbursement of the funds provided for by this Agreement.

### SECTION 4. PLEDGE AND LIEN OF NET REVENUES; RATES, FEES AND CHARGES; ADDITIONAL PAYMENTS.

Section 4.1. Establishment of Enterprise Fund. In order to carry out its obligation to pay the Installment Payments, Additional Payments, any other Project Costs and System Obligations, the Agency agrees and covenants that it shall establish and maintain the Enterprise Fund. The Enterprise Fund shall consist of all gross income and revenue received or receivable by the Agency including payments and income received from the CRA pursuant to the JPA, and any earnings thereon. All Revenues received by it shall be deposited when and as received in trust in the Enterprise Fund.

Section 4.2. Pledge of Pledged Revenues. The Enterprise Fund and the Pledged Revenues are hereby pledged and a senior security interest granted therein in order to secure the payment of Installment Payments and Additional Payments and any other Project Costs and System Obligations. The Pledged Revenues and all amounts in the Enterprise Fund shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Agency.

Section 4.3. Application and Purpose of the Enterprise Fund. Until the Agency has paid all amounts due under this Agreement, all money on deposit in the Enterprise Fund shall be applied and used only to pay Project Costs (but only until Project Completion), Installment Payments due hereunder and Additional Payments due hereunder. Once all amounts due under this Agreement have been paid, the Agency may expend any remaining money in the Enterprise Fund for any lawful purpose of the Agency.

Section 4.4. Amendment of JPA. The Agency shall not amend the JPA in a manner that materially adversely affects the CRA's obligations to make payments to the Agency, the CRA's pledge of tax increment revenue as security for its obligations to the Agency or the priority

## EXHIBIT B — BUDGET DETAIL AND PAYMENT PROVISIONS

of the CRA's obligations to make payments to the Agency relative to other Agency obligations. The Agency shall provide to the Division copies of all amendments to the JPA.

Section 4.5. Future Local Debt. All future debt secured by the pledged revenue source shall be subordinate to the Obligation.

### SECTION 5. FINANCIAL MANAGEMENT SYSTEM AND STANDARDS.

The Agency agrees to comply with federal standards for financial management systems. The Agency 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 Agency agrees to be bound by and to comply with, the provisions and requirements of the federal Single Audit Act of 1984 (Pub. L. 98-502) Office of Management and Budget (OMB) Circular No. A-133, and updates or revisions thereto.

### SECTION 6. ACCOUNTING AND AUDITING STANDARDS.

The Agency will maintain separate Project accounts in accordance with generally accepted government accounting principles. The contractor shall comply with "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" promulgated by the U.S. General Accounting Office. (40 CFR § 35.3135(l).)

### SECTION 7. BUDGET.

Budget costs are contained in the Approval to Award Letter(s) (or engineer's estimates) which is referenced as **Exhibit E**.

**EXHIBIT C — GENERAL TERMS AND CONDITIONS (GTC 307)**

1. **APPROVAL:** This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. **AMENDMENT:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. **ASSIGNMENT:** This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. **AUDIT:** Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. **DISPUTES:** Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. **TERMINATION FOR CAUSE:** The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. **INDEPENDENT CONTRACTOR:** Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. **RECYCLING CERTIFICATION:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of

**EXHIBIT C — GENERAL TERMS AND CONDITIONS (GTC 307)**

Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, Contractor and its 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, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. **CERTIFICATION CLAUSES:** The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.
12. **TIMELINESS:** Time is of the essence in this Agreement.
13. **COMPENSATION:** The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
14. **GOVERNING LAW:** This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
15. **ANTITRUST CLAIMS:** The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

- 1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- 2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or

**EXHIBIT C — GENERAL TERMS AND CONDITIONS (GTC 307)**

under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

- c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
  - d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.
16. **CHILD SUPPORT COMPLIANCE ACT:** "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:
- a). The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
  - b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."
17. **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.
18. **PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

**EXHIBIT D — SPECIAL CONDITIONS**

**SPECIAL CONDITION REGARDING PROJECT CONSTRUCTION**

1. Since the Project will be constructed in six Stages over ten years as described in the Facilities Plan Approval letter dated September 21, 2007, each Stage will receive an Approval-to-Award, which states the amount the Agency will be allowed for reimbursement for that Stage.
2. The Agency shall submit a satisfactory legal opinion regarding the Agency's ownership/access to land involved for each Stage prior to issuance of Final Plans and Specifications Approval;
3. If the Agency does not continue to make progress on Project construction in accordance with the approved Facilities Plan Approval milestones, or delays construction without prior approval by the Division, the Deputy Director of the Division shall have the discretion to reduce the amount of the SRF Loan and/or demand immediate repayment of received SRF moneys including incurred interest.

**EXHIBIT E — APPROVAL TO AWARD LETTER**

The Division will issue an Approval to Award (ATA) letter for each Stage of project construction. This letter will show how the maximum financing assistance amount, as described in Exhibit B, is determined. The Agency may request amendment of the ATA for additional funding of unforeseen eligible construction costs up to the maximum financing assistance amount in Exhibit B, provided that the Agency complete the Project.

**EXHIBIT F**  
**APPLICABLE EFFLUENT LIMITATIONS**

Incorporated by reference are the following supporting documents:

Waste Discharge Requirements, **Order No. R5-2004-0073**, adopted by the California Regional Water Quality Control Board, **Central Valley Region**, on **June 4, 2004**.

**EXHIBIT G — FINAL PLANS AND SPECIFICATIONS APPROVAL LETTER**

The Final Plans and Specifications approved by the Division for each Stage will be incorporated herein by reference and in accordance with the schedule outlined in the Facilities Plan Approval letter dated **September 21, 2007** and any amendments thereto. Based on the approved Final Plans and Specifications, the Agency shall award each construction contract to the lowest responsive bidder following competitive bidding advertisement.

**EXHIBIT H —FACILITIES PLAN APPROVAL LETTER**

See the Facilities Plan Approval letter dated **September 21, 2007..**



Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board

## Division of Financial Assistance

1001 I Street, Sacramento, California 95814 (916) 341-5700  
Mailing Address: P.O. Box 944212, Sacramento, California 94244-2120  
Fax (916) 341-5707 <http://www.waterboards.ca.gov>



Arnold Schwarzenegger  
Governor

SEP 21 2007

CERTIFIED MAIL NO. 7003 3110 0003 0771 0742  
Return Receipt Requested

Mr. Gregory T. Jones, Executive Director  
Chico Urban Area Joint Powers Financing Authority  
P.O. Box 3420  
Chico, CA 95927

Dear Mr. Jones:

FACILITIES PLAN APPROVAL; CHICO URBAN AREA JOINT POWERS FINANCING AUTHORITY (JPFA); CHICO URBAN AREA NITRATE COMPLIANCE PROJECT (PROJECT); STATE REVOLVING FUND (SRF) LOAN PROGRAM PROJECT NO. C-06-4111-220

In accordance with the State Water Resources Control Board's (State Water Board) *Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities* (Policy), as amended on July 17, 2007, the Division of Financial Assistance (Division) hereby approves the Facilities Plan for the subject Project. Our approval is based on the following determinations:

1. The County of Butte (County) and Chico Redevelopment Agency (Agency) entered into a Joint Exercise of Powers Agreement creating the JPFA effective June 30, 2005, for construction of sewer facilities and improvements (proposed Project) located in the City of Chico (City) and adjacent unincorporated areas that are currently served by residential septic systems. In 2006, the JPFA entered into a partnership agreement with the City and amended its Public Improvements Agreement (Agreement) on August 29, 2007, to facilitate financing and construction of the proposed Project. Under the Agreement, the JPFA has delegated construction, operation, maintenance, and ownership of the proposed Project to the City and corresponding compliance with the SRF Loan Program requirements for the operational life of the Project.
2. A complete Project Report, "Nitrate Action Plan" dated January 2007, was submitted on February 5, 2007, and it complies with Section IX.A of the Policy.
3. The Division staff have reviewed the environmental documents and distributed them to the federal agencies for comment. Based on this review, staff have determined that the Project will not result in any additional significant adverse water quality impacts.
4. The JPFA is seeking an SRF Loan with a local match as defined in Section V the Policy. Pursuant to Subsection 13478 of Chapter 6.5 of Division 7 of the Water Code, the State Water Board may enter into agreements with, and accept State match funds from local agencies in return for no-interest SRF Loans.

*California Environmental Protection Agency*

5. The Division has reviewed the following documents for SRF Financial Plan Requirements:
  - a) Draft Revenue Program dated July 16, 2007; and
  - b) Resolution No. JPFA 03-06 adopted on June 8, 2006, dedicating a source of revenue for repayment of the SRF Loan.
6. JPFA will fund the Project's construction through tax increments generated from the tax increment of the Chico Amended and Merged Redevelopment Project Area imposed by the Agency on parcels served by the proposed Project.
7. JPFA has certified that the water purveyor, California Service Water Company, is a signatory to the California Urban Water Conservation Council's Memorandum of Understanding (MOU) regarding Urban Water Conservation in California, and the MOU covers at least seventy-five (75) percent of the water connections within the applicant's Project sewer service area.
8. JPFA has complied with the State planning requirements of Section IX.A.11 of the Policy.
9. JPFA sent the proposed Project information to the City for review and comment on the Project's consistency with the City's General Plan. The City, in a letter dated June 1, 2006, certified that the proposed Project is consistent with the City's General Plan.
10. JPFA has submitted a Schedule of System Obligations, a Bond Counsel Letter stating a legal opinion regarding conditions or prohibitions in existing debts that would affect the JPFA's ability to enter into, and meet, its obligations under the SRF Loan Agreement, and supporting indenture documentation.
11. JPFA has submitted a Tax Questionnaire dated July 3, 2007, and Reimbursement Resolution No. JPFA 04-06 dated June 8, 2006.

### PROJECT DESCRIPTION

In the late 1970s, the County contracted with the Department of Water Resources (DWR) to perform an assessment study on nitrate contamination of some private wells in the Chico urban area. The DWR study concluded that several areas of high nitrate levels existed, and that septic tanks were a major source of nitrate contamination in the shallow aquifer beneath the Chico urban area. Additionally, a separate study conducted by a private consulting firm confirmed the conclusion of the DWR study.

The Central Valley Regional Water Quality Control Board (Regional Water Board) adopted Prohibition Order No. 90-126 on April 27, 1990, to revise the Water Quality Control Plan of the Sacramento River Basin 5A by the addition of prohibition of waste discharge from individual disposal systems in the Chico Urban Area. This Prohibition Order affects approximately 30,000 residents on 10,000 parcels, and represents nearly 12,000 dwelling units in the Chico urban area.

The submitted Project Report has identified that approximately 5,634 dwelling units in the Chico urban area, which are located in the City's northern area (Lassen Avenue corridor), central area (Chico-Vecino avenues), and southern area (Chapman-Mulberry district) will be connected to the City's existing sewer system. These dwelling units include single-family homes, apartment complexes, and mobile park homes. The Project Report estimates that diverting these dischargers to the existing sewer system for treatment will reduce approximately 90 tons per year of nitrates that could be discharged to the groundwater.

The JPFA proposes to construct sewer facilities and improvements to connect 5,634 dwelling units within 32 sub-areas. These sub-areas are grouped into six larger Project areas for the purpose of construction sequencing and are described below. Construction of the entire Project is estimated to be completed in 10 years. The Projects have been spread out over 10 years of construction in order to provide additional funds for SRF Loan repayments from interest earned on contributions made by the Agency to the JPFA, and to minimize construction impacts to the community.

Project Area	Location	Units	Constn.
Project 1N	North of Lindo Channel, East Lassen Avenue area	1164	2 yrs.
Project 2N	North of Lindo Channel, East Avenue area	1364	2 yrs.
Project 3N	North of Lindo Channel, Esplanade area	432	1 yr.
Project 1S	South of Lindo Channel, Humboldt Road area	804	2 yrs.
Project 2S	South of Lindo Channel, East 5 <sup>th</sup> Avenue area	790	2 yrs.
Project 3S	South of Lindo Channel, Warner Street area	1080	1 yr.

Detailed Project component eligibility and eligible component size will be determined during the review of the Plans and Specifications (P&S) and will be consistent with this Facilities Plan Approval letter.

The following items are eligible for SRF Loans:

- A. Construction of approximately 151,500 lineal feet of eight to 12 inches sewer lines and necessary connections to the existing sewer collection system within the public right-of-way;
- B. Necessary site preparation, access, and security improvements;
- C. Necessary control systems, manholes, reconstruction, etc.;
- D. Special equipment necessary to maintain the facilities, including one set of the manufacturer's list of spare parts;
- E. Allowances for planning, design, construction, Value Engineering for projects less than \$10 million, prime engineering, and administration;
- F. Mitigation measures mandated by State and/or Federal agencies;
- G. Reasonable buy-in for all of the proportional costs to connect to an existing collection system (or interceptor); and
- H. Necessary and reasonable buy-in costs for transport, capacity, and treatment at the City's treatment plant.

The following items are **NOT** eligible for SRF Loans:

- I. Any items that replace/repair facilities that were previously constructed with State or EPA grant funds;
- J. Facilities under construction prior to the issuance of P&S Approval by the Division;
- K. Land, easements, and rights of way;
- L. Construction Change Orders and claims;
- M. House laterals for collection systems beyond the public right-of-way and any in-house facilities;
- N. Engineering costs included as part of the construction bid;
- O. Decorative items (art work, sculptures, reflective ponds, etc.);
- P. Solids handling facilities that perform pasteurization, co-generation, conditioning, heat-drying, thermal reduction, and facilities for packaging or distributing biosolids;
- Q. License fee(s) for proprietary treatment processes;
- R. Construction contingencies;
- S. Operation and maintenance costs and extended warranties for equipment, Act of God insurance costs;
- T. Motor vehicles used for employee transportation of material generated or consumed by the treatment plant;
- U. All other items not included in the Construction Contract except allowances;
- V. Portable furniture and appliances; and
- W. Demolition of existing facilities not required to provide space for eligible new facilities.

The construction cost of the Project is estimated at \$24.4 million based on the updated application package, and capacity buy-in of \$9.6 million for wastewater treatment at the City's wastewater treatment plant. The total eligible Project cost is estimated at \$38 million, which includes the capacity buy-in and allowances for planning, engineering, and construction.

**PROJECT MILESTONES**

The proposed Project will be constructed into six phases, and will require separate SRF Loan Agreements for each phase based on the P&S Approval and awarded Construction Contract. This approval is based on submittals and milestone dates according to the following schedule for each phase:

Milestone (Project No.)	Phase 1	Phase 2	Phase 3	Phase 4	Phase 5	Phase 6
	Area 1N	Area 1S	Area 2N	Area 2S	Area 3N	Area 3S
	4111-220	4111-230	4111-240	4111-250	4111-260	4111-270
<b>Submit Loan Application</b>	<b>June 2006</b>					
<b>Submit VE report</b>	<b>Aug. 2007</b>	---	---	---	---	---
VE Report Acceptance	Oct. 2007	---	---	---	---	---
Issue FPA	Sept. 25, 2007	---	---	---	---	---
<b>City Acceptance of FPA</b>	<b>Sept. 28, 2007</b>	---	---	---	---	---
Issue Preliminary Loan Commitment	Nov. 2007	---	---	---	---	---
<b>Submit Final P&amp;S</b>	<b>Nov. 2007</b>	<b>Nov. 2008</b>	<b>Nov. 2009</b>	<b>Nov. 2010</b>	<b>Nov. 2011</b>	<b>Nov. 2012</b>
Issue Final P&S Approval	Dec. 2007	Dec. 2008	Dec. 2009	Dec. 2010	Dec. 2011	Dec. 2012
<b>Advertise for Bids</b>	<b>Jan. 2008</b>	<b>Dec. 2008</b>	<b>Dec. 2010</b>	<b>Dec. 2012</b>	<b>Dec. 2014</b>	<b>Dec. 2015</b>
<b>Open Bids</b>	<b>Feb. 2008</b>	<b>Feb. 2009</b>	<b>Feb. 2011</b>	<b>Feb. 2013</b>	<b>Feb. 2015</b>	<b>Feb. 2016</b>
<b>Submit Approval-to-Award (ATA) Docs.</b>	<b>Mar. 2008</b>	<b>Feb. 2009</b>	<b>Feb. 2011</b>	<b>Feb. 2013</b>	<b>Feb. 2015</b>	<b>Feb. 2016</b>
Issue ATA Approval	April 2008	Mar. 2009	Mar. 2011	Mar. 2013	Mar. 2015	Mar. 2016
<b>Initiate Construction (Notice-to-Proceed)</b>	<b>April 1, 2008</b>	<b>March 1, 2009</b>	<b>March 1, 2011</b>	<b>March 1, 2013</b>	<b>March 1, 2015</b>	<b>March 1, 2016</b>
Initiate Loan Agreement	May 2008	Apr. 2009	Apr. 2011	Apr. 2013	Apr. 2015	Apr. 2016
<b>Submit Final Revenue Plan</b>	<b>90 percent constn. completion</b>					
<b>Execute Loan Agreement</b>	<b>June 1, 2008</b>	<b>Mar. 2009</b>	<b>Mar. 2011</b>	<b>Mar. 2013</b>	<b>Mar. 2015</b>	<b>Mar. 2016</b>
<b>Complete Construction*</b>	<b>November 1, 2008</b>	<b>November 1, 2010</b>	<b>November 1, 2012</b>	<b>November 1, 2014</b>	<b>November 1, 2016</b>	<b>November 1, 2017</b>
<b>Final Loan Disb.</b>	<b>Dec. 2008</b>	<b>Dec. 2011</b>	<b>Dec. 2012</b>	<b>Dec. 2014</b>	<b>Dec. 2016</b>	<b>Dec. 2017</b>

\* City notifies JPFA upon completion of construction and initiation of operation of each construction phase. The estimated construction completion date for the entire project is **November 1, 2017**.

	Phase 1	Phase 2	Phase 3	Phase 4	Phase 5	Phase 6
<b>Request</b>						
<b>Initiate Facilities Operation</b>	December 1, 2008	December 1, 2010	December 1, 2012	December 1, 2014	December 1, 2016	December 1, 2017
<b>Submit Performance Certification</b>	December 1, 2009	December 1, 2011	December 1, 2013	December 1, 2015	December 1, 2017	December 1, 2018
<b>Est. Const. Cost (Indexed to 3/2007, Millions)</b>	\$3.9	\$4.4	\$6.1	\$4.8	\$1.8	\$3.4

This schedule does not supersede any regulatory enforcement schedule. Special attention to the Project Milestones schedule is critical. Schedules must be compatible with requirements of the Regional Water Board enforcement actions related to the planned facilities. Approval of a schedule not compatible with the Regional Water Board requirements does not relieve the applicant of its responsibility to achieve compliance with said requirements.

#### ESTIMATED DISBURSEMENT SCHEDULE

The following projected disbursement schedule indicates an estimate of the JPFA's yearly SRF Loan requests during construction of the proposed Project:

<b>Fiscal Year (FY)</b>	<b>FY 07-08</b>	<b>FY 08-09</b>	<b>FY 09-10</b>	<b>FY 10-11</b>	<b>FY11-12</b>
Estimated Disbursement Requests (Million)	\$3.2	\$3.6	\$3.7	\$3.2	\$4.2

<b>Fiscal Year (FY)</b>	<b>FY12-13</b>	<b>FY 13-14</b>	<b>FY 14-15</b>	<b>FY 15-16</b>	<b>FY 16-17</b>
Estimated Disbursement Requests (Million)	\$4.5	\$3.8	\$3.3	\$2.5	\$6.0

#### INSTRUCTIONS PERTAINING TO THE PREPARATION OF P&S

If JPFA has not already done so, you should now proceed with the preparation of P&S. The 100 percent P&S submittal must include the following documents if not submitted previously:

1. One set of reduced (half size) P&S, stamped and signed by your professional engineer and ready for bidding;
2. Detailed engineer's cost estimate for Loan eligible and ineligible Project components;
3. Complete Loan Application;
4. Copy of Resolution Designating an Authorized Representative;
5. Copy of adopted NPDES/WDR Permit;
6. Enacted ordinance or resolution creating a Wastewater Capital Reserve Fund;
7. Approved ordinance or resolution committing a dedicated source of funds to repay the Loan; and
8. Resolution for Local Match Loan, if applicable.

A Value Engineering (VE) Study Report is required if the total Project cost exceeds \$10 million. VE studies are also recommended for projects less than \$10 million because of the potential cost savings and design improvements resulting from the VE process. VE requirements include:

1. Compliance with EPA publication *Value Engineering for Wastewater Treatment Works*;
2. The VE Team Coordinator must be recognized by the Society of American Value Engineers as a Certified Value Specialist and has participated in at least ten VE workshops; and
3. The consultant or company that is responsible for Project design is not permitted to perform the VE workshops.

The VE Study Report should be completed during the early stages of design and shall describe all VE recommendations. If any VE recommendations are not being implemented, the Report must discuss the reasons for rejection.

#### CONDITIONS OF APPROVAL

1. This approval includes only the proposed Project described above and does not include any associated projects that may have been referred to in the Project Report. This approval does not guarantee that SRF Loan assistance will be awarded for this Project.
2. JPFA must obtain written permission from the landowner for right-of-entry to the premises during the design process. A Loan Agreement will not be issued unless this condition is met.
3. JPFA may jeopardize SRF Loan funding if construction begins prior to Final P&S Approval. Construction after Final P&S Approval and prior to issuance of the Loan Agreement is eligible for SRF Loan funding.

This letter constitutes a Final Staff Decision. The Division will request a Preliminary Loan Commitment for this Project's SRF Loan **after** an agreement in writing on the eligibility decisions, schedule, and other conditions contained herein has been received. To expedite this process, please notify me immediately in writing if you agree with this letter so our staff can start the process of requesting approval of a Preliminary SRF Loan for your Project.

If you are **not** in agreement, then you must request a Final Division Decision **within 10 working days** from the date of this letter. Your request should be specific on the items of disagreement, and suggest the exact changes with which you would agree. Please send the request to:

Ms. Barbara L. Evoy, Deputy Director  
Division of Financial Assistance  
P.O. Box 944212  
Sacramento, CA 94244-2120

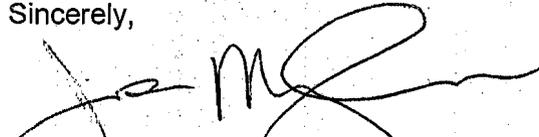
Mr. Gregory T. Jones

- 8 -

Again, we **must** reach agreement in writing before your proposed Project can be scheduled for approval of a Preliminary Funding Commitment.

If you have any questions or comments regarding this letter, please contact Mr. Leo Sarmiento at (916) 341-5830 or by email at [lsarmiento@waterboards.ca.gov](mailto:lsarmiento@waterboards.ca.gov).

Sincerely,



Jim Maughan, Assistant Deputy Director  
Division of Financial Assistance

cc: Ms. Tamara Miller  
MPM Engineering  
3209 Esplanade, Suite 140  
Chico, CA 95973

Mr. Jim Pedri  
Mr. Ron Dykstra  
Central Valley Regional Water Quality Control Board  
Redding Branch Office  
415 Knollcrest Drive, Suite 100  
Redding, CA 96002

**EXHIBIT I**  
**SRF INSTALLMENT SALE AGREEMENT PAYMENT SCHEDULE**

The final SRF Installment Sale Agreement Payment Schedule will be forwarded to the Agency after all disbursements have been paid and construction of the Project has been completed.

**EXHIBIT J — SCHEDULE OF SYSTEM OBLIGATIONS**

**The Agency has no outstanding System Obligations:**

The following outstanding debt is senior to this Obligation:

Title	Interest Rate	Total Amount	Amount Remaining	End Date
n/a				

The following outstanding debt is parity to this Obligation:

Title	Interest Rate	Total Amount	Amount Remaining	End Date
n/a				

The following outstanding debt is subordinate to this Obligation:

Title	Interest Rate	Total Amount	Amount Remaining	End Date
n/a				

## EXHIBIT K — TAX COVENANTS

### SECTION 1. GOVERNMENTAL UNIT.

The Agency 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. The Agency exclusively owns the Project, except that the Agency will transfer ownership and operation of the Project to the City. The Agency shall ensure that the City will maintain exclusive ownership and operation of the Project for the life of the Project.

### SECTION 2. TEMPORARY PERIOD.

Not applicable.

### SECTION 3. WORKING CAPITAL.

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

### SECTION 4. EXPENDITURE OF PROCEEDS.

Local Match Project Funds shall be used exclusively for the following purposes: (i) architectural, engineering, surveying, soil testing, and similar costs paid with respect to the Project incurred prior to the commencement of construction and in an aggregate amount not exceeding twenty percent (20%) of the Project Funds, (ii) capital expenditures relating to the Project originally paid by the Agency on or after the date hereof, (iii) interest on the Obligation through the later of three (3) years after the Applicable Date or one (1) year after the Project is placed in service, and (iv) initial operating expenses directly associated with the Project in the aggregate amount not more than five percent (5%) of the Project Funds.

### SECTION 5. PRIVATE USE AND PRIVATE PAYMENTS.

None of the Project Funds or the Project are, have been or will be used in the aggregate for any activities that constitute a Private Use (as defined below). None of the principal of or interest with respect to the Installment Payments will be secured by any interest in property (whether or not the Project) used for a Private Use or in payments in respect of property used for a Private Use, or will be derived from payments in respect of property used for a Private Use. "Private Use" means any activity that constitutes a trade or business that is carried on by persons or entities, other than a Governmental Unit. The leasing of the Project or the access by or the use of 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.

### SECTION 6. NO DISPROPORTIONATE OR UNRELATED USE.

None of the Project Funds or the 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.

**EXHIBIT K — TAX COVENANTS****SECTION 7. 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 and Revenue Procedure 97-13 and other applicable rules and regulations. As of the date hereof, none of the Project Funds or the 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 Agency 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 SWRCB and the Bank to the contrary, the Agency 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 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 Project; (iii) not more than twenty percent (20%) of the voting power of the Agency 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 Agency and the service provider must not include the chief executive officer or executive director of either, or their respective governing bodies; and (v):

- (A) At least ninety-five percent (95%) of the compensation for services for each annual period during the term of this 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 (1) 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 eighty percent (80%) of the reasonably expected useful life of the financed property and fifteen (15) years (twenty (20) years for "public utility property" within the meaning of Section 168(i)(10) of the Code);
- (B) At least eighty percent (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 eighty percent (80%) of the reasonably expected useful life of the financed property and ten (10) years. A one (1) 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 fifty percent (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 Agency assumes the responsibility to provide all needed services

### EXHIBIT K — TAX COVENANTS

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 twenty percent (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 five (5) years. The contract must be terminable by the Agency 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 Agency; *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 three (3) years. The contract must be terminable by the Agency on reasonable notice, without penalty or cause, at the end of the second year of the contract term; or
- (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 either gross revenues, adjusted gross revenues or expenses of a facility. The term of the contract, including renewal options, must not exceed two (2) years. The contract must be terminable by the Agency 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 (1) 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 Agency's ability to compete with the service provider, a requirement that the Agency purchase equipment, goods or services from the service provider, and a requirement that the Agency pay liquidated damages for cancellation of the contract; in comparison, a requirement effective on cancellation that the Agency reimburse the service provider for ordinary and necessary expenses or a restriction against the Agency hiring key personnel of the service provider is generally not a contract termination penalty. Another contract between the service provider and the Agency, such as an Installment Sale Agreement or guarantee by the service provider, is treated as creating a contract termination penalty if that contract

## EXHIBIT K — TAX COVENANTS

contains terms that are not customary or arm's length, that could operate to prevent the Agency 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 Agency, that, in effect, substantially limits the Agency's ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances.

### SECTION 8. NO DISPOSITION OF FINANCED PROPERTY.

The Agency does not expect to sell or otherwise dispose of any portion of the Project, in whole or in part, prior to the final maturity date of the Obligation except to the City; nor does it expect the City to sell or otherwise dispose of any portion of the Project, in whole or in part, prior to the final maturity date of the Obligation.

### SECTION 9. USEFUL LIFE OF PROJECT.

The economic useful life of the Project is at least twenty (20) years from the Project Completion.

### SECTION 10. INSTALLMENT PAYMENTS.

Installment Payments generally are expected to be derived from current revenues of the Agency in each year, and current revenues are expected to equal or exceed debt service on the Obligation during each payment period.

### SECTION 11. NO OTHER REPLACEMENT PROCEEDS.

The Agency will not use any of the Local Match Project Funds to replace funds of the Agency which are or will be used to acquire investment property reasonably expected to produce a yield that is materially higher than the yield on the Bonds.

### SECTION 12. REIMBURSEMENT RESOLUTION.

Not applicable.

### SECTION 13. CHANGE IN USE.

The Agency reasonably expects to use all Project Funds and the Project for the entire stated term to maturity of the Obligation. Absent an opinion of Nationally-Recognized Bond Counsel to the effect that such use of 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 Agency will use the property financed or refinanced with Project Funds solely as set forth in the Agreement.

### SECTION 14. NO FEDERAL GUARANTEE.

The Agency will not directly or indirectly use any of the Project Funds that would cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

### SECTION 15. NO NOTICES OR INQUIRIES FROM IRS.

### EXHIBIT K — TAX COVENANTS

The Agency has not received any notice or inquiry by the Internal Revenue Service within the last ten (10) years regarding any obligations issued by the Agency, the interest on which obligations is excludable from federal income taxation.

#### SECTION 16. AMENDMENTS.

The provisions in this **Exhibit K** may be amended or supplemented at any time to reflect changes in the Code upon obtaining an opinion of Nationally-Recognized Bond Counsel that such amendment will not adversely affect the exclusion from federal gross income of interest on the Bonds pursuant to Section 103 of the Code.

#### SECTION 17. REASONABLE EXPECTATIONS.

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

**EXHIBIT L**  
**AGENCY REIMBURSEMENT RESOLUTION**

Not applicable.

**EXHIBIT M — SWRCB SPECIAL TERMS AND CONDITIONS**

**SECTION 1. COPYRIGHTS.**

The Agency agrees that the U.S. Environmental Protection Agency shall have a royalty-free, nonexclusive and irrevocable license to reproduce, publish, otherwise use, and to authorize others to use, for federal government purposes: (a) The copyright in any work developed under this Agreement and (b) any rights of copyright which the Agency may purchase where costs of such purchase are reimbursed with Local Match Project Funds.

**SECTION 2. COVENANTS.**

Section 2.1. Tax Covenant. Notwithstanding any other provision hereof, the Agency covenants and agrees that it will comply with the Tax Covenants set forth in **Exhibit K** attached hereto.

Section 2.2. Disclosure of Financial Information, Operating Data and Other Information. The Agency covenants to furnish certain financial and operating data pertaining to the Agency that may be required to either: (i) enable the SWRCB to secure an Indenture by this Agreement and issue any Bonds; or (ii) enable any underwriter to comply with Rule 15c2-12(b)(5) of the Securities and Exchange Commission. The Agency further covenants to provide the SWRCB with copies of all continuing disclosure reports concerning the Agency required by the terms of any financing other than this Agreement, including reports required to be filed in order to comply with Rule 10b-5, and to send such reports to the SWRCB at the same time such reports are sent to any dissemination agent, trustee, nationally recognized municipal securities information repository or other person.

**SECTION 3. ASSIGNABILITY.**

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

**SECTION 4. STATE REVIEWS AND INDEMNIFICATION.**

The parties agree that review or approval of Project plans and specifications by the SWRCB is for administrative purposes only and does not relieve the Agency of its responsibility to properly plan, design, construct, operate, and maintain the Project. To the extent permitted by law, the Agency agrees to indemnify, defend and hold harmless the SWRCB, the Bank and any trustee and their officers, employees and agents for the Bonds (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 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

## EXHIBIT M — SWRCB SPECIAL TERMS AND CONDITIONS

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 Agency for use in any disclosure document utilized in connection with any of the transactions contemplated by this Agreement. To the fullest extent permitted by law, the Agency 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 Agency's Obligation hereunder.

### SECTION 5. LIABILITY OF AGENCY.

Notwithstanding anything contained herein, the Agency shall not be required to advance any moneys derived from any source of income other than Net Revenues and the other funds legally available for the payment of the Installment Payments, and other payments required to be made by it hereunder, or for the performance of any agreements or covenants required to be performed by it contained herein. The Agency may, however, but in no event shall be obligated to, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the Agency for such purpose.

### SECTION 6. FEDERAL MBE/WBE REPORTING.

The Agency agrees to report MBE/WBE utilization to the Division on the MBE/WBE Utilization Report, SWRCB Form MBE/WBE UR334. Reports must be submitted to the Division within ten (10) calendar days following the end of each fiscal year quarter until such time as the "Notice of Completion" is issued.

### SECTION 7. TERMINATION; IMMEDIATE REPAYMENT; INTEREST.

- (A) This Agreement may be terminated by written notice during construction of the Project, or thereafter at any time prior to complete repayment by the Agency, at the option of the SWRCB, upon violation by the Agency of any material provision of this Agreement after such violation has been called to the attention of the Agency and after failure of the Agency to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the Division.
- (B) In the event of such termination, the Agency agrees, upon demand, to immediately repay to the SWRCB an amount equal to Installment Payments due hereunder, including accrued interest, and all penalty assessments due. 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 Agency to the date of full repayment by the Agency.

### SECTION 8. DAMAGES FOR BREACH AFFECTING TAX EXEMPT STATUS.

In the event that any breach of any of the provisions of this Agreement by the Agency shall result in the loss of tax exempt status for any state bonds, or if such breach shall result in an obligation on the part of the State to reimburse the federal government by reason of any arbitrage profits, the Agency shall immediately reimburse the State in an amount equal to any damages paid by or loss incurred by the State due to such breach.

### SECTION 9. DISPUTES.

- (A) Any dispute arising under this Agreement which is not otherwise disposed of by agreement shall be decided by the Division Chief, or his or her Authorized Representative. The decision shall be reduced to writing and a copy thereof furnished to the Agency and to the SWRCB's Executive

### EXHIBIT M — SWRCB SPECIAL TERMS AND CONDITIONS

Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Division decision to the Agency, the Agency mails or otherwise furnishes a written appeal of the decision to the SWRCB's Executive Director. The decision of the SWRCB's Executive Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Agency shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Agreement.

- (B) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the SWRCB, or any official or representative thereof, on any question of law.

#### SECTION 10. VENUE.

The SWRCB and the Agency hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California.

#### SECTION 11. RIGHTS IN DATA.

The Agency 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 Agency may copyright the same, except that, as to any work which is copyrighted by the Agency, 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. (40 CFR 31.34, 31.36)

#### SECTION 12. INCOME RESTRICTIONS.

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

#### SECTION 13. PERMITS, SUBCONTRACTING, WAIVER, REMEDIES AND DEBARMENT.

The Agency shall procure all permits and licenses 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.

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

### EXHIBIT M — SWRCB SPECIAL TERMS AND CONDITIONS

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

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

The Agency 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 Agency shall not subcontract with any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35, Gov. Code 4477)

The Agency certifies to the best of its knowledge and belief, that it and its principals:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
- (2) Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (3) 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 (1)(b) of this certification; and
- (4) Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

#### SECTION 14. CONTRACT MODIFICATIONS.

The SWRCB may, at any time, without notice to any sureties, by written order designated or indicated to be a "contract modification", make any change in Exhibit A, for the work to be performed under this Agreement so long as the modified work is within the general scope of work called for by this Agreement, including but not limited to changes in the specifications or in the method, manner, or time of performance of work. If the Agency intends to dispute the change, the Agency must, within ten (10) days after receipt of a written "contract modification", submit to the SWRCB a written statement setting forth the disagreement with the change.

Notwithstanding the above, no modification may be made which in any way alters the provisions of **Exhibit B** without formal amendment of this Agreement.

#### SECTION 15. COMPUTER SOFTWARE.

The Agency certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

**EXHIBIT M — SWRCB SPECIAL TERMS AND CONDITIONS**

**SECTION 16. COMPLIANCE WITH LAW, REGULATIONS, ETC.**

- (A) The Agency agrees that it 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 Agency agrees that, to the extent applicable, the Agency will:
- (1) Comply with the provisions of the adopted environmental mitigation plan for the term of the Installment Sale Agreement;
  - (2) Comply with the SWRCB's "Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities", February 16, 1995, as amended;
  - (3) Comply with and require its contractors and subcontractors on the Project to comply with federal minority and women-owned business enterprise (MBE/WBE) requirements.

**SECTION 17. SWRCB ACTION; COSTS AND ATTORNEY FEES.**

The Agency agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the SWRCB as a result of breach of this Agreement by the Agency, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this Agreement by the SWRCB shall not preclude the SWRCB 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 the each party shall bear its own costs and attorney fees.

**SECTION 18. PREVAILING WAGES**

The Agency agrees to be bound by all the provisions of State Labor Code Section 1771 regarding prevailing wages. The Agency shall monitor all agreements subject to reimbursement from this Installment Sale Agreement to assure that the prevailing wage provisions of State Labor Code Section 1771 are being met.