



BOARD OF DIRECTORS SPECIAL MEETING AGENDA

Thursday, August 25, 2022 at 1:00 PM

Via Teleconference – No Live Attendance

NOTICE IS HEREBY GIVEN MISSION SPRINGS WATER DISTRICT BOARD MEETINGS WILL BE CONDUCTED PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER N-29-20 AND CALIFORNIA'S ASSEMBLY BILL 361 IN AN EFFORT TO PROTECT THE PUBLIC HEALTH AND PREVENT THE SPREAD OF COVID-19 (CORONAVIRUS). THE PUBLIC MAY ATTEND AND PARTICIPATE TELEPHONICALLY AS THERE WILL BE NO PUBLIC LOCATION FOR ATTENDING IN PERSON. THE AUDIO/VIDEO RECORDING OF THESE MEETINGS MAY BE POSTED TO THE MSWD WEBPAGE FOLLOWING THE MEETING.

THE PUBLIC MAY SUBMIT ANY COMMENTS ADDRESSING ITEMS BELOW BY EMAILING DPETEE@MSWD.ORG PRIOR TO THE START OF THE MEETING OR GIVE REAL TIME COMMENTS BY ATTENDING THE MEETING VIRTUALLY OR TELEPHONICALLY.

JOIN ZOOM MEETING:

<https://us02web.zoom.us/j/8220655340?from=addon>

DIAL BY PHONE:

+1 (408) 638-0968

Meeting ID: 822 065 5340

ACTION MAY BE TAKEN ON ANY ITEM LISTED ON THIS AGENDA

1. CALL TO ORDER
2. ROLL CALL
3. PUBLIC INPUT

*This is the opportunity for members of the public to address the Board on matters within the Board's jurisdiction. **Please limit comments to three (3) minutes or less.** State law prohibits the Board from discussing or taking action on any item not listed on the agenda.*

ACTION ITEMS

4. **RESOLUTION 2022-23 - AUTHORIZING AN AGREEMENT FOR GRANT FUNDING WITH THE STATE WATER RESOURCE CONTROL BOARD FOR THE REGIONAL WATER RECLAMATION PROGRAM**
It is recommended the Board adopt Resolution 2022-23, and authorize the General Manager to execute the agreement for grant funding with the State Water Resource Control Board for the Mission Springs Water District Regional Water Reclamation Program.

5. APPROVE CONTRACT AMENDMENT NO. 1 WITH J.F. SHEA CONSTRUCTION, INC., FOR THE CONSTRUCTION OF THE REGIONAL WATER RECLAMATION FACILITY

It is recommended to authorize the General Manager to approve Contract Amendment No. 1 with J.F. Shea Construction, Inc. for the construction of the Regional Water Reclamation Facility, augment the capital improvement budget amount to \$53,049,300.00 for Job No. 11424, and to do all things necessary to complete the project. The construction amendment would increase of the construction contingency from 5% to 10%, increasing the contract amount \$2,049,300.00 from \$43,035,300 to \$45,084,600.

6. GENERAL MANAGER'S COMMENTS

7. DIRECTORS' COMMENTS

8. ADJOURN

If you need special assistance to participate in this meeting, please contact the Executive Assistant at (760) 660-4403 at least 24 working hours prior to the meeting.

ANY DISCLOSABLE PUBLIC RECORDS RELATED TO AN OPEN SESSION ITEM ON A SPECIAL MEETING AGENDA AND DISTRIBUTED BY MISSION SPRINGS WATER DISTRICT TO ALL OR A MAJORITY OF THE BOARD OF DIRECTORS LESS THAN 24 HOURS PRIOR TO THAT MEETING ARE AVAILABLE FOR PUBLIC INSPECTION AT THE DISTRICT OFFICE, 66575 SECOND STREET, DESERT HOT SPRINGS, CALIFORNIA DURING NORMAL BUSINESS HOURS AND MAY ALSO BE AVAILABLE ON THE DISTRICT'S WEBSITE AT <https://www.mswd.org/> NOTE: THE PROCEEDINGS MAY BE AUDIO AND VIDEO RECORDED.

CERTIFICATION OF POSTING

I certify that on or before August 24, 2022, a copy of the foregoing notice was posted near the regular meeting place of the Board of Directors of Mission Springs Water District at least 24 hours in advance of the meeting (Government Code Section 54954.2).



Arden Wallum
Secretary of the Board of Directors

AGENDA STAFF REPORT

MEETING NAME: SPECIAL MEETING

MEETING DATE(S): AUGUST 25, 2022

FROM: BRIAN MACY – ASSISTANT GENERAL MANAGER

FOR: ACTION DIRECTION _____ INFORMATION _____



RESOLUTION 2022-23

AUTHORIZING THE GENERAL MANAGER TO ENTER INTO A FUNDING AGREEMENT WITH THE STATE WATER RESOURCE CONTROL BOARD FOR THE WEST VALLEY WATER RECLAMATION PROGRAM PROJECT

STAFF RECOMMENDATION

It is recommended to adopt Resolution 2022-23 and authorize the General Manager to execute the agreement for grant funding with the State Water Resource Control Board for the Regional Water Reclamation Program

SUMMARY

The Regional Water Reclamation Program (Project, aka the West Valley Water Reclamation Program) is a vital component in expanding the District's wastewater treatment capacity. Resolution 2022-23 is required by the State Water Resource Control Board (State Water Board) to enter into a grant funding agreement for the Project. Said agreement states that the State Water Board will provide up to \$68,627,837 in grant funding for the Project.

ANALYSIS

The Clean Water State Revolving Fund (SRF) provide grants and low interest loans for projects directly related to improving water quality and/or public health. The District submitted an application under the Clean Water SRF program in 2019 to finance the Project. Since that time, staff has worked closely with the State Water Board throughout the application process to answer questions, provide additional information and documents, and provide regular updates on the Project. Based on early discussions with the State Water Board, the District was eligible for up to \$16 million in grants through the Small Community Wastewater Program and the Groundwater Grant Program. In 2021, the State Water Board had identified additional grant funding for the Project from the Budget Act of 2021 (Senate Bill 129 and Senate Bill 170). The Budget Act of 2021 appropriated \$650 million to the State Water Board for wastewater projects, with priority given to septic-to-sewer conversions. Subsequently, the State Water Board approved providing up to \$68,627,837 in grant funding for the Project. The agreement attached hereto provides the details of the grant funding and requirements.

FISCAL IMPACT AND STRATEGIC PLAN IMPLEMENTATION

The current project budget was amended in 2021 to \$51,000,000.00 to cover design and construction of the treatment plant only. Since that time, construction costs have continued to rise since then due to economic growth and impacts brought on by the pandemic. Notwithstanding, the proposed funding agreement includes grant funding in the amount of \$68,627,837, which is projected to cover all Project costs.

ATTACHMENT

Resolution 2022-23 with Exhibit A (Final Funding Agreement No. D2101054)

RESOLUTION NO. 2022-23**A RESOLUTION OF THE BOARD OF DIRECTORS OF
MISSION SPRINGS WATER DISTRICT AUTHORIZING
THE GENERAL MANAGER TO ENTER INTO A FUNDING
AGREEMENT WITH THE STATE WATER RESOURCE
CONTROL BOARD FOR THE WEST VALLEY WATER
RECLAMATION PROGRAM PROJECT**

WHEREAS, the Mission Springs Water District (the “District”) intends to undertake the West Valley Water Reclamation Program Project (the “Project”).

WHEREAS, the District has submitted an application to the State Water Resources Control Board (the “State Water Board”), requesting grants and a low-interest loan to finance construction of the Project.

WHEREAS, the State Water Board has offered to enter into a Funding Agreement in substantially the form that is attached hereto as Exhibit A (the “Final Funding Agreement”).

WHEREAS, the District desires to receive \$68,627,837 in grant funding for the Project with monies provided by the State Water Board.

WHEREAS, The State requires the adoption of a Resolution verifying: (1) identity of the official with legal authority to enter an agreement, (2) identify the Authorized Representative is designated to provide assurances, certifications, and commitments required for the financial assistance application, including executing a financial assistance agreement, and (3) the Authorized Representative, or his/her designee, is designated to represent the District in carrying out the District’s responsibilities under the financing agreement, including certifying disbursement requests on behalf of the District.

BY THIS RESOLUTION, BE IT RESOLVED, DETERMINED AND ORDERED that the Board of Directors of the District hereby directs as follows:

1. The above recitations are true.
2. The General Manager (the “Authorized Representative”) or designee is hereby authorized and directed to sign and file, for and on behalf of the District, a Funding Agreement for grant funding from the State Water Resource Control Board for planning, design, and construction of the Project that is attached hereto as Exhibit A and incorporated by this reference, with the State.
3. The Authorized Representative, or his/her designee, is designated to provide the assurances, certifications, and commitments required for the financial assistance application, including executing a financial assistance

agreement from the State Water Resource Control Board and any amendments or changes thereto.

- 4. The Authorized Representative, or his/her designee, is designated to represent the District in carrying out the District's responsibilities under the financing agreement, including certifying disbursement requests on behalf of the District, and compliance with applicable state and federal laws.

- 5. This Resolution shall take effect from and after its date of adoption.

ADOPTED this ___ the day of _____, 2022.

Ayes:
Noes:
Absent:
Abstain:

Russ Martin
President of Mission Springs Water District
and its Board of Directors

ATTEST:

Arden Wallum
Secretary of Mission Springs Water District
and its Board of Directors

EXHIBIT A

**CLEAN WATER CONSTRUCTION
GRANT**

AGREEMENT No. D2101054

by and between

MISSION SPRINGS WATER DISTRICT (“Recipient”)

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD (“State Water Board”)

for the purpose of the

WEST VALLEY WATER RECLAMATION PROGRAM (“Project”)

PROJECT NO. C-06-8218-110



GAVIN NEWSOM
GOVERNOR



JARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Item 4.

State Water Resources Control Board

August 17, 2022

Mission Springs Water District
Attn: Arden Wallum, General Manager
66575 2nd Street
Desert Hot Springs, CA 92240

Agreement Number: D2101054
Project Number: C-06-8218-110

Enclosed is your Agreement for your approval and signature. This Agreement cannot be considered binding by either party until executed by the State Water Resources Control Board (State Water Board).

If you are in agreement with all terms and conditions of the Agreement, please sign and date **two (2) signature** pages; return only the two (2) signature pages – it is not necessary to send the entire Agreement - **no later than thirty (30) calendar days from the date of this letter to:**

Overnight Mail

Koreenia Harmon
State Water Resources Control Board
Division of Financial Assistance
1001 I Street, 16th Floor
Sacramento, CA 95814

US Mail

Koreenia Harmon
State Water Resources Control Board
Division of Financial Assistance
P. O. Box 944212
Sacramento, CA 94244-2120

In order for the Funding Agreement to be executed by the State Water Board, the following items must also be returned with the signed signature pages:

Opinion of General Counsel.

Ms. Harmon may be contacted at (916) 319-0807 or koreenia.harmon@waterboards.ca.gov

Once the Agreement is signed by both parties, we will forward an executed copy to you for your records.

Enclosures

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR



**CLEAN WATER CONSTRUCTION
GRANT**

AGREEMENT No. D2101054
by and between
MISSION SPRINGS WATER DISTRICT (“Recipient”)
AND
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD (“State Water Board”)

for the purpose of the

WEST VALLEY WATER RECLAMATION PROGRAM (“Project”)
PROJECT NO. C-06-8218-110

-
- Section 79723 of the Water Code, and Resolution No. 2021-0021.
 - Item 3940-106-0001 of Section 2.00 of the Budget Act of 2021, and Resolution No. 2021-0030.

PROJECT FUNDING AMOUNT: \$68,627,837
GRANT COMPONENT: \$68,627,837

ESTIMATED REASONABLE PROJECT COST: \$72,373,992
ELIGIBLE WORK START DATE: DECEMBER 1, 2021
ELIGIBLE CONSTRUCTION START DATE: MAY 1, 2022
CONSTRUCTION COMPLETION DATE: FEBRUARY 1, 2024
FINAL REIMBURSEMENT REQUEST DATE: JULY 1, 2024
RECORDS RETENTION END DATE: FEBRUARY 1, 2060

1. The State Water Board and the Recipient mutually promise, covenant, and agree to the terms, provisions, and conditions of this Agreement, including the following Exhibits, which are attached hereto or are incorporated by reference:
 - EXHIBIT A – SCOPE OF WORK AND SCHEDULE
 - EXHIBIT B – SPECIFIC FUNDING PROVISIONS
 - EXHIBIT C – GENERAL TERMS AND CONDITIONS 2019-NOV
 - EXHIBIT D – SPECIAL CONDITIONS

2. The following documents are also incorporated by reference:
 - the Final Plans & Specifications, which are the basis for the construction contract to be awarded by the Recipient;
 - the Waste Discharge Requirement Order No. R7-2020-0011;
 - the Davis-Bacon requirements found at:

https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/davisbacon/davis-bacon_2021_cwsrf-governmental_entities_public.pdf

3. Party Contacts during the term of this Agreement are:

State Water Board		Mission Springs water District	
Section:	Division of Financial Assistance		
Name:	Joseph Quilatan	Name: Arden Wallum	Title: General Manager
Address:	1001 I Street, 16 th Floor	Address:	66575 2 nd Street
City, State, Zip:	Sacramento, CA 95814	City, State, Zip:	Desert Hot Springs, CA 92240
Phone:	(916) 322-9671	Phone:	(760) 329-5169
Email:	Joseph.Quilatan@waterboards.ca.gov	Email:	awallum@mswd.org

Each party may change its contact upon written notice to the other party. While Party Contacts are contacts for day-to-day communications regarding Project work, the Recipient must provide official communications and notices to the Division’s Deputy Director.

4. Conditions precedent to this Agreement are set forth as follows:
 - (a) The Recipient must deliver to the Division a resolution authorizing this Agreement and identifying its authorized representative by title.
 - (b) The Recipient must deliver an opinion of general counsel satisfactory to the State Water Board’s counsel dated on or after the date that the Recipient signs this Agreement.

5. The Recipient represents, warrants, and commits to the following as of the Eligible Work Start Date and continuing thereafter for the term of this Agreement, which shall be at least until the Records Retention End Date:
 - (a) The Recipient agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents.
 - (b) The execution and delivery of this Agreement, including all incorporated documents, has been duly authorized by the Recipient. Upon execution by both parties, this Agreement constitutes a valid and binding obligation of the Recipient, enforceable in accordance with its terms, except as such enforcement may be limited by law.

- (c) None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of Recipient. The Recipient is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. The Recipient is able to pay its debts as they become due. The Recipient maintains sufficient insurance coverage considering the scope of this Agreement, including, for example but not necessarily limited to, general liability, automobile liability, workers compensation and employer liability, professional liability.
 - (d) The Recipient is in compliance with all State Water Board funding agreements to which it is a party.
6. This Agreement may be executed and delivered in any number of counterparts, each of which when delivered shall be deemed to be an original, but such counterparts shall together constitute one document. The parties may sign this Agreement either by an electronic signature using a method approved by the State Water Board or by a physical, handwritten signature. The parties mutually agree that an electronic signature using a method approved by with the State Water Board is the same as a physical, handwritten signature for the purposes of validity, enforceability, and admissibility.

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

MISSION SPRINGS WATER DISTRICT:

STATE WATER RESOURCES CONTROL BOARD:

By: _____
Name: Arden Wallum
Title: General Manager

By: _____
Name: Joe Karkoski
Title: Deputy Director
Division of Financial Assistance

Date: _____

Date: _____

EXHIBIT A – SCOPE OF WORK AND SCHEDULE

A.1 PROJECT PURPOSE AND DESCRIPTION.

The Project is for the benefit of the Recipient and has a Useful Life of forty (40) years. The funding under this Agreement shall be used to construct the West Valley Water Reclamation Facility (WVWRF), Area M2 collection system, conveyance system, and septic abatement of approximately 405 on-site septic systems. The purpose of the Project is to provide sufficient sewage treatment capacity and to remove individual septic systems from service that overlie the Mission Creek and Desert Hot Spring groundwater sub-basins.

A.2 SCOPE OF WORK.

The Recipient agrees to do the following:

- Phase 1: Construct the WVWRF comprised of:
 - Influent pump station;
 - Coarse screening with screenings compactor;
 - Stacked tray or vortex grit removal with grit classifiers;
 - Sequencing batch reactors;
 - Effluent disposal to infiltration basins;
 - Aerated sludge storage with decanter for gravity thickening;
 - 3-Belt filter press for biosolids dewatering;
 - Sludge drying beds;
 - Contract disposal of biosolids;
 - Odor control; and
 - Emergency stand-by power generator.
- Phase 2: Remove approximately 405 existing septic tanks in Area M2 and install approximately 25,260 linear feet of 4-inch sewer laterals in both public and private right-of-way. The collection systems will connect approximately 687 parcels to the Recipient's sewer system and includes approximately 17,272 linear feet of 8-inch gravity sewer, with short runs of 12-inch to 15-inch gravity sewer.
- Phase 3: Construct a conveyance system that will convey flows from the existing Areas L and M1 at the Dos Palmas Lift Station to connect both the new connections and approximately 2,919 existing connections currently served by the District's Horton Wastewater Treatment Plant to the WVWRF. The system will reconfigure the existing Dos Palmas Lift Station and lift flows through a dual 12-inch polyvinyl chloride (PVC) force main on Dillion Road to Little Morongo Road and then through 33-inch and 36-inch gravity sewer pipelines on Little Morongo Road from Dillon Road to the WVWRF.

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

A.3 SIGNAGE

The Recipient must place a professionally prepared sign at least four feet tall by eight feet wide made of ¾ inch thick exterior grade plywood or other approved material in a prominent location on the Project site and must maintain the sign in good condition for the duration of Project implementation. The sign may

include another agency’s required information and must include, prominently displayed, the following disclosure statement and color logos (available from the Division):



“Funding for this Project has been provided in full or in part by the Budget Act of 2021 and Proposition 1 – the Water Quality, Supply, and Infrastructure Improvement Act of 2014 through an agreement with the State Water Resources Control Board.

A.4 SCHEDULE.

Failure to provide items by the due dates indicated in the table below may constitute a material violation of this Agreement. The Project Manager may adjust the dates in the “Estimated Due Date” column of this table, but Critical Due Date adjustments will require an amendment to this Agreement. The Recipient must complete and submit all work in time to be approved by the Division prior to Project Completion. As applicable for specific submittals, the Recipient must plan adequate time to solicit, receive, and address comments prior to submitting the final submittal. The Recipient must submit the final Reimbursement Request prior to the Final Reimbursement Request Date set forth on the Cover Page.

ITEM	DESCRIPTION OF SUBMITTAL	CRITICAL DUE DATE	ESTIMATED DUE DATE
EXHIBIT A – SCOPE OF WORK			
A.	ADDITIONAL SUBMITTAL(S) TO DIVISION		
1.	Phase 1 Final Plans and Specifications	N/A	Complete
2.	Phase 2 Final Plans and Specifications	N/A	September 1, 2022
3.	Phase 3 Final Plans and Specifications	N/A	August 1, 2022
4.	Construction Completion	February 1, 2024	N/A
B.	REPORTS		
1.	Progress Reports		Quarterly
2.	Final Inspection and Certification		July 1, 2024
3.	Project Completion Report	N/A	June 30, 2024
4.	As Needed Reports	N/A	As Requested by Division
EXHIBIT B – REIMBURSEMENTS, BUDGET DETAIL, AND REPORTING PROVISIONS			
A.	REIMBURSEMENTS		
1.	First Reimbursement Request	No later than 90 days from Agreement Execution Date	N/A
2.	Phase 1 Final Budget Approval Package	N/A	Complete

ITEM	DESCRIPTION OF SUBMITTAL	CRITICAL DUE DATE	ESTIMATED DUE DATE
EXHIBIT A – SCOPE OF WORK			
3.	Phase 2 Final Budget Approval Package	N/A	January 1, 2023
4.	Phase 3 Final Budget Approval Package	N/A	December 1, 2022
5.	Reimbursement Requests	N/A	Quarterly
6.	Final Reimbursement Request	July 1, 2024	N/A

The Recipient must award the prime construction contract and begin construction timely. The Recipient must deliver any request for extension of the Completion of Construction Date no less than 90 days prior to the Completion of Construction Date.

The Division may require corrective work to be performed prior to Project Completion. The State Water Board is not obligated to reimburse corrective work under this Agreement.

A.5 PROGRESS REPORTS.

The Recipient must provide a progress report to the Division each quarter, beginning no later than 90 days after execution of this Agreement. The Recipient must provide a progress report with each Reimbursement Request. Failure to provide a complete and accurate progress report may result in the withholding of Project Funds. A progress report must contain the following information:

- 1) A summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced, and percent schedule elapsed;
- 2) A description of compliance with environmental requirements;
- 3) A listing of change orders including amount, description of work, and change in contract amount and schedule; and
- 4) Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.

A.6 PROJECT COMPLETION REPORT.

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

- i. Description of the Project,
- ii. Description of the water quality problem the Project sought to address,
- iii. Discussion of the Project’s likelihood of successfully addressing that water quality problem in the future, and
- iv. Summary of compliance with applicable environmental conditions.

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

A.7 FINAL PROJECT INSPECTION AND CERTIFICATION.

Upon completion of the Project, the Recipient must provide for a final inspection and must certify that the Project has been completed in accordance with this Agreement, any final plans and specifications submitted to the State Water Board, and any amendments or modifications thereto. If the Project involves the planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering, or other professionals, the final inspection and certification must be conducted by a California Registered Civil Engineer or other appropriate California registered professional. The results of the final inspection and certification must be submitted to the Project Manager.

A.8 DBE REPORTS FOR STATE REVOLVING FUND PROJECTS

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

EXHIBIT B – FUNDING AMOUNTS

B.1 ESTIMATED REASONABLE COST AND PROJECT FUNDS.

The estimated reasonable cost of the total Project is set forth on the Cover Page of this Agreement, and is greater than or equal to the funding anticipated to be provided by the State Water Board under this Agreement. Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds not to exceed the amount of the Project Funding Amount set forth on the Cover Page of this Agreement.

B.2 RECIPIENT CONTRIBUTIONS.

The Recipient must pay any and all costs connected with the Project including, without limitation, any and all Project Costs. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient must nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.

B.3 VERIFIABLE DATA.

Upon request by the Division, the Recipient must submit verifiable data to support deliverables specified in the Scope of Work. The Recipient’s failure to comply with this requirement may be construed as a material breach of this Agreement.

B.4 BUDGET COSTS

(a) Estimated budget costs are contained in the Summary Project Cost Table below:

LINE ITEM	TOTAL ESTIMATED COST	PROJECT FUNDING AMOUNT
Construction	\$57,567,413	\$57,567,413
Pre-Purchased Material/Equipment	\$0	\$0
Purchase of Land	\$0	\$0
Contingency	\$3,707,441	\$3,707,441
Force Account	\$0	\$0
Allowances (Soft Costs)	\$11,099,138	\$7,352,983
TOTAL	\$72,373,992	\$68,627,837

The Division’s Final Budget Approval and related Form 259 and Form 260 will document a more detailed budget of eligible Project Costs and Project funding amounts.

Reasonable indirect costs may be allowable upon approval by the Division.

The Recipient is prohibited from requesting disbursement amounts that represent Recipient’s mark-ups to costs invoiced or otherwise requested by consultants or contractors.

B.5 LINE ITEM ADJUSTMENTS.

Upon written request by the Recipient, the Division may adjust the line items of the Summary Project Cost Table at the time of Division’s Final Budget Approval. Upon written request by the Recipient, the Division may also adjust the line items of the Summary Project Cost Table as well as the detailed budget at the time of Recipient’s submittal of its final claim. Any line item adjustments to the Summary Project Cost Table that are due to a change in scope of work will require an Agreement amendment. The sum of adjusted line items in both the Summary Project Cost Table and the detailed budget must not exceed the Project Funding Amount. The Division may also propose budget adjustments.

Under no circumstances may the sum of line items in the budget approved through the Final Budget Approval process exceed the Project Funding Amount. Any increase in the Project Funding Amount will require an Agreement amendment.

B.6 REIMBURSEMENT PROCEDURE.

Except as may be otherwise provided in this Agreement, reimbursements will be made as follows:

1. Upon execution and delivery of this Agreement by both parties, the Recipient may request immediate reimbursement of any eligible incurred planning and design allowance costs through submission to the State Water Board of the Reimbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed.
2. The Recipient must submit a Reimbursement Request for costs incurred prior to the date this Agreement is executed by the State Water Board no later than ninety (90) days after this Agreement is executed by the State Water Board. Late Reimbursement Requests may not be honored.
3. Additional Project Funds will be promptly disbursed to the Recipient upon receipt of Reimbursement Request Form 260 and Form 261, or any amendment thereto, duly completed and executed by the Recipient for incurred costs consistent with this Agreement, along with receipt of progress reports due under this Agreement.
4. The Recipient must not request reimbursement for any Project Cost until such cost has been incurred and is currently due and payable by the Recipient, although the actual payment of such cost by the Recipient is not required as a condition of Reimbursement Request. Supporting documentation (e.g., receipts) must be submitted with each Reimbursement Request. The amount requested for Recipient's administration costs must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = total amount claimed). Reimbursement of Project Funds will be made only after receipt of a complete, adequately supported, properly documented, and accurately addressed Reimbursement Request. Upon request by the Division, supporting documents for professional and administrative services must include the employees' names, classifications, labor rates, hours worked, and descriptions of the tasks performed. Reimbursement Requests submitted without supporting documents may be wholly or partially withheld at the discretion of the Division.
5. The Recipient must spend Project Funds within 30 days of receipt. If the Recipient earns interest earned on Project Funds, it must report that interest immediately to the State Water Board. The State Water Board may deduct earned interest from future reimbursements.
6. The Recipient must not request a reimbursement unless that Project Cost is allowable, reasonable, and allocable.
7. Notwithstanding any other provision of this Agreement, no reimbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, policies, or regulations.

Notwithstanding any other provision of this Agreement, the Recipient agrees that the State Water Board may retain an amount equal to ten percent (10%) of the Project Funding Amount until Project Completion. Any retained amounts due to the Recipient will be promptly disbursed to the Recipient, without interest, upon Project Completion.

Except as follows, construction costs and disbursements are not available until after the Division has approved the final budget form submitted by the Recipient. The Deputy Director of the Division may authorize the disbursement of up to ten percent (10%) of Project Funds for the reimbursement of eligible construction costs and pre-purchased materials prior to Division approval of the final budget form submitted by the Recipient. All other construction costs are not eligible for reimbursement until after the Division has approved the final budget form submitted by the Recipient. Construction costs incurred prior to the Eligible Construction Start Date are not eligible for reimbursement.

B.7 REVERTING FUNDS AND DISENCUMBRANCE.

In the event the Recipient does not submit Reimbursement Requests for all funds encumbered under this Agreement timely, any remaining funds revert to the State. The State Water Board may notify the Recipient that the project file is closed, and any remaining balance will be disencumbered and unavailable for further use under the Agreement.

EXHIBIT C – GENERAL TERMS AND CONDITIONS 2019-NOV

GENERAL TERMS AND CONDITIONS 2019-NOV is incorporated by reference and is posted at https://www.waterboards.ca.gov/water_issues/programs/grants_loans/general_terms.html

EXHIBIT D – SPECIAL CONDITIONS

D.1 DEFINITIONS

(a) Notwithstanding Exhibit C, the following terms have no meaning for the purposes of this Agreement:

- Work Completion
- Work Completion Date

(b) Each capitalized term used in this Agreement has the following meaning:

- "Allowance" means an amount based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the Project.
- "Authorized Representative" means the duly appointed representative of the Recipient as set forth in the certified original of the Recipient's authorizing resolution that designates the authorized representative by title.
- "Completion of Construction" means the date, as determined by the Division after consultation with the Recipient, that the work of building and erection of the Project is substantially complete, and is established on the Cover Page of this Agreement.
- "Eligible Construction Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which construction costs may be incurred and eligible for reimbursement hereunder.
- "Eligible Work Start Date" means the date set forth on the Cover Page of this Agreement, establishing the date on or after which any non-construction costs may be incurred and eligible for reimbursement hereunder.
- "Enterprise Fund" means the enterprise fund of the Recipient in which Revenues are deposited.
- "Event of Default" means, in addition to the meanings set forth in Exhibit C, the occurrence of any of the following events:
 - a) A material adverse change in the condition of the Recipient, the Revenues, or the System, which the Division reasonably determines would materially impair the Recipient's ability to satisfy its obligations under this Agreement.
 - b) Failure to operate the System or the Project, unless the Division has given its approval for such non-operation;
 - c) The occurrence of a material breach or event of default under any Recipient obligation that results in the acceleration of principal or interest or otherwise requires immediate prepayment, repurchase or redemption;
- "Final Budget Approval (FBA)" means the Division-approved final budget for the Project, as set forth in Exhibit B.
- "Indirect Costs" means those costs that are incurred for a common or joint purpose benefiting more than one cost objective and are not readily assignable to the Project (i.e., costs that are not directly related to the Project). Examples of Indirect Costs include, but are not limited to: central service costs; general administration of the Recipient; non-project-specific accounting and personnel services performed within the Recipient organization; depreciation or use allowances on buildings and equipment; the costs of operating and maintaining non-project-specific facilities; tuition and conference fees; generic overhead or markup; and taxes.

- "Initiation of Construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and erection of the Project.
- "Net Revenues" means, for any Fiscal Year, all Revenues received by the Recipient less the Operations and Maintenance Costs for such Fiscal Year.
- "Operations and Maintenance Costs" means the reasonable and necessary costs paid or incurred by the Recipient for maintaining and operating the System, determined in accordance with GAAP, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all reasonable and necessary administrative costs of the Recipient that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits, licenses, and charges to operate the System and insurance premiums; but excluding, in all cases depreciation, replacement, and obsolescence charges or reserves therefor and amortization of intangibles.
- "Policy" means the State Water Board's "Policy for Implementing the Clean Water State Revolving Fund," as amended from time to time, including the Intended Use Plan in effect as of the execution date of this Agreement.
- "Revenues" means, for each Fiscal Year, all gross income and revenue received or receivable by the Recipient from the ownership or operation of the System, determined in accordance with GAAP, including all rates, fees, and charges (including connection fees and charges) as received by the Recipient for the services of the System, and all other income and revenue howsoever derived by the Recipient from the ownership or operation of the System or arising from the System, including all income from the deposit or investment of any money in the Enterprise Fund or any rate stabilization fund of the Recipient or held on the Recipient's behalf, and any refundable deposits made to establish credit, and advances or contributions in aid of construction.
- "System" means all wastewater collection, pumping, transport, treatment, storage, and disposal facilities, including land and easements thereof, owned by the Recipient, including the Project, and all other properties, structures, or works hereafter acquired and constructed by the Recipient and determined to be a part of the System, together with all additions, betterments, extensions, or improvements to such facilities, properties, structures, or works, or any part thereof hereafter acquired and constructed.
- "Useful Life" means the economically useful life of the Project beginning at Project Completion and is set forth in Exhibit A.

D.2 ADDITIONAL REPRESENTATIONS AND WARRANTIES.

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

The Recipient agrees to fulfill all assurances, declarations, representations, and commitments in its application, accompanying documents, and communications filed in support of its request for funding under this Agreement.

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

Except as set forth in this paragraph, there are, as of the date of execution of this Agreement by the Recipient, no pending or, to Recipient's knowledge, threatened actions, claims, investigations, suits, or proceedings before any governmental authority, court, or administrative agency which materially affect the financial condition or operations of the Recipient, the Revenues, and/or the Project.

There are no proceedings, actions, or offers by a public entity to acquire by purchase or the power of eminent domain any of the real or personal property related to or necessary for the Project.

The Recipient is duly organized and existing and in good standing under the laws of the State of California. Recipient must at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. Within the preceding ten years, the Recipient has not failed to demonstrate compliance with state or federal audit disallowances.

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

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

The Recipient has no conflicting or Material Obligations, except as set forth in this paragraph.

The Recipient has sufficient real or personal property rights necessary for the purposes of this Agreement, not subject to third party revocation, which rights extend at least to the Records Retention End Date of this Agreement, except as disclosed to the State Water Board. The Recipient has disclosed to the State Water Board all proceedings, actions, or offers of which the Recipient has knowledge or belief that may in any way affect the Recipient's ability to access or legally possess all of the property necessary for the purpose of this Agreement, including any proceedings, actions, or offers to lease, purchase, or acquire by eminent domain any of the real or personal property related to or necessary for the Project.

The Recipient and its principals, contractors, and subcontractors, to the best of the Recipient's knowledge and belief, are not presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized; nor have they engaged or permitted the performance of services covered by this Agreement from parties that are debarred or suspended or otherwise excluded from or ineligible for participation in any work overseen, directed, funded, or administered by the State Water Board program for which this funding is authorized.

D.3 ACKNOWLEDGEMENTS

The Recipient must include the following acknowledgement in any document, written report, or brochure to be shared with the general public prepared in whole or in part pursuant to this Agreement:

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

D.4 RATES, FEES, AND CHARGES.

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

D.5 SPECIAL CONDITIONS.

Environmental:

1. The documents identified below are incorporated by reference and the Recipient shall comply with the conditions and recommendations therein:
 - a. The Mitigation Monitoring and Reporting Program adopted by the Mission Springs Water District on August 19, 2019 for the Project. The Recipient must implement all mitigation measures therein:
2. The Recipient shall make no change in the Project, construction area, or special conditions, without obtaining the appropriate and necessary prior approval(s) from the State Water Board.
3. In the Recipient's Progress Reports/Quarterly Reports and the Project Completion Report, submitted pursuant to this Agreement, the Recipient shall include a discussion of the status of its compliance with all environmental measures identified in this Exhibit D, with separate sections clearly labeled with section titles, discussing the status of Recipient's compliance with:
 - a. Mitigation Measures 4.4-1 and 4.4-2 for air quality in the MMRP,
 - b. Mitigation Measures 4.5-1 through 4.5-5 for biological resources in the MMRP,
 - c. Mitigation Measures 4.6-1 and 4.6-2 for cultural resources in the MMRP,
 - d. Mitigation Measures 4.6-2 for cultural resources in the MMRP,
 - e. Mitigation Measures 4.9-1 and 4.9-2 for hazards and hazardous materials in the MMRP,
 - f. Mitigation Measures 4.10-1 through 4.10-8 for hydrology and water quality in the MMRP,
 - g. Mitigation Measures 4.18-1 for cultural resources in the MMRP, and
 - h. Mitigation Measures 4.19.4.1 for utilities and service systems in the MMRP.

Technical:

1. The Recipient must obtain a right-of-entry agreement for each property owner prior to construction on each individual property. The right-of-entry agreement template must be reviewed and approved by the State Water Board's Chief Counsel.
2. The Recipient must submit a Fiscal Sustainability Plan no later than December 31, 2022. The Division may retain an amount equal to ten percent (10%) of the Project Funding Amount until the Fiscal Sustainability Plan is submitted. Any retained amounts due to the Recipient will be promptly disbursed to the Recipient, without interest, upon submittal.
3. The Recipient shall not solicit bids, award a contract, or commence construction activities for Phases 2 and 3 until final plans and specifications for Phases 2 and 3 are approved by the Division's Project Manager.

D.6 RETURN OF FUNDS.

Notwithstanding any other provision of this Agreement, if the Division determines that an Event of Default has occurred, the Recipient may be required, upon demand, to immediately return to the State Water Board any grant or principal forgiveness amounts received pursuant to this Agreement and pay interest at the highest legal rate on all of the foregoing.

D.7 DAMAGES FOR BREACH OF TAX-EXEMPT STATUS.

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

D.8 OPERATION AND MAINTENANCE.

The Recipient shall sufficiently and properly staff, operate, and maintain the facility and structures constructed or improved as part of the Project throughout the term of this Agreement, consistent with the purposes of this Agreement. The Recipient assumes all operations and maintenance costs of the facilities and structures; the State Water Board shall not be liable for any cost of such maintenance, management or operation.

D.9 INSURANCE.

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

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

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

D.10 CONTINUOUS USE OF PROJECT; NO LEASE, SALE, TRANSFER OF OWNERSHIP, OR DISPOSAL OF PROJECT.

The Recipient agrees that, except as provided in this Agreement, it will not abandon, substantially discontinue use of, lease, sell, transfer ownership of, or dispose of all or a significant part or portion of the

Project during the Useful Life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all disbursed Project Funds or all or any portion of all remaining funds covered by this Agreement together with accrued interest and any penalty assessments that may be due.

D.11 NOTICE.

Upon the occurrence of any of the following events, the Recipient must notify the Division's Deputy Director and Party Contacts by phone and email within the time specified below:

- (a) Within 24 hours, the Recipient must notify the Party Contacts by phone and by email, and also notify the Division by phone at (916) 327-9978 and by email to CleanWaterSRF@waterboards.ca.gov of any discovery of any potential tribal cultural resource and/or archaeological or historical resource. Should a potential tribal cultural resource and/or archaeological or historical resource be discovered during construction or Project implementation, the Recipient must ensure that all work in the area of the find will cease until a qualified archaeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient must implement appropriate actions as directed by the Division.
- (b) The Recipient must notify the Division and Party Contacts promptly of the occurrence of any of the following events:
 - i. Bankruptcy, insolvency, receivership or similar event of the Recipient, or actions taken in anticipation of any of the foregoing;
 - ii. Change of ownership of the Project (no change of ownership may occur without written consent of the Division);
 - iii. Loss, theft, damage, or impairment to Project;
 - iv. Events of Default, except as otherwise set forth in this section;
 - v. A proceeding or action by a public entity to acquire the Project by power of eminent domain.
 - vi. Any litigation pending or threatened with respect to the Project or the Recipient's technical, managerial or financial capacity or the Recipient's continued existence;
 - vii. Consideration of dissolution, or disincorporation;
 - viii. Enforcement actions by or brought on behalf of the State Water Board or Regional Water Board.
 - ix. The discovery of a false statement of fact or representation made in this Agreement or in the application to the Division for this funding, or in any certification, report, or request for reimbursement made pursuant to this Agreement, by the Recipient, its employees, agents, or contractors;
 - x. Any substantial change in scope of the Project. The Recipient must undertake no substantial change in the scope of the Project until prompt written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;

- xi. Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more;
- xii. 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;
- xiii. The Recipient must promptly notify the Division and Party Contacts of the 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 implementation of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
- xiv. Any Project monitoring, demonstration, or other implementation activities required in this Agreement;
- xv. Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division;
- xvi. Any event requiring notice to the Division pursuant to any other provision of this Agreement;
- xvii. The award of the prime construction contract for the Project; and the initiation of construction of the Project; and
- xviii. Completion of Construction, and Project Completion.

D.12 FRAUD, WASTE, AND ABUSE.

The Recipient shall prevent fraud, waste, and the abuse of Project Funds, and shall cooperate in any investigation of such activities that are suspected in connection with this Agreement. The Recipient understands that discovery of any evidence of misrepresentation or fraud related to Reimbursement Requests, invoices, proof of payment of invoices, or other supporting information, including but not limited to double or multiple billing for time, services, or any other eligible cost, may result in referral to the Attorney General's Office or the applicable District Attorney's Office for appropriate action. The Recipient further understands that any suspected occurrences of false claims, misrepresentation, fraud, forgery, theft or any other misuse of Project Funds may result in withholding of reimbursements and/or the termination of this Agreement requiring the immediate repayment of all funds disbursed hereunder.

D.13 DISPUTES.

The Recipient must continue with the responsibilities under this Agreement during any dispute. The Recipient may, in writing, appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. The Recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute. This provision does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final

the decision of the State Water Board, or any official or representative thereof, on any question of law. This section relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.

D.14 STATE CROSS-CUTTERS.

Recipient represents that, as applicable, it complies and covenants to maintain compliance with the following for the term of the Agreement:

- The California Environmental Quality Act (CEQA), as set forth in Public Resources Code 21000 et seq. and in the CEQA Guidelines at Title 14, Division 6, Chapter 3, Section 15000 et seq.
- Water Conservation requirements, including regulations in Division 3 of Title 23 of the California Code of Regulations.
- Monthly Water Diversion Reporting requirements, including requirements set forth in Water Code section 5103.
- Public Works Contractor Registration with Department of Industrial Relations requirements, including requirements set forth in Sections 1725.5 and 1771.1 of the Labor Code.
- Volumetric Pricing & Water Meters requirements, including the requirements of Water Code sections 526 and 527.
- Urban Water Management Plan requirements, including the Urban Water Management Planning Act (Water Code, § 10610 et seq.).
- Urban Water Demand Management requirements, including the requirements of Section 10608.56 of the Water Code.
- Delta Plan Consistency Findings requirements, including the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.
- Agricultural Water Management Plan Consistency requirements, including the requirements of Water Code section 10852.
- Charter City Project Labor Requirements, including the requirements of Labor Code section 1782 and Public Contract Code section 2503.
- The Recipient agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with directives or orders issued pursuant to Division 7 of the Water Code.

D.15 DAMAGES FOR BREACH OF FEDERAL CONDITIONS

In the event that any breach of any of the provisions of this Agreement by the Recipient results in the failure of Project Funds to be used pursuant to the provisions of this Agreement, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government, the Recipient must immediately reimburse the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

D.16 ACCESS AND INSPECTION.

In addition to the obligations set forth in section 2 of the General Terms and Conditions incorporated in Exhibit C of this Agreement, the Recipient must ensure that the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, or any authorized representative of the foregoing, will have safe and suitable access to the Project site at all reasonable times during the term of the Agreement.

D.17 FINANCIAL MANAGEMENT SYSTEMS.

The Recipient must comply with federal standards for financial management systems. The Recipient agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Project funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of this Agreement. To the extent applicable, the Recipient is bound by, and must comply with, the provisions and requirements of the federal Single Audit Act of 1984 and 2 CFR Part 200, subpart F, and updates or revisions, thereto.

D.18 FEDERAL CROSS-CUTTERS

The Recipient acknowledges, warrants compliance with, and covenants to continuing compliance with the following federal terms and conditions for the Useful Life of the Project:

- i. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient shall not purchase "iron and steel products" produced outside of the United States on this Project. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient hereby certifies that all "iron and steel products" used in the Project were or will be produced in the United States. For purposes of this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.
- ii. The Recipient agrees to comply with the Davis-Bacon provisions incorporated by reference in this Agreement. The Recipient must include in full the Wage Rate Requirements (Davis-Bacon) language incorporated by reference in all construction contracts and subcontracts.
- iii. The Recipient shall notify the State Water Board and the USEPA contact of public or media events publicizing the accomplishment of significant events related to this Project and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
- iv. The Recipient shall comply with applicable USEPA general terms and conditions found at <http://www.epa.gov/oqd>.
- v. No Recipient may receive funding under this Agreement unless it has provided its Unique Entity Identifier, assigned by the System for Award management, to the State Water Board.
- vi. The Recipient represents and warrants that it and its principals are not excluded or disqualified from participating in this transaction as such terms are defined in Parts 180 and 1532 of Title 2 of the Code of Federal Regulations (2 CFR). If the Recipient is excluded after execution of this Agreement, the Recipient shall notify the Division within ten (10) days and shall inform the

Division of the Recipient's exclusion in any request for amendment of this Agreement. The Recipient shall comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR. Such compliance is a condition precedent to the State Water Board's performance of its obligations under this Agreement. When entering into a covered transaction as defined in Parts 180 and 1532 of 2 CFR, the Recipient shall require the other party to the covered transaction to comply with Subpart C of Part 180 of 2 CFR, as supplemented by Subpart C of Part 1532 of 2 CFR.

- vii. To the extent applicable, the Recipient shall disclose to the State Water Board any potential conflict of interest consistent with USEPA's Final Financial Assistance Conflict of Interest Policy at <https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy>. A conflict of interest may result in disallowance of costs.
- viii. USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement.
- ix. Where an invention is made with Project Funds, USEPA and the State Water Board retain the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the Recipient. The Recipient must utilize the Interagency Edison extramural invention reporting system at <http://iEdison.gov> and shall notify the Division when an invention report, patent report, or utilization report is filed.
- x. The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the Acknowledgment statement set forth in Exhibit D.
- xi. The Recipient acknowledges that it is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Project.
- xii. The Recipient, its employees, contractors and subcontractors and their employees warrants that it will not engage in severe forms of trafficking in persons, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands that failure to comply with this provision may subject the State Water Board to loss of federal funds. The Recipient agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement if the Recipient that is a private entity is determined to have violated the foregoing.
- xiii. The Recipient certifies to the best of its knowledge and belief that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Agreement, the Recipient shall complete and

submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and notify the State Water Board.

The Recipient shall require this certification from all parties to any contract or agreement that the Recipient enters into and under which the Recipient incurs costs for which it seeks reimbursement under this Agreement.

- xiv. The Recipient must comply with the following federal non-discrimination requirements:
- a. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
 - b. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
 - c. The Age Discrimination Act of 1975, which prohibits age discrimination.
 - d. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.
 - e. 40 CFR Part 7, as it relates to the foregoing.
 - f. Executive Order 13798, including, to the greatest extent practicable and to the extent permitted by law, the requirement to respect and protect the freedom of persons and organizations to engage in political and religious speech.
 - g. All applicable federal civil rights regulations, including statutory and national policy requirements (2 CFR section 200.300).
- xv. If the Project relates to construction of a publicly owned treatment works, where the Recipient contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services, the Recipient shall ensure that any such contract is negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based requirement as determined by the State Water Board.
- xvi. If the Project relates to construction of a publicly owned treatment works, the Recipient certifies that it has developed and is implementing a fiscal sustainability plan for the Project, except as set forth in Exhibit D, that includes an inventory of critical assets that are a part of the Project, an evaluation of the condition and performance of inventoried assets or asset groupings, a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan, and a plan for maintaining, repairing, and, as necessary, replacing the Project and a plan for funding such activities.
- xvii. Executive Order No. 11246. The Recipient shall include in its contracts and subcontracts related to the Project the following provisions:

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

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

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

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

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

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

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

- xviii. The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises.
- xix. Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368. Except where the purpose of this Agreement is to remedy the cause of the violation, the Recipient may not procure goods, services, or materials from suppliers excluded under the federal System for Award Management: <http://www.sam.gov/> .
- xx. Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655. The Recipient must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105.

- xxi. The Recipient agrees that if its network or information system is connected to USEPA networks to transfer data using systems other than the Environmental Information Exchange Network or USEPA's Central Data Exchange, it will ensure that any connections are secure.
- xxii. All geospatial data created pursuant to this Agreement that is submitted to the State Water Board for use by USEPA or that is submitted directly to USEPA must be consistent with Federal Geographic Data Committee endorsed standards. Information on these standards may be found at www.fgdc.gov.
- xxiii. If the Recipient is a water system that serves 500 or fewer persons, the Recipient represents that it has considered publicly-owned wells as an alternative drinking water supply.
- xxiv. The Recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.
- xxv. The Recipient agrees to immediately notify the Project Manager in writing about any allegation of research misconduct involving research activities that are supported in whole or in part with USEPA funds under this Project, including fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, or ordering, advising, or suggesting that subordinates engage in research misconduct.
- xxvi. The Recipient agrees to comply with, and require all contractors and subcontractors to comply with, USEPA's Scientific Integrity Policy, available at <https://www.epa.gov/osa/policy-epa-scientific-integrity>, when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue.

The Recipient shall not suppress, alter, or otherwise impede the timely release of scientific findings or conclusions; intimidate or coerce scientists to alter scientific data, findings, or professional opinions or exert non-scientific influence on scientific advisory boards; knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty; or otherwise violate the USEPA's Scientific Integrity Policy. The Recipient must refrain from acts of research misconduct, including publication or reporting, as described in USEPA's Policy and Procedures for Addressing Research Misconduct, Section 9.C, and must ensure scientific findings are generated and disseminated in a timely and transparent manner, including scientific research performed by contractors and subcontractors.
- xxvii. The Recipient agrees to comply with the Animal Welfare Act of 1966 (7 USC 2131-2156). Recipient also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training," available at <http://grants.nih.gov/grants/olaw/references/phspol.htm#USGovPrinciples>.
- xxviii. The Recipient certifies that no Project Funds will be used on:
 - a. Video surveillance or telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

- b. Telecommunications or video surveillance services produced by such entities;
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country; or
- d. Other telecommunications or video surveillance services or equipment in violation of 2 CFR 200.216.

xxx. EXECUTIVE ORDER N-6-22 — RUSSIAN SANCTIONS

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State Water Board determine Recipient is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement. The State Water Board shall provide Recipient advance written notice of such termination, allowing Recipient at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State Water Board.

The Recipient represents that the Recipient is not a target of economic sanctions imposed in response to Russia’s actions in Ukraine imposed by the United States government or the State of California. The Recipient is required to comply with the economic sanctions imposed in response to Russia’s actions in Ukraine, including with respect to, but not limited to, the federal executive orders identified in California Executive Order N-6-22, located at <https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf> and the sanctions identified on the United States Department of the Treasury website (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>). The Recipient is required to comply with all applicable reporting requirements regarding compliance with the economic sanctions, including, but not limited to, those reporting requirements set forth in California Executive Order N-6-22 for all Recipients with one or more agreements with the State of California with an aggregated value of Five Million Dollars (\$5,000,000) or more. Notwithstanding any other provision in this Agreement, failure to comply with the economic sanctions and all applicable reporting requirements may result in termination of this Agreement.

For Recipients with an aggregated agreement value of Five Million Dollars (\$5,000,000) or more with the State of California, reporting requirements include, but are not limited to, information related to steps taken in response to Russia’s actions in Ukraine, including but not limited to:

- 1. Desisting from making any new investments or engaging in financial transactions with Russian institutions or companies that are headquartered or have their principal place of business in Russia;
- 2. Not transferring technology to Russia or companies that are headquartered or have their principal place of business in Russia; and
- 3. Direct support to the government and people of Ukraine.

AGENDA STAFF REPORT

MEETING NAME: SPECIAL MEETING

MEETING DATE(S): AUGUST 25, 2022

FROM: BRIAN MACY – ASSISTANT GENERAL MANAGER

FOR: ACTION X DIRECTION _____ INFORMATION _____



APPROVE CONTRACT AMENDMENT NO. 1 WITH J.F. SHEA CONSTRUCTION, INC. FOR THE CONSTRUCTION OF THE REGIONAL WATER RECLAMATION FACILITY

STAFF RECOMMENDATION

Authorize the General Manager to approve Contract Amendment No. 1 with J.F. Shea Construction, Inc. for the construction of the Regional Water Reclamation Facility, augment the capital improvement budget amount to \$53,049,300.00 for Job No. 11424, and to do all things necessary to complete the project. The construction amendment would increase of the construction contingency from 5% to 10%, increasing the contract amount \$2,049,300.00 from \$43,035,300 to \$45,084,600.

SUMMARY

The Regional Water Reclamation Facility (RWRF) Project is a vital component in expanding the District's wastewater treatment capacity. The RWRF will construct a 1.5 million gallon per day Sequence Batch Reactor (SBR) wastewater treatment plant, that will dispose the treated secondary effluent in on-site disposal ponds. The District originally elected to defer equipping the 4th SBR treatment tank due to low initial flows. However, due to the anticipated development following the COVID-19 pandemic and changes in the overall wastewater management strategy, equipping the 4th SBR tank is necessary.

ANALYSIS

Typically, on projects of this size and scope, a 5% contingency is adequate. However, due to the anticipated development following the COVID-19 pandemic, the District has asked the Contractor to equip the 4th SBR tank at the proposed change order amount of \$1,925,000. This 10% contingency will allow for the equipping of the 4th SBR tank and provide additional set aside monies to cover any additional unforeseen or extra costs that may arise through the course of construction.

FISCAL IMPACT AND STRATEGIC PLAN IMPLEMENTATION

The current project budget was amended in 2021 to \$51,000,000.00 to cover design and construction. The proposed increase in contingency will result in a capital improvement budget of \$53,049,300.00.

ATTACHMENTS

Contract Amendment No. 1

CONTRACT AMENDMENT

Contract Amendment No. 1

Date: August 24, 2022

Agreement Date: December 16, 2021

Sheet: 1 of 2

Owner: **MISSION SPRINGS WATER DISTRICT (DISTRICT)**Project Description: **Regional Water Reclamation Facility**Contractor: **J.F. Shea Construction, Inc.**

The following changes are hereby made to the Contract:

The is an additive change order for the directed change in the Contractor's scope due to equipping the 4th Sequence Batch Reactor (SBR) tank. In addition, a detailed breakdown of the total cost is attached.

JUSTIFICATION

The District originally elected to defer equipping the 4th SBR treatment tank due to anticipated low flows over the first 5-years of operation. However, due to the anticipated development following the COVID-19 pandemic and changes in the overall wastewater management strategy, equipping the 4th SBR tank is necessary. Specifically, equipping the 4th SBR tank includes adding instrumentation to monitor and control wastewater treatment within the tank, adding new mechanical equipment (i.e. pumps, mixers, diffusers, decanter, etc.) and associated electrical work to provide power to said mechanical and instrumentation equipment.

This change was discussed between the parties, and they agree with the District to complete the additional work. The work is to be done on a lump sum basis; see detailed equipment and man-hour estimate attached. Based on the proposed change, an addition of \$1,925,000.00 will be accepted.

The District has requested the contingency of this project be increased from 5% to 10% for a total construction contract amount of \$45,084,600.00.

CHANGE TO CONTRACT PRICE

	<u>Work Approved by C/M team</u>	<u>Amount Approved by MSWD</u>
Original Contract Price	\$40,986,000.00	
Contract Price with 5% Contingency (MSWD Board Approval: October 18, 2021)		\$43,035,300.00
Current Contract Price adjusted by Previous Change Orders	\$41,083,944.00	
Contract Price with 4th SBR Change Order (\$1,925,000.00)	\$43,008,944.00	
Contract Price with 10% Contingency (MSWD Board Approval: August 25, 2022)		\$45,084,600.00

CHANGE TO CONTRACT TIME

Contract Time will be increased	<u>N/A</u>
Date for Completion of all Work	<u>November 17, 2023 (Projected)</u>

APPROVALS REQUIRED

To be effective, this Change Order must be approved by the Owner if it changes the scope or objective of the Project, or as may otherwise be required by the Contract Documents.

Requested by: J.F. Shea Construction, Inc Date: 08/05/2022
Contractor

Recommended by: Steve Ledbetter Date: 08/17/2022
TKE Engineering, Inc.

Ordered by: _____ Date: _____
Eric Weck

Accepted by: _____ Date: _____
J.F. Shea Construction, Inc.