

## ***STAFF REPORT***

**To:** Coastside County Water District Board of Directors

**From:** David Dickson, General Manager

**Agenda:** September 27, 2011

Report

Date: September 26, 2011

**Subject: Resolution Authorizing Execution of the Installment Sale Agreement Between Coastside County Water District and the California Infrastructure and Economic Development Bank**

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### **Recommendation:**

Approve the attached Resolution (Attachment A) authorizing the General Manager to execute the Installment Sale Agreement between Coastside County Water District and the California Infrastructure and Economic Development Bank (Attachment B), providing \$6,756,500 in financing for the Denniston Creek Water Treatment Plan Improvements Project.

### **Background:**

As reported to the Board at the August 9 meeting, Board of Directors of the California Infrastructure and Economic Development Bank (I-Bank) on July 26 approved a loan for the District's Denniston Creek Water Treatment Plant Improvements Project in the amount of \$6,756,500. The loan has a term of 30 years at an interest rate of 2.79% (plus a 0.3% annual fee).

District staff and District Counsel Patrick Miyaki have worked with I-Bank staff to finalize the Installment Sale Agreement in Attachment B. Approval of the Resolution would authorize the General Manager to make minor modifications to the approved agreement form and to execute and deliver all documents necessary to complete the I-Bank financing. Once I-Bank receives and executes the Agreement, I-Bank will establish the Effective Date, allowing the District to begin requesting disbursements.

### **Fiscal Impact:**

The I-Bank agreement provides \$6,756,500 in financing for the Denniston project, as contemplated in the District's 2011 Financing Plan Update.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE COASTSIDE COUNTY WATER DISTRICT AUTHORIZING THE EXECUTION AND DELIVERY OF THE INSTALLMENT SALE AGREEMENT BY AND BETWEEN THE COASTSIDE COUNTY WATER DISTRICT AND THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK AND APPROVING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE COASTSIDE COUNTY WATER DISTRICT, AS FOLLOWS:

Section 1. The General Manager is authorized and directed to execute and deliver the Enterprise Fund Installment Sale Agreement (the "Agreement") proposed to be entered into by the Coastsides County Water District ("District") and the California Infrastructure and Economic Development Bank ("I-Bank"), for and on behalf of the Coastsides County Water District. As executed and delivered, such documents shall be in substantially the form presented at this meeting, with such minor additions thereto or minor changes therein as the officers executing such document shall require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 2. The General Manager is hereby authorized and directed, in the name and on behalf of the Coastsides County Water District, to take any and all steps and to execute and deliver any and all certificates, contracts and other documents which they might deem necessary or appropriate in order to consummate the delivery of the Agreement and otherwise to effectuate the purposes of this resolution; including the execution of a tax certificate, and such actions previously taken by the employees of the Coastsides County Water District are hereby ratified and confirmed.

Section 3. The Board of Directors acknowledges that subsequent to the execution and delivery of the Agreement, the I-Bank may determine to issue bonds to fund all or a portion of the District's Project, as defined in the Agreement. In such event, the Board of Directors hereby authorizes the General Manager to execute any necessary documentation, as requested by the I-Bank, including a new agreement, so long as such documentation is consistent with this Resolution and substantially identical to the terms and conditions of the Agreement.

Section 4. This resolution shall take effect from and after its passage, approval and adoption.

PASSED, APPROVED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by the following vote:

- Ayes:
- Noes:
- Absent:
- Abstain:

By \_\_\_\_\_  
Robert Feldman  
President

ATTEST

By \_\_\_\_\_  
David R. Dickson  
Secretary

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**ENTERPRISE FUND INSTALLMENT  
SALE AGREEMENT**

by and between the

**COASTSIDE COUNTY WATER DISTRICT,**

as Purchaser

and the

**CALIFORNIA INFRASTRUCTURE AND  
ECONOMIC DEVELOPMENT BANK,**

as Seller

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Dated as of [Effective date]

Agreement No. CIEDB-11-099

**DRAFT****ENTERPRISE FUND INSTALLMENT SALE AGREEMENT**

THIS ENTERPRISE FUND INSTALLMENT SALE AGREEMENT, is made and entered into as of *add date of agreement* (the “Agreement”), by and between the COASTSIDE COUNTY WATER DISTRICT, a County Water District duly organized and existing under the laws of the State of California, as purchaser (the “Purchaser”), and the CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK (the “CIEDB”), duly organized and validly existing pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act, constituting Division 1 of Title 6.7 of the California Government Code (commencing at section 63000 thereof) as now in effect and as it may from time to time hereafter be amended (the “Act”), as seller.

**WITNESSETH:**

WHEREAS, on or about \_\_\_\_\_, 200\_\_, the Purchaser adopted Resolution No. \_\_\_\_\_, in substantially the same form as set forth in Exhibit A attached hereto, authorizing the purchase from the CIEDB of a Project, as defined herein, evidenced by this Enterprise Fund Installment Sale Agreement (the “Agreement”);

WHEREAS, the Purchaser hereby finds and determines that there will be significant public benefits accruing from such purchase;

WHEREAS, the CIEDB intends to issue tax-exempt bonds (“Proceeds Bonds” as defined in Section 1.01), the proceeds of which may be used to fund all or a portion of the Project;

WHEREAS, the CIEDB may pledge its rights under this Agreement to secure bonds (“Secured Bonds” as defined in Section 1.01), and Purchaser acknowledges that the issuance of both the Proceeds Bonds and the Secured Bonds impacts its rights and obligations as described herein;

WHEREAS, Purchaser hereby agrees to adhere to the requirements contained in this Agreement necessary in order to be subject to the Proceed Bonds and to maintain the tax-exempt status of the Proceeds Bonds;

WHEREAS, the Purchaser has the following current debt obligations outstanding:

(a) an Installment Purchase Agreement by and between Coastside County Water District and the Association of Bay Area Governments (“Association of Bay Area Governments Installment Purchase Agreement”) payable from the System Revenues (as defined herein) and

(b) an Installment Purchase Agreement by and between Coastside County Water District and California Statewide Communities Development Authority (“California Statewide Communities Development Authority Installment Purchase Agreement”) payable from System Net Revenues (as defined herein);

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WHEREAS, this Agreement will be subordinate to the Association of Bay Area Governments Installment Purchase Agreement and the California Statewide Communities Development Authority Installment Purchase Agreement;

WHEREAS, Purchaser has submitted an opinion of counsel to CIEDB in substantially the same form as set forth in Exhibit H attached hereto;

WHEREAS, all acts and proceedings required by law necessary to make this Agreement, when executed by the Purchaser and the CIEDB, the valid, legal and binding obligation of the Purchaser and the CIEDB, and to constitute this Agreement a legal, valid, and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution of this Agreement has been in all respects duly authorized.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the parties hereto do hereby agree as follows:

**ARTICLE I****DEFINITIONS**

SECTION 1.01. Definitions. Unless the context clearly otherwise requires, the capitalized terms in this Agreement shall have the respective meanings set forth below.

“Act” means the Bergeson-Peace Infrastructure and Economic Development Bank Act, constituting Division 1 of Title 6.7 of the California Government Code (commencing at section 63000 thereof) as now in effect and as it may from time to time hereafter be amended.

“Additional Payments” means the payments made pursuant to Section 2.04(f).

“Agreement” means this Enterprise Fund Installment Sale Agreement, between the CIEDB and the Purchaser, as originally entered into and as amended pursuant to the provisions hereof.

“Association of Bay Area Governments Installment Purchase Agreement” means the Installment Purchase Agreement dated May 1, 1998 by and between the Coastside County Water District and the Association of Bay Area Governments relating to Association of Bay Area Governments Water and Wastewater Revenue Bonds (Pooled Financing Program).

“Business Day” means any day, Monday through Friday, which is not a legal holiday of the State or the trustee of the Secured Bonds.

“California Statewide Communities Development Authority Installment Purchase Agreement” means the Installment Purchase Agreement dated June 1, 2006 by and between Coastside County Water District and California Statewide Communities Development Authority relating to California Communities Development Authority Water Revenue Bonds (Pooled Financing Program).

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“Certificate of the Purchaser” means a request or certificate, in writing, signed by a duly authorized representative of the Purchaser.

“CIEDB” means the California Infrastructure and Economic Development Bank.

“CIEDB Annual Fee” means the fee payable to CIEDB pursuant to Section 2.04(f)(1).

“Code” means the Internal Revenue Code of 1986, as amended, or any successor statute thereto, and any regulations promulgated thereunder.

“Debt Service” means, for any Fiscal Year, the sum of interest, and principal due and payable under this Agreement during such Fiscal Year, the CIEDB Annual Fee for such Fiscal Year and any Senior and Parity Debt Service for such Fiscal Year.

“Effective Date” means *[add agreement date]*, the date on which this Agreement becomes effective and binding on the Purchaser and the CIEDB.

“Enterprise Fund” means the water enterprise fund established by the Purchaser pursuant to the County Water District Law (California Water Code Sections 30000 et seq.) and in which all System Revenues are deposited and maintained by the Purchaser pursuant to Section 3.02 and in which the CIEDB has a security interest pursuant to the terms of this Agreement.

“Event of Default” means any of the events described in Section 7.01.

“Facility” means that portion of the Project to be sold by the CIEDB to the Purchaser pursuant to terms and conditions of this Agreement as authorized by Government Code section 63010 and by the Act and as further set forth in Exhibit D, hereto.

“Fiscal Year” means any twelve month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other twelve month period selected and designated by the Purchaser as its official fiscal year period.

“Independent Accountant” means any certified public accountant or firm of certified public accountants duly licensed or registered or entitled to practice and practicing as such under the laws of the State, appointed by the Purchaser who, or each of whom:

(a) Is in fact independent and not under the control of the Purchaser or the CIEDB;

(b) Does not have any substantial interest, direct or indirect, in the Purchaser the CIEDB or the Project; and

(c) Is not connected with the Purchaser or the CIEDB as an officer or employee of the Purchaser or the CIEDB, but who may be regularly retained to make reports to the Purchaser or the CIEDB.

“Independent Consultant” means any consultant or firm of such consultants judged by the Purchaser to have experience in matters relating to the collection of System Revenues or other

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experience with respect to the financing of System projects, as appropriate, appointed and paid by the Purchaser who, or each of whom:

- (a) Is in fact independent and not under the control of the Purchaser or the CIEDB;
- (b) Does not have any substantial interest, direct or indirect, in the Purchaser or the CIEDB; and
- (c) Is not connected with the Purchaser or the CIEDB as a member, officer or employee of the Purchaser, but who may be regularly retained to make reports to the Purchaser or the CIEDB.

“CIEDB Installment Payments” means the principal and interest payments to be made by the Purchaser to the CIEDB in payment of the Purchase Price hereunder.

“Interest Payment Date” means February 1 and August 1 of every year in which the Purchase Price remains unpaid.

“Maximum Annual Debt Service” means as of the date of calculation, the greatest total Debt Service payable in any Fiscal Year during which this Agreement is in effect.

“Net System Revenues” means, for any Fiscal Year, all System Revenues received by the Purchaser for such Fiscal Year less the Operations and Maintenance Costs for such Fiscal Year after payment of Senior Debt Service.

“Operations and Maintenance Costs” means the reasonable and necessary costs paid or incurred by the Purchaser for maintaining and operating the System, determined in accordance with generally accepted accounting principles, 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 administrative costs of the Purchaser 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 and licenses to operate the System and insurance premiums, and including all other reasonable and necessary costs of the Purchaser or charges required to be paid by it to comply with the terms hereof; but excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles.

“Parity Debt” means any loan, bond, note, advance, installment sale agreement, capital lease or other evidence of indebtedness payable from and secured by a lien on the Net System Revenues on a parity with the Installment Payments and Additional Payments, issued or incurred pursuant to and in accordance with the provisions of Section 2.08.

“Parity Debt Instrument” means any instrument evidencing Parity Debt.



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“Parity Debt Service” means, for any Fiscal Year, the sum of: (1) the principal and interest due and payable during such Fiscal Year for all outstanding Parity Debt, and (2) annual fees, if any, under Parity Debt.

“Project” means the public development facility to be constructed by Purchaser and described in Exhibit D.

“Project Funds” mean the moneys provided by the CIEDB to the Purchaser, as agent for the CIEDB, pursuant to this Agreement to purchase and/or construct the Facility for the CIEDB for sale to the Purchaser as set forth in Section 2.06.

“Proceeds Bonds” means bonds issued by the CIEDB the proceeds of which may be used, in whole or part, to fund the Facility.

“Purchase Price” means the principal amount plus the interest thereon owed by the Purchaser to the CIEDB under the conditions and terms hereof for the payment of the costs of the Facility and the incidental costs and expenses related thereto paid by the CIEDB.

“Purchaser” means the Coastside County Water District.

“Report” means a document in writing signed by an Independent Consultant or an Independent Accountant, and including:

(a) A statement that the person or firm making or giving such Report has read the pertinent provisions of this Agreement to which such Report relates;

(b) A brief statement as to the nature and scope of the examination or investigation upon which the Report is based; and

(c) A statement that, in the opinion of such person or firm, sufficient examination or investigation was made as is necessary to enable said consultant to express an informed opinion with respect to the subject matter referred to in the Report.

“Senior Debt” means the obligations evidenced by the Senior Debt Instruments and any additional loan, bond, note, advance, installment sale agreement, or other indebtedness or capital lease of the Purchaser payable from and secured by a first lien on the Net System Revenues which is senior to this Agreement and issued or incurred pursuant to and in accordance with the provision of Section 6.01.

“Senior Debt Instruments” mean, collectively, the Association of Bay Area Governments Installment Purchase Agreement and the California Statewide Communities Development Authority Installment Purchase Agreement and any additional loan, bond, note, advance, installment sale agreement, or other indebtedness or capital lease of the Purchaser payable from and secured by a lien on the Net System Revenues which are senior to this Agreement and issued or incurred pursuant to and in accordance with the provision of 6.01.

“Senior Debt Service” means, for any Fiscal Year, the amounts required to be paid pursuant to any Senior Debt Instrument.

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“Secured Bonds” means bonds of one or more series issued by the CIEDB to which certain rights of the CIEDB under this Agreement may be from time to time pledged directly or indirectly.

“State” means the State of California.

“Subordinate Debt” means any loan, bond, note, advance, installment sale agreement, or other indebtedness or capital lease of the Purchaser payable from and secured by a lien on Net Systems Revenues which is subordinate to the Agreement.

“Subordinate Debt Instruments” means any additional loan, bond, note, advance, installment sale agreement, or other indebtedness or capital lease of the Purchaser payable from and secured by a lien on the Net System Revenues which are subordinate to this Agreement.

“System” means all water enterprise system facilities owned by the Purchaser, and all other properties, structures or works hereafter acquired and constructed by the Purchaser 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 Net Revenues” see “Net System Revenues”.

“System Revenues” means, for each Fiscal Year, all gross income and revenue received or receivable by the Purchaser from the ownership or operation of the System, determined in accordance with generally accepted accounting principles, including all rates, fees and charges (including connection fees and charges) received by the Purchaser for the services of the System, and all other income and revenue howsoever derived by the Purchaser from the ownership or operation of the System or arising from the System, and also including all income from the deposit or investment of any money in the Enterprise Fund or any rate stabilization fund and the proceeds of any taxes, but excluding in all cases any refundable deposits made to establish credit, and advances or contributions in aid of construction.

“Tax Certificate” means the tax certificate in the form set forth in Exhibit G executed and delivered by the Purchaser as of the Effective Date and setting forth certain conditions, covenants, expectations and elections of the Purchaser with respect to the purchase in accordance with the Code.

**SECTION 1.02. Rules of Construction.**

Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa, and pronouns inferring the masculine gender shall include the feminine gender and vice versa. All references herein to particular articles or sections are references to articles or sections of this Agreement. The headings and Table of Contents herein are solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meanings, construction or effect.

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## ARTICLE II

## TERMS OF SALE

SECTION 2.01. Authorization.

The CIEDB hereby agrees to sell to the Purchaser and the Purchaser hereby agrees to purchase from the CIEDB the Facility under and subject to the terms of this Agreement. This Agreement constitutes a continuing agreement between the Purchaser and the CIEDB to secure the full and final payment of the Purchase Price, subject to the covenants, agreements, provisions and conditions herein contained.

SECTION 2.02. Design, Acquisition, Construction and Sale of the Facility.

The CIEDB hereby agrees to design, acquire and construct the Facility for, and to sell the Facility to, the Purchaser. In order to implement this provision, the CIEDB hereby appoints the Purchaser as its agent for the purpose of such design, acquisition and construction; and the Purchaser hereby agrees to enter into such engineering, design and construction contracts and purchase orders as may be necessary, as agent for the CIEDB, to provide the complete design, acquisition and construction of the Facility. The Purchaser hereby agrees that as such agent it will cause the acquisition and construction of the Facility to be diligently completed. The CIEDB hereby agrees to sell, and hereby sells, the Facility to the Purchaser. The Purchaser hereby agrees to purchase, and hereby purchases, the Facility from the CIEDB. Notwithstanding the foregoing, it is hereby expressly understood and agreed that the CIEDB shall be, except as expressly provided herein, under no liability of any kind or character whatsoever for the payment of any costs or expenses incurred by the Purchaser (whether as agent for the CIEDB or otherwise) for the engineering, design, acquisition or construction of the Project and that all such costs and expenses shall be paid by the Purchaser, regardless of whether Project Funds are sufficient to cover all such costs.

SECTION 2.03. Payment of Purchase Price; Term; Interest Rates.

(a) The Purchase Price to be paid by the Purchaser to the CIEDB hereunder is the sum of the principal amount of the Purchaser's obligation hereunder plus interest, subject to prepayment as provided in Section 2.05. Interest shall accrue on the entire principal balance, whether or not disbursed, as set forth in the amortization schedule of Exhibit E hereto.

(b) For purposes of this Agreement:

(1) The principal amount of the Purchase Price to be paid by the Purchaser to the CIEDB hereunder is six million seven hundred fifty-six thousand five hundred dollars (\$6,756,500).

(2) The term of this Agreement is thirty years from the Effective Date.

(3) The interest rate is two and 79/100 percent (2.79%) per annum.

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(c) Installment Payments of principal and interest shall be as set forth in the amortization schedule of Exhibit E hereto.

(1) The interest only period shall be in effect through \_\_\_\_\_ *[use date which is the date before the first principal payment date]*. The first principal payment shall be due \_\_\_\_\_ *[see amortization table]*.

(2) Interest only payments will be based upon the total principal component of the Purchase Price, including the amounts not disbursed, using an interest rate of 2.79% per annum.

(3) Purchaser shall receive a credit against interest owed based upon the actual interest earned by the CIEDB on the undisbursed Project Funds or the interest rate on the Agreement, whichever is lower.

(d) Commencing on the day following the end of the interest only period, the principal component of the Purchase Price shall be fully amortized over the remaining term of this Agreement. If any portion of the principal of the Purchase Price is prepaid in part pursuant to Section 2.05 hereof, the schedule of the principal payments shall be modified to reflect such partial prepayment.

(e) The obligation of the Purchaser to pay the Purchase Price by paying the Installment Payments and Additional Payments is, subject to Section 4.07, absolute and unconditional; and until such time as the Purchase Price shall have been paid in full (or provision for the payment thereof shall have been made as provided in Section 8.05), the Purchaser shall not discontinue or suspend any Installment Payments or Additional Payments required to be paid by it under this Agreement when due, whether or not the Project or any part thereof is operating or operable, or its use is suspended, interfered with, reduced, curtailed or terminated in whole or in part; and such 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 to any agreement for any cause whatsoever.

**SECTION 2.04. Disbursement of Project Funds; Additional Payments.**

(a) Project Funds shall be disbursed solely upon receipt by the CIEDB of invoices documenting, to the satisfaction of the CIEDB, that the Purchaser has incurred costs that constitute both reasonable and necessary components of the Project and which are consistent with the cost categories, amounts and requirements described in Exhibit D hereto; provided, however, that no disbursements shall be approved until and unless the Purchaser has complied with the conditions precedent to disbursement set forth in Exhibit C hereto.

(1) The disbursement of Project Funds shall be limited to costs paid by Purchaser that are eligible for reimbursement from ISRF Program financings and permitted by federal regulations pertaining to the reimbursement of costs from the proceeds of tax-exempt bonds ("Federal Tax Reimbursement Regulations"), as follows:

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A.) The following “preliminary costs”, subject to the aggregate amount limitation of the Federal Tax Reimbursement Regulations, notwithstanding when they were incurred or paid: costs of architectural, engineering, surveying, soil and environmental testing and reports, studies (including environmental impact, rate and feasibility studies), CEQA reports, the issuance of ISRF Program Bonds, and similar costs not including land acquisition, site preparation or similar costs incident to the commencement of construction.

B.) Costs of land acquisition, if any, and ISRF Program fees, to the extent paid within the time limits established by the Federal Tax Reimbursement Regulations.

C.) All other project costs to the extent paid on or after February 11, 2011, or such later date permitted by the Federal Tax Reimbursement Regulations.

(b) The total cumulative amount of such disbursements shall not exceed the total principal amount of the Purchase Price.

(c) Purchaser must both: (1) begin Project construction no later than six months after July 26, 2011; and (2) submit invoices to the CIEDB for the entire amount of the Project Funds no later than [add the date]. If the Purchaser fails to meet either of these conditions, the CIEDB may withhold any and all undisbursed Project Funds pursuant to Section 2.14 herein.

(d) Notwithstanding any contrary provisions of this Agreement or any related documents, under no circumstances will the CIEDB be obligated to make disbursements in excess of the lesser of (i) actual Project costs incurred in connection with the completion of the Project or (ii) \$6,756,500.

(e) Interest shall be calculated on the basis of a 360-day year of twelve 30-day months. Any installment of principal or interest that is not paid when due shall continue to accrue interest at the lesser of twelve percent (12%) per annum or the maximum rate permitted by law from and including the Interest Payment Date with respect to which such principal or interest is payable to but not including the date of actual payment.

(f) The Purchaser shall pay Additional Payments to the CIEDB as follows:

(1) A payment of the CIEDB Annual Fee on August 1 of each year during the term of this Agreement in an amount equal to three tenths of one percent (.3%) of the outstanding principal component of the remaining Installment Payments as set forth in Exhibit E; and

(2) Amounts in each year as shall be required by the CIEDB for the payment of extraordinary expenses of the CIEDB in connection with an Event of Default, the enforcement of this Agreement or any amendments hereto requested by the Purchaser, including

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all expenses, fees of accountants, trustees, attorneys, litigation costs, insurance premiums and all other extraordinary costs of the CIEDB. Extraordinary expenses and extraordinary costs are those expenses and costs related to this Agreement in excess of ordinary and customary expenses and costs incurred as part of the CIEDB Annual Fee pursuant to Section 2.04(f)(1). Such Additional Payments shall be billed by the CIEDB from time to time, together with a statement certifying that the amount so billed has been paid by, or will be paid by, the CIEDB for one or more of the items above described, or that such amount is then payable by the CIEDB for such items; and

(3) Purchaser shall deposit the CIEDB Annual Fee with the CIEDB not later than August 1 of each year and Purchaser shall pay to the CIEDB the amount billed pursuant to subsection (2) within thirty (30) days after mailing of the bill by the CIEDB. Any amounts not promptly paid shall accrue interest at the lesser of twelve percent (12%) per annum or the maximum rate permitted by law.

(g) A one-time sale origination fee in an amount equal to \$57,430 shall be due and payable by the Purchaser on or before the first disbursement.

(h) All payments hereunder shall be payable by the Purchaser in immediately available funds which constitute lawful money of the United States of America. Such payments shall be secured, and amounts for the payment thereof shall be deposited with the CIEDB as set forth in Article III.

(i) Upon receipt of a written request for disbursement, the CIEDB will disburse Project Funds to the Purchaser no more than once a month, in amounts of at least five thousand dollars (\$5,000) and only after specific compliance with Exhibit C conditions precedent and only after the Purchaser presents evidence that a Project cost has been incurred. All requests for payment shall be accompanied by information and documentation as may be required by the CIEDB to determine the amount of Project Funds to be disbursed. Any disbursement requests for costs of Purchaser employees shall include documentation, to the satisfaction of the CIEDB, that costs incurred are directly for the Project, are not billed to other sources, and are billed at hourly rates not to exceed Purchaser's actual costs of salary and benefits. In addition, all requests for payment shall be accompanied by a certification by the Purchaser that the Project Funds requested are for eligible costs, as defined in the Act, CIEDB guidelines and this Agreement, incurred in the amounts and for the purposes represented, and that the work or materials for which payment has been requested are satisfactory. The CIEDB will provide the Purchaser with a description of the documentation required for payment. Further, not more than ninety percent (90%) of each invoice payable from Project Funds designated for construction shall be disbursed until the CIEDB receives a recorded notice of completion for the Project or other evidence of completion satisfactory to the CIEDB and the Purchaser has met all conditions precedent to final disbursement set out in Exhibit C; provided however, if the Purchaser demonstrates to the satisfaction of the CIEDB that the Purchaser is obliged by law to make payments to certain construction contractors of one hundred percent (100%) of invoiced amounts or to establish a retention fund escrow pursuant to Public Contract Code section 22300 for final payment to certain contractors, so long as such requirement remains in full force and effect, and so long as no funds have been released thereunder, the CIEDB shall pay 100% of all invoices with the

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exception of an amount equal to 10% of the Purchase Price to be retained by CIEDB until all conditions for final disbursement as set forth in Exhibit C have been completed.

(j) Each disbursement request shall specify one or more of the following for costs included in the disbursement request:

(1) Purchaser previously paid the costs and is requesting reimbursement;

(2) Purchaser will pay the costs directly upon receipt of funds from the CIEDB; or

(3) CIEDB is requested to pay the disbursement directly to the party owed the funds instead of Purchaser.

**SECTION 2.05. Prepayment and Reduction in Project Funds.**

(a) Purchaser may at any time request CIEDB's approval for Purchaser to prepay all or a portion of the principal component of the Purchase Price. A request for reduction in the Project Funds is a request for a prepayment. The CIEDB shall promptly respond to any such request, and shall make every effort to accommodate the request, subject to the restrictions of the Secured Bonds.

(b) Notwithstanding subsection (a), Purchaser shall be authorized to prepay all or a portion of the principal amount of Purchase Price, as follows: (i) If the prepayment date is on or after ten years after the Effective Date but prior to eleven years after the Effective Date, the prepayment amount shall be either one hundred two percent (102%) of the outstanding principal amount or one hundred percent (100%) of the outstanding principal amount of the Secured Bonds scheduled to be called for redemption as a result of Purchaser's prepayment plus accrued interest on the Secured Bonds to be redeemed from such prepayment as of the date scheduled for redemption (the "Redemption Amount"), whichever is greater; (ii) if the prepayment date is on or after eleven years after the Effective Date but prior to twelve years after the Effective Date, the prepayment amount shall be either one hundred one percent (101%) of the outstanding principal amount or the Redemption Amount, whichever is greater; and (iii) if the prepayment date is on or after twelve years after the Effective Date, the prepayment amount shall be one hundred percent (100%) of the outstanding principal amount of the Redemption Amount, whichever is greater. Purchaser shall notify the CIEDB at least sixty (60) days prior to the date fixed for any prepayment made pursuant to this subsection (b).

(c) Notwithstanding the prepayment provisions of this section, the Purchaser may, on any date, provide for the legal defeasance of the amount outstanding hereunder by providing amounts sufficient to pay, in full, the Purchase Price and Additional Payments when due, until the dates set forth in subsection (b).

(d) The Purchaser hereby covenants to notify the CIEDB at least forty-five (45) days before making any repayment or prepayment of this Agreement.

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SECTION 2.06. Encumbrance of Project Funds. The CIEDB hereby encumbers the amount of \$6,756,500 as Project Funds.

SECTION 2.07. Reserved

SECTION 2.08. Parity Debt.

(a) The Purchaser may after the Effective Date issue or incur Parity Debt in such principal amount as shall be determined by the Purchaser subject to the requirements for additional obligations as set forth in all Parity Debt Instruments and the following specific conditions, which are hereby made conditions precedent to the issuance and delivery of such Parity Debt issued under this section, provided that to the extent that a Parity Debt Instrument conflicts with any of the requirements set forth in this Section 2.08, the more restrictive provision shall prevail:

(1) No Event of Default hereunder, under any other instrument secured by System Revenues shall have occurred and be continuing, and the Purchaser shall otherwise be in compliance with all covenants set forth in this Agreement; and

(2) Net System Revenues calculated on generally accepted accounting principles, and excluding any balances in any fund (other than the rate stabilization fund) at the beginning of the period of the computation, as shown by the books of the Purchaser for the latest Fiscal Year, or any more recent twelve month period selected by the Purchaser ending not more than sixty (60) days prior to the adoption of the resolution pursuant to which instrument such Parity Debt is issued or incurred, as shown by the books of the Purchaser, plus, at the option of the Purchaser, either or both of the items below designated in subsections (b)(1) and (b)(2), shall have amounted to at least 1.20 times the Maximum Annual Debt Service taking into consideration the maximum annual debt service payable in any Fiscal Year on the proposed Parity Debt, as set forth in the Report of an Independent Accountant or Independent Consultant delivered to the CIEDB.

(b) Either or both of the following items may be added to Net System Revenues for the purpose of applying the restriction contained in subsection (a)(2) above:

(1) An allowance for increased System Revenues from any additions to or improvements or extensions of the System to be made with the proceeds of such Parity Debt, and also for System Revenues from any such additions, improvements, or extensions which have been made from moneys from any source but which, during all or any part of such Fiscal Year or any more recent twelve month period, were not in service, all in an amount equal to ninety percent (90%) of the estimated additional average annual System Revenues to be derived from such additions, improvements, and extensions for the first thirty-six (36) month period following closing of the proposed Parity Debt, all as shown in the Report of an Independent Accountant or Independent Consultant delivered to the CIEDB; and/or

(2) An allowance for increased System Revenues arising from any increase in the charges made for service from the System which has become effective prior to the incurring of such Parity Debt but which, during all or any part of such Fiscal Year or any more



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recent twelve month period, was not in effect in an amount equal to one hundred percent (100%) of the amount by which System Revenues would have been increased if such increase to charges had been in effect during the whole of such time period and any period prior to the incurring of such Parity Debt, as shown in the Report of an Independent Accountant or Independent Consultant delivered to the CIEDB.

(c) For purposes of making the calculations set forth in subsection (a)(2):

(1) If any Parity Debt includes capital appreciation bonds, then the accreted value payment thereof shall be deemed a principal payment and interest that is compounded and paid as accreted value shall be deemed due on the scheduled redemption or payment date of such capital appreciation bond;

(2) If any Parity Debt includes interest payable pursuant to a variable interest rate formula, the variable interest rate portion of such Parity Debt for periods when the actual interest rate cannot yet be determined, shall be assumed to be the maximum interest rate under the Parity Debt.

(d) The Purchaser shall deliver to the CIEDB prior to the incurrence of such Parity Debt a copy of the proposed Parity Debt Instrument and Certificate of the Purchaser certifying that the conditions precedent to the issuance of such Parity Debt set forth in subsections (a) and (b) above have been satisfied and, as applicable, the Report required by subsections (a) and (b) above have been delivered.

SECTION 2.09. Reserved.

SECTION 2.10. Purchaser's Payment of Project Costs.

The Purchaser agrees to pay any and all costs connected with the Project, including, without limitation, any and all Project costs as defined in the Act exceeding the CIEDB approved amount, and the Purchaser shall not be relieved of its obligation even if the CIEDB reduces the Purchase Price pursuant to any provision hereunder.

SECTION 2.11. Validity of Agreement.

The validity of this Agreement shall not be dependent upon the completion of the Project or upon the performance by any person of his or her obligation with respect to the Project.

SECTION 2.12. Project Description.

The Project shall be known as the Denniston Creek Water Treatment Plant Improvements Project. The Project and Facility are more particularly described in Exhibit D hereto.

SECTION 2.13. Reasonable Cost of Eligible Project.

The reasonable cost of the eligible Project is estimated to be six million nine hundred ninety-seven thousand eight hundred eighty-four dollars (\$6,997,884) of which a portion (the

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Facility) valued at \$6,756,500 shall be purchased hereunder, and the remainder shall be financed as set forth in Exhibit D hereto.

**SECTION 2.14. Withholding of Project Funds.**

(a) The CIEDB may withhold all or any portion of the Project Funds in the event that:

(1) The Purchaser has substantially violated any of the terms, provisions, conditions or commitments of this Agreement, or if an Event of Default has occurred; or

(2) The Purchaser is unable to demonstrate, to the satisfaction of the CIEDB, the ability to complete the Project or to maintain adequate progress toward completion thereof.

(b) In the event that Project Funds are withheld from the Purchaser, the CIEDB shall notify the Purchaser of the reasons and advise the Purchaser that the Purchaser has thirty (30) days in which to remedy the failure or violation.

(c) If Project Funds are withheld pursuant to this section, the Purchaser remains obligated to repay the entire amount of the Purchase Price but to the extent applicable, the Purchaser may request that the withheld amount be applied as a prepayment pursuant to Section 2.05.

**SECTION 2.15. Reserved.**

**ARTICLE III**

**PLEDGE OF REVENUES; APPLICATION OF FUNDS**

**SECTION 3.01. Pledge of Net System Revenues.**

The Installment Payments and Additional Payments and all Parity Debt shall be equally secured by a pledge of and lien on all of the Net System Revenues and all amounts in the Enterprise Fund, without preference or priority for series, issue, number, dated date, sale date, date of execution or date of delivery, subject and subordinate solely to the Senior Debt. The Net System Revenues and all amounts in the Enterprise Fund are hereby pledged in their entirety to the payment of Installment Payments and Additional Payments. The Net System 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 Purchaser.

Neither the Installment Payments, the Additional Payments nor this Agreement is a debt of the CIEDB, the State or any of its political subdivisions (other than the Purchaser) and neither the CIEDB, the State nor any of its political subdivisions (other than the Purchaser) is liable thereon, nor in any event shall the Installment Payments or the Additional Payments be payable

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out of any funds or properties other than Net System Revenues of the Purchaser as provided herein.

SECTION 3.02. Enterprise Fund; Payments. In order to carry out its obligation to pay the Installment Payments and Additional Payments, the Purchaser agrees and covenants that it shall maintain the Enterprise Fund. All System Revenues received by it shall be deposited when and as received in trust in the Enterprise Fund and shall be applied and used only as provided herein: the Purchaser shall pay all Operations and Maintenance Costs (including amounts reasonably required to be set aside in contingency reserves for Operations and Maintenance Costs the payment of which is not then immediately required) from the Enterprise Fund as they become due and payable, and all remaining money on deposit in the Enterprise Fund shall then be used to pay Senior Debt as a first priority and then, Section 3.03 amounts. After making all the set asides and payments hereinabove required to be made in each Fiscal Year, the Purchaser may expend in such Fiscal Year any remaining money in the Enterprise Fund for any lawful purpose of the Purchaser. The Purchaser agrees and covenants to maintain the Enterprise Fund so long as any portion of the Purchase Price remains unpaid.

SECTION 3.03. Amounts Payable from the Enterprise Fund. The Purchaser shall promptly pay to the CIEDB the following amounts at the following times:

(a) CIEDB Payments.

(1) The principal portion of the Installment Payments is due at the CIEDB by August 1 of each year, as set forth on the Exhibit E amortization schedule. The interest portions of Installment Payments are due at the CIEDB by each Interest Payment Date.

(2) Additional Payments.

The Purchaser shall promptly pay to the CIEDB Additional Payments due pursuant to Section 2.04 (f).

(b) Parity Debt.

The Purchaser shall promptly pay to the holder of any Parity Debt the amount of Parity Debt Service as that amount becomes due and payable on Parity Debt and any amounts needed to replenish reserve accounts established for the Parity Debt.

SECTION 3.04. Commingling of Accounts. The CIEDB may commingle any amounts in any of the funds and accounts held hereunder with any other amounts held by the CIEDB for purposes of making any deposit or investment, provided that the CIEDB shall maintain separate accounting procedures for the investment of all funds held hereunder. The value of investments credited to such fund shall be calculated at the cost thereof (excluding accrued interest).

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## ARTICLE IV

## REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

SECTION 4.01. Organization; Authority.

The Purchaser is duly organized and existing as a municipal corporation under the laws of the State and has all necessary power and authority to enter into and perform its duties (including the authority to set rents, rates and charges and to pledge the Net System Revenues) under this Agreement.

SECTION 4.02. Agreement Valid and Binding.

This Agreement has been duly authorized, executed and delivered by the Purchaser and constitutes the legal, valid and binding obligation of the Purchaser, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally.

SECTION 4.03. No Conflict in Execution of Agreement.

The execution and delivery by the Purchaser of this Agreement and compliance with the provisions hereof will not conflict with or constitute a breach of or default under any law, administrative regulation, court decree, resolution, charter, by-law or any agreement to which the Purchaser is subject or by which it is bound or by which its properties may be affected.

SECTION 4.04. No Litigation. There is no action, suit, proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or threatened against the Purchaser to restrain or enjoin the execution or delivery of this Agreement, or in any way contesting or affecting the validity of this Agreement, or contesting the powers of the Purchaser to enter into or perform its obligations under this Agreement, including the pledge of Net System Revenues.

SECTION 4.05. No Breach or Default. The Purchaser is not in breach of or in default under any applicable law or administrative regulation of the State or the United States, the Constitution of the State (including article XVI, section 18 thereof), any applicable judgment or decree, any agreement, indenture, bond, note, resolution, agreement or other instrument to which the Purchaser is a party or is otherwise subject which would have a material adverse impact on the Purchaser's ability to perform its obligations under this Agreement and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument.

SECTION 4.06. No Consent, Approval or Permission Necessary. No consent or approval of any trustee or holder of any indebtedness of the Purchaser, and no consent, permission, authorization, order or licenses of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Agreement or the

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consummation of any transaction contemplated herein, except as have been obtained or made and as are in full force and effect.

SECTION 4.07. Pledged Funds; Limited Obligation. The Purchaser expects that in each Fiscal Year Net System Revenues will equal or exceed the current Fiscal Year's payments due under this Agreement, and such payments will be treated as paid from current Net System Revenues. The Purchaser shall have no obligation to use any funds other than the Net System Revenues, directly or indirectly, to pay principal of or interest on the Purchase Price and Additional Payments; nor are any funds other than the Net System Revenues so pledged as security for the payment of the Installment Payments and Additional Payments.

SECTION 4.08. Pledge and Lien. The pledge of the Net System Revenues and amounts in the Enterprise Fund constitute a valid pledge of and a lien on all of the Net System Revenues, subject only to the prior lien of the Senior Debt.

SECTION 4.09. Information Submitted to the CIEDB. The information relating to the Purchaser and its System submitted by the Purchaser to the CIEDB, including, but not limited to, all information in the application for Project Funds was true at the time submitted to CIEDB and, as of the Effective Date, remains true and correct in all material respects; and such information did not and does not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made.

SECTION 4.10. Financial Statements of the Purchaser. The Purchaser's financial statements furnished to the CIEDB have been prepared in conformity with generally accepted accounting principles and fairly present in all material respects the financial condition of the Purchaser as of the date thereof and the results of its operations for the period covered thereby. There has been no material adverse change in the business, condition (financial or otherwise) or operations of the Purchaser since the date of such financial statements.

SECTION 4.11. Notification to the CIEDB. The Purchaser agrees to notify the CIEDB, immediately, by telephone promptly confirmed in writing, if any representation made herein shall at any time so long as the Agreement is outstanding prove untrue or incorrect in any manner.

SECTION 4.12. Licenses, Permits and Approvals for Operation of System. The Purchaser has obtained or will obtain all licenses, permits and approvals from any governmental agency or authority having jurisdiction over the Purchaser now required for the operation of the System and will obtain all licenses, permits and approvals as required in the future.

SECTION 4.13. Project Completion.

(a) The Project consists and will consist of the facilities described in Exhibit D and the Purchaser shall make no changes thereto or to the operation thereof which would affect the qualification of the Project as a "public development facility" within the meaning of the Act or the qualifications of the Project for tax-exempt financing under the Code.

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(b) The Purchaser, upon completion of the Project, will have good and valid title to the Project sufficient to carry out the purposes of this Agreement.

(c) The Purchaser intends to utilize the Project or cause the Project to be utilized as a “public development facility” within the meaning of the Act.

(d) The Project will be located wholly within the corporate limits of the Purchaser.

(e) To the best of the Purchaser’s knowledge no officer or official of the CIEDB has any material interest whatsoever in the Project or in the transactions contemplated by this Agreement.

(f) All applicable local governmental agency, State and federal government certificates, approvals, permits and authorizations with respect to the construction of the Project have been obtained or will be obtained as soon as practicable.

**SECTION 4.14. Existing Obligations.**

As of the Effective Date the only debt obligations (other than this Agreement) are the Association of Bay Area Governments Installment Purchase Agreement secured by a pledge of System Revenues and the California Statewide Communities Development Authority Installment Purchase Agreement both of which are secured by a lien on Net System Revenues.

**ARTICLE IV**

**AFFIRMATIVE COVENANTS OF THE PURCHASER**

**SECTION 5.01. Punctual Payment.** The Purchaser will punctually pay, or cause to be paid, all payments required hereunder in strict conformity with the terms of this Agreement, and it will faithfully observe and perform all of the conditions, covenants and requirements of this Agreement.

**SECTION 5.02. Payment of Claims.** The Purchaser from time to time will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies, which, if unpaid, might become liens or charges upon the properties owned by the Purchaser, including the System, or upon the System Revenues or any part thereof, or upon any funds in the hands of the CIEDB, or which might impair the security for the payment of the Installment Payments or Additional Payments. Nothing herein contained shall require the Purchaser to make any such payment so long as the Purchaser in good faith shall contest the validity of said claims.

**SECTION 5.03. Books and Accounts; Financial Statements.**

(a) The Purchaser will keep proper books of record and accounts in which complete and correct entries shall be made of all transactions relating to the System Revenues. Such books of record and accounts shall at all times during business hours be subject to the inspection of the CIEDB or its designee.

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To the extent that any continuing disclosure certificates provide the information required in subsections (b) through (e), the Purchaser may submit a copy of the continuing disclosure certificate instead of providing separate statements setting forth the required information.

(b) The Purchaser will prepare and file with the CIEDB annually as soon as practicable, but in any event not later than two hundred ten (210) days after the close of each Fiscal Year, so long as this Agreement has not been discharged by the CIEDB, an audited financial statement of the Purchaser relating to the System Revenues and Enterprise Fund for the preceding Fiscal Year, prepared by an Independent Accountant; provided, however, that in the event that such audited financial statement is not available by the above-referenced filing date, an unaudited financial statement may be substituted therefore. In the event an unaudited financial statement is submitted, the Purchaser shall file the audited financial statement with the CIEDB as soon as it becomes available. The Purchaser will furnish to the CIEDB such reasonable number of copies of such audited financial statements as may be required by the CIEDB for distribution (at the expense of the Purchaser).

(c) Simultaneously with the delivery of the annual financial statements, the Purchaser will deliver to the CIEDB a Certificate of the Purchaser stating the following:

- (1) The number of System users as of the end of the Fiscal Year;
- (2) Calculation of the coverage ratios described in Section 5.06 and a certification that adopted rates and charges comply with the requirements of that section;
- (3) Notification of the withdrawal of any System user generating four percent (4%) or more of System Revenues since the last reporting date;
- (4) Any significant System facility retirements or expansions planned or undertaken since the last reporting date;
- (5) Notification of any Parity Debt or Subordinate Debt incurred since the last reporting date and certification that there has been no default or noncompliance under any obligation secured by System Revenues;
- (6) Certification that no Event of Default has occurred and no event has occurred which, with the passing of time or the giving of notice or of both, would constitute an Event of Default;
- (7) Certification that the Purchaser is in compliance with the Tax Certificate, as set forth in Exhibit G, as well as the Tax Covenant set forth in Section 5.07;
- (8) Notification of any other event or circumstance that would materially affect completion of the Project and/or payment of the Purchase Price; and
- (9) Such other information as may be reasonably required.

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(d) The Purchaser shall, upon request, furnish to the CIEDB, in a format provided by the CIEDB, information concerning employment and other public benefits connected to the Project.

(e) The Purchaser shall notify the CIEDB forthwith upon the filing of a stop notice, litigation or any other legal proceeding which may impact the completion of the Project.

SECTION 5.04. Protection of Security and Rights. The Purchaser will preserve and protect the security for payment of the Installment Payments, Additional Payments and the rights of the CIEDB. From and after the Effective Date, the Agreement shall be incontestable by the Purchaser.

SECTION 5.05. Payments of Taxes and Other Charges. The Purchaser will pay and discharge, or cause to be paid and discharged, all taxes, service charges, assessments and other governmental charges, or charges in lieu thereof, which may hereafter be lawfully imposed upon the Purchaser, the System or the System Revenue when the same shall become due. Nothing herein contained shall require the Purchaser to make any such payment so long as the Purchaser in good faith shall contest the validity of said taxes, assessments or charges. The Purchaser will duly observe and conform to all valid requirements of any governmental authority relative to the System or any part thereof.

SECTION 5.06. Maintenance of System Revenues.

(a) The Purchaser will fix, charge and collect, or cause to be fixed, charged and collected, in each Fiscal Year, such rates and charges for the use of and for the service furnished by the System so that Net System Revenues are in an amount which will be sufficient to be at least equal to one hundred twenty percent (120%) of annual Debt Service for such fiscal year.

(b) If for any reason Net System Revenues prove insufficient to comply with the requirements of subsection (a), the Purchaser agrees to increase System Revenues through increased rents, rates, fees, charges, and/or assessments not later than one hundred eighty (180) days following the date on which Net System Revenues fail to meet those requirements. The Purchaser may make adjustments from time to time in such rents, rates, fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rents, rates, fees, and charges then in effect unless the Net System Revenues from such reduced rents, rates, fees and charges will at all times be sufficient to meet the requirements of this section.

SECTION 5.07. Tax Covenant. The Purchaser recognizes that the Project Funds may consist of proceeds of a tax-exempt financing program. In order to maintain the tax-exempt status of the financing, the Purchaser will not take any action, or fail to take any action, if such action or failure to take such action would adversely affect the exclusion from gross income of the interest on the Proceeds Bonds, and the Purchaser specifically agrees to comply with all terms and conditions contained in the Tax Certificate and to provide annual certification of its compliance with the Tax Certificate.



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The provisions of this Section 5.07 shall survive the discharge of the Purchaser's obligations hereunder and shall apply to any trustee or other successor or assignee described in Section 8.02.

SECTION 5.08. Operation of System. The Purchaser will, so long as any portion of the Purchase Price is unpaid, maintain and operate the System in good condition, repair and working order, and will operate the System in an efficient and economical manner, and will pay all Operations and Maintenance Costs as they become due and payable. The Purchaser shall ensure that all activities undertaken by the Purchaser with respect to the operation of the System are undertaken and accomplished in conformity with all applicable requirements of law.

SECTION 5.09. Assumption of Agreement. The obligations of the Purchaser under this Agreement may not be assumed by another entity except in connection with a transfer of the entire System by the Purchaser and only upon prior written approval of the CIEDB and receipt by the CIEDB of:

(1) an opinion of counsel experienced in matters relating to the tax-exempt status of interest on any obligations secured by this Agreement, and approved by the CIEDB, to the effect that such transfer would not cause interest on the obligations to be included in gross income for federal income tax purposes;

(2) a Report signed by an Independent Consultant or Independent Certified Accountant concluding that such transfer would not materially adversely affect the security for the Installment Payments, Additional Payments or the rights of the CIEDB; and

(3) evidence satisfactory to the CIEDB that the entity assuming the Purchaser's obligation hereunder is eligible pursuant to the Act.

SECTION 5.10. Completion of Project; Construction Contracts.

(a) The Purchaser shall ensure that all activities undertaken with respect to the completion of the Project are undertaken and accomplished with due diligence and in conformity with all requirements of the Act and other applicable law.

(b) All construction contracts and subcontracts necessary for the Project construction have been awarded, and were awarded pursuant to competitive bidding and Purchaser procedures normally required for similar construction projects.

(c) The Purchaser shall notify the CIEDB forthwith upon the filing of a stop notice, litigation or any other legal proceeding which may impact the completion of the Project.

SECTION 5.11. Proceeds Bonds.

Purchaser understands and agrees that CIEDB intends to issue Proceeds Bonds subsequent to the Effective Date of this Agreement, and that one requirement of the Proceeds Bonds will be the reissuance of an agreement to take the place of this Agreement. So long as the terms of the subsequent agreement are substantially identical to this Agreement, Purchaser agrees to execute the new documents and provide related certifications in a timely manner.

**DRAFT****SECTION 5.12. Further Assurances.**

The Purchaser will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably required by the CIEDB as necessary or proper to carry out the intention or to facilitate the performance of this Agreement and for the better assuring and confirming unto the CIEDB of the rights and benefits provided in this Agreement.

**SECTION 5.13. Agreement to Complete.**

(a) The Purchaser agrees that it will acquire, construct or install the Project, and construct, acquire and install other facilities and real and personal property deemed by the Purchaser necessary for the operation of the Project. The Purchaser may supplement or amend the Project description with written approval from the CIEDB from time to time, provided that no such supplement or amendment shall cause the Project or any portion thereof to fail to constitute a “project” within the meaning of the Act.

(b) At any time, upon request of the CIEDB, the Purchaser agrees to make available to the CIEDB for review and copying all then current plans and specifications for the Project. The Purchaser may identify any proprietary information in such plans and specifications and, to the extent legally permissible, the CIEDB agrees to keep such information confidential.

(c) As soon as the Project is completed, the Purchaser shall evidence such completion by providing a certificate to the CIEDB stating that (i) construction of the Project has been completed substantially in accordance with the final plans and specifications therefor and all labor, services, materials and supplies used in construction have been paid for, and (ii) all other facilities necessary in connection with the Project have been constructed, acquired and installed in accordance with the final plans and specifications therefor and all costs and expenses incurred in connection therewith have been paid. Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights of the Purchaser against third parties for the payment of any amount not then due and payable which exist at the date of such certificate or which may subsequently exist.

**SECTION 5.14. Collection of Rates, Fees and Charges.** The Purchaser will have in effect at all times rules and regulations requiring each user of the System to pay the rates, fees and charges applicable to the services provided by the System to each user. The Purchaser will not permit any part of the System or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, or by any public agency (including the United States of America, the State and any city, county, district, political subdivision, public corporation or agency of any thereof); provided, that the Purchaser may without charge use the services provided by the System.

**SECTION 5.15. Purchaser’s General Responsibility.** The Purchaser is solely responsible for the design, construction, operation and maintenance of the Project. Any review or approval of plans, specifications, bid documents or other construction documents by the CIEDB is solely for the purpose of proper administration of Project Funds by the CIEDB and

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shall not be deemed to relieve or restrict the Purchaser's responsibility or result in any duty, obligation or responsibility on the part of the CIEDB or the officers and agents thereof.

**SECTION 5.16. Purchaser's Assurances and Commitments.****(a) Compliance with Laws and Regulations.**

The Purchaser shall at all times comply and require its contractors and subcontractors to comply with all applicable federal and State laws, rules and regulations, and all applicable local ordinances, specifically including, but not limited to, prevailing wage, environmental, procurement and safety laws, rules, regulations, and ordinances. Purchaser agrees that its failure to act in accordance with the provisions of this subsection (a) will not result in any duty, obligation or responsibility on the part of the CIEDB or the officers and agents thereof.

**(b) Archeological or Historical Resources.**

Should a potential archeological or historical resource be discovered during construction, the Purchaser agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and the Purchaser has determined appropriate actions regarding preservation of the resource.

**(c) Construction Activities.**

The Purchaser shall assure that adequate supervision and inspection of Project construction activities are maintained. The CIEDB reserves the right to conduct an audit of Purchaser's construction expenditures during construction and for up to three years following receipt by CIEDB of notice of completion or other evidence of completion satisfactory to CIEDB. The CIEDB, at its discretion, may require the Purchaser to conduct an interim and/or a final audit at the Purchaser's expense, such audit to be conducted by and a report prepared by an Independent Accountant.

**SECTION 5.17. Project Access.** The Purchaser shall assure that the CIEDB or its designee will have suitable access to the Project site at all reasonable times so long as the Purchase Price remains unpaid and shall include provisions assuring such access in all contracts and subcontracts relating to the Project.

**SECTION 5.18. Operation and Maintenance of the Project.** The Purchaser agrees to commence operation of the Project upon completion of construction. The Purchaser covenants and agrees that it will operate and maintain the Project in accordance with all governmental laws, ordinances, approvals, rules, regulations and requirements including, without limitation, such zoning, sanitary, pollution and safety ordinances and laws and such rules and regulations thereunder as may be binding upon the Purchaser. The Purchaser further covenants and agrees that it will maintain and operate the Project and will maintain and operate the same, now or hereafter at any time constituting part of the Project, in good repair, working order and condition, and that it will from time to time make or cause to be made all needful and proper replacements, repairs, renewals and improvements, in each case to the extent necessary so that the efficiency and value of the Project shall not be impaired.

**DRAFT****SECTION 5.19. Performance and Payment Bonds.**

(a) The Purchaser shall require its contractor to certify under penalty of perjury, and provide the Purchaser with a copy of such certification, which shall be available for the CIEDB's inspection if requested, that it has obtained a bond or bonds by one or more authorized surety companies satisfactory to the Purchaser has been obtained; surety companies must be authorized to do business in California and have an agent for service of process in California. The Purchaser shall require that the Purchaser be named as loss payee and additional insured on the performance and payment bonds required herein and shall provide the CIEDB with a copy of the bonds to that effect unless specifically waived by CIEDB.

(b) Said bond shall be in the amounts and for the following purposes: (i) an amount not less than one hundred percent (100%) of the total estimated cost of the Project construction contract amount conditioned upon the faithful performance of the terms of the construction contract, including the maintenance of the work for a period of one year from the date of final acceptance of work or improvements by the Purchaser against any defective work or labor done, or defective materials furnished, and (ii) an additional amount not less than one hundred percent (100%) of the estimated cost of the Project securing payment to the subcontractors and to persons renting equipment or furnishing labor or materials to them for the Project.

**SECTION 5.20. Continuing Disclosure.** Upon the request of the CIEDB, the Purchaser covenants to furnish certain financial and operating data pertaining to the Purchaser that may be required to either: (i) enable the CIEDB to issue any Secured Bonds; or (ii) enable any underwriter of any Secured Bonds to comply with Rule 15c2-12(b)(5) of the Securities and Exchange Commission.

**SECTION 5.21. Notice of Event of Default.** The Purchaser covenants that it will deliver to the CIEDB, immediately after the Purchaser shall have obtained knowledge of the occurrence of an Event of Default or a failure as described in Section 7.01(a)(2), the written statement of an authorized officer of the Purchaser setting forth the details of such Event of Default or failure and the action which the Purchaser proposes to take with respect thereto.

**SECTION 5.22. Maintenance of Insurance.** The Purchaser will procure and maintain or cause to be maintained insurance on the System with responsible insurers, or as part of a reasonable system of self-insurance, in such amounts and against such risks (including damage to or destruction of the System) as are usually covered in connection with systems similar to the System. The Purchaser shall annually provide a Certificate of the Purchaser to the CIEDB certifying that such insurance is in effect. 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 Purchaser shall begin such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the System shall be free and clear of all claims and liens. If such net proceeds are sufficient to enable the Purchaser to pay all remaining unpaid Installment Payments and Additional Payments, the Purchaser may elect not to reconstruct, repair or replace the damaged or destroyed portion of the System, and

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thereupon such net proceeds shall be applied to the prepayment of Installment Payments and Additional Payments as provided herein.

SECTION 5.23. Compliance with State Contract Requirements. The Purchaser shall comply with all provisions contained in Exhibit F so long as any portion of the Purchase Price is unpaid.

SECTION 5.24. Compliance with Contracts. The Purchaser will comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in all contracts for the use of the System and all other contracts affecting or involving the System to the extent that the Purchaser is a party thereto.

## ARTICLE VI

## NEGATIVE COVENANTS OF THE PURCHASER

SECTION 6.01. Limitation on Additional Obligations; No New Senior Debt. The Purchaser hereby covenants that, until the Purchase Price has been paid in full and this Agreement has been discharged pursuant to Section 8.05, the Purchaser shall not after the date of this Agreement issue any bonds, notes or other obligations, enter into any agreement or otherwise incur any loans, advances or obligations, which are in any case secured by a lien on all or any part of Net System Revenues that is senior to or on a parity with the lien established hereunder for the security for the payment of the Installment Payments and Additional Payments, excepting only Parity Debt meeting the requirements of Section 2.08 herein.

SECTION 6.02. Disposition of Property. The Purchaser will not authorize the disposition of real or personal property constituting more than ten percent (10%) of the value of the System unless the Purchaser first obtains a Report, and provides a copy to the CIEDB, of an Independent Consultant concluding that such disposition will not substantially adversely affect the security for the payment of the Installment Payments and Additional Payments. The Purchaser shall not dispose of any portion of the Project while the Purchase Price is unpaid except for property that is not operating or is worn out and for the dedication of public streets and public and private utility easements.

SECTION 6.03. Nondiscrimination.

(a) During the performance of this Agreement, the Purchaser, any contractor and its subcontractors shall not deny the contracts' benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age or sex. The Purchaser, any contractor and its subcontractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

(b) The Purchaser, any contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.),

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the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any regulations promulgated thereunder.

(c) The Purchaser, any contractor and its subcontractors shall not knowingly give preferential treatment of any kind whatsoever in connection with any business transaction related to the construction or operation of the Project to any of its affiliates or to any business enterprise in which Purchaser has any financial interest, but in such business transactions shall deal at all times with such affiliates and enterprises on the same basis as though Purchaser were dealing with any other parties.

(d) The Purchaser, any contractor and its subcontractors shall, with respect to the Project described herein, give written notice of their obligations under this section to labor organizations representing employees of the Purchaser and any contractor or subcontractor performing construction on the Project which have a collective bargaining or other contract with the Purchaser, such contractor or subcontractor.

(e) The Purchaser, any contractor and its subcontractors shall include provisions meeting the requirements of this section in all subcontracts to perform work under this Agreement or any contract contemplated hereby.

**ARTICLE VII****EVENTS OF DEFAULT AND REMEDIES****SECTION 7.01. Events of Default and Acceleration.**

(a) Each of the following events shall constitute an Event of Default hereunder:

(1) Failure by the Purchaser to pay any Installment Payment or interest or prepayment premium (if any) or any Additional Payment pursuant to Section 3.03(a) when and as the same shall become due and payable;

(2) Failure by the Purchaser to observe and perform any of the covenants, agreements or conditions on its part contained in this Agreement, other than as referred to in the preceding subsection (1), for a period of sixty (60) days after written notice has been given to the Purchaser by the CIEDB, or to the Purchaser and the CIEDB, specifying such failure and requesting that such failure be remedied; provided, however, that if the failure stated in such notice can be corrected, but not within such sixty (60) day period, the CIEDB may consent to an extension of such time if corrective action is instituted by the Purchaser within such sixty (60) day period and diligently pursued until such failure is corrected;

(3) The filing by the Purchaser of a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the Purchaser, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or if, under the

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provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Purchaser or of the whole or any substantial part of its property;

(4) Any representation or other written statement made by the Purchaser contained in this Agreement, the application for financing or in any instrument furnished in compliance with or in reference thereto shall prove to have been incorrect in any material respect;

(5) An unexcused failure by the Purchaser to pay amounts due under any bond, note, installment sale agreement, capital lease or other agreement or instrument to which it is a party relating to the borrowing of money, if such unpaid amount shall exceed fifty thousand dollars (\$50,000); or

(6) The occurrence of an event of default with respect to any Senior Debt, any Parity Debt, or any Subordinate Debt which causes all principal of such Senior Debt, Parity Debt, or Subordinate Debt to become due and payable immediately.

(b) If an Event of Default has occurred and is continuing, the CIEDB may (i) declare the principal of the Purchase Price, together with the accrued interest on all unpaid installments thereof, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything in this Agreement to the contrary notwithstanding, and (ii) exercise any other remedies available to the CIEDB in law or at equity. Immediately upon becoming aware of the occurrence of an Event of Default, the CIEDB shall give notice of such Event of Default to the Purchaser by telephone, telecopier, facsimile or other telecommunication device, promptly confirmed in writing. This provision, however, is subject to the condition that if, at any time after the principal of the Purchase Price shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the Purchaser shall deposit with the CIEDB a sum sufficient to pay all installments of principal of the Purchase Price due prior to such declaration and all accrued interest thereon, with interest on such overdue Installment Payments at the rate of the lesser of twelve percent (12%) per annum or the maximum rate permitted by law, and the reasonable expenses of the CIEDB (including but not limited to attorneys fees and costs), and any and all other defaults known to the CIEDB (other than in the payment of principal of and interest on the Purchase Price due and payable solely by reason of such declaration), including the payment of Additional Payments due and owing, shall have been made good or cured to the satisfaction of the CIEDB or provision deemed by the CIEDB to be adequate shall have been made therefor, then, and in every such case, the CIEDB may, by written notice to the Purchaser, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

SECTION 7.02. Remedies. Upon the occurrence of an Event of Default the CIEDB shall have the following rights, in addition to its rights under Section 7.01:

(a) By mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the Purchaser or any member, officer or employee thereof, and to

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compel the Purchaser or any such member, officer or employee to perform and carry out its or his duties under law and the agreements and covenants required to be performed by it or him contained herein;

(b) By suit in equity to enjoin any acts or things which are unlawful or violate the rights of the CIEDB; or

(c) By suit in equity to require the Purchasers and its members, officers and employees to account as the trustee of an express trust.

SECTION 7.03. Application of Funds upon Default. All amounts received by the CIEDB pursuant to any right given or action taken by the CIEDB under provisions of this Agreement, or otherwise held by the CIEDB upon the occurrence of an Event of Default, shall be applied by the CIEDB in the following order:

(a) First, to the payment of the costs and expenses of the CIEDB, including reasonable compensation to their agents and attorneys, including CIEDB employees, as set forth in Section 2.04(f)(2); and

(b) Second, to the payment of the whole amount of Installment Payments then due and unpaid, with interest on overdue Installment Payments at the rate of the lesser of twelve percent (12%) per annum or the maximum rate permitted by law; provided, however, that in the event such amounts shall be insufficient to pay in full the amount of such Installment Payments, then such amounts shall be applied in the following order of priority:

(1) First, to the payment of all installments of interest on the Purchase Price then due and unpaid, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full;

(2) Second, to the payment of principal of all installments of the Purchase Price then due and unpaid, other than principal having come due and payable solely by reason of acceleration pursuant to Section 7.01, on a pro rata basis in the event that the available amounts are insufficient to pay all such principal in full;

(3) Third, to the payment of principal of the Purchase Price then due and unpaid and having come due and payable solely by reason of acceleration pursuant to Section 7.01, on a pro rata basis in the event that the available amounts are insufficient to pay all such principal in full; and

(c) Third, to the payment to the CIEDB of other Additional Payments as described in Section 2.04(f)(1).

SECTION 7.04. No Waiver. Nothing in this Article VII or in any other provision of this Agreement shall affect or impair the obligation of the Purchaser, which is absolute and unconditional, to pay from the Net System Revenues and other amounts pledged hereunder, all payments due hereunder, or affect or impair the right of action, which is also absolute and unconditional, of the CIEDB to institute suit to enforce such payment by virtue of the contract embodied in this Agreement.



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A waiver of any default by the CIEDB shall not affect any subsequent default or impair any rights or remedies on the subsequent default. No delay or omission of the CIEDB to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy conferred upon the CIEDB by this Article VII may be enforced and exercised from time to time and as often as shall be deemed expedient by the CIEDB.

If a suit, action or proceeding to enforce any right or exercise any remedy shall be abandoned or determined adversely to the CIEDB, the Purchaser and the CIEDB shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

SECTION 7.05. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the CIEDB is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by law.

## ARTICLE VIII

## MISCELLANEOUS

SECTION 8.01. Venue. The CIEDB and the Purchaser 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 8.02. Assignment. This Agreement may, at the CIEDB's discretion, be assigned by the CIEDB to a trustee or any other party for the purpose of securing the payment of any bonds, notes or other obligations issued by the CIEDB and secured by this Agreement and the Installment Payments and Additional Payments; and the Purchaser hereby consents to such assignment.

SECTION 8.03. Benefits Limited to Parties. Nothing in this Agreement, expressed or implied, is intended to give to any person other than the Purchaser, the CIEDB and any trustee for the Proceeds Bonds or Secured Bonds, any right, remedy or claim under or by reason of this Agreement. All covenants, stipulations, promises or agreements contained in this Agreement by and on behalf of the Purchaser shall be for the sole and exclusive benefit of the CIEDB.

SECTION 8.04. Successor. Whenever in this Agreement either the Purchaser or the CIEDB is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the Purchaser or the CIEDB shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not. The trustee for the Proceeds Bonds will be the CIEDB's initial assignee.

SECTION 8.05. Discharge of Agreement.

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(a) If the Purchaser shall pay and discharge the entire indebtedness hereunder by paying or causing to be paid the principal of, interest and prepayment premium (if any) on the Purchase Price and Additional Payments, as and when the same become due and payable, then, at the election of the Purchaser, but only if all other amounts then due and payable hereunder shall have been paid or provision for their payment made, the pledge of and lien upon the Net System Revenues and other funds provided for in this Agreement and all other obligations of the CIEDB and the Purchaser under this Agreement with respect to the Purchase Price shall cease and terminate, except only (i) the obligation of the Purchaser to pay or cause to be paid to the CIEDB, from the amounts so deposited with the CIEDB or such other fiduciary, all sums due with respect to this Agreement and all expenses and costs of the CIEDB, and (ii) the obligations of the Purchaser under Sections 5.07, 8.01 and 8.12. Notice of such election shall be filed with the CIEDB.

(b) All or any portion of unpaid principal installments of the Purchase Price shall, prior to their payment dates or dates of prepayment, be deemed to have been paid within the meaning of and with the effect expressed in this section (except that the Purchaser shall remain liable for such Purchase Price payment, but only out of such money or securities deposited with the trustee or other fiscal agent approved by the CIEDB for such payment), if (i) there shall have been deposited with the trustee or other fiscal agent approved by the CIEDB either money in an amount which shall be sufficient, or federal securities (as defined below) which are not subject to redemption prior to maturity except by the holder thereof (including any such federal securities issued or held in book entry form) or tax-exempt obligations of a state or a political subdivision thereof which have been defeased under irrevocable escrow instructions with federal securities, the interest on and principal of which when paid will provide money which, together with money, if any, deposited with the CIEDB, shall be sufficient to pay when due the Installment Payments of such portions thereof on and prior to their payment dates or their dates of prepayment, as the case may be, and the prepayment premiums, if any, applicable thereto, and (ii) an opinion of nationally recognized bond counsel acceptable to the CIEDB is filed with the CIEDB to the effect that the action taken pursuant to this section will not cause the interest on the Proceeds Bonds to be includable in gross income under the Code for federal income tax purposes. As used in this section, "federal securities" means United States of America Treasury bills, notes, bonds or certificates of indebtedness, or obligations of, or obligations guaranteed directly or indirectly by, the United States of America, or securities evidencing ownership interests in such obligations or in specified portions of the interest on or principal of such obligations.

SECTION 8.06. Amendment. This Agreement may be amended by the parties in writing.

SECTION 8.07. Waiver of Personal Liability. No member, officer, agent or employee of the Purchaser shall be individually or personally liable for the payment of the principal of premium if any, or the interest under this Agreement; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

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SECTION 8.08. Payment on Business Days. Whenever in this Agreement any amount is required to be paid on a day that is not a Business Day, such payment shall be required to be made on the Business Day immediately following such day and no further interest shall accrue.

SECTION 8.09. Notices. All written notices to be given under this Agreement shall be given by first-class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time, except that notices from the Purchaser to the CIEDB shall be given by registered mail, or by telecommunication confirmed in writing. Notice shall be effective forty-eight (48) hours after deposit in the United States mail, postage prepaid or, in the case of any notice to the CIEDB or in the case of personal delivery to any person, upon actual receipt at the address set forth below:

If to the CIEDB: California Infrastructure and Economic Development Bank  
Attn: ISRF Support Unit Manager, CIEDB 11-099  
P.O. Box 2830  
Sacramento, California 95812-2830

If by personal delivery or overnight mail:

California Infrastructure and Economic Development Bank  
Attn: ISRF Support Unit Manager, CIEDB 11-099  
980 9<sup>th</sup> Street, Suite 900  
Sacramento, California 95814

Or to such other address as may be designated in writing by the CIEDB.

If to the Purchaser: Coastside County Water District  
766 Main Street  
Half Moon Bay, CA 94019  
Attn: General Manager

Or to such other address as may be designated in writing by the Purchaser.

SECTION 8.10. Partial Invalidity. If any portion of this Agreement shall for any reason be held illegal, invalid or unenforceable, such holding shall not affect the validity and enforceability of the remaining portions of this Agreement.

SECTION 8.11. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State.

SECTION 8.12. Indemnification. The Purchaser shall, to the extent permitted by law, indemnify and hold harmless the CIEDB and its members, directors, officers, employees and agents, the trustee and underwriter and its members, directors, officers, employees and agents, from and against any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever, including, but not limited to, losses, claims,

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damages, liabilities or expenses arising out of, resulting from or in any way connected with (1) this Agreement or the System, or the conditions, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation or construction of the System or any part thereof; (2) the carrying out of any of the transactions contemplated by this Agreement or any related document; (3) information provided by the Purchaser which is used in the offering for sale of the Secured Bonds; or (4) any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance on or near, the System. The Purchaser shall, to the extent permitted by law, pay or reimburse the CIEDB and its members, directors, officers, employees and agents for the Purchaser's pro rata share of any and all reasonable costs, reasonable attorneys' fees, liabilities or expenses incurred in connection with investigating, defending against or otherwise in connection with any such losses, claims, damages, liabilities, expenses or actions. Notwithstanding anything to the contrary in this Agreement, the CIEDB, and its members, directors, officers, employees and agents shall not be entitled to payment, reimbursement or indemnification with respect to actions involving willful misconduct, default or negligence on the part of the CIEDB, or its members, directors, officers, employees and agents.

The provisions of this Section 8.12 shall survive the discharge of the Purchaser's obligations hereunder and shall apply to any trustee or other successor or assignee described in Section 8.02.

**SECTION 8.13. Contact Persons.**

(a) The executive director of the CIEDB or such other person as designated in writing by the CIEDB shall manage this Agreement for the CIEDB and shall have authority to make determinations and findings with respect to each controversy arising under or in connection with the interpretation, performance, or payment for work performed under this Agreement.

(b) The Purchaser Project manager shall be the General Manager or such other person as may be designated in writing by the Purchaser. The Purchaser Project manager shall be the Purchaser's representative for the administration of this Agreement and shall have full authority to act on behalf of the Purchaser. The General Manager or such other person as designated by the General Manager may designate in writing another person or persons authorized to request disbursement of Project Funds. All communications given to the Purchaser Project manager shall be as binding as if given to the Purchaser.

**SECTION 8.14. Effective Date; Execution.** This Agreement shall become enforceable upon its execution and delivery.

[The balance of this page is intentionally left blank.]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by the respective officers, all as of the day and year first above written.

CALIFORNIA INFRASTRUCTURE AND  
ECONOMIC DEVELOPMENT BANK, as seller

By \_\_\_\_\_  
Stanton C. Hazelroth  
Executive Director

Attest

By \_\_\_\_\_  
Roma Cristia-Plant  
Secretary

COASTSIDE COUNTY WATER DISTRICT, as  
Purchaser

By \_\_\_\_\_  
David R. Dickson  
General Manager

Attest

By \_\_\_\_\_  
Gina Brazil  
Office Manager

**EXHIBIT A**

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
COASTSIDE COUNTY WATER DISTRICT AUTHORIZING THE EXECUTION AND  
DELIVERY OF THE INSTALLMENT SALE AGREEMENT BY AND BETWEEN THE  
COASTSIDE COUNTY WATER DISTRICT AND THE CALIFORNIA INFRASTRUCTURE  
AND ECONOMIC DEVELOPMENT BANK AND APPROVING CERTAIN OTHER  
MATTERS IN CONNECTION THEREWITH

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE COASTSIDE  
COUNTY WATER DISTRICT, AS FOLLOWS:

Section 1. The General Manager is authorized and directed to execute and deliver the Enterprise Fund Installment Sale Agreement (the "Agreement") proposed to be entered into by the Coastsides County Water District ("District") and the California Infrastructure and Economic Development Bank ("I-Bank"), for and on behalf of the Coastsides County Water District. As executed and delivered, such documents shall be in substantially the form presented at this meeting, with such minor additions thereto or minor changes therein as the officers executing such document shall require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 2. The General Manager is hereby authorized and directed, in the name and on behalf of the Coastsides County Water District, to take any and all steps and to execute and deliver any and all certificates, contracts and other documents which they might deem necessary or appropriate in order to consummate the delivery of the Agreement and otherwise to effectuate the purposes of this resolution; including the execution of a tax certificate, and such actions previously taken by the employees of the Coastsides County Water District are hereby ratified and confirmed.

Section 3. The Board of Directors acknowledges that subsequent to the execution and delivery of the Agreement, the I-Bank may determine to issue bonds to fund all or a portion of the District's Project, as defined in the Agreement. In such event, the Board of Directors hereby authorizes the General Manager to execute any necessary documentation, as requested by the I-Bank, including a new agreement, so long as such documentation is consistent with this Resolution and substantially identical to the terms and conditions of the Agreement.

Section 4. This resolution shall take effect from and after its passage, approval and adoption.

PASSED, APPROVED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by the following vote:

Ayes:

Noes:

Absent:

Abstain:

By \_\_\_\_\_  
Robert Feldman  
President

ATTEST

By \_\_\_\_\_  
David R. Dickson  
Secretary

### CERTIFICATION OF RESOLUTION

The undersigned hereby states and certifies:

(1) I am the duly qualified and acting \_\_\_\_\_ of the Coastside County Water District (the Purchaser), and, as such, am familiar with the facts herein certified and am fully authorized to certify the same.

(2) Attached hereto is a true, correct and complete copy of the resolution of the governing body of the Purchaser authorizing the execution and delivery of the Enterprise Fund Installment Sale Agreement, dated as of *[add agreement date]*, by and between the Purchaser and the California Infrastructure and Economic Development Bank adopted on \_\_\_\_\_, 200\_\_ at a meeting thereof duly held on the date set forth in such resolution, of which meeting all of the members of said governing body had due notice and at which a quorum was present and acting throughout.

(3) I further certify that I have carefully compared the attached copy of the resolution with the original minutes of said meeting on file and of record in my office; that said copy is a true, correct and complete copy of the original resolution duly adopted by said governing body at said meeting and entered in said minutes; and that said resolution has not been amended, modified or rescinded since its adoption and is in full force and effect as of the date hereof.

(4) I further certify that in accordance with Government Code section 54954.2, the agenda of the meeting contained a brief description of the resolution to be considered at the meeting, and a copy thereof was posted at least seventy-two (72) hours before the meeting in a location freely accessible to members of the public.

Dated: [to be dated as of the Effective Date]

COASTSIDE COUNTY WATER DISTRICT

By \_\_\_\_\_



**EXHIBIT B-1**

## CERTIFICATE OF THE

GENERAL MANAGER of the COASTSIDE COUNTY WATER DISTRICT (“PURCHASER”)

The undersigned hereby states and certifies:

(1) that I am the duly qualified and acting General Manager of the Purchaser, and, as such, am familiar with the facts herein certified and am fully authorized to certify the same.

(2) The financial data submitted by Purchaser in the application for financing (including supplements thereto) in connection with the Enterprise Fund Installment Sale Agreement (“Agreement”), dated as of *add date of agreement* by and between the Purchaser and the California Infrastructure and Economic Development Bank (“CIEDB”) was true at the time submitted to CIEDB and as of the date of this certification, remains true and correct in all material respects, and such information did not and does not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made.

(3) The Purchaser is not in breach of or in default under any bond indenture, loan agreement, note or other instrument to which it is a party.

(4) The Purchaser maintains workers’ compensation insurance covering all Purchaser employees at the Project.

(5) The CIEDB financing will be a subordinate pledge on the System Net Revenue and the Enterprise Fund, as set forth in Section 4.14 of the Agreement.

(6) The only outstanding obligations secured by Net System Revenues and the Enterprise Fund are as set forth in Section 4.14 of the Agreement.

(7) The representations and warranties made in the Agreement are true and correct as if made on the date of this certificate.

Dated: [to be dated as of the Effective Date]

COASTSIDE COUNTY WATER DISTRICT

By \_\_\_\_\_  
David R. Dickson  
General Manager

**EXHIBIT B-2**

## CERTIFICATE OF THE

GENERAL MANAGER of the COASTSIDE COUNTY WATER DISTRICT (“PURCHASER”)

RELATED TO THE DENNISTON CREEK WATER TREATMENT PLANT  
IMPROVEMENTS PROJECT

The undersigned hereby states and certifies:

(1) I am the duly qualified and acting General Manager of the Purchaser, and, as such, am familiar with the facts herein certified and am fully authorized to certify the same.

(2) The Purchaser has obtained any and all lands, rights-of-way, lot line adjustments, easements, and orders of possession, which are required for construction and operation of the Denniston Creek Water Treatment Plant Improvements Project.

(3) All required permits have been obtained for the construction of the Project.

(4) Regarding the construction contracts:

(A) All construction contracts and subcontracts necessary for Project construction have been awarded, and were awarded pursuant to competitive bidding and Purchaser procedures normally required for similar construction projects;

(B) Costs are consistent with the Exhibit D Project sources and uses chart;

(C) All prime contracts require the contractor to maintain appropriate builder’s risk insurance and name the Purchaser as loss payee and additional insured, require the contractor to maintain liability insurance and name the Purchaser as loss payee and additional insured, and include the performance and payment bond provisions set forth in Section 5.19 of this Agreement and name the Purchaser as loss payee and additional insured;

(D) All construction contracts and subcontracts necessary for the Project construction have been awarded, and were awarded pursuant to competitive bidding and Purchaser procedures normally required for similar construction projects;

(E) All construction contracts require payment of prevailing wage rates and compliance with Chapter 1 (commencing with section 1720) of Part 7 of Division 2 of the California Labor Code;

(F) All construction contracts require payment of workers’ compensation insurance by contractors and subcontractors; and

(G) All construction contracts include nondiscrimination provisions meeting the requirements of Section 6.03; and

(H) If Purchaser is required to establish an escrow pursuant to Public Contract Code section 22300, Purchaser shall certify that the escrow agreement remains in full force and effect and that no funds have been released thereunder.

(I) Purchaser utilized contractor pre-qualification forms developed by the Director of Industrial Relations as set forth in AB 574 (Chapter 972 of the Statutes of 1999) codified in Public Contract Code section 20101 et seq.

(6) All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Agreement.

Dated: \_\_\_\_\_, \_\_\_\_\_

COASTSIDE COUNTY WATER DISTRICT

By \_\_\_\_\_

David R. Dickson  
General Manager

## EXHIBIT C

### CONDITIONS PRECEDENT TO DISBURSEMENT

(a) Initial Disbursement.

No funds shall be disbursed pursuant to this Agreement until and unless Purchaser, in the good faith judgment of the CIEDB, has specifically complied with the following and provided a copy of the specified documents satisfactory to the CIEDB:

- (1) Documents in a form substantially similar to Exhibit A with Certification, Exhibit B-1, and Exhibit G herein.
- (2) Certification by Purchaser of insurance as required by Section 5.22.
- (3) Payment of origination fee.

(b) Preliminary Expenditures.

When all the requirements of section (a) herein are met in a manner satisfactory to the CIEDB, disbursement shall be allowed for the following costs: Preliminary Expenditures as specified in Exhibit G.

(c) Construction Costs.

For costs other than the origination fee and costs described in section (b) herein, no funds shall be disbursed pursuant to this Agreement until and unless Purchaser has, in the good faith judgment of the CIEDB, provided the CIEDB with all the documents required in section (a) herein and the following documents:

- (1) Document in a form substantially similar to Exhibit B-2 herein; and
- (2) One copy of the executed construction contract(s), including any exhibits, attachments or change orders, if and when applicable.
- (3) One copy of the contractor's builder's risk and liability insurance policies that name Purchaser as loss payee and additional insured unless specifically waived by CIEDB.
- (4) One copy of the contractor's payment and performance bonds naming Purchaser as loss payee and additional insured unless specifically waived by CIEDB.

(d) Final Disbursement.

The final disbursement of Project Funds, including any applicable retention amounts, shall not be made until and unless Purchaser, in the good faith judgment of the CIEDB, has specifically complied with each and every one of the following as described in Section (c), and provided a copy of the specified document or certificate satisfactory to the CIEDB:

- (1) Recorded Project notice of completion or other evidence of completion;
- (2) Lien waivers for the Project, or passage of the applicable statutory time periods for filing mechanics and other similar liens;
- (3) Certification that the Project has been completed in accordance with the approved final plans and specifications, and that the completed Project is consistent with the definition of Project in this Agreement and is acceptable to the Purchaser and that the requirements of Section 5.13(c) have been met;
- (4) Certification of Recycled Content as set out in Section 6 of Exhibit F; and
- (5) Certification that the Purchaser has obtained all licenses and permits (including operating permits), and approvals from any governmental agency or authority having jurisdiction over the Purchaser in connection with the Project, where applicable.

**EXHIBIT D****DESCRIPTION AND PROJECT SOURCES AND USES**

Project Title:

Denniston Creek Water Treatment Plant Improvements Project

Project Description:

The Project consists of the design, construction, and installation of new pre-treatment units that will reduce the raw water turbidity to meet California Department of Public Health requirements; an upgrade of the washwater handling system; and improvements to the original chemical storage and feed systems, plant control system, and raw water pumps.

Project Sources and Uses:

<b>PROJECT SOURCES and USES</b>			
<b>Uses</b>	<b>Sources</b>		
	<b>I-Bank</b>	<b>District</b>	<b>Total</b>
Construction & Contingency	\$1,853,244		<b>\$1,853,244</b>
Machinery & Equipment	\$2,991,210		<b>\$2,991,210</b>
Preliminary Expenditures: Architectural Costs/Engineering/Design/ Permits/Environmental/Construction Management/ Consultant Fees/Administration and Legal Fees	\$1,912,046	\$183,954	<b>\$2,096,000</b>
I-Bank Origination Fee	-	\$57,430	<b>\$57,430</b>
<b>Total</b>	<b>\$6,756,500</b>	<b>\$241,384</b>	<b>\$6,997,884</b>

Purchaser is authorized to charge its employee costs to this Agreement. However, documentation must be provided, to the satisfaction of the CIEDB, that costs incurred are directly for the Facility, and are billed at hourly rates not to exceed Purchaser's actual costs of salary and benefits.

Modifications to any Project sources and uses line item financed by the CIEDB shall require the written approval of the CIEDB. The CIEDB credit support unit manager shall provide a revised Project sources and uses chart for approved cumulative modifications that are less than ten percent (10%) of the Project Funds. Approved cumulative modifications to the CIEDB Project budget that are ten percent (10%) or greater than ten percent (10%) of the Project Amount shall require an amendment to the Agreement.

The CIEDB shall not be responsible for the payment of any cost overruns.

The Purchaser shall submit invoices only for expenses incurred. Expenses contained in the invoices shall be listed according to the categories contained in the above Project sources and uses. The CIEDB shall pay ninety percent (90%) of all invoices for construction costs submitted to the Purchaser prior to compliance with Exhibit C, section (d), conditions precedent to final disbursement; provided that if the Purchaser demonstrates to the satisfaction of the CIEDB that

the Purchaser is obliged by law to make payments to certain construction contractors for one hundred percent (100%) of invoiced amounts or to establish a retention fund escrow pursuant to Public Contract Code section 22300 for final payment to certain contractors, so long as such requirement remains in full force and effect, and so long as no funds have been released thereunder, the CIEDB shall pay 100% of all invoices with the exception of an amount equal to 10% of the Purchase Price to be retained by CIEDB until all conditions for final disbursement as set forth in Exhibit C have been completed.

Purchaser shall not approve any change orders of the original construction contract amount without having funds committed for the increased Project costs.

Project costs not covered by this Agreement will be paid for by the Coastside County Water District.

No costs of the Project to be paid by CIEDB can be incurred prior to February 12, 2011 except for Preliminary Expenditures as shown in the Project Sources and Uses chart herein and as described in Exhibit G.

**EXHIBIT E**

AMORTIZATION SCHEDULE

COASTSIDE COUNTY WATER DISTRICT

CIEDB No. 11-099

*[Purchaser: an amortization schedule will be provided when we have the Effective Date.]*



## EXHIBIT F

### STATE CONTRACT REQUIREMENTS

#### SECTION 1. Record Establishment, Access and Retention.

(a) The Purchaser agrees that the CIEDB shall have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Purchaser agrees to provide the CIEDB with any relevant information requested and shall permit the access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with Government Code section 8546.7. The Purchaser further agrees to maintain records concerning costs paid with State funds for three years following the CIEDB's receipt of a notice of completion or payment of an invoice, whichever is later. In the event of an Agreement performance or payment dispute, the three-year minimum shall automatically be extended until the dispute is resolved.

(b) Upon inspection, the Purchaser shall promptly implement any corrective measures recommended by the CIEDB, its representatives, or the Bureau of State Audits ("BSA") regarding the requirements of this section.

(c) The Purchaser shall keep all books, records, accounts and documents pertaining to this Agreement separate from other activities unrelated to this Agreement.

#### SECTION 2. Nondiscrimination Clause and Compliance Statement.

(a) By signing this Agreement, the Purchaser and its contractors agree that each shall not, during the performance of this Agreement, unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave or denial of pregnancy disability leave. The Purchaser and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Purchaser and its contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), and the applicable regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (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. The Purchaser and its contractor shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

(b) The Purchaser shall include nondiscrimination and compliance provisions meeting the requirements of subsection (a) of this section, in all contracts to perform work under this Agreement.

SECTION 3. Americans with Disabilities Act Certification. By signing this Agreement, the Purchaser assures the CIEDB that it complies with the Americans with Disabilities Act (“ADA”) of 1990 (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

SECTION 4. National Labor Relations Board Certification. By signing this Agreement, the Purchaser does swear under the penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Purchaser within the immediately preceding two year period because of the Purchaser's failure to comply with an order of a federal court which orders the Purchaser to comply with an order of the National Labor Relations Board.

SECTION 5. Certification of Drug Free Workplace.

(a) By signing this Agreement, the Purchaser hereby certifies under penalty of perjury under the laws of the State of California that the Purchaser shall comply with the requirements of the Drug Free Workplace Act of 1990 (Government Code section 8350 et seq.) and shall provide a drug free workplace by:

(1) Publishing a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code section 8355(a).

(2) Establishing a Drug Free Awareness Program as required by Government Code section 8355(b), to inform employees about:

- (A) The dangers of drug abuse in the workplace;
- (B) The person's or organization's policy of maintaining a drug-free workplace;
- (C) Any available counseling, rehabilitation and employee assistance programs; and,
- (D) Penalties that may be imposed upon employees for drug abuse violations; and,

(3) Providing, as required by Government Code section 8355(c), that every employee who performs work under this Purchaser shall:

- (A) Receive a copy of the Purchaser's drug-free policy statement; and,
- (B) Agree to abide by the terms of the Purchaser's statement as a condition of employment under this Agreement.

(b) In addition to any other consequences specified in this Agreement, failure to comply with these requirements may result in the Purchaser being ineligible for award of any future State Contracts if the CIEDB determines that the Purchaser:

- (1) Has made a false certification; or,
- (2) Violates the certification by failing to carry out the requirements as noted above.

SECTION 6. Certification of Recycled Content. The Purchaser shall certify in writing, under penalty of perjury, the minimum, if not exact, percentage of recycled content of both post-consumer material and secondary material as defined in Public Contract Code sections 12161 and 12200, in materials, goods or supplies offered, or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in Public Contract Code sections 12161 and 12200. The Purchaser may certify that the product contains zero recycled content. The Recycle Certification shall be delivered to the CIEDB not more than thirty (30) calendar days following the date of the Notice of Completion.

SECTION 7. Child Support Compliance Act.

(a) The Purchaser 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 Purchaser, 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.

SECTION 8. Welfare Recipients.

(a) The Purchaser shall give priority consideration in filling vacancies in positions funded by the Purchaser to qualified recipients of aid under Chapter 2 (commencing with section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code in accordance with Article 3.9 (commencing with section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

- (b) Nothing in this provision shall be construed to:
- (1) Interfere with or create a violation of the terms of valid collective bargaining agreements;
  - (2) Require the Purchaser to hire an unqualified recipient of aid;
  - (3) Interfere with or create a violation of any federal affirmative action obligation of the Purchaser for hiring disabled veterans or veterans of the Vietnam era; or,

(4) Interfere with or create a violation of the requirements of Government Code section 12990.

SECTION 9. Prevailing Wages.

(a) By signing this Agreement, the Purchaser agrees to comply with the provisions of section 1720 et seq. of the California Labor Code in the award of public works contracts and subcontracts involving the expenditure of funds provided in this Agreement, and to insure that its contractor and subcontractors meet the requirements of those enactments.

(b) The Purchaser shall comply with Labor Code provisions that include but are not limited to the following requirements: The Purchaser shall obtain, from the Director of the Department of Industrial Relations, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the public work is to be performed for each craft, classification, or type of worker needed to execute the Agreement. The Purchaser shall either specify the general prevailing rates in bid and contract documents or include a statement in those documents that such information is available; take cognizance of any violations of prevailing wage law and notify the Department of Industrial Relations of such violations; require that the contractor and subcontractors keep adequate payroll and other records and withhold funds pending investigation of violations.

(c) The Purchaser shall require its contractor and subcontractors to adhere to prevailing wage requirements, including but not limited to the following requirements: contracts between the contractor and subcontractors must include provisions regarding prevailing wage; the contractor shall monitor subcontractors' payment of prevailing wage by periodically reviewing certified payroll records and diligently taking corrective action if the subcontractors fail to pay prevailing wage; contractor and subcontractors shall maintain certified payroll records and time records. The contractor to whom a contract is awarded, and any subcontractor under him, shall not pay less than the specified prevailing wage; contractor and subcontractors are subject to penalties for violations of prevailing wage provisions.

(d) The Purchaser acknowledges that it has been informed by the CIEDB that the CIEDB may contract with the Department of Industrial Relations to conduct audits of some contracts to assure compliance with prevailing wage requirements. The Purchaser shall require its contractor and subcontractors to cooperate in an audit if requested to do so by the CIEDB and shall inform its contractor and subcontractors that spot audits are planned.

## EXHIBIT G

### TAX CERTIFICATE

This Tax Certificate is executed and delivered by the Coastside County Water District (the “Purchaser”) in connection with the Enterprise Fund Installment Sale Agreement between the Purchaser and the California Infrastructure and Economic Development Bank (the “Seller”), dated as of add date of agreement (the “Obligation”) in the amount of \$6,756,500. The Purchaser certifies, covenants, warrants and represents as follows:

#### ARTICLE I.

#### IN GENERAL

##### 1.1 The Purchaser.

The Purchaser is a county water district duly organized and existing under the laws of the State of California.

##### 1.2 Purpose of Tax Certificate.

The Seller has issued bonds (the “Bonds”) that will be used to fund the Obligation. The Purchaser is delivering this Tax Certificate to the Seller with the understanding that the Seller will rely in part upon this Tax Certificate in obtaining an opinion from bond counsel that interest on the Bonds is excluded from gross income for federal income tax purposes under section 103 of the Code (as defined below).

##### 1.3 Purpose of Financing.

The Obligation is being issued to finance the Denniston Creek Water Treatment Plant Improvements Project on the Purchaser’s property (the “Project”), as described in more detail in the application of the Purchaser to the CIEDB, dated June 20, 2011, including amendments thereto and in Exhibit D of the Obligation.

##### 1.4 Definitions.

Unless the context otherwise requires, the following capitalized terms have the following meanings:

“*Code*” means the Internal Revenue Code of 1986 (including amendments thereto).

“*Current Revenues*” has the meaning given thereto in Section 2.7 hereof.

“*Governmental Unit*” means any state, or political subdivision of a state, but excludes the United States and its agencies or instrumentalities.

“*Investment Property*” means any security or obligation, any annuity contract, or any other investment-type property, but does not include any Tax-Exempt Bond unless

such obligation is a “specified private activity bond” within the meaning of section 57(a)(5)(C) of the Code.

“*Nongovernmental Person*” means any person or entity other than a Governmental Unit.

“*Payment Account*” has the meaning given thereto in Section 2.7 hereof.

“*Preliminary Expenditures*” means architectural, engineering, surveying, soil testing, legal, and similar costs paid with respect to the Project in an aggregate amount not exceeding twenty percent (20%) of the Obligation. However, Preliminary Expenditures do not include land acquisition, site preparation or similar costs incident to the commencement of construction.

“*Tax-Exempt Bond*” means any obligation the interest on which is excluded from gross income for federal income tax purposes pursuant to section 103 of the Code or section 103 of the Internal Revenue Code of 1954, as amended, and Title XIII of the Tax Reform Act of 1986, as amended, as well as stock in a regulated investment company to the extent at least ninety-five percent (95%) of income to the stockholder is treated as interest that is excludable from gross income under section 103 of the Code.

## ARTICLE II.

### TAX LIMITATIONS

#### 2.1 Expenditure of Proceeds.

Proceeds of the Obligation shall be used exclusively for the following purposes: (i) architectural, engineering, surveying, soil testing, and similar costs paid with respect to the Project paid prior to February 12, 2011 and in an aggregate amount not exceeding twenty percent (20%) of the Obligation; (ii) capital expenditures originally paid by the Purchaser on or after February 12, 2011 (iii) interest on the Obligation through the later of three years after the date hereof or one year after the Project is placed in service, and (iv) initial operating expenses directly associated with the Project (in aggregate amount not exceeding five percent (5%) of the amount of the Obligation).

On April 12, 2011, the Purchaser adopted a resolution stating its official intent to be reimbursed from the proceeds of a borrowing to finance costs of the Project (the "Reimbursement Resolution"). Absent written agreement by the Seller, all expenditures of proceeds of the Obligation will be made in respect of (a) Preliminary Expenditures, (b) capital expenditures reimbursed in respect of payments made by the Purchaser on or after the date which is sixty (60) days prior to the date on which the Reimbursement Resolution was adopted, or (c) other capital expenditures or related expenditures, as described in the first sentence of this Section 2.1, originally paid by the Purchaser on or after the date hereof. In connection with all expenditures described in (b), the reimbursement allocation will be made no later than the later of eighteen (18) months after the date hereof or the date on which the Project is placed in service, but in no event later than three years after the date of expenditure.

## 2.2 Governmental Bond Status.

The Purchaser will not loan any of the proceeds of the Obligation to one or more Nongovernmental Persons. The Purchaser will not allow more than five percent (5%) of proceeds of the Obligation or more than five percent (5%) of the Project to be used directly or indirectly by any Nongovernmental Person, other than as a member of the general public. In addition, a Nongovernmental Person will be treated as “using” proceeds of the Obligation to the extent the Nonexempt Person:

- (i) Borrows proceeds of the Obligation, or
- (ii) Uses the Project (e.g., as owner, lessee, service provider, operator or manager).

## 2.3 Change in Use.

The Purchaser reasonably expects to use all proceeds of the Obligation and all of the Project as set forth in Section 2.1 for the entire stated term to maturity of the Obligation. Absent written agreement by the Seller, the Purchaser in fact will use all proceeds of the Obligation and all of the Project as set forth in Section 2.1.

## 2.4 Federal Guarantee.

The Purchaser will not directly or indirectly use or permit the use of any proceeds of the Obligation or take or omit to take any action that would cause the Bonds to be obligations that are “federally guaranteed” within the meaning of section 149(b) of the Code. In furtherance of this covenant, the Purchaser will not allow the payment of principal or interest with respect to the Obligation to be guaranteed (directly or indirectly) in whole or in part by the United States or any agency or instrumentality thereof. The Purchaser will not use five percent (5%) or more of the proceeds of the Obligation to make or finance loans the payment of principal or interest with respect to which is guaranteed in whole or in part by the United States or any agency or instrumentality thereof.

## 2.5 No Refunding.

Proceeds of the Obligation will not be used directly or indirectly to make principal, interest or premium payments with respect to any tax-exempt obligation.

## 2.6 No Hedge Bonds.

The Purchaser reasonably expects that more than eighty-five percent (85%) of proceeds of the Obligation will be expended for the purposes of the Obligation within three years.

## 2.7 Installment Payments.

“Payment Account” means the funds or accounts (or any portions of any funds or accounts) that will hold monies that are expected by the Purchaser to be used to pay debt service

on the Obligation. "Current Revenues" means revenues which are both received by the Purchaser and utilized for the payment of debt service on the Obligation within a six month period. All amounts used to fund the Payment Account will be deemed to have been made from the Payment Account by using a last-in, first-out accounting method. Purchaser agrees that the amounts used to pay debt service shall be both received by the Purchaser and utilized for the payment of debt service on the Obligation within a thirty (30) day period. The Payment Account will be used primarily to achieve a proper matching of revenues and debt service within each year; a matching of revenues means that revenue and debt service come in and go out at approximately the same level and the Payment Account is cleared out to a very low balance at least one time during the year. Current Revenues in the Payment Account may be invested without regard to yield so long as Purchaser complies with this section.

#### 2.8 No Other Replacement Proceeds.

The Purchaser will not use any proceeds of the Obligation to replace funds of the Purchaser 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 Obligation.

#### 2.9 No Expected Sale.

It is not expected that the Project or any part thereof will be sold or otherwise disposed of so long as the Obligation is outstanding.

#### 2.10 Tax Covenant.

The Purchaser will not take any action, or fail to take any action, if such action or failure to take such action would adversely affect the exclusion from gross income of the interest on the Bonds pursuant to section 103 of the Code and specifically (i) the Purchaser will not directly or indirectly use or make any use of the proceeds of the Bonds or any other funds of the Purchaser or take or omit to take any action that would cause the Bonds or to be "arbitrage bonds" subject to federal income taxation by reason of section 148 of the Code or obligations subject to federal income taxation because they are "federally guaranteed" as provided in section 149(b) of the Code, as applicable; and (ii) to that end the Purchaser, with respect to the proceeds of the Bonds will comply with all requirements of such sections of the Code to the extent that such requirements are, at the time, applicable and in effect; provided, that if the Purchaser shall obtain an Opinion of Counsel nationally recognized in the area of the exemption of interest from gross income under of the Code to the effect that any action required under this Section is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest evidenced and represented by the Bonds pursuant to section 103 of the Code, as applicable, the Purchaser may rely conclusively on such opinion in complying with the provisions hereof.

#### 2.11 Private Use.

No more than five percent (5%) of the Project (determined both on the basis of space and cost) shall be used for private use. Private use includes use in the trade or business of any nongovernmental persons, but does not include the portion of the proceeds properly



allocable to facilities expected to be used by an organization described in section 501(c)(3) of the Code in a manner that does not constitute an unrelated trade or business of such organization, as defined in section 513(a) of the Code. For purposes of this section, the federal government is considered a nongovernmental person.

(a) For purposes of this section, private use shall include any contract for the management or operation of any portion of the Project unless each of the following conditions is met: (i) the term of such contract (including renewal options) does not exceed five years; (ii) the manager or operator under such contract is not compensated on the basis of a share of net profits; (iii) the compensation of the manager or operator is reasonable; (iv) the Purchaser must be able to cancel such contract without penalty or cause at the end of the third year of the contract; and (v) neither the Purchaser nor the manager or operator may control more than twenty percent (20%) of the voting power of the other's governing board; and

(b) The service provider's compensation for management or operation services rendered must be pursuant to one of the following four methods: (i) at least fifty percent (50%) of annual compensation is based on a periodic fixed fee; (ii) the compensation is based on a capitation fee or a combination of a capitation fee and a periodic fixed fee; (iii) in the case of certain contracts with a term not longer than three years, the compensation is based on a per-unit fee or a combination of a per-unit fee and periodic fixed fee and the contract is cancelable after two years; and (iv) in the case of certain contracts with a term not longer than two years, the compensation is based on a percentage of fees charged and the contract is cancelable after one year.

(c) The term "renewal option" as used in this Section, means a provision under which the service provider has a legally enforceable right to renew the contract. Thus, for example, a provision under which a contract is automatically renewed for one year periods absent cancellation by either party is not a renewal option (even if it is expected to be renewed).

**ARTICLE III.****OTHER MATTERS**3.1 Expectations.

The undersigned is an authorized representative of the Purchaser acting for and on behalf of the Purchaser in executing this Tax Certificate. To the best of the knowledge and belief of the undersigned, there are no other facts, estimates or circumstances that would materially change the expectations as set forth herein, and said expectations are reasonable.

3.2 Amendments.

Notwithstanding any other provision of this Tax Certificate, the Purchaser may amend this Tax Certificate and thereby alter any actions allowed or required by this Tax Certificate if such amendment is signed by an authorized officer and is supported by formal written agreement by the CIEDB.

3.3 Survival of Defeasance.

Notwithstanding any provision in this Tax Certificate to the contrary, the obligation to comply with all requirements contained in this Tax Certificate shall survive defeasance or prepayment of the Obligation.

Dated: [to be dated as of the Effective Date].

Coastside County Water District

By \_\_\_\_\_  
David R. Dickson  
General Manager

**EXHIBIT H**

Legal Opinion

Attorney's letterhead

**Dated** as of the Effective Date

## COASTSIDE COUNTY WATER DISTRICT

California Infrastructure and Economic Development Bank  
Attn: Credit Support Manager, CIEDB 11-099  
P.O. Box 2830  
Sacramento, CA 95812-2830

RE: Enterprise Fund Installment Sale Agreement, By and Between Coastside County Water District, as Purchaser and the California Infrastructure and Economic Development Bank, as Seller, Dated as of *[add agreement date]*, Agreement No. CIEDB 11-099 in the amount not to exceed \$6,756,500 for the Denniston Creek Water Treatment Plant Improvements Project

Ladies and Gentlemen:

In my capacity as counsel to the Coastside County Water District (the "Public Agency") and in connection with the above described Enterprise Fund Installment Sale Agreement (the "Agreement"), I have examined the laws pertaining to the Public Agency; the original of the Agreement, signed by the Public Agency; the Public Agency's resolution adopted April 12, 2011 (the "Resolution"); and such other information and documents as I considered necessary to render this opinion. All capitalized terms used but not otherwise defined herein shall have the same meaning given them in the Agreement.

Based upon the foregoing, it is my opinion that:

(i) The Public Agency is a public agency, specifically a county water district formed pursuant to the County Water District Law (California Water Code Section 30000 et seq.) and duly organized and validly existing pursuant to the laws of the State of California;

(ii) The Resolution and other actions of the Public Agency approving and authorizing the execution and delivery of the Agreement were duly adopted at a meeting of the governing body of the Public Agency which was called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout;

(iii) The water revenues have been duly adopted and imposed by the Public Agency; the Public Agency's pledge of the moneys in the Enterprise Fund is valid and binding on the Public

Agency; and that the lien on the Net System Revenues and the Enterprise Fund granted in the Agreement is valid and binding on the Public Agency;

(iv) The Public Agency has full right and lawful authority to execute and deliver the Agreement and the Agreement has been duly authorized and executed on behalf of the Public Agency and the Agreement is the legal, valid and binding obligation of the Public Agency enforceable in accordance with its respective terms, except as enforcement may be limited by bankruptcy, insolvency, moratorium, or similar laws, or by legal or equitable principles relating to or limiting creditors' rights generally;

(v) To the best of my knowledge, after due inquiry, the execution and delivery of the Agreement and compliance with the provisions thereof, under the circumstances contemplated thereby, do not and will not in any material respect conflict with or constitute on the part of the Public Agency a breach of or default under any agreement or other instrument to which the Public Agency is a party or by which it is bound or any existing law, regulation, court order or consent decree to which the Public Agency is subject;

(vi) To the best of my knowledge, after due inquiry, the Association of Bay Area Governments Installment Purchase Agreement and the California Statewide Communities Development Authority Installment Purchase Agreement are the only debt obligations, other than the Agreement, secured by the Public Agency's Net System Revenues and the Enterprise Fund and the Public Agency is not in default of the Association of Bay Area Governments Installment Purchase Agreement and the California Statewide Communities Development Authority Installment Purchase Agreement; and

(vii) To the best of my knowledge, after due inquiry, there is no action, suit, proceeding, inquiry or investigation before or by any court or public body pending or threatened against or affecting the Public Agency: 1) challenging or questioning the transactions contemplated by the Agreement or any other agreement, document or certificate related to such transactions; 2) challenging or questioning the creation, organization, existence or powers of the Public Agency; 3) seeking to enjoin or restrain the execution of the Agreement or the construction and implementation of the Project or the collection of the Net System Revenues and the Enterprise Fund; 4) in any way questioning or affecting any of the rights, powers, duties or obligations of the Public Agency with respect to the Net System Revenues and the Enterprise Fund; 5) in any way questioning or affecting any authority for the execution of the Agreement or validity or enforceability of the Agreement; or 6) in any way questioning or affecting any other agreement or instrument concerning the Agreement to which the Public Agency is a party.

The opinions set forth above are further qualified as follows:

(a) We do not purport to be experts in or generally familiar with or qualified to express legal opinions based on the laws of any jurisdiction other than the State of California and the United States of America;

(b) Our opinions do not include any opinion regarding the laws of any jurisdiction respecting securities regulation;

(c) We have not rendered financial advice to the District and do not represent by this opinion, or otherwise, that we have reviewed or made any assessment about, nor do we offer any opinion about, the financial condition of the District, past, present or future;

(d) The opinions expressed herein are based on the laws or regulations in effect as of the date hereof, and we assume no obligation to revise or supplement this opinion should such laws or regulations be changed in any respect by legislative activity, judicial decision or otherwise;

(e) We express no opinion with respect to any numerical or mathematical calculation or computation or any of the documents referred to herein or any certificate given or issued with respect to the matters referred to herein;

(f) No persons other than the addressees are entitled to rely on this opinion, nor may any such addressees rely on this opinion in connection with any transaction other than the Agreement; and

(g) The opinions expressed herein may be affected by actions taken or events occurring after the date hereof. The undersigned has not undertaken to determine or to inform any person whether any such subsequent actions or events are taken or occur.

Sincerely,

Patrick Miyaki  
Hanson Bridgett

## TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS.....	2
SECTION 1.01. Definitions.....	2
SECTION 1.02. Rules of Construction.....	6
ARTICLE II TERMS OF SALE.....	7
SECTION 2.01. Authorization.....	7
SECTION 2.02. Design, Acquisition, Construction and Sale of the Facility.....	7
SECTION 2.03. Payment of Purchase Price; Term; Interest Rates.....	7
SECTION 2.04. Disbursement of Project Funds; Additional Payments.....	8
SECTION 2.05. Prepayment and Reduction in Project Funds.....	11
SECTION 2.06. Encumbrance of Project Funds.....	12
SECTION 2.07. Reserved.....	<b>Error! Bookmark not defined.</b>
SECTION 2.08. Parity Debt.....	12
SECTION 2.09. Reserved.....	13
SECTION 2.10. Purchaser's Payment of Project Costs.....	13
SECTION 2.11. Validity of Agreement.....	13
SECTION 2.12. Project Description.....	13
SECTION 2.13. Reasonable Cost of Eligible Project.....	13
SECTION 2.14. Withholding of Project Funds.....	14
SECTION 2.15. Reserved.....	<b>Error! Bookmark not defined.</b>
ARTICLE III PLEDGE OF REVENUES; APPLICATION OF FUNDS.....	14
SECTION 3.01. Pledge of Net System Revenues.....	14
SECTION 3.02. Enterprise Fund; Payments.....	15
SECTION 3.03. Amounts Payable from the Enterprise Fund.....	15
SECTION 3.04. Commingling of Accounts.....	15
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE PURCHASER.....	16
SECTION 4.01. Organization; Authority.....	16
SECTION 4.02. Agreement Valid and Binding.....	16
SECTION 4.03. No Conflict in Execution of Agreement.....	16
SECTION 4.04. No Litigation.....	16
SECTION 4.05. No Breach or Default.....	16
SECTION 4.06. No Consent, Approval or Permission Necessary.....	16
SECTION 4.07. Pledged Funds; Limited Obligation.....	17
SECTION 4.08. Pledge and First Lien.....	17
SECTION 4.09. Information Submitted to the CIEDB.....	17
SECTION 4.10. Financial Statements of the Purchaser.....	17
SECTION 4.11. Notification to the CIEDB.....	17
SECTION 4.12. Licenses, Permits and Approvals for Operation of System.....	17
SECTION 4.13. Project Completion.....	17
SECTION 4.14. Existing Obligations.....	18
ARTICLE V AFFIRMATIVE COVENANTS OF THE PURCHASER.....	18
SECTION 5.01. Punctual Payment.....	18

## TABLE OF CONTENTS

	<b>Page</b>
SECTION 5.02. Payment of Claims. ....	18
SECTION 5.03. Books and Accounts; Financial Statements. ....	18
SECTION 5.04. Protection of Security and Rights. ....	20
SECTION 5.05. Payments of Taxes and Other Charges. ....	20
SECTION 5.06. Maintenance of System Revenues. ....	20
SECTION 5.07. Tax Covenant. ....	20
SECTION 5.08. Operation of System. ....	21
SECTION 5.09. Assumption of Agreement. ....	21
SECTION 5.10. Completion of Project; Construction Contracts. ....	21
SECTION 5.11. Reserved. ....	21
SECTION 5.12. Further Assurances. ....	22
SECTION 5.13. Agreement to Complete. ....	22
SECTION 5.14. Collection of Rates, Fees and Charges. ....	22
SECTION 5.15. Purchaser's General Responsibility. ....	22
SECTION 5.16. Purchaser's Assurances and Commitments. ....	23
SECTION 5.17. Project Access. ....	23
SECTION 5.18. Operation and Maintenance of the Project. ....	23
SECTION 5.19. Performance and Payment Bonds. ....	24
SECTION 5.20. Continuing Disclosure. ....	24
SECTION 5.21. Notice of Event of Default. ....	24
SECTION 5.22. Maintenance of Insurance. ....	24
SECTION 5.23. Compliance with State Contract Requirements. ....	25
SECTION 5.24. Compliance with Contracts. ....	25
<b>ARTICLE VI NEGATIVE COVENANTS OF THE PURCHASER. ....</b>	<b>25</b>
SECTION 6.01. Limitation on Additional Obligations; No New Senior Debt. ....	25
SECTION 6.02. Disposition of Property. ....	25
SECTION 6.03. Nondiscrimination. ....	25
<b>ARTICLE VII EVENTS OF DEFAULT AND REMEDIES. ....</b>	<b>26</b>
SECTION 7.01. Events of Default and Acceleration. ....	26
SECTION 7.02. Remedies. ....	27
SECTION 7.03. Application of Funds upon Default. ....	28
SECTION 7.04. No Waiver. ....	28
SECTION 7.05. Remedies Not Exclusive. ....	29
<b>ARTICLE VIII MISCELLANEOUS. ....</b>	<b>29</b>
SECTION 8.01. Venue. ....	29
SECTION 8.02. Assignment. ....	29
SECTION 8.03. Benefits Limited to Parties. ....	29
SECTION 8.04. Successor. ....	29
SECTION 8.05. Discharge of Agreement. ....	29
SECTION 8.06. Amendment. ....	30
SECTION 8.07. Waiver of Personal Liability. ....	30
SECTION 8.08. Payment on Business Days. ....	31
SECTION 8.09. Notices. ....	31

## TABLE OF CONTENTS

	<b>Page</b>
SECTION 8.10. Partial Invalidity.....	31
SECTION 8.11. Governing Law.....	31
SECTION 8.12. Indemnification.....	31
SECTION 8.13. Contact Persons.....	32
SECTION 8.14. Effective Date; Execution.....	32
<b>EXHIBIT A</b> RESOLUTION NO. _____ A RESOLUTION OF THE [GOVERNING BODY] OF THE COASTSIDE COUNTY WATER DISTRICT.....	A-1
<b>CERTIFICATION OF RESOLUTION</b> .....	A-3
<b>EXHIBIT B-1</b> CERTIFICATE OF THE CHIEF FINANCIAL OFFICER of the COASTSIDE COUNTY WATER DISTRICT (“PURCHASER”).....	B1-1
<b>EXHIBIT B-2</b> CERTIFICATE OF THE PUBLIC WORKS DIRECTOR or LEGAL COUNSEL of the COASTSIDE COUNTY WATER DISTRICT (“PURCHASER”).....	B2-1
<b>EXHIBIT C</b> CONDITIONS PRECEDENT TO DISBURSEMENT .....	C-1
<b>EXHIBIT D</b> DESCRIPTION AND PROJECT SOURCES AND USES.....	D-1
<b>EXHIBIT E</b> AMORTIZATION SCHEDULE .....	E-1
<b>EXHIBIT F</b> STATE CONTRACT REQUIREMENTS.....	F-1
<b>EXHIBIT G</b> TAX CERTIFICATE.....	G-1
<b>EXHIBIT H</b> LEGAL OPINION .....	H-1