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November 30, 2023

**RECEIVED**

December 01, 2023

**Commission on  
State Mandates**

Heather Halsey  
Executive Director  
Commission on State Mandates  
980 9<sup>th</sup> Street, Suite #300  
Sacramento, CA 95814

**LATE FILING**

*Lead Sampling in Schools: Public Water System No. 3710020, 17-TC-03-R*  
On Remand from *City of San Diego v. Commission on State Mandates*, Court of  
Appeal, Third Appellate District, Case No. C092800; Judgment and Writ of  
Mandate issued by the Sacramento County Superior Court, Case No. 34-2019-  
80003169-CU-WM-GDS; Permit Amendment No. 2017PA-SCHOOLS, City of  
San Diego Public Water System No. 3710020, effective January 18, 2017  
City of San Diego, Claimant  
Comments on Draft Proposed Decision

Dear Ms. Halsey:

Please accept these comments on behalf of Claimant City of San Diego (City) in response to the Draft Proposed Decision issued on November 14, 2023. The City disagrees with the Commission's Draft Proposed Decision as discussed below.

**I. The Commission Incorrectly Finds the City is Not Practically Compelled to Comply with the Permit Amendment.**

Even absent legal compulsion, a local entity may be practically compelled to comply with State directives where there are "severe consequences [for failing to comply] that leave the local entity no reasonable alternative[.]"<sup>1</sup>

In *City of Sacramento*, the Court found practical compulsion where "[t]he alternatives were so far beyond the realm of practical reality that they left the state without discretion."<sup>2</sup> The Court considered the following factors: "the nature and purpose of the [] program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal."<sup>3</sup>

<sup>1</sup> *Coast Cmty. Coll. Dist. v. Comm'n on State Mandates*, 13 Cal. 5th 800, 816 (2022).

<sup>2</sup> *City of Sacramento v. State of California*, 50 Cal. 3d 51, 74 (1990) [quotations omitted].

<sup>3</sup> *Id.* at 76.

Here, the City was practically compelled to comply with the Permit Amendment because failing to comply would result in severe consequences. Looking to the factors outlined in *City of Sacramento*, first, the City began providing water service to its citizens in 1901, which clearly weighs in favor of finding practical compulsion.

Second, regarding penalties, if the City failed to comply with the Permit Amendment, then the Water Board could suspend or revoke the City's permit. Without the requisite permit, the City cannot operate its water system. This would have drastic consequences to San Diego's 1.3 million residents and threaten the existence of the water system. The Commission discounts this penalty in its Proposed Decision in stating that the City did not present substantial evidence that the Water Board was "certain" to enforce the Permit Amendment.<sup>4</sup> However, there is no "certainty" requirement in the case law. Furthermore, it is not a reasonable alternative to ignore the Water Board's authority, especially given the potential grave consequences.

Third, the City would suffer several legal and practical consequences for failing to comply with the Permit Amendment. Discontinuing water service is not a reasonable alternative to complying with the Permit Amendment. Discontinuing water service would constitute a breach of its obligations regarding approximately \$1 billion in debt. If all debtors commenced collection, then the City's Water Utility would not have sufficient funds to cover the principal. The City would need to liquidate approximately three quarters of a billion dollars of its Water Utility assets to cover the principal. There would be several practical hurdles in the event of liquidation, including finding multiple buyers and operating leftover assets as newly formed, standalone entities.<sup>5</sup>

The Commission improperly focuses on "imminence."<sup>6</sup> There is no "imminence" requirement in the case law. Regardless, the fact that there are multiple debt holders, and those debt holders may not exercise their rights to \$1 billion in debt immediately, does not change the fact the City would be in default and would suffer consequences in time. The Commission appears to recognize that the City would not have any defense to its multiple defaults. It is not realistic or reasonable to assume the City's debtors will indefinitely excuse an indefensible default.

The Commission also states that defaulting on its Water Utility's loans is of no consequence to the City because it is a separate entity.<sup>7</sup> However, this ignores the interconnectivity between the City and its Water Utility. If the Water Utility defaulted on its loans, the Water Utility's credit rating would suffer, and there would likely be parallel consequences to the City's credit rating. The City of Jacksonville serves as an example. In 2018, Moody's Investors Service downgraded Jacksonville's credit rating after its electricity utility – Jackson Energy Authority – filed suit

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<sup>4</sup> Proposed Decision, pp. 64-65.

<sup>5</sup> See Declaration of Adams Jones, Deputy Director of Finance for the Public Utilities Department.

<sup>6</sup> Proposed Decision, pp. 52-64.

<sup>7</sup> Proposed Decision, pp. 52-57.

against the Municipal Energy Authority of Georgia to invalidate a contract to purchase electricity.<sup>8</sup>

An SEC enforcement action against the City, in 2006, also demonstrates that City and its Water Utility are linked.<sup>9</sup> Due to the enforcement action against the City, the Water Utility was likewise barred from the bond market for five years. These two examples demonstrate the City cannot default on its Water Utility obligations without consequence to the City itself and its General Fund.

Lastly, selling the City's water system is not a reasonable alternative to complying with the Permit Amendment as stated by the Commission.<sup>10</sup> The City's water system is large, with \$4.1 billion in assets, approximately 283,000 connections, and serving over one million people. Given its size and complexity, the possibility of finding a suitable buyer is remote.<sup>11</sup> The City's Pure Water system would also need to be sold with its Water Utility, due to its interconnectedness with the Water Utility, which would further complicate a sale and operations. Similarly, the City's Water Utility includes infrastructure that is the backbone of San Diego region's emergency storage system. A buyer would also need to take over these emergency-related operations.

There is also a restriction on the City's water pump station at 69th and Mohawk that would complicate selling its Water Utility. The State Revolving Fund agreement requires that, in the event of a sale, the Water Utility must sell the pump station to a government entity.<sup>12</sup> The City anticipates the Commission will suggest that the City sell this water pump separately from the larger water system. However, this amounts to addition piecemealing that would further complicate a sale, making it impractical.

In sum, the Commission proposes alternatives to complying with the Permit Amendment that fall squarely within the standard for practical compulsion. The Commission states, rather than comply with the Permit Amendment, the City should stop providing water service, sell its water system, hope the Water Board does not enforce the Permit Amendment, and hope the Water Utility's multiple debtors do not attempt to collect on \$1 billion in debt. These alternatives are

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<sup>8</sup> Patterson, Steve, "*City, JEA credit ratings take hit over Plant Vogtle suit,*", The Florida Times Union, Oct. 11, 2018, <https://www.jacksonville.com/story/news/2018/10/12/moodys-lowers-jacksonville-jea-bond-ratings-over-plant-vogtle-lawsuit/9575507007/>

<sup>9</sup> See Exhibit F attached to Jones Declaration.

<sup>10</sup> Proposed Decision at pp. 63-64.

<sup>11</sup> See Declaration of Lisa Celaya, Executive Assistant Director for the Public Utilities Department.

<sup>12</sup> "The Project (or any portion thereof) will not be sold or otherwise disposed of, in whole or in part, to any person who is not a Governmental Unit prior to the final maturity date of the Obligation." Exhibit 1, City of San Diego and State Water Resources Control Board Construction Installment Sale Agreement, 69th Street and Mohawk Pump Station Project, Project No. 3710020-074C, Agreement No. D16-02102.

“so far beyond the realm of practical reality” that City had no choice but to comply with the Permit Amendment.<sup>13</sup>

Sincerely yours,

MARA W. ELLIOTT, City Attorney

By: /s/ Kevin B. King  
Kevin B. King  
Deputy City Attorney

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<sup>13</sup> *City of Sacramento v. State of California*, 50 Cal. 3d 51, 74 (1990) [quotations omitted].

# **EXHIBIT 1**



## DRINKING WATER

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CITY OF SAN DIEGO

AND

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



CONSTRUCTION INSTALLMENT SALE AGREEMENT

69<sup>th</sup> STREET AND MOHAWK PUMP STATION PROJECT

PROJECT NO. 3710020-074C

AGREEMENT NO. D16-02102

**AMENDMENT NO. 1**

AMOUNT: \$15,000,044.00

ELIGIBLE START DATE: April 19, 2017

COMPLETION OF CONSTRUCTION DATE: May 1, 2020

FINAL DISBURSEMENT REQUEST DATE: ~~November 1, 2020~~ **December 31, 2021**

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**This Agreement executed by the State Water Board on October 30, 2017, is hereby amended and restated, to revise the Final Disbursement Request Date and update Exhibits A and E (deletions shown as stricken and revisions bold and underlined). Except as noted herein all other terms and conditions shall remain the same. Please note, page numbers may have changed.**

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WHEREAS,

1. The State Water Board is authorized to provide financial assistance under this Agreement pursuant to the following:
  - Section 1452 of the federal Safe Drinking Water Act (42 USC § 300j-12) (Federal Act)
  - Chapter 4.5 of Part 12 of Division 104 of the California Health and Safety Code (State Act)
2. The State Water Board determines eligibility for financial assistance, determines a reasonable schedule for providing financial assistance, establishes compliance with the Federal Act and State Act, and establishes the terms and conditions of a financial assistance agreement.
3. The Recipient has applied to the State Water Board for financial assistance for the Project described in Exhibit A of this Agreement and the State Water Board has selected the application for financial assistance.
4. The State Water Board proposes to assist in providing financial assistance for eligible costs of the Project, and the Recipient desires to participate as a recipient of financial assistance from the State Water Board and evidence its obligation to pay Installment Repayments, which obligation will be secured by Net Revenues, as defined herein, upon the terms and conditions set forth in this Agreement, all pursuant to the Federal Act and the State Act.

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

ARTICLE I DEFINITIONS

1.1 Definitions.

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

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

"Agreement" means this Installment Sale Agreement including all exhibits and attachments.

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

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

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

"Bond Funded Portion of the Project Funds" means any portion of the Project Funds which was or will be funded with Bond Proceeds.

"Bond Proceeds" means original proceeds, investment proceeds, and replacement proceeds of Bonds.

"Bonds" means any series of bonds issued by the Bank, the interest on which is excluded from gross income for federal tax purposes, all or a portion of the proceeds of which have been, are, or will be

applied by the State Water Board to fund all or any portion of the Project Costs or that are secured in whole or in part by Installment Payments paid hereunder.

"Code" as used in Article V of this Agreement means the Internal Revenue Code of 1986, as amended, and any successor provisions and the regulations of the U.S. Department of the Treasury promulgated thereunder.

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

"Days" means calendar days unless otherwise expressly indicated.

"Debt Service" means, as of any date, with respect to outstanding System Obligations and, in the case of the additional debt tests in Section 3.7 of this Agreement, any System Obligations that are proposed to be outstanding, the aggregate amount of principal and interest scheduled to become due (either at maturity or by mandatory redemption), calculated with the following assumptions:

- a. Principal payments (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) are made in accordance with any amortization schedule published for such principal, including any minimum sinking fund payments;
- b. Interest on a variable rate System Obligation that is not subject to a swap agreement and that is issued or will be issued as a tax-exempt obligation under federal law, is the average of the SIFMA Municipal Swap Index, or its successor index, during the 24 months preceding the date of such calculation;
- c. Interest on a variable rate System Obligation that is not subject to a swap agreement and that is issued or will be issued as a taxable obligation under federal law, is the average of LIBOR, or its successor index, during the 24 months preceding the date of such calculation;
- d. Interest on a variable rate System Obligation that is subject to a swap agreement is the fixed swap rate or cap strike rate, as appropriate, if the variable rate has been swapped to a fixed rate or capped pursuant to an interest rate cap agreement or similar agreement;
- e. Interest on a fixed rate System Obligation that is subject to a swap agreement such that all or a portion of the interest has been swapped to a variable rate shall be treated as variable rate debt under subsections (b) or (c) of this definition of Debt Service;
- f. Payments of principal and interest on a System Obligation are excluded from the calculation of Debt Service to the extent such payments are to be paid from amounts then currently on deposit with a trustee or other fiduciary and restricted for the defeasance of such System Obligations;
- g. If 25% or more of the principal of a System Obligation is not due until its final stated maturity, then principal and interest on that System Obligation may be projected to amortize over the lesser of 30 years or the useful life of the financed asset, and interest may be calculated according to subsections (b)-(d) of this definition of Debt Service, as appropriate.

"Disbursement Period" means the period during which Project Funds may be disbursed.

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

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

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

"DWSRF" means the Drinking Water State Revolving Fund.

"Eligible Start Date" means the date set forth in Exhibit B, establishing the date on or after which construction costs may be incurred and eligible for reimbursement hereunder, subject to the 60-day look back period established in the Reimbursement Resolution.

"Enterprise Fund" means the Water Utility Fund of the Recipient in which Revenues are deposited.

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

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

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

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

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

"Installment Payments" means Installment Payments due and payable by the Recipient to the State Water Board under this Agreement, the amounts of which are set forth as Exhibit C hereto.

"Listed Event" means, so long as the Recipient has outstanding any System Obligation subject to Rule 15c2-12, any of the events required to be reported pursuant to Rule 15c2-12(b)(5).

"Loan Repayments" means repayments due and payable by the Recipient to the State Water Board under this Agreement, the amounts of which are set forth as Exhibit C hereto.

"Material Event" means any event that, as determined by the Division, might cause the State Water Board to violate the terms and conditions of its agreements with USEPA or its bond covenants, including any of the following: (a) revenue shortfalls; (b) unscheduled draws on the Reserve Fund, if any, or the Enterprise Fund; (c) substitution of insurers, or their failure to perform; (d) adverse findings by the Division of Drinking Water; (e) litigation related to the Revenues, the System, or the Project, whether pending or anticipated; (f) any false warranty or representation made by the Recipient relevant to this Agreement; (g) loss, theft, damage, or impairment to the Revenues or the System; (h) seizure of, or levy on any collateral securing this Agreement; (i) dissolution or cessation of operations by the Recipient, termination of Recipient's existence, insolvency of Recipient, or filing of a voluntary or involuntary bankruptcy petition by or on behalf of Recipient; (j) any event set forth in section 2.10 of this Agreement.

"Material Obligation" means (a) any senior or parity obligation of the Recipient payable from Revenues as identified as of the date of this Agreement in Exhibit F, (b) the Obligation, and (c) such additional obligations as may hereafter be issued in accordance with the provisions of such obligations and this Agreement.

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

"Obligation" means the obligation of the Recipient to make Installment Payments and Additional Payments as provided herein, as evidenced by the execution of this Agreement, proceeds of such obligations being used to fund the Project as specified in the Project Description in Exhibit A and Exhibit A-FBA and in the documents thereby incorporated by reference.

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

"Party Contact" means, for the Recipient, the Authorized Representative of the Recipient or any designee of the Authorized Representative, and, for the State Water Board, the Grant Manager, or the Program Analyst.

"Policy" means the State Water Board's "Policy for Implementing the Drinking Water State Revolving Fund," as amended from time to time.

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

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

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

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

"Recipient" means City of San Diego.

"Regional Water Quality Control Board" or "Regional Water Board" means the appropriate Regional Water Quality Control Board.

"Reimbursement Resolution" means the Recipient's reimbursement resolution identified in Exhibit A of this Agreement.

"Revenues" means, for each Fiscal Year, all gross income and revenue received or receivable by the Recipient from the ownership or operation of the System, determined in accordance with GAAP, including all rates, fees, and charges (including connection fees and charges) as received by the Recipient for the

services of the System, and all other income and revenue howsoever derived by the Recipient from the ownership or operation of the System or arising from the System, including all income from the deposit or investment of any money in the Enterprise Fund or any rate stabilization fund of the Recipient or held on the Recipient's behalf, and any refundable deposits made to establish credit, and advances or contributions in aid of construction.

"Rule 15c2-12(b)(5)" means Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended.

"SRF" means the Drinking Water State Revolving Fund.

"State" means State of California.

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

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

"System Obligation" means any long-term obligation of the Recipient payable from the Revenues, including this Obligation and outstanding obligations reflected in Exhibit F.

"Year" means calendar year unless otherwise expressly indicated.

## 1.2 Exhibits and Appendices Incorporated.

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

## ARTICLE II REPRESENTATIONS, WARRANTIES, AND COMMITMENTS

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

### 2.1 General Recipient Commitments.

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



2.2 Authorization and Validity.

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

2.3 No Violations.

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

2.4 No Litigation.

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

2.5 Solvency.

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

2.6 Legal Status and Eligibility.

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

2.7 Financial Statements and Continuing Disclosure.

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

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

2.8 Completion of Project.

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

2.9 Award of Construction Contracts.

- (a) The Recipient shall award the prime construction contract timely in order to meet the start of construction date specified in Exhibit A.
- (b) The Recipient shall promptly notify the Division in writing both of the award of the prime construction contract for the Project and of Initiation of Construction of the Project. The Recipient shall make all reasonable efforts to complete construction in substantial conformance with the terms of the contract by the Completion of Construction date established in Exhibit A. Such date shall be binding upon the Recipient unless modified in writing by the Division upon a showing of good cause by the Recipient. The Recipient shall deliver any request for extension of the Completion of Construction date no less than 90 days prior to the Completion of Construction date. The Division will not unreasonably deny a timely request, but the Division may deny requests received after this time.

2.10 Notice.

- (a) The Recipient shall notify the Division in writing within five (5) working days of the occurrence of the following:
  - (1) Material defaults on this Obligation;
  - (2) Unscheduled draws on debt service reserves held for this Obligation, if any, reflecting financial difficulties;
  - (3) Bankruptcy, insolvency, receivership or similar event of the Recipient;
  - (4) Actions taken by the Recipient pursuant to state law in anticipation of filing for bankruptcy;
  - (5) Listed Events or Material Events, except as set forth in subdivisions (b) or (c) of this section;
  - (6) Change of ownership of the Project or change of management or service contracts, if any, for operation of the Project; or
- (b) The Recipient shall notify the Division within 10 working days of the following:
  - (1) Material defaults on System Obligations, other than this Obligation;
  - (2) Unscheduled draws on debt service reserves held for System Obligations, other than this Obligation, if any, reflecting financial difficulties;
  - (3) Unscheduled draws on credit enhancements on System Obligations, if any, reflecting financial difficulties;
  - (4) Substitution of credit or liquidity providers, if any, or their failure to perform;
  - (5) Any litigation pending or threatened against Recipient regarding its water capacity or its continued existence, circulation of a petition to challenge rates, consideration of dissolution, or reincorporation, or any other material threat to the Recipient's Revenues;
  - (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of any tax-exempt bonds;

- (7) Rating changes on outstanding System Obligations, if any; or
  - (8) Issuance of additional parity obligations.
- (c) The Recipient shall notify the Division promptly of the following:
- (1) Any substantial change in scope of the Project. The Recipient shall undertake no substantial change in the scope of the Project until written notice of the proposed change has been provided to the Division and the Division has given written approval for the change;
  - (2) Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of thirty (30) days or more;
  - (3) Any circumstance, combination of circumstances, or condition, which is expected to or does delay Completion of Construction for a period of ninety (90) days or more beyond the estimated date of Completion of Construction as specified in Exhibit A;
  - (4) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Recipient agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Recipient shall implement appropriate actions as directed by the Division;
  - (5) Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. Should a federally protected species be unexpectedly encountered during construction of the Project, the Recipient agrees to promptly notify the Division. This notification is in addition to the Recipient's obligations under the federal Endangered Species Act;
  - (6) Any Project monitoring, demonstration, or other implementation activities such that the State Water Board Division of Drinking Water staff may observe and document such activities;
  - (7) Any public or media event publicizing the accomplishments and/or results of this Agreement and provide the opportunity for attendance and participation by state representatives with at least ten (10) working days' notice to the Division; or
  - (8) Completion of Construction of the Project, and actual Project Completion.

#### 2.11 Findings and Challenge

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

#### 2.12 Project Access.

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

**2.13 Project Completion; Initiation of Operations.**

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

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

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

**2.15 Project Reports.**

(a) **Status Reports.** The Recipient shall provide expeditiously status reports no less frequently than quarterly, starting with the execution of this Agreement. These reports must accompany any disbursement request and are a condition precedent to any disbursement. At a minimum the reports will contain the following information:

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

(b) **Project Completion Report.** The Recipient shall submit a Project Completion Report to the Division with a copy to the appropriate District Office of the Division of Drinking Water on or before the due date established by the Division and the Recipient at the time of final project inspection. The Project Completion Report must address the following:

- (1) Describe the Project,
- (2) Describe the water quality problem the Project sought to address,
- (3) Discuss the Project's likelihood of successfully addressing that water quality problem in the future, and

- (4) Summarize compliance with environmental conditions, if applicable.
  - (5) If the Recipient fails to submit a timely Project Completion Report, then the State Water Board may stop processing pending or future applications for new financial assistance, withhold disbursements under this Agreement or other agreements, and begin administrative proceedings.
- (c) **As Needed Reports.** The Recipient shall provide expeditiously, during the term of this Agreement, any reports, data, and information reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the funding program or to fulfill any reporting requirements of the state or federal government.

2.16 Federal Disadvantaged Business Enterprise (DBE) Reporting.

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

2.17 Records.

- (a) Without limitation of the requirement to maintain Project accounts in accordance with GAAP, the Recipient shall:
- (1) Establish an official file for the Project which adequately documents all significant actions relative to the Project;
  - (2) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all assistance funds received under this Agreement;
  - (3) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to assistance funds disbursed under this Agreement;
  - (4) Establish an accounting system which will accurately depict final total costs of the Project, including both direct and indirect costs;
  - (5) Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
  - (6) If Force Account is used by the Recipient for any phase of the Project, other than for planning, design, and construction engineering and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee. Indirect Force Account costs are not eligible for funding.
- (b) The Recipient shall maintain separate books, records and other material relative to the Project. The Recipient shall also retain such books, records, and other material for itself and for each contractor or subcontractor who performed or performs work on this project for a minimum of thirty-six (36) years after Project Completion. The Recipient shall require that such books, records, and other material are subject at all reasonable times (at a minimum during normal

business hours) to inspection, copying, and audit by the State Water Board, the Bureau of State Audits, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned. The Recipient shall allow and shall require its contractors to allow interviews during normal business hours of any employees who might reasonably have information related to such records. The Recipient agrees to include a similar duty regarding audit, interviews, and records retention in any contract or subcontract related to the performance of this Agreement. The provisions of this section shall survive the discharge of the Recipient's Obligation and the term of this Agreement.

2.18 Audit.

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

ARTICLE III FINANCING PROVISIONS

3.1 Purchase and Sale of Project.

The Recipient hereby sells to the State Water Board and the State Water Board hereby purchases from the Recipient the Project. Simultaneously therewith, the Recipient hereby purchases from the State Water Board, and the State Water Board hereby sells to the Recipient, the Project in accordance with the provisions of this Agreement. All right, title, and interest in the Project shall immediately vest in the Recipient on the date of execution and delivery of this Agreement without further action on the part of the Recipient or the State Water Board. The State Water Board's disbursement of funds hereunder is contingent on the Recipient's compliance with the terms and conditions of this Agreement.

3.2 Amounts Payable by the Recipient.

- (a) **Installment Payments.** Interest will accrue beginning with each disbursement. The Recipient shall repay interest semi-annually, by January 1 and July 1 of each year, until one year after Completion of Construction. Beginning no later than one year after Completion of Construction, repayment of the principal of the Project Funds, together with all interest accruing thereon, shall be repaid semi-annually by January 1 and July 1, and shall be fully amortized by the end term date specified in Exhibit B.

The Installment Payments are based on a standard fully amortized assistance amount with equal semi-annual payments. The remaining balance is the previous balance, plus the disbursements, plus the accrued interest on both, less the Installment Payment. Installment Payment calculations will be made beginning one (1) year after Completion of Construction. Exhibit C is a payment schedule based on the provisions of this article and an estimated disbursement schedule. Actual payments will be based on actual disbursements.

Upon Completion of Construction and submission of necessary reports by the Recipient, the Division will prepare an appropriate payment schedule and supply the same to the Recipient. The Division may amend this schedule as necessary to accurately reflect amounts due under this Agreement. The Division will prepare any necessary amendments to the payment schedule and send them to the Recipient.

The Recipient shall make each Installment Payment on or before the due date therefor. A ten (10) day grace period will be allowed, after which time a penalty in the amount of costs incurred by the State Water Board will be assessed for late payment. These costs may include, but are not limited to, lost interest earnings, staff time, bond debt service default penalties, if any, and other related costs. For purposes of penalty assessment, payment will be deemed to have been made if payment is deposited in the U.S. Mail within the grace period with postage prepaid and properly addressed. Any penalties assessed will not be added to the assistance amount balance, but will be treated as a separate account and obligation of the Recipient. The interest penalty will be assessed from the payment due date.

The Recipient as a whole is obligated to make all payments required by this Agreement to the State Water Board, notwithstanding any individual default by its constituents or others in the payment to the Recipient of fees, charges, taxes, assessments, tolls or other charges ("Charges") levied or imposed by the Recipient. The Recipient shall provide for the punctual payment to the State Water Board of all amounts which become due under this Agreement and which are received from constituents or others in the payment to the Recipient. In the event of failure, neglect or refusal of any officer of the Recipient to levy or cause to be levied any Charge to provide payment by the Recipient under this Agreement, to enforce or to collect such Charge, or to pay over to the State Water Board any money collected on account of such Charge necessary to satisfy any amount due under this Agreement, the State Water Board may take such action in a court of competent jurisdiction as it deems necessary to compel the performance of all duties relating to the imposition or levying and collection of any of such Charges and the payment of the money collected therefrom to the State Water Board. Action taken pursuant hereto shall not deprive the State Water Board of, or limit the application of, any other remedy provided by law or by this Agreement.

Each Installment Payment shall be paid by check and in lawful money of the United States of America.

The Recipient shall not be entitled to interest earned on undisbursed funds. Upon execution of this Agreement, the State Water Board shall encumber an amount equal to the Obligation. The Recipient shall pay Installment Payments and Additional Payments from Net Revenues and/or other amounts legally available to the Recipient therefor. Interest on any funds disbursed to the Recipient shall begin to accrue as of the date of each disbursement.

- (b) Project Costs. The Recipient shall pay any and all costs connected with the Project including, without limitation, any and all Project Costs. If the Project Funds are not sufficient to pay the Project Costs in full, the Recipient shall nonetheless complete the Project and pay that portion of the Project Costs in excess of available Project Funds, and shall not be entitled to any reimbursement therefor from the State Water Board.
- (c) Additional Payments. In addition to the Installment Payments required to be made by the Recipient, the Recipient shall also pay to the State Water Board the reasonable extraordinary fees and expenses of the State Water Board, and of any assignee of the State Water Board's right, title, and interest in and to this Agreement, in connection with this Agreement, including all expenses and fees of accountants, trustees, staff, contractors and consultants, insurance premiums and all other extraordinary costs reasonably incurred by the State Water Board or assignee of the State Water Board.

Additional Payments may be billed to the Recipient by the State Water Board from time to time, together with a statement executed by a duly authorized representative of the State Water Board, stating that the amounts billed pursuant to this section have been incurred by the State Water Board or its assignee for one or more of the above items and a copy of the invoice or statement

for the amount so incurred or paid. Amounts so billed shall be paid by the Recipient within thirty (30) days after receipt of the bill by the Recipient.

- (d) The Recipient may without penalty prepay all or any portion of the outstanding principal amount of the Obligation provided that the Recipient shall also pay at the time of such prepayment all accrued interest on the principal amount prepaid to the date of prepayment.

### 3.3 Obligation Absolute.

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

### 3.4 No Obligation of the State.

Any obligation of the State Water Board herein contained shall not be an obligation, debt, or liability of the State and any such obligation shall be payable solely out of the moneys encumbered pursuant to this Agreement.

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

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



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

### 3.6 Withholding of Disbursements and Material Violations.

- (a) The State Water Board may withhold all or any portion of the funds provided for by this Agreement in the event that:
- (1) The Recipient has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Agreement; or
  - (2) The Recipient fails to maintain reasonable progress toward completion of the Project.
- (b) For the purposes of this Agreement, the terms "material violation" or "threat of material violation" include, but are not limited to:
- (1) Placement on the ballot of an initiative or referendum to reduce Revenues;
  - (2) Passage of such an initiative or referendum;
  - (3) Successful challenges by ratepayer(s) to the process used by Recipient to set, dedicate, or otherwise secure Revenues; or
  - (4) Any other action or lack of action that may be construed by the Division as a material violation or threat thereof.

### 3.7 Pledge; Rates, Fees and Charges; Additional Debt.

- (a) Establishment of Enterprise Fund. In order to carry out its Material Obligations, the Recipient covenants that it shall establish and maintain or shall have established and maintained the

Enterprise Fund. All Revenues received shall be deposited when and as received in trust in the Enterprise Fund.

- (b) Pledge of Net Revenues and Enterprise Fund. The Obligation hereunder shall be secured by a lien on and pledge of the Enterprise Fund and Net Revenues in priority as specified in Exhibit F (senior, parity, or subordinate). The Recipient hereby pledges and grants such lien on and pledge of the Enterprise Fund and Net Revenues to secure the Obligation, including payment of Installment Payments and Additional Payments hereunder. The Net Revenues 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 Recipient.
- (c) Application and Purpose of the Enterprise Fund. Subject to the provisions of any outstanding Material Obligation, money on deposit in the Enterprise Fund shall be applied and used first, to pay Operations and Maintenance Costs, and thereafter, all amounts due and payable with respect to the Material Obligations. After making all payments hereinabove required to be made in each Fiscal Year, the Recipient may expend in such Fiscal Year any remaining money in the Enterprise Fund for any lawful purpose of the Recipient, including payment of subordinate debt.
- (d) Rates, Fees and Charges. The Recipient shall, to the extent permitted by law, fix, prescribe and collect rates, fees and charges for the System during each Fiscal Year which are reasonable, fair, and nondiscriminatory and which will be at least sufficient to yield during each Fiscal Year Net Revenues equal to the debt service on System Obligations, including the Obligation, for such Fiscal Year, plus any coverage ratio specified in Exhibit D of this Agreement. The Recipient may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Net Revenues from such reduced rates, fees, and charges will at all times be sufficient to meet the requirements of this section.
- (e) Additional Debt Test.
  - (1) Additional Senior Debt. The Recipient's future debt that is secured by revenues pledged herein may not be senior to this Obligation, except where the new senior obligation refunds or refinances a senior obligation with the same lien position as the existing senior obligation, the new senior obligation has the same or earlier repayment term as the refunded senior debt, the new senior debt service is the same or lower than the existing debt service, and the new senior debt will not diminish the Recipient's ability to repay its SRF obligations.
  - (2) Additional Parity Debt. Future debt that is secured by revenues pledged herein may be on parity with this Obligation under the following conditions:
    - (A) The Recipient's non-subordinate debt is rated "A," or higher, by at least two of the nationally recognized rating agencies, and the conditions in Exhibit D are met.

### 3.8 Financial Management System and Standards.

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

3.9 Accounting and Auditing Standards.

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

3.10 Other Assistance.

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

ARTICLE IV MISCELLANEOUS PROVISIONS

4.1 Amendment.

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.

4.2 Assignability.

The Recipient consents to any pledge, sale, or assignment to the Bank or a trustee for the benefit of the owners of the Bonds, if any, at any time of any portion of the State Water Board's estate, right, title, and interest and claim in, to and under this Agreement and the right to make all related waivers and agreements in the name and on behalf of the State Water Board, as agent and attorney-in-fact, and to perform all other related acts which are necessary and appropriate under this Agreement, if any, and the State Water Board's estate, right, title, and interest and claim in, to and under this Agreement to Installment Payments (but excluding the State Water Board's rights to Additional Payments and to notices, opinions and indemnification under each Obligation). This Agreement is not assignable by the Recipient, either in whole or in part, without the consent of the State Water Board in the form of a formal written amendment to this Agreement.

4.3 Bonding.

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

4.4 Competitive Bidding

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

4.5 Compliance with Law, Regulations, etc.

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

- (a) Comply with the provisions of the adopted environmental mitigation plan, if any, for the term of this Agreement;
- (b) Comply with the State Water Board's Policy;
- (c) Comply with and require compliance with the list of state laws attached as Exhibit H.
- (d) Comply with and require its contractors and subcontractors on the Project to comply with federal DBE requirements; and
- (e) Comply with and require its contractors and subcontractors to comply with the list of federal laws attached as Exhibit E.

4.6 Conflict of Interest.

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

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

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

4.8 Disputes.

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

- (d) This section 4.8 relating to disputes does not establish an exclusive procedure for resolving claims within the meaning of Government Code sections 930 and 930.4.

4.9 Governing Law.

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

4.10 Income Restrictions.

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

4.11 Indemnification and State Reviews.

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

4.12 Independent Actor.

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

4.13 Leveraging Covenants.

- (a) Tax Covenant. Notwithstanding any other provision hereof, the Recipient covenants and agrees that it will comply with the Tax Covenants set forth in Article V of this Agreement.
- (b) Disclosure of Financial Information, Operating Data, and Other Information. The Recipient covenants to furnish such financial, operating and other data pertaining to the Recipient as may be requested by the State Water Board to: (i) enable the State Water Board to cause the issuance of Bonds and provide for security therefor; or (ii) enable any underwriter of Bonds issued for the benefit of the State Water Board to comply with Rule 15c2-12(b)(5). The Recipient further covenants to provide the State Water Board with copies of all continuing disclosure reports and materials concerning the System required by the terms of any financing other than this Agreement and to submit such reports to the State Water Board at the same time such reports are submitted to any dissemination agent, trustee, nationally recognized municipal securities information repository, the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (EMMA) website or other person or entity.

4.14 Non-Discrimination Clause.

- (a) During the performance of this Agreement, Recipient and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family care leave, or genetic information, gender, gender identity, gender expression, or military and veteran status.
- (b) The Recipient, its contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- (c) The Recipient, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subs. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- (d) The Recipient, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- (e) The Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

4.15 No Third Party Rights.

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

4.16 Operation and Maintenance; Insurance.

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

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

In the event of any damage to or destruction of the System caused by the perils covered by such insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System. The Recipient shall begin such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such net proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the System shall be free and clear of all claims and liens. If such net proceeds are insufficient to enable the Recipient to pay all remaining unpaid principal portions of the Installment Payments, if any, the Recipient shall provide additional funds to restore or replace the damaged portions of the System.

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

#### 4.17 Permits, Subcontracting, and Remedies.

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

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

#### 4.18 Prevailing Wages.

The Recipient agrees to be bound by all applicable provisions of State Labor Code regarding prevailing wages. The Recipient shall monitor all agreements subject to reimbursement from this Agreement to ensure that the prevailing wage provisions of the State Labor Code are being met. In addition, the Recipient agrees to comply with the provisions of Exhibit G (Davis-Bacon).

#### 4.19 Public Funding.

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

#### 4.20 Recipient's Responsibility for Work.

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

#### 4.21 Related Litigation.

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

#### 4.22 Rights in Data.

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

#### 4.23 State Water Board Action; Costs and Attorney Fees.

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

#### 4.24 Termination; Immediate Acceleration; Interest.

- (a) This Agreement may be terminated by written notice during construction of the Project, or thereafter at any time prior to complete satisfaction of the Obligation by the Recipient, at the option of the State Water Board, upon violation by the Recipient of any material provision of this Agreement after such violation has been called to the attention of the Recipient and after failure of the Recipient to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the Division.
- (b) In the event of such termination, the Recipient agrees, upon demand, to immediately repay to the State Water Board an amount equal to Project Funds disbursed hereunder, accrued interest, penalty assessments, and Additional Payments. In the event of termination, interest shall accrue



on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Recipient to the date all monies due have been received by the State Water Board.

4.25 Timeliness.

Time is of the essence in this Agreement.

4.26 Unenforceable Provision.

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

4.27 Useful Life.

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

4.28 Venue.

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

4.29 Waiver and Rights of the State Water Board.

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

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

## ARTICLE V TAX COVENANTS

5.1 Purpose.

The purpose of this Article V is to establish the reasonable expectations of the Recipient regarding the Project and the Project Funds, and is intended to be and may be relied upon for purposes of Sections 103, 141 and 148 of the Code and as a certification described in Section 1.148-2(b)(2) of the Treasury Regulations. This Article V sets forth certain facts, estimates and circumstances which form the basis for the Recipient's expectation that neither the Project nor the Bond Funded Portion of the Project Funds is to be used in a manner that would cause the Obligation to be classified as "arbitrage bonds" under Section 148 of the Code or "private activity bonds" under Section 141 of the Code.

5.2 Tax Covenant.

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

5.3 Governmental Unit.

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

**5.4 Financing of a Capital Project.**

The Recipient will use the Project Funds to finance costs it has incurred or will incur for the construction, reconstruction, installation or acquisition of the Project. Such costs shall not have previously been financed with the proceeds of any other issue of tax-exempt obligations.

**5.5 Ownership and Operation of Project.**

The Recipient exclusively owns and, except as provided in Section 5.12 hereof, operates the Project.

**5.6 Temporary Period.**

The Recipient reasonably expects that at least eighty-five percent (85%) of the Bond Funded Portion of the Project Funds will be allocated to expenditures for the Project within three (3) years of the earlier of the effective date of this Agreement or the date the Bonds are issued ("Applicable Date"). The Recipient has incurred, or reasonably expects that it will incur within six (6) months of the Applicable Date, a substantial binding obligation (i.e., not subject to contingencies within the control of the Recipient or a related party) to a third party to expend at least five percent (5%) of the Bond Funded Portion of the Project Funds on Project Costs. The completion of acquisition, construction, improvement and equipping of the Project and the allocation of the Bond Funded Portion of the Project Funds to Project Costs will proceed with due diligence.

**5.7 Working Capital.**

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

**5.8 Expenditure of Proceeds.**

The Bond Funded Portion of the Project Funds shall be used exclusively for the following purposes: (i) Reimbursement Expenditures (as defined in Section 4.20 below), (ii) Preliminary Expenditures (as defined in Section 4.20 below) in an aggregate amount not exceeding twenty percent (20%) of the Bond Funded Portion of the Project Funds, (iii) capital expenditures relating to the Project originally paid by the Recipient on or after the date hereof, (iv) interest on the Obligation through the later of three (3) years after the Applicable Date or one (1) year after the Project is placed in service, and (v) initial operating expenses directly associated with the Project in the aggregate amount not more than five percent (5%) of the Bond Funded Portion of the Project Funds.

**5.9 Private Use and Private Payments.**

No portion of the Project Funds or the Project is being, has been or will be used in the aggregate for any activities that constitute a Private Use (as defined below). No portion of the principal of or interest with respect to the Installment Payments will be secured by any interest in property (whether or not the Project) used for a Private Use or in payments in respect of property used for a Private Use, or will be derived from payments in respect of property used for a Private Use. "Private Use" means any activity that constitutes a trade or business that is carried on by persons or entities, other than a Governmental Unit. The leasing of the Project or the access by or the use of the Project by a person or entity other than a Governmental Unit on a basis other than as a member of the general public shall constitute a Private Use. Use by or on behalf of the State of California or any of its agencies, instrumentalities or subdivisions or by any local Governmental Unit and use as a member of the general public will be disregarded in

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

#### 5.10 No Sale, Lease or Private Operation of the Project.

The Project (or any portion thereof) will not be sold or otherwise disposed of, in whole or in part, to any person who is not a Governmental Unit prior to the final maturity date of the Obligation. The Project will not be leased to any person or entity that is not a Governmental Unit prior to the final maturity date of the Obligation. Except as permitted under Section 5.12 hereof, the Recipient will not enter any contract or arrangement or cause or permit any contract or arrangement to be entered with persons or entities that are not Governmental Units if that contract or arrangement would confer on such persons or entities any right to use the Project on a basis different from the right of members of the general public. The contracts or arrangements contemplated by the preceding sentence include but are not limited to management contracts, take or pay contracts or put or pay contracts, and capacity guarantee contracts.

#### 5.11 No Disproportionate or Unrelated Use.

No portion of the Project Funds or the Project is being, has been, or will be used for a Private Use that is unrelated or disproportionate to the governmental use of the Project Funds.

#### 5.12 Management and Service Contracts.

The Recipient represents that, as of the date hereof, it is not a party to any contract, agreement or other arrangement with any persons or entities engaged in a trade or business (other than Governmental Units) that involve the management or operation of property or the provision of services at or with respect to the Project that does not comply with the standards of the Treasury Regulations, Revenue Procedure 97-13, as modified by Revenue Procedure 2001-39 and IRS Notice 2014-67, or Revenue Procedure 2016-44. The Recipient represents that it will not be party to any such contract, agreement or arrangement with any person or entity that is not a Governmental Unit for the management of property or the provision of services at or with respect to the Project, while the Obligation (including any obligation or series thereof issued to refund the Obligation, as the case may be) is outstanding, except: (a) with respect to any contract, agreement or arrangement that does not constitute "private business use" of the Project under Code §§141(b), or (b) with respect to any contract, agreement or arrangement that complies with (i) Revenue Procedure 97-13, 1997-1 C.B. 632, as amended by Revenue Procedure 2001-39, 2001-2 C.B. 38, and as amplified by Notice 2014-67, with respect to contracts entered into before August 18, 2017 and not materially modified or extended after August 18, 2017, or (ii) Revenue Procedure 2016-44, 2016-36 I.R.B., with respect to contracts entered into or materially modified or extended on or after August 18, 2017, or (c) with respect to any contract, agreement or arrangement that does not give rise to use of the Bond Funded Portion of the Project Funds or the Project by a non-Governmental Unit of more than the amount of such non-qualified use permitted by the Code, or (d) in the event that the Recipient receives an

opinion of counsel, satisfactory to the State Water Board and the Bank and expert in the issuance of state and local government bonds the interest on which is excluded from gross income under Section 103 of the Code ("Nationally-Recognized Bond Counsel"), that such contract, agreement or arrangement will not adversely affect the exclusion of the interest on the Obligation from gross income for federal income taxation purposes.

**5.13 No Disposition of Financed Property.**

As of the date hereof, the Recipient does not expect to sell or otherwise dispose of any portion of the Project, in whole or in part, prior to the final maturity date of the Obligation.

**5.14 Useful Life of Project.**

As of the date hereof, the Recipient reasonably expects that the economic useful life of the Project, commencing at Project Completion, will be at least equal to the term of this Agreement, as set forth on Exhibit B hereto.

**5.15 Installment Payments.**

Installment Payments generally are expected to be derived from assessments, taxes, fees, charges or other current Revenues of the Recipient in each year, and such current Revenues are expected to equal or exceed the Installment Payments during each payment period. Any amounts accumulated in a sinking fund or bona fide debt service fund to pay Installment Payments (whether or not deposited to a fund or account established by the Recipient) will be disbursed to pay Installment Payments within thirteen months of the initial date of accumulation or deposit. Any such fund used for the payment of Installment Payments will be depleted once a year except for a reasonable carryover amount not exceeding earnings on such fund or one-twelfth of the Installment Payments in either case for the immediately preceding year.

**5.16 No Other Replacement Proceeds.**

The Recipient will not use any of the Bond Funded Portion of the Project Funds to replace or substitute other funds of the Recipient that were otherwise to be used to finance the Project or which are or will be used to acquire securities, obligations or other investment property reasonably expected to produce a yield that is materially higher than the yield on the Bonds.

**5.17 No Sinking or Pledged Fund.**

Except as set forth in Section 5.18 below, the Recipient will not create or establish any sinking fund or pledged fund which will be used to pay Installment Payments on the Obligation within the meaning of Section 1.148-1(c) of the Treasury Regulations. If any sinking fund or pledged fund comes into being with respect to the Obligation before the Obligation has been fully retired which may be used to pay the Installment Payments, the Recipient will invest such sinking fund and pledged fund moneys at a yield that does not exceed the yield on the Bonds.

**5.18 Reserve Amount.**

If specified in Exhibit D, the State Water Board requires that the Recipient maintain and fund a separate account in an amount equal to one (1) year of debt service with respect to the Obligation (the "Reserve Amount") as set forth in Exhibit D. The Recipient represents that the Reserve Amount is and will be available to pay debt service with respect to the Obligation, if and when needed. The Reserve Amount consists solely of revenues of the Recipient and does not include any proceeds of any obligations the interest on which is excluded from gross income for federal income tax purposes or investment earnings thereon. The aggregate of the Reserve Amount, up to an amount not exceeding the lesser of (i) ten percent of the aggregate principal amount of the Obligation, (ii) the maximum annual debt service with

respect to the Obligation, or (iii) 125 percent of the average annual debt service with respect to the Obligation, will be treated as a reasonably required reserve fund.

5.19 Reimbursement Resolution.

The "reimbursement resolution" adopted by the Recipient is incorporated herein by reference, pursuant to Exhibit A.

5.20 Reimbursement Expenditures.

Reimbursements are disallowed, except as specifically authorized in Exhibit B or Exhibit D of this Agreement. To the extent so authorized, a portion of the Bond Funded Portion of the Project Funds may be applied to reimburse the Recipient for Project Costs paid before the date hereof, so long as the Project Cost was (i) not paid prior to sixty (60) days before the Recipient's adoption of a declaration of official intent to finance the Project, (ii) not paid more than eighteen (18) months prior to the date hereof or the date the Project was placed-in-service, whichever is later, and (iii) not paid more than three (3) years prior to the date hereof (collectively, "Reimbursement Expenditures"), unless such cost is attributable to a "preliminary expenditure." Preliminary expenditure for this purpose means architectural, engineering, surveying, soil testing and similar costs incurred prior to the commencement of construction or rehabilitation of the Project, but does not include land acquisition, site preparation and similar costs incident to the commencement of acquisition, construction or rehabilitation of the Project. Preliminary expenditures may not exceed 20% of the Bond Funded Portion of the Project Funds.

5.21 Change in Use of the Project.

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

5.22 Rebate Obligations.

If the Recipient satisfies the requirements of one of the spending exceptions to rebate specified in Section 1.148-7 of the Treasury Regulations, amounts earned from investments, if any, acquired with the Bond Funded Portion of the Project Funds will not be subject to the rebate requirements imposed under Section 148(f) of the Code. If the Recipient fails to satisfy such requirements for any period, it will notify the State Water Board and the Bank immediately and will comply with the provisions of the Code and the Treasury Regulations at such time, including the payment of any rebate amount calculated by the State Water Board or the Bank.

5.23 No Federal Guarantee.

The Recipient will not directly or indirectly use any of the Bond Funded Portion of the Project Funds in any manner that would cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code, taking into account various exceptions including any guarantee related to investments during an initial temporary period until needed for the governmental purpose of the Bonds, investments as part of a bona fide debt service fund, investments of a reasonably required reserve or replacement fund, investments in bonds issued by the United States Treasury, investments in refunding escrow funds or certain other investments permitted under the Treasury Regulations.

5.24 No Notices or Inquiries from IRS.

Within the last 10 years, the Recipient has not received any notice of a final action of the Internal Revenue Service that determines that interest paid or payable on any debt obligation of the Recipient is or was includable in the gross income of an owner or beneficial owner thereof for federal income tax purposes under the Code.

5.25 Amendments.

The provisions in this Article may be amended, modified or supplemented at any time to reflect changes in the Code upon obtaining written approval of the State Water Board and the Bank and an opinion of Nationally-Recognized Bond Counsel to the effect that such amendment, modification or supplement will not adversely affect the exclusion from federal gross income of interest on the Bonds pursuant to Section 103 of the Code.

5.26 Reasonable Expectations.

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

**5.27 Electronic Signatures**

**This Agreement, and any amendments hereto, may be executed and delivered in any number of counterparts, each of which when delivered shall be deemed to be an original, but such counterparts shall together constitute one document. The parties may sign this Agreement, and any amendments hereto, either by an electronic signature using a method approved by the State Water Board or by a physical, handwritten signature. The parties mutually agree that an electronic signature using a method approved by with the State Water Board is the same as a physical, handwritten signature for the purposes of validity, enforceability, and admissibility.**

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


**CITY OF SAN DIEGO:**

By:   
Name: Matthew Vespi  
Title: Chief Financial Officer

Date: 8/1/22

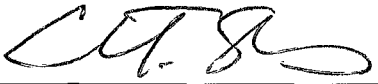
Attest: \_\_\_\_\_  
Name: Juan Guerreiro  
Title: Director of Public Utilities

Date: \_\_\_\_\_

Approved as to form:   
Name: Bret A. Bartolotta  
Title: Deputy City Attorney

Date: 8/1/2022

**STATE WATER RESOURCES CONTROL BOARD:**

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


Date: 9/20/22

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

**CITY OF SAN DIEGO:**

By: \_\_\_\_\_  
Name: Matthew Vespi  
Title: Chief Financial Officer

Date: \_\_\_\_\_



Attest:  \_\_\_\_\_  
Name: Juan Guerreiro  
Title: Director of Public Utilities

Date: 8/11/2022

Approved as to form: \_\_\_\_\_  
Name: Bret A. Bartolotta  
Title: Deputy City Attorney

Date: \_\_\_\_\_

**STATE WATER RESOURCES CONTROL BOARD:**

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

Date: 9/20/22



EXHIBIT A – SCOPE OF WORK

1. The Recipient agrees to start construction no later than the estimated date of June 1, 2017.
2. The Completion of Construction date is hereby established as May 1, 2020.
3. The Recipient agrees to ensure that its final Request for Disbursement is received by the Division no later than ~~six months after Completion of Construction~~ **December 31, 2021**. Otherwise, the undisbursed balance of this Agreement will be deobligated.
4. Incorporated by reference into this Agreement are the following documents:
  - (a) the Final Plans & Specifications, dated September 21, 2016, which are the basis for the construction contract to be awarded by the Recipient;
  - (b) the Drinking Water System Permit No. 68-15;
  - (c) the Recipient's Reimbursement Resolution No. 310374 dated May 4, 2016;
5. Reporting. Status Reports due at least quarterly.
6. Scope of Work.

The Project includes the installation of six pumps with 18 MGD total capacity in the abandoned 69<sup>th</sup> and Mohawk pump station to replace the Montezuma pump station as the primary pump station to the Redwood Village 645 Zone. In addition, approximately 7,000ft of new pipelines will be installed to eliminate the high amount of head loss, increase transmission capacity, and meet pressure criteria.

7. Signage.

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



"Funding for this \$15,000,044, 69<sup>th</sup> Street and Mohawk Pump Station Project has been provided in full or in part by the Drinking Water State Revolving Fund through an agreement with the State Water Resources Control Board. California's Drinking Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds."

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

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

EXHIBIT A – SCOPE OF WORK

“Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. California’s Drinking Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.”

EXHIBIT A – SCOPE OF WORK

Table 1: Approved Construction Bid Amount

CONTRACTOR	AMOUNT BID	APPROVED COSTS
West Coast General Corp./PK Mechanical Systems	\$10,099,115	\$10,099,115

1 - BUDGET

Table 2: Approved Final Project Budget

PROJECT COST TABLE	
TYPE OF WORK	APPROVED BUDGET
A. Construction (West Coast General Corp./PK Mechanical Systems)	\$10,099,115
B. Contingency	\$1,029,000
C. Allowances	\$3,871,929
TOTAL (Subtotal A+B+C)	\$15,000,044

Note: Adjustments may be made between Line Items on the Final Disbursement.

2 - PROJECT ELIGIBILITY DETERMINATION

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

- Stamped and Signed Final Plan and Specifications (P&S) for the Project received September 21, 2016 and
- Addendums No A, B, C, D, E, F, and G issued October 24, 2016, November 18, 2016, November 29, 2016, December 14, 2016, January 12, 2017, January 23, 2017, and February 7, 2017 respectively.

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

Table 3: Eligibility Determination Agreement:

Bid Item	Description	Percent Eligibility
1	Construction of a new water pump station, including masonry building generator enclosure, security fencing, vehicle access gates, retaining walls, landscaping, irrigation, site work, ADA pedestrian ramps, sidewalk and the installation of 30", 24", and 16" water mains totaling approximately 6,800 feet, fire hydrants, valves, water main abandonment, and appurtenances serving the College and mid-city eastern communities	100%

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

Eligibility Determination Conditions of Approval

1. Necessary insurance directly related to the construction contract and extending throughout the period of the construction contract will be eligible for DWSRF financing. This includes builder risk insurance, public liability insurance, fire, and Project specific insurance.
2. Earthquake insurance and "Act of God" insurance are ineligible for funding.

### EXHIBIT A – SCOPE OF WORK

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

### 3 – PROJECT COMPLETION

#### SECTION 1. Project Completion Report

The Project completion report shall contain the following:

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

#### Project Completion Reporting

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

EXHIBIT B – FUNDING AMOUNT

1. Estimated Reasonable Cost. The estimated reasonable cost of the total Project, including associated planning and design costs is fifteen million forty-four dollars and no cents (\$15,000,044.00).
2. Project Financing. Subject to the terms of this Agreement, the State Water Board agrees to provide Project Funds in the amount of up to fifteen million forty-four dollars and no cents (\$15,000,044.00). The estimated amount of principal that will be due to the State Water Board under this Agreement is fifteen million forty-four dollars and no cents (\$15,000,044.00).
3. Payment, Interest Rate, and Charges. The Recipient agrees to make all Installment Payments according to the schedule in Exhibit C at an interest rate of one point seventy percent (1.70%) per annum. The Recipient agrees to pay an Administrative Service Charge in lieu of interest as reflected in Exhibit C. The Recipient agrees to pay a Drinking Water Small Community Emergency Grant Fund Charge in lieu of interest as reflected in Exhibit C.
4. [RESERVED]
5. [RESERVED]
5. Useful Life. The useful life of this Project is at least fifty (50) years.
6. [RESERVED]
7. The term of this agreement is from the Eligible Start Date of April 19, 2017 to January 1, 2050.
8. Budget costs are contained in the Project Cost Table which is part of Exhibit A-FBA.

Construction costs incurred prior to the Eligible Start Date in Exhibit B of this Agreement are not eligible for reimbursement. Failure to begin construction according to the timelines set forth in Exhibit A may require the Recipient to repay to the State Water Board all disbursed Project Funds, including planning and design allowances.

EXHIBIT C – PAYMENT SCHEDULE

See the attached preliminary Payment Schedule. The final Payment Schedule will be forwarded to the Recipient after all disbursements have been paid and construction of the Project has been completed.

EXHIBIT D – SPECIAL CONDITIONS

Recipient acknowledges and agrees to the following special conditions:

Technical:

1. Recipient shall notify the Division when the Project is fifty percent (50%) and hundred percent (100%) complete.
2. Recipient shall notify the Division when the Project facility is in operation.

Environmental:

1. Recipient shall provide an opportunity for a Native American monitor from the Viejas Band of Kumeyaay Indians to be present during all ground disturbing activities.
2. Recipient shall implement the mitigation measures identified in the 69th and Mohawk Pump Station Mitigated Negative Declaration (October 13, 2016, SCH# 2016101036) as well as the Mitigation Monitoring and Reporting Program prepared for the Project.

Financial:

1. The Recipient shall establish and maintain rates and charges sufficient to generate Revenues in the amounts necessary to cover Operation and Maintenance cost, and shall ensure that Net Revenue are equal to at least 1.1 times the Maximum Annual Debt Service in each Fiscal Year. "Maximum Annual Debt Service" means the maximum amount of Debt Service due on System Obligations in any Fiscal Year during the period commencing with the Fiscal Year for which such calculation is made and terminating with the last Fiscal Year in which debt service for any System Obligations will become due.
2. Issuance of additional parity or subordinate debt requires Recipient's Net Revenues during any 12-consecutive-month period within the 18 consecutive months ending immediately prior to the issuance of such additional debt to be at least 1.1 times the Maximum Annual Debt Service for existing and proposed additional debt, as evidenced by a certificate prepared by the Recipient and signed by the Recipient's Chief Financial Officer and Comptroller.

Minimum Liquidity Requirement

By Completion of Construction, Recipient shall maintain an unrestricted cash balance within its Enterprise Fund at a minimum equal to two (2) Installment Payments and shall maintain such balance throughout the term of this Agreement. This minimum balance shall be in addition to any other reserve or liquidity requirements of the Recipient's existing obligations, including liquidity requirements of the Recipient's other State Revolving Funds loans, if any. The Recipient shall provide evidence of such minimum balances upon request of the State Water Board.

Legal:

This Agreement assumes that the exception clause in the Recipient's Municipal Code section 22.4402 has been triggered. To the extent that a court determines that the Recipient's Municipal Code section 22.4402 prohibits, limits, or constrains the Recipient from adopting, requiring, or utilizing a project labor agreement, this Agreement is voidable at the sole discretion of the State Water Board.

EXHIBIT D – SPECIAL CONDITIONS



EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

The Recipient agrees to comply with the following federal conditions:

(A) Federal Award Conditions

- (1) American Iron and Steel. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient shall not purchase "iron and steel products" produced outside of the United States on this Project. Unless the Recipient has obtained a waiver from USEPA on file with the State Water Board or unless this Project is not a project for the construction, alteration, maintenance or repair of a public water system or treatment work, the Recipient hereby certifies that all "iron and steel products" used in the Project were or will be produced in the United States. For purposes of this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.
- (2) Wage Rate Requirements (Davis-Bacon). The Recipient shall include in full the language provided in Exhibit G of this Agreement in all contracts and subcontracts.
- (3) Signage Requirements. The Recipient shall comply with the USEPA's Guidelines for Enhancing Public Awareness of SRF Assistance Agreements, dated June 3, 2015, as otherwise specified in this Agreement.
- (4) Public or Media Events. The Recipient shall notify the State Water Board and the EPA contact as provided in the notice provisions of this Agreement of public or media events publicizing the accomplishment of significant events related to this Project and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
- (5) EPA General Terms and Conditions (USEPA GTCs). The Recipient shall comply with applicable EPA general terms and conditions found at <http://www.epa.gov/ogd>, including but not limited to the following:
  - (a) DUNS. No Recipient may receive funding under this Agreement unless it has provided its DUNS number to the State Water Board.
  - (b) Executive Compensation. The Recipient shall report the names and total compensation of each of its five most highly compensated executives for the preceding completed fiscal year, as set forth in the USEPA GTCs.
  - (c) Contractors, Subcontractors, Debarment and Suspension, Executive Order 12549; 2 CFR Part 180; 2 CFR Part 1532. The Recipient shall comply with Subpart C of 2 CFR Part 180 and shall ensure that its contracts include compliance. The Recipient shall not subcontract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension". The Recipient shall not subcontract with any individual or organization on USEPA's List of Violating Facilities. The Recipient shall obtain

EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

certification from its contractors as to themselves and their principals as to the following, and hereby certifies as to itself and its principals:

- i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
  - ii. Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (ii) of this section; and
  - iv. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.
  - v. Suspension and debarment information can be accessed at <http://www.sam.gov>. The Recipient represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its contracts and subcontracts under this Agreement. The Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the termination, delay or negation of this Agreement, or pursuance of legal remedies, including suspension and debarment.
- (d) Conflict of Interest. To the extent applicable, the Recipient shall disclose to the State Water Board any potential conflict of interest consistent with USEPA's Final Financial Assistance Conflict of Interest Policy at <https://www.epa.gov/grants/epas-final-financial-assistance-conflict-interest-policy>. A conflict of interest may result in disallowance of costs.
- (e) Copyright and Patent.
- i. USEPA and the State Water Board have the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement.
  - ii. Where an invention is made with Project Funds, USEPA and the State Water Board retain the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the Recipient.

EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

The Recipient must utilize the Interagency Edison extramural invention reporting system at <http://iEdison.gov> and shall notify the Division when an invention report, patent report, or utilization report is filed.

- (f) Credit. The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this Agreement shall contain the following statement:

“This project has been funded wholly or in part by the United States Environmental Protection Agency and the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency or the State Water Resources Control Board, nor does the EPA or the Board endorse trade names or recommend the use of commercial products mentioned in this document.”

- (g) Electronic and Information Technology Accessibility. The Recipient is encouraged to follow guidelines established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194, with respect to enabling individuals with disabilities to participate in its programs supported by this Project.

- (h) Trafficking in Persons. The Recipient, its employees, contractors and subcontractors and their employees may not engage in severe forms of trafficking in persons during the term of this Agreement, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. The Recipient must include this provision in its contracts and subcontracts under this Agreement. The Recipient must inform the State Water Board immediately of any information regarding a violation of the foregoing. The Recipient understands that failure to comply with this provision may subject the State Water Board to loss of federal funds. The Recipient agrees to compensate the State Water Board for any such funds lost due to its failure to comply with this condition, or the failure of its contractors or subcontractors to comply with this condition. The State Water Board may unilaterally terminate this Agreement if the Recipient that is a private entity is determined to have violated the foregoing. Trafficking Victims Protection Act of 2000.

- (B) Super Cross-Cutters - Civil Rights Obligations. The Recipient must comply with the following federal non-discrimination requirements:

- (1) Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).
- (2) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.
- (3) The Age Discrimination Act of 1975, which prohibits age discrimination.
- (4) 40 CFR Part 7, as it relates to the foregoing.

- (D) Cross-Cutters

EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

- (1) Executive Order No. 11246. The Recipient shall include in its contracts and subcontracts related to the Project the following provisions:

*"During the performance of this contract, the contractor agrees as follows:*

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

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

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

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

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

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

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

EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

- (2) Disadvantaged Business Enterprises (40 CFR Part 33). The Recipient agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises. The DBE rule can be accessed at [www.epa.gov/osbp](http://www.epa.gov/osbp). The Recipient shall comply with, and agrees to require its prime contractors to comply with 40 CFR Section 33.301, and retain all records documenting compliance with the six good faith efforts. (IUP)
- (3) Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans; 42 USC § 7606; 33 USC § 1368. Except where the purpose of this Agreement is to remedy the cause of the violation, the Recipient may not procure goods, services, or materials from suppliers excluded under the federal System for Award Management: <http://www.sam.gov/>.
- (4) Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended; 42 USC §§4601-4655. The Recipient must comply with the Act's implementing regulations at 49 CFR 24.101 through 24.105.
- (5) Debarment and Suspension Executive Order No. 12549 (1986). The Recipient certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 40 CFR Part 32 to participate in the Project. Contractors on the Project must provide a similar certification prior to the award of a contract and subcontractors on the project must provide the general contractor with the certification prior to the award of any subcontract.
- (6) The Recipient agrees that if its network or information system is connected to USEPA networks to transfer data using systems other than the Environmental Information Exchange Network or USEPA's Central Data Exchange, it will ensure that any connections are secure.

(E) Geospatial Data Standards

All geospatial data created pursuant to this Agreement that is submitted to the State Water Board for use by USEPA or that is submitted directly to USEPA must be consistent with Federal Geographic Data Committee endorsed standards. Information on these standards may be found at [www.fgdc.gov](http://www.fgdc.gov).

**(G) RUSSIAN SANCTIONS**

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

EXHIBIT E – PROGRAMMATIC CONDITIONS & CROSS-CUTTERS

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

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

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

EXHIBIT F – SCHEDULE OF SYSTEM OBLIGATIONS

Except for the following and the Obligation evidenced by this Agreement, the Recipient certifies that it has no outstanding System Obligations or other material debt, and that it is in compliance with all applicable additional debt provisions of the following:

The following outstanding debt is senior to the Obligation:

Title	Total Amount	End Date
NONE		

The following outstanding debt is on parity with the Obligation:

Title	Total Amount	End Date
Drinking Water State Revolving Fund SRF14C104	\$26,000,000	1/1/2037
Drinking Water State Revolving Fund SRF12CX103	\$5,977,779	1/1/2036
Drinking Water State Revolving Fund SRF12C103	\$10,581,067	1/1/2036
Drinking Water State Revolving Fund SRF10CX120	\$18,000,000	1/1/2032
Drinking Water State Revolving Fund SRF10CX111	\$12,000,000	7/1/2031
Drinking Water State Revolving Fund SRF10CX122	\$20,000,000	7/1/2031

The following outstanding debt is subordinate to the Obligation:

Title	Total Amount	End Date
Water Commercial Paper Program	\$250,000,000*	-
Water Revenue Bonds, Series 2016A	\$40,540,000	8/1/2045
Water Revenue Bonds, Refunding Series 2016B	\$523,485,000	8/1/2039
Water Revenue Bonds, Refunding Series 2012A	\$188,610,000	8/1/2032

\*Outstanding balance for the Water Commercial Paper Program is approximately \$42,000,000 as of August 2, 2017

## EXHIBIT G – DAVIS-BACON REQUIREMENTS

For purposes of this Exhibit only, “subrecipient” or “sub recipient” means the Recipient as defined in this Agreement.

For purposes of this Exhibit only, “recipient” means the State Water Board.

### **I. Requirements For Sub recipients That Are Governmental Entities:**

If a sub recipient has questions regarding when Davis-Bacon (DB) applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State Water Board. The recipient or sub recipient may also obtain additional guidance from DOL’s web site at <http://www.dol.gov/whd/>

#### **1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.**

DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

#### **2. Obtaining Wage Determinations.**

(a) Sub recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the sub recipient shall monitor [www.wdol.gov](http://www.wdol.gov) weekly to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.

(ii) If the sub recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient shall monitor [www.wdol.gov](http://www.wdol.gov) on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the sub recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub recipient shall insert the appropriate DOL wage determination from [www.wdol.gov](http://www.wdol.gov) into the ordering instrument.



## EXHIBIT G – DAVIS-BACON REQUIREMENTS

(c) Sub recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

### 3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF - financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or, for CWSRF projects, the FY 2015 Water Resource Reform and Development Act, or for DWSRF projects, the Consolidated Appropriations Act, 2016, the following clauses:

#### (1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section

1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. Sub recipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The sub recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be

## EXHIBIT G – DAVIS-BACON REQUIREMENTS

classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The sub recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the

## EXHIBIT G – DAVIS-BACON REQUIREMENTS

accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### (3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the sub recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub recipient(s).

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

EXHIBIT G – DAVIS-BACON REQUIREMENTS

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

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

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

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate

## EXHIBIT G – DAVIS-BACON REQUIREMENTS

specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

## EXHIBIT G – DAVIS-BACON REQUIREMENTS

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

(10) Certification of eligibility.

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

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

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

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

(a) Contract Work Hours and Safety Standards Act. The sub recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub recipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

## EXHIBIT G – DAVIS-BACON REQUIREMENTS

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section. (b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the USEPA and the Department of Labor and the State Water Board, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

### 5. Compliance Verification

(a) The sub recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The sub recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c) The sub recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the sub recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The sub recipient shall periodically review contractors' and subcontractors' use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

EXHIBIT G – DAVIS-BACON REQUIREMENTS

(e) Sub recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm>.



## EXHIBIT H – COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES

### 1. EMERGENCY DROUGHT REGULATIONS

The Recipient certifies that it complies with and shall continue to comply with the State Water Board's Drought Emergency Water Conservation regulations in Article 22.5 of Chapter 2 of Division 3 of Title 23 of the California Code of Regulations. The Recipient will include a discussion of its implementation in reports submitted pursuant to Section 2.15 of this Agreement.

### 2. CALIFORNIA DEBT INVESTMENT ADVISORY COMMISSION (CDIAC)

Where Recipient is a public entity, Recipient acknowledges its responsibility to file debt obligations with the CDIAC. Recipient understands that CDIAC has waived filing fees for State Water Board SRF debt.

### 3. COMPLIANCE WITH STATE REQUIREMENTS

Recipient represents that is in compliance with the following conditions precedent and agrees that it will continue to maintain compliance during the term of this Agreement:

#### (a) Monthly Water Diversion Reporting

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

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

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

#### (c) Volumetric Pricing & Water Meters

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

#### (d) Urban Water Management Plan

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

#### (e) Urban Water Demand Management

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

#### (f) Delta Plan Consistency Findings

If Recipient is a state or local public agency and the proposed action is covered by the Delta Plan, Recipient must submit certification of project consistency with the Delta Plan to the Delta

EXHIBIT H – COMPLIANCE WITH CROSS-CUTTING STATE AUTHORITIES

Stewardship Council according to the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.

(g) Agricultural Water Management Plan Consistency

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

(h) Charter City Project Labor Requirements

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

(1) Prevailing Wage

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

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

(2) Labor Agreements

Recipient certifies that Proposition A's exception clause, codified in San Diego Municipal Code section 22,4402, is triggered, and that accordingly no charter provision, initiative, or ordinance limits or constrains the city's authority or discretion to adopt, require, or utilize project labor agreements that include all the taxpayer protection antidiscrimination provisions of Public Contract Code section 2500 in construction projects, and that Recipient is accordingly eligible for state funding or financial assistance pursuant to Public Contract Code section 2503.

**Test Claim Title: SWRCB Water Supply Permit Amendment (2017PA-SCHOOLS) for PWS No. 3710020**

**Claimant: City of San Diego**

**DECLARATION OF ADAM JONES**

**IN SUPPORT OF TEST CLAIM FILED BY THE CITY OF SAN DIEGO**

I Adam Jones, declare as follows:

1. I am the Deputy Director of Finance for the Public Utilities Department (PUD). In that capacity, I am responsible for developing rates for both the Water and Wastewater, issuing debt, preparing annual disclosures, applying for grants and developing the Department's capital and operating budget.
2. I have reviewed the City of San Diego's Test Claim filing and am familiar with its contents. I am also familiar with the pertinent sections of Permit Amendment No. 2017PA-SCHOOLS, which was issued by the SWRCB on January 17, 2017.
3. I have personal knowledge of the facts contained in this declaration, and if called upon as a witness, I could and would competently testify to the truthfulness of these facts as set forth in this declaration.
4. The Public Utility's Water System currently has approximately \$1.39 billion in outstanding principal for senior and subordinate lien debt, backed by pledges of revenue from the Water system, based on draft information used for the City's 2023 financial Statements. Of that principal approximately \$66 million is owed to the State Water Resources Control Board under the State Revolving Fund (SRF) program and \$240 million is owed to the Federal Environmental Protection Agency under the Water Infrastructure Finance Innovation Act (WIFIA).
5. As of June 30, 2023, the Water Utility has approximately \$271 million in cash and investments available based on draft information used for the City's 2023 financial statements.
6. If all outstanding debt was called, the Water Utility would have insufficient funding to immediate accelerate payment of all principal owed and assets would likely need to be

**Test Claim Title: SWRCB Water Supply Permit Amendment (2017PA-SCHOOLS) for PWS No. 3710020**

**Claimant: City of San Diego**

I, Lisa Celaya, declare as follows:

1. I am the Executive Assistant Director for the Public Utilities Department (PUD). In that capacity, I am responsible for the day-to-day operations to ensure the delivery of safe, clean drinking water and treating wastewater in an environmentally safe manner.
2. I have reviewed the City of San Diego's Test Claim filing and am familiar with its contents. I am also familiar with the pertinent sections of Permit Amendment No. 2017PA-SCHOOLS, which was issued by the SWRCB on January 17, 2017.
3. I have personal knowledge of the facts contained in this declaration, and if called upon as a witness, I could and would competently testify to the truthfulness of these facts as set forth in this declaration.
4. Based on my knowledge and experience, I cannot envision a path where selling the water system could be successful. Due to our size and complexity, the ability to identify a qualified and capable buyer is non-existent. The City's system is significantly larger, more complex (the City's topography, with multiple elevation changes requiring a large number of pressure stations) and requires qualified individuals to operate in accordance with all state and federal regulations.
5. Whether another system has the capacity to purchase the City's system is also in serious doubt. In the San Diego region, the City's water system serves five times the next largest water system – Otay Water District.<sup>1</sup> The City's Water Utility has \$4.1 billion in assets, whereas, Otay Water District has \$613 million.<sup>2</sup> With our size, it is more realistic to assume the City could absorb any of the other water providers versus their ability to absorb the City.
6. The City's Pure Water San Diego development further complicates the possibility of

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<sup>1</sup> Otay Water District At -A-Glance, Mission and Vision Statement, July, 2023, <https://otaywater.gov/about-otay/otay-at-a-glance/>.

<sup>2</sup> Exhibit D-Attached to the Declaration of Adam Jones, City of San Diego, Annual Comprehensive Report, Proprietary Funds, Fiscal Year Ended June 30, 2022, pp. 60-62.

**Test Claim Title: SWRCB Water Supply Permit Amendment (2017PA-SCHOOLS) for PWS No. 3710020**

**Claimant: City of San Diego**

selling the City's water system. The City of San Diego operates the Point Loma Wastewater Treatment Plant (PLWTP), which currently processes the wastewater generated by 2.5 million people from the City of San Diego and 15 adjacent cities.

Upgrading this facility from its current advanced primary treatment level to the federal standard secondary treatment level would be logistically challenging and exceedingly expensive due to its difficult location. In an effort to find an alternative to the expensive and environmentally impactful upgrades to the PLWTP, the City pursued the idea of potable reuse for San Diego, which ultimately became Pure Water San Diego.

7. The City has been able to work with the Federal Government on proposed modifications to the Clean Water Act by agreeing to advance Pure Water San Diego, which significantly curtails future wastewater flows to the PLWTP. Ultimately, Pure Water San Diego will significantly reduce treated discharges into the Pacific Ocean, in addition being a local water supply source for San Diego.
8. Upon completion of Pure Water, the City's water and wastewater systems will be a fully integrated system. Any sale of the water system would be further complicated by the interconnectivity of both systems, including assets jointly owned by both water and wastewater and how both systems will need to operate together.
9. Additionally, the City's extensive dams' infrastructure is the backbone of the region's emergency storage system that ensures the region has enough water during an extreme event that may disconnect San Diego from the north. Any purchaser would need to take over the management and operation of this emergency storage system.
10. Given the complexities outlined above and the serious doubt in finding a willing, capable, and funded buyer, it is my opinion that the City must comply with the Permit Amendment to avoid the impossible task of selling its water system.

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**Test Claim Title: SWRCB Water Supply Permit Amendment (2017PA-SCHOOLS) for  
PWS No. 3710020**

**Claimant: City of San Diego**

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 30th day of November 2023 in San Diego, California.

/s/ Lisa Celaya  
Lisa Celaya

**Test Claim Title: SWRCB Water Supply Permit Amendment (2017PA-SCHOOLS) for PWS No. 3710020**

**Claimant: City of San Diego**

liquidated. This would include selling assets, some of which are *mutually* funded by the Water Utility and the City's General Fund, including key information technology systems. This would be a material impact to the City's General Fund and would impact its financial stability.

7. Systems like the City's Enterprise Resource Planning<sup>1,2</sup> and Enterprise Assets Management<sup>3</sup> Systems were all supported with the City's general Revenue and Water Utility System Revenue, given that both government functions benefited from the systems. The City's General Revenues would need to be used to "buy- out" the Water Utilities portion of these system, in the event the water system was sold. These systems cost 100s of millions of dollars to develop and operate, which would now be the responsibilities of the City's General Revenues to support.
8. If the City were to sell its water utility in a piecemeal fashion, it would likely get close to the value of its underlying assets of \$4.1 billion<sup>4</sup>. However, the entire service area would likely not be sold to one entity given its size, complexity and the historical challenges of large municipal privatization.
9. If all aspects of the City's water system were sold it is uncertain who would receive the funding, aside from the outstanding bond holders. If it was sold piecemeal, any parts that were likely to remain with the City would be difficult to operate as standalone entities, due to its limited economies of scale, non-contiguous operations and socio-economic make-up of the remaining customer base. This is one of the reasons the Master Installment Purchase Agreement has strict determinations that must be determined before

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<sup>1</sup> Exhibit A, City of San Diego Fiscal Year 2011 Adopted Budget, Volume III Capital Improvement Program, p. 93.

<sup>2</sup> Exhibit B, City of San Diego, Revenue and Expense Statement, Fiscal Year 2011-2012, p. 308. Services to Other Funds is primarily the City's Water and Sewer Utilities

<sup>3</sup> Exhibit C, City of San Diego, Operating Budget Impact, Fiscal Year 2018. p. 109

<sup>4</sup> Exhibit D, City of San Diego, Annual Comprehensive Report, Proprietary Funds, Fiscal Year Ended June 30, 2022, pp. 60-62.

**Test Claim Title: SWRCB Water Supply Permit Amendment (2017PA-SCHOOLS) for PWS No. 3710020**

**Claimant: City of San Diego**

any water system assets are sold, so as to not endanger the rest of the systems operations and its ability to pay outstanding debts.

10. If only a portion of debt was accelerated, so that sufficient cash was available to pay the obligations the Water Utility, the Water Utility would have an extreme drop in cash on hand, which equates to the number of days operations can be supported with available cash. This is an important measure of financial health looked at by the rating agencies and independent investors. A change in ratings can increase debt costs by tens of millions of dollars.
11. Given the amount of capital required to successfully run a Water System the size of the City of San Diego, defaulting on any conditions of its debt would have immediate cash flow implications and long-term financial impacts. The Water System, on average, supports 80% of its capital expenses with debt. At current rates, every \$100 million in debt results in \$6-7 million in principal and interest payments over a 30-year period. For Fiscal Year 2025-2029, the Water system expects to spend \$1.29 billion<sup>5</sup> in debt proceeds resulting in \$77 to \$90 million in yearly principal and interest payments. Absent the ability to borrow those costs would have to be paid as expenses were incurred, which would be \$258 million a year for five years or 2.8- 3.4 times the principal and interest paid for that period. This would require a dramatic change in rates, where every 1% rate increase brings in \$3 million in new revenue.<sup>6</sup>
12. Defaults are incredibly rare in rated municipal debt market, with Moody's and S&P only reporting 118 issuer defaults from 54,486 issuers, or .2% default rate from 1986 to 2011.<sup>7</sup> This fact both shows the rarity of these events, which means processes are less defined

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<sup>5</sup> Exhibit E, City of San Diego, Public Utilities Department, Capital Improvements Program, Sources of Funds for the Water Capital Improvement Program for Fiscal Years 2023-2029.(Table 3.2, p.27)

<sup>6</sup> Exhibit E, City of San Diego, Public Utilities Department, Five-Year Financial Outlook, Water Sales Revenue Projections, (Table 4.2, p. 31, Sensitivity Analysis)

<sup>7</sup> Appleson, Jason and Haughwout, Andrew F., "*The Untold Story of Municipal Bonds*," Liberty Street Economics, Aug. 15, 2022, <https://libertystreeteconomics.newyorkfed.org/2012/08/the-untold-story-of-municipal-bond-defaults/>.



**Test Claim Title: SWRCB Water Supply Permit Amendment (2017PA-SCHOOLS) for PWS No. 3710020**

**Claimant: City of San Diego**

due to the irregularity of them happening, and the seriousness taken by municipal issuers at even the discussion of default.

13. If the City defaulted on its loan obligations for its Water Utility, the City would also likely suffer a ratings impact because the Water Utility is under the purview of the Mayor, City Council, Chief Operating Officer and Chief Financial Officer. Credit raters view city-owned utility credit risks as parallel risks for the owning city. By way of example, in 2020, the City of Jacksonville took a credit rating hit due to a lawsuit by its electricity utility. Moody's stated, Jacksonville's lawsuit "calls into question its willingness to support an absolute and unconditional obligation of its largest municipal enterprise," which "weakens the City's creditworthiness on all of its debt."<sup>8</sup> This demonstrates the interconnectivity between cities and their utilities.
14. The City's bond operations can also impact its Water Utility bond operations. For instance, in 2006, the SEC penalized the City for failing to report that it was intentionally under-funding its pension and the potential financial stress to the City from an underfunded pension program<sup>9</sup>. Due to the SEC violations, the City was under a series of new restrictions when issuing new debt. These restrictions applied to the City's Water Utility as well.
15. Based on the financial challenges that would be encountered by the both the City's Water Utility and its General Fund in the event of a default on debt or selling of its underlying assets, it is my opinion that the City is practically compelled to comply with the Permit Amendment. The hypothetical process described by State Staff by which the City could

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<sup>8</sup>Greive, Patrick Joey, "*Debt Affordability Study, FY22 Budget Update*," The City of Jacksonville, Aug. 1, 2021, [http://apps2.coj.net/City\\_Council\\_Public\\_Notices\\_Repository/Debt%20Affordability%20Study%20-%20FY22%20Budget%20Update\\_FINAL.pdf](http://apps2.coj.net/City_Council_Public_Notices_Repository/Debt%20Affordability%20Study%20-%20FY22%20Budget%20Update_FINAL.pdf), and

Patterson, Steve, "*City, JEA credit ratings take hit over Plant Vogtle suit*," The Florida Times Union, Oct. 11, 2018, <https://www.jacksonville.com/story/news/2018/10/12/moodys-lowers-jacksonville-jea-bond-ratings-over-plant-vogtle-lawsuit/9575507007/>

<sup>9</sup> Exhibit F, Securities and Exchange Commission Order Instituting Cease and-Desist Proceeding, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and section 21c of the Securities Exchange Act of 1934 against the City of San Diego, November 14, 2006.



# **EXHIBIT A**

**Chief Financial Officer - BC**  
**Bldg - Operations Facility / Structures**

**OneSD Capital / S09999**

<b>Council District:</b> Citywide	<b>Community Plan:</b> Citywide
<b>Project Status:</b> Released	<b>Contact Information:</b> Wochaski, Ed
<b>Duration:</b> 2008 - 2010	619-533-6417
<b>Improv Type:</b> New	ewochaski@sandiego.gov

**Description:** The OneSD project provides for the replacement of many legacy software systems currently in use by City departments with the business center of the Office of the Chief Financial Officer (CFO) and Business and Support Services. The System will replace the following major systems: AMRIS (General Ledger), ALVA (Financial Reporting), APIS (Accounts Payable), ARIS (Accounts Receivable), FMIS (Budgeting and Financial Management), FAMIS (Fixed Asset Management), OPIS (Purchasing), CAPPs (Payroll), and PATS (Applicant Tracking). Additionally, this integrated application will be used by all City departments for day-to-day business operations and human resource needs and is expected to support the City's information technology (IT) needs for the next 15 years.

**Justification / Public Benefit:** Recommendations contained in the Kroll Report stated that due to their antiquated state, the City's major software systems require updating. The applications that support the departments under the Office of the Chief Financial Officer (CFO) and Business and Support Services no longer meet the requirements for responsible financial management, efficient human resources management, and IT operational efficiency.

**Operating Budget Impact:** The expenses to support ongoing operating of the OneSD project are already included in the City's budget. Debt service payments, currently budgeted in the OneSD Support Department for Fiscal Year 2010 are expected to increase in Fiscal Year 2011. The estimated increase of \$1.9 million is reflected in the Operating Budget Impact table.

**Relationship to General and Community Plans:** This project is in conformance with the City's General Plan.

**Schedule:** The implementation of the OneSD project was divided into phases and completed on the following dates: Financial and Logistics (purchasing and contracting) applications July 1, 2009; Human Capital Management (HCM), which includes human resources/personnel, benefits and payroll functions December 21, 2009; Public Budget Formulation (PBF) November 1, 2009; and Accounts Receivable March 1, 2010.

**Summary of Project Changes:** The OneSD project is complete and closure is expected by June 30, 2010. Staff is in the process of establishing the final debt service payment schedule. Debt payments will be made by the OneSD Support Department.

**Expenditure by Funding Source**

Fund Name	Fund No	Exp/Enc	Con Appn	FY 2011	FY 2011 Anticipated	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	Future FY	Unidentified Funding	Project Total
ERP-CAPITAL PROJECT	400020	37,541,840	458,160	0	0	0	0	0	0	0	0	0	38,000,000
<b>Total</b>		<b>37,541,840</b>	<b>458,160</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>38,000,000</b>

**Operating Budget Impact**

Department Fund	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
<b>OneSD Support - SAP SUP-PORT FUND</b>	<b>FTEs</b> 0.00	0.00	0.00	0.00	0.00
	<b>Total Impact</b> 1,897,104	1,897,104	1,897,104	1,897,104	1,897,104

# **EXHIBIT B**

# Enterprise Resource Planning



## Department Description

The Enterprise Resource Planning Department was created to provide a support structure for the City's Enterprise Resource Planning (ERP) system.

The ERP system consolidates a wide range of financial, logistics, and human resource functions into a single integrated system. Operational use of the ERP system marks a new era in the City by replacing a collection of custom-built, non-integrated software applications with an enterprise-wide, commercial off-the-shelf (COTS), integrated software solution which will be the foundation for the City's core business processes for many years to come.

The Department is based on the Business Application Competency Center (BACC) model. The administrative, functional, development, and technical resources required for ongoing operations and maintenance are co-located in the same facility dedicated to supporting the enterprise-wide suite of Systems Applications and Products in Data Processing (SAP) applications. This is an industry-proven model for providing high quality and cost-effective support.

The Department's mission is:

*To provide the highest quality ERP support services in order to maximize the efficiency of City operations, enable the delivery of business processes, and enhance the quality of services*

## Goals and Objectives

The following goals and objectives represent the action plan for the Department:

### ***Goal 1: Provide exceptional customer service***

The Department will move toward accomplishing this goal by focusing on the following objectives:

- Provide accurate and timely response to user requests
- Provide SAP knowledge empowerment to stakeholders

# Enterprise Resource Planning

## ***Goal 2: Increase business value from the City's ERP***

The Department will move toward accomplishing this goal by focusing on the following objective:

- Enable process improvement

## ***Goal 3: Create and maintain a sustainable, business-focused organization***

The Department will move toward accomplishing this goal by focusing on the following objectives:

- Identify and use a governance framework to provide strategic direction and prioritization of ERP initiatives
- Implement best practices for SAP support

## ***Goal 4: Develop and maintain a skilled technical and functional workforce***

The Department will move toward accomplishing this goal by focusing on the following objective:

- Recruit and retain skilled technical and functional staff

## Service Efforts and Accomplishments

During Fiscal Year 2011, the Enterprise Resource Planning Department continued to manage and implement the City's ERP system. Major projects and initiatives accomplished or in progress during Fiscal Year 2011 include:

- Public Budget Formulation 'Go Live' (November 2010)
- Implementation of SAP Enhancement Pack 4 (December 2010)
- Business Warehouse Update (September 2010)
- Benefits Open Enrollment 'Go Live' (June-July 2010)
- Citywide training provided to 900 City staff (2010)

## Key Performance Indicators

Performance Measure	Actual FY2010	Actual FY2011
1. Percent of staff with professional certifications	46%	50%
2. Percent of work requests completed on schedule	N/A <sup>1</sup>	89%

<sup>1</sup> This performance measure was not in place prior to Fiscal Year 2011.

# Enterprise Resource Planning

## Department Summary

	FY2011 Budget	FY2012 Adopted	FY2011–2012 Change
Positions	19.00	20.00	1.00
Personnel Expenditures	\$ 2,590,420	\$ 2,910,295	\$ 319,875
Non-Personnel Expenditures	14,694,243	18,332,498	3,638,255
<b>Total Department Expenditures</b>	<b>\$ 17,284,663</b>	<b>\$ 21,242,793</b>	<b>\$ 3,958,130</b>
<b>Total Department Revenue</b>	<b>\$ 17,284,663</b>	<b>\$ 21,250,474</b>	<b>\$ 3,965,811</b>

**Note:** The name of this department changed from OneSD Support to Enterprise Resource Planning in Fiscal Year 2012.

## OneSD Support Fund

### Department Expenditures

	FY2011 Budget	FY2012 Adopted	FY2011–2012 Change
Enterprise Resource Planning	\$ 17,284,663	\$ 21,242,793	\$ 3,958,130
<b>Total</b>	<b>\$ 17,284,663</b>	<b>\$ 21,242,793</b>	<b>\$ 3,958,130</b>

### Department Personnel

	FY2011 Budget	FY2012 Adopted	FY2011–2012 Change
Enterprise Resource Planning	19.00	20.00	1.00
<b>Total</b>	<b>19.00</b>	<b>20.00</b>	<b>1.00</b>

### Significant Budget Adjustments

	FTE	Expenditures	Revenue
<b>Equipment/Support for Information Technology</b> Funding allocated according to a zero-based annual review of information technology funding requirements and priority analyses.	0.00	\$ 10,957,928	\$ -
<b>Non-Discretionary Adjustment</b> Total expenditure allocations that are determined outside of the department's direct control. These allocations are generally based on prior year expenditure trends and examples of these include utilities, insurance, and rent.	0.00	7,160,418	-
<b>Addition of Program Managers</b> Addition of 3.00 Program Managers based on applicable job duties and descriptions. These positions are responsible for overseeing Citywide support of the ERP system.	3.00	596,379	-
<b>Enterprise Asset Management (EAM) Transfer</b> Transfer of 1.00 Program Manager and 1.00 Assistant Engineer-Civil from the Transportation & Storm Water Department to more effectively manage the City's asset management information technology systems.	2.00	295,845	-
<b>Reduction of Accountant 4s</b> Reduction of 2.00 Accountant 4s who no longer perform system duties required by the department.	(2.00)	(300,904)	-



# Enterprise Resource Planning

## Significant Budget Adjustments (Cont'd)

	FTE	Expenditures	Revenue
<b>IT Sourcing Strategy Restructure</b>	(2.00)	(292,449)	-
Adjustment reflects the transfer of 2.00 Program Managers to the Department of Information Technology as a result of the IT Sourcing Strategy Restructure.			
<b>Revised Revenue</b>	0.00	-	3,965,811
Adjustment to reflect Fiscal Year 2012 revenue projections.			
<b>Total</b>	<b>1.00</b>	<b>\$ 18,706,666</b>	<b>\$ 3,965,811</b>

## Expenditures by Category

	FY2011 Budget	FY2012 Adopted	FY2011-2012 Change
<b>PERSONNEL</b>			
Salaries and Wages	\$ 1,701,176	\$ 1,814,222	\$ 113,046
Fringe Benefits	889,244	1,096,073	206,829
<b>PERSONNEL SUBTOTAL</b>	<b>\$ 2,590,420</b>	<b>\$ 2,910,295</b>	<b>\$ 319,875</b>
<b>NON-PERSONNEL</b>			
Supplies	\$ 4,400	\$ 17,500	\$ 13,100
Contracts	133,052	405,284	272,232
Information Technology	8,325,113	10,957,928	2,632,815
Energy and Utilities	17,255	18,469	1,214
Other	65,019	834,166	769,147
Capital Expenditures	60,000	60,000	-
Debt	6,089,404	6,039,151	(50,253)
<b>NON-PERSONNEL SUBTOTAL</b>	<b>\$ 14,694,243</b>	<b>\$ 18,332,498</b>	<b>\$ 3,638,255</b>
<b>Total</b>	<b>\$ 17,284,663</b>	<b>\$ 21,242,793</b>	<b>\$ 3,958,130</b>

## Revenues by Category

	FY2011 Budget	FY2012 Adopted	FY2011-2012 Change
Charges for Current Services	\$ 7,138,566	\$ 7,138,566	\$ -
Other Financial Sources (Uses)	10,146,097	14,111,908	3,965,811
<b>Total</b>	<b>\$ 17,284,663</b>	<b>\$ 21,250,474</b>	<b>\$ 3,965,811</b>

## Personnel Expenditures

Job Number	Job Class	Job Title / Wages	FY2011 Budget	FY2012 Adopted	Salary Range	Total
<b>Salaries and Wages</b>						
20000102	1183	Accountant 4	2.00	0.00	\$66,768 - \$88,982	\$ -
20000070	1153	Assistant Engineer-Civil	0.00	1.00	57,866 - 69,722	70,071
20001247	1022	Business Systems Analyst 2	2.00	2.00	59,467 - 71,864	126,080
20001246	1021	Business Systems Analyst 3	3.00	3.00	65,416 - 79,061	142,105
20001101	2132	Department Director	1.00	1.00	59,155 - 224,099	132,001
20001261	1243B	Information Systems Administrator	3.00	3.00	73,466 - 88,982	220,398
20001222	2270	Program Manager	7.00	9.00	46,966 - 172,744	1,045,103
20000970	1917	Supervising Management Analyst	1.00	1.00	66,768 - 80,891	78,464
<b>Salaries and Wages Subtotal</b>			<b>19.00</b>	<b>20.00</b>		<b>\$ 1,814,222</b>

# Enterprise Resource Planning

## Personnel Expenditures (Cont'd)

Job Number	Job Class	Job Title / Wages	FY2011 Budget	FY2012 Adopted	Salary Range	Total
<b>Fringe Benefits</b>						
		Employee Offset Savings				\$ 53,687
		Flexible Benefits				203,118
		Long-Term Disability				10,994
		Medicare				26,620
		Other Post-Employment Benefits				115,547
		Retiree Medical Trust				810
		Retirement 401 Plan				3,241
		Retirement ARC				591,174
		Retirement DROP				3,202
		Retirement Offset Contribution				279
		Risk Management Administration				19,112
		Supplemental Pension Savings Plan				43,262
		Unemployment Insurance				6,666
		Workers' Compensation				18,361
<b>Fringe Benefits Subtotal</b>						<b>\$ 1,096,073</b>
<b>Total Personnel Expenditures</b>						<b>\$ 2,910,295</b>

# Enterprise Resource Planning

## Revenue and Expense Statement (Non-General Fund)

OneSD Support Fund	FY2011 Budget*		FY2012 Adopted	
<b>BEGINNING BALANCE AND RESERVES</b>				
Balance from Prior Year	\$	–	\$	615,399
<b>TOTAL BALANCE AND RESERVES</b>	<b>\$</b>	<b>–</b>	<b>\$</b>	<b>615,399</b>
<b>REVENUE</b>				
Services to the General Fund	\$	10,146,097	\$	8,882,182
Services to Other Funds		7,138,566		12,368,292
<b>TOTAL REVENUE</b>	<b>\$</b>	<b>17,284,663</b>	<b>\$</b>	<b>21,250,474</b>
<b>TOTAL BALANCE, RESERVES, AND REVENUE</b>	<b>\$</b>	<b>17,284,663</b>	<b>\$</b>	<b>21,865,873</b>
<b>OPERATING EXPENSE</b>				
Personnel Expense	\$	2,590,420	\$	2,910,295
Non-Personnel Expense		14,694,243		18,332,498
<b>TOTAL OPERATING EXPENSE</b>	<b>\$</b>	<b>17,284,663</b>	<b>\$</b>	<b>21,242,793</b>
<b>TOTAL EXPENSE</b>	<b>\$</b>	<b>17,284,663</b>	<b>\$</b>	<b>21,242,793</b>
<b>BALANCE</b>	<b>\$</b>	<b>–</b>	<b>\$</b>	<b>623,080</b>
<b>TOTAL BALANCE, RESERVES, AND EXPENSE</b>	<b>\$</b>	<b>17,284,663</b>	<b>\$</b>	<b>21,865,873</b>

\* At the time of publication, audited financial statements for Fiscal Years 2010 and 2011 were not available. Therefore, the Fiscal Year 2011 column reflects final budget amounts from the Fiscal Year 2011 Adopted Budget. As such, current fiscal year balances and reserves are estimates of carryover from the previous fiscal year.

# **EXHIBIT C**

Citywide

I AM San Diego Project / S14000

Intangible Assets - Information Tech

<b>Council District:</b>	Citywide	<b>Priority Score:</b>	N/A
<b>Community Planning:</b>	Citywide	<b>Priority Category:</b>	N/A
<b>Project Status:</b>	Continuing	<b>Contact Information:</b>	Noel, Erin
<b>Duration:</b>	2013 - 2019		619-533-3640
<b>Improvement Type:</b>	Replacement		enoel@sandiego.gov

**Description:** The I AM San Diego Project is a Citywide strategic initiative to develop and implement an integrated SAP-based software solution that will improve the City's management of infrastructure assets. The Infrastructure Asset Management (IAM) System will be used for asset-based planning; capital asset management including the CIP, Multi-Year Capital Plan, and City's financial plan for the repair and/or construction of municipal infrastructure; predictive, proactive and corrective maintenance of asset-intensive operations; asset inspections; and condition assessments.

**Justification:** The City owns and maintains a large and complex network of aging and deteriorating assets with a backlog of deferred maintenance and capital projects. I AM will replace 32 outdated applications and integrate with the City's existing SAP functions which will increase efficiencies in work management

**Operating Budget Impact:** Based on the project business case developed by the project team, operating costs include 3.00 FTEs in the Department of Information Technology (DoIT) to support the system and \$1.46 million in ongoing software maintenance costs, which are already included in the operating budget. Bond payments for the CIP Lease Financing will be funded through the operating budgets of the three General Fund departments currently involved in this project.

**Relationship to General and Community Plans:** This project is consistent with the applicable community plans and is in conformance with the City's General Plan.

**Schedule:** The project is currently in the realization phase and is anticipated to be completed and go live in the second quarter of Fiscal Year 2018. Upon project completion, the system will be transferred to DoIT, which will manage and support the system. Phase 2 of the project is scheduled to begin in Fiscal Year 2019 as a phased rollout over four fiscal years to five additional departments (Police, Library, Fire-Rescue, Environmental Services, and Park & Recreation).

**Summary of Project Changes:** The Total Project budget (CIP and operating) remains \$54.2 million. The CIP project cost decrease by \$2.6M in Fiscal Year 2018 is based upon a thorough review of the Project budget and full accounting of carryover funds, such as from the OneSD Support Fund. Sub-phase S16041, Civic Center Plaza 8 Floor Build-out for the project space, has been closed and capitalized. The CIP project total increases to \$47,170,800, if those capitalized costs are included. The Schedule has been updated for Fiscal Year 2018.

Expenditure by Funding Source

Fund Name	Fund No	Exp/Enc	Con Appn	FY 2018	FY 2018 Anticipated	FY 2019	FY 2020	FY 2021	FY 2022	Future FY	Unidentified Funding	Project Total
CIP Lease Financing	200724	\$ 3,629,054	\$ 3,180,954	\$ 1,018,572	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,828,581
Metro Sewer Utility - CIP Funding Source	700009	5,222,853	1,526,993	522,867	-	-	-	-	-	-	-	7,272,714
Muni Sewer Utility - CIP Funding Source	700008	9,021,282	2,637,543	903,134	-	-	-	-	-	-	-	12,561,960
OneSD Support Fund	200610	6,124,219	63,596	-	-	-	-	-	-	-	-	6,187,815
Water Utility - CIP Funding Source	700010	9,496,100	2,776,346	950,667	-	-	-	-	-	-	-	13,223,114
<b>Total</b>		<b>\$ 33,493,511</b>	<b>\$ 10,185,434</b>	<b>\$ 3,395,240</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 47,074,185</b>

Operating Budget Impact

Department - Fund		FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Department of IT - SAP SUPPORT FUND	FTEs	0.00	0.00	0.00	0.00	0.00
Department of IT - SAP SUPPORT FUND	Total Impact \$	192	483	483	483	483
General Services - GENERAL FUND	FTEs	-	-	-	-	-
General Services - GENERAL FUND	Total Impact \$	316,920	799,319	799,319	799,319	799,319
Transp & Storm Water - GENERAL FUND	FTEs	-	-	-	-	-
Transp & Storm Water - GENERAL FUND	Total Impact \$	161,547	407,446	407,446	407,446	407,446

# **EXHIBIT D**

**GOVERNMENTAL FUNDS**  
**STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES**  
Fiscal Year Ended June 30, 2022  
(Dollars in Thousands)

	General Fund	Other Governmental Funds	Total Governmental Funds
<b>REVENUES</b>			
Property Taxes .....	\$ 663,142	\$ 18,750	\$ 681,892
Special Assessments .....	—	69,193	69,193
Sales Taxes - Shared State Revenue .....	387,872	37,654	425,526
Transient Occupancy Taxes .....	136,468	122,642	259,110
Franchises .....	114,621	71,580	186,201
Other Local Taxes .....	75,727	—	75,727
Licenses and Permits .....	43,842	92,814	136,656
Fines, Forfeitures and Penalties .....	30,506	2,954	33,460
Revenue (Loss) from Use of Money and Property .....	59,396	(3,365)	56,031
Revenue from Federal Agencies .....	100,123	236,622	336,745
Revenue from Other Agencies .....	9,679	35,730	45,409
Revenue from Private Sources .....	220	2,764	2,984
Charges for Current Services .....	322,149	25,591	347,740
Other Revenue .....	13,881	3,604	17,485
<b>TOTAL REVENUES</b> .....	<b>1,957,626</b>	<b>716,533</b>	<b>2,674,159</b>
<b>EXPENDITURES</b>			
Current:			
General Government and Support .....	449,925	17,866	467,791
Public Safety - Police .....	592,198	10,721	602,919
Public Safety - Fire and Life Safety and Homeland Security .....	327,026	14,367	341,393
Parks, Recreation, Culture and Leisure .....	184,384	132,784	317,168
Transportation .....	141,408	22,756	164,164
Sanitation and Health .....	99,329	8,130	107,459
Neighborhood Services .....	46,712	241,507	288,219
Capital Outlay .....	12,851	187,280	200,131
Debt Service:			
Principal Retirement .....	20,073	42,328	62,401
Cost of Issuance .....	—	105	105
Interest .....	3,383	26,240	29,623
<b>TOTAL EXPENDITURES</b> .....	<b>1,877,289</b>	<b>704,084</b>	<b>2,581,373</b>
<b>EXCESS OF REVENUES OVER EXPENDITURES</b> .....	<b>80,337</b>	<b>12,449</b>	<b>92,786</b>

**GOVERNMENTAL FUNDS**  
**STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES (Continued)**  
**Fiscal Year Ended June 30, 2022**  
**(Dollars in Thousands)**

	<b>General Fund</b>	<b>Other Governmental Funds</b>	<b>Total Governmental Funds</b>
<b>OTHER FINANCING SOURCES (USES)</b>			
Transfers from Other Funds .....	\$ 37,714	\$ 102,193	\$ 139,907
Transfers to Proprietary Funds .....	(217)	(10,196)	(10,413)
Transfers to Other Funds .....	(68,499)	(71,408)	(139,907)
Proceeds from the Sale of Capital Assets .....	3	2,559	2,562
Leases .....	851	596	1,447
Proceeds from Financed Purchases .....	1,029	—	1,029
<b>TOTAL OTHER FINANCING SOURCES (USES) .....</b>	<b>(29,119)</b>	<b>23,744</b>	<b>(5,375)</b>
<b>NET CHANGE IN FUND BALANCES .....</b>	<b>51,218</b>	<b>36,193</b>	<b>87,411</b>
Fund Balances at Beginning of Year .....	429,442	1,651,609	2,081,051
<b>FUND BALANCES AT END OF YEAR .....</b>	<b>\$ 480,660</b>	<b>\$ 1,687,802</b>	<b>\$ 2,168,462</b>

The accompanying notes are an integral part of the basic financial statements.



**RECONCILIATION OF THE STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES  
OF GOVERNMENTAL FUNDS TO THE STATEMENT OF ACTIVITIES**  
Fiscal Year Ended June 30, 2022  
(Dollars in Thousands)

Net Change in Fund Balances of Governmental Funds (page 57)	\$ 87,411
Governmental funds report capital outlays as expenditures. However, in the Statement of Activities, the cost of those assets is allocated over their estimated useful lives and reported as depreciation/amortization expense. Donated assets are not financial resources, and therefore, are not reported in the funds. This is the amount by which capital outlays and donated assets exceeded depreciation/amortization in the current period.	56,098
The net effect of various miscellaneous transactions involving capital assets (e.g., retirements and transfers) is to decrease net position.	(4,211)
Revenues available to liquidate liabilities of the current period were recognized in the governmental funds during the current year; however, such amounts were recognized as revenue in the Statement of Activities in the prior year.	15,044
The issuance of long-term debt (e.g., bonds, leases) provides current financial resources to governmental funds, while the repayment of the principal of long-term debt consumes the current financial resources of governmental funds. Neither transaction, however, has any effect on net position. This amount is the net effect of these differences in the treatment of long-term debt and related items.	59,925
Some expenses reported in the Statement of Activities do not require the use of current financial resources (e.g., compensated absences, NPL), and therefore, are not accrued as expenditures in governmental funds.	84,318
Internal service funds are used to charge the costs of activities such as Fleet Operations, Central Stores, Publishing Services, and Employee Benefit Programs to individual funds. The net income of certain internal service activities is reported with governmental activities.	<u>9,629</u>
Change in Net Position of Governmental Activities (page 53)	<u>\$ 308,214</u>

**The accompanying notes are an integral part of the basic financial statements.**

# **EXHIBIT E**

The City of  
**SAN DIEGO**  
**PUBLIC UTILITIES DEPARTMENT**  
**FISCAL YEAR 2025-2029**  
**FIVE-YEAR FINANCIAL OUTLOOK**



**Todd Gloria**

Mayor

**Eric K. Dargan**

Chief Operating Officer

**Kris McFadden**

Deputy Chief Operating Officer

**Juan Guerreiro**

Director

**Lisa M. Celaya**

Executive Assistant Director

**Yajaira Gharst**

Interim Assistant Director

**Adam Jones**

Deputy Director

NOVEMBER 2023

Disclaimer:

The City files its disclosure documents, including official statements, audited financial statements, annual comprehensive financial reports, annual financial information, material event notices, and voluntary disclosures with the Municipal Securities Rule Making Board's Electronic Municipal Market Access ("EMMA") system. The Five-Year Financial Outlook ("Outlook") is utilized by the City as a planning tool and as such, is not filed on EMMA and therefore should not be relied upon by investors to make any investment decisions. The City will provide the Outlook to the rating agencies, its bond insurers and other interested parties for informational purposes and welcomes and encourages their careful review of this document. All readers are cautioned that the numbers presented in the Outlook represent the City's best estimates for the next five years based on facts and factors currently known to the City and may differ materially from actual results. As of the date any reader reviews the Outlook, the City makes no representation that there is not a material difference between the City's actual performance as of such date and the financial data presented in the Outlook. Certain statements herein constitute forward-looking statements or statements which may be deemed or construed to be forward-looking statements. Forward-looking statements involve and are subject to known and unknown risks, uncertainties and other factors which could cause the City's actual results, performance (financial or operating) or achievements to differ materially from future results, performance (financial or operating) or achievements expressed or implied by such forward-looking statements. All forward-looking statements herein are expressly qualified in their entirety by the above-stated cautionary statement. The City disclaims any obligation to update forward-looking statements contained in the Outlook. Fiscal Year 2023 activity reflects unaudited activity and is subject to change. Final activity will be published in the City's Annual Comprehensive Financial Report.

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## **MISSION STATEMENT**

*To provide reliable water utility services that protect the health of our communities and the environment*

## **VISION STATEMENT**

*A world-class water utility for a world-class city*

## EXECUTIVE SUMMARY

The Public Utilities Department (PUD or Department) Fiscal Year 2025-2029 Five-Year Financial Outlook (PUD Outlook or Outlook) is provided to guide long-range planning and serve as the framework for the development of the Fiscal Year (FY) 2025 Proposed Budget for the Water and Wastewater Funds. The purpose of this report is to provide an overview of the Public Utilities Department's long-range needs and to guide programmatic decisions.

The PUD Outlook focuses on the overall fiscal condition of the Water and Wastewater Funds and assesses impacts to revenues and expenditures from regional water and wastewater demands. It also explores a funding strategy to finance major capital investments in Water and Wastewater System infrastructure and the Pure Water Program construction. The PUD Outlook quantifies new costs that are critical to accomplishing PUD's strategic goals over the next five-year period. These goals include:

### **Goal 1: Water Supply/Environmental Stewardship**

- Water supply and conservation
- Carbon footprint and energy management

### **Goal 2: Organization Excellence**

- Rate structure optimization
- Safety
- Training and development
- Culture of accountability

### **Goal 3: Community Engagement**

- Stakeholder understanding and support
- Customer service strategies

### **Goal 4: Infrastructure Management**

- Asset management
- Infrastructure investment

The PUD Outlook is not a budget, and projected revenues and expenditures in any given year of the PUD Outlook may not correspond exactly to those in future Proposed Budgets. Nevertheless, the PUD Outlook can serve as a planning tool to assist in budget decisions and the allocation of resources to meet PUD's strategic goals that are critical to providing the community with a reliable and high-quality water and wastewater service. The PUD Outlook also provides the City Council, key stakeholders, and the public with information to facilitate discussions during the development of the FY 2025 Budget.

As enterprise funds, the Water and Wastewater Funds differ from the General Fund in that their services are supported with revenue derived from rates charged to customers. These rates are determined through a process prescribed by state law, which requires a cost of service analysis and Council approval of any rate adjustments at a public hearing. For the Wastewater System, rates and the corresponding revenues from a cost of service study approved September 2021 are reflected in FY 2023 through FY 2025 of the PUD Outlook. For the Water System, the City Council's approved rate adjustments from September 2023's are incorporated into this Outlook. The PUD Outlook identifies the overall system needs, whereas the cost of service analysis allocates those needs to establish applicable rate recovery by the different user classes.

During this Outlook period, both the Water and Wastewater systems are facing significant changes attributed to the increases in general wage adjustments and chemical and energy cost increases. Separate but noteworthy impacts to the Water system include the shift in rate adjustments by City Council, in comparison to what was proposed, and reductions in projected water consumption due to weather. To account for these changes corresponding adjustments have been made in capital spending, utilization of rate stabilization reserves, stored water usage and modifications to future rate assumptions ensuring there is enough revenue to support the Systems' continued operations.

## **SUMMARY OF KEY FINANCIAL DATA**

This section presents a summary of the PUD Outlook, and the overall fiscal condition of the Water and Wastewater Systems. Tables 1.1 and 1.3 summarize revenues projected to support operations, Capital Improvements Program (CIP) related expenditures, and key financial metrics for the Water and Wastewater Systems, respectively. Further details on CIP expenses and revenue sources for those expenses is also provided.

Additional detail on each line item in these summaries can be found in the corresponding sections of this report. Baseline operating expenditures are those expenditures that are sufficient to allow PUD to continue providing its existing level of service without expanding any operational programs. Critical operating expenditures are those associated with expanded operations for PUD; a significant portion of these critical operating expenditures are associated with Phase 1 of the Pure Water Program coming online. CIP expenditure projections are also detailed in Tables 1.2 and 1.4 and are split into Pure Water CIP expenditures, which are associated with the Pure Water Program, and Baseline CIP expenditures, which consist of capital expenditures on all non-Pure Water related capital improvements, which includes pipelines, pump stations and storage infrastructure. Revenue projections include revenue that will be required to adequately cover operating expenses, CIP expenses, and to meet financial metrics necessary to operate the systems.

### **Water and Wastewater Systems**

Overall, the PUD Outlook for both the Water and Wastewater Systems forecasts baseline operating expenditures to grow over the next five years; however, increases in critical operating expenditures are expected as PUD begins operations and maintenance of Phase 1 of the Pure Water Program as well as debt service expenditures for constructing Pure Water Phase 1. Conversely, CIP expenditures during the Outlook period are expected to peak in FY 2025 due to Pure Water Phase 1 and then gradually decrease through FY 2029, as Phase 1 construction of the Pure Water Program nears completion and efforts shift to planning for Phase 2 of Pure Water.

In addition to Pure Water, the City's network of nine dams are expected to become another core expenditure program with expenditures ramping up in the next five to 20 years. This will impact both the operating and capital budget. This Outlook builds on earlier budget adds proposed by the Mayor and approved by City Council in what is expected to be a billion dollar plus program. As expected in prior outlooks, new data has influenced the size and scope of the portfolio of Dam projects included in this outlook, which is expected to increase as more projects are identified and completed.



For the Water System, water purchase expenses are expected to decline during the Outlook period due to the additional use of stored water from prior years' rain events and availability of local water supply produced from Phase 1 of Pure Water coming online.

Revenues for both the Water and Wastewater Systems are projected to increase over the next five years, primarily due to increased rates to support the operations as forecasted in FY 2025 through FY 2029. The PUD Outlook also anticipates the transfer of funds to and from the Rate Stabilization Fund for each system to smooth revenue needs through the Outlook period, which would otherwise require additional rate increases or a reduction in expenditures. Both systems expect to deviate from target levels of rate stabilization reserves levels, which will be brought back to target levels with future rate adjustments.

PUD continues to project the use of financing to fund the CIP, including the Pure Water Program, as illustrated in Tables 1.2 and 1.4.

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**Table 1.1 - Water System Fiscal Year 2025-2029 Financial Outlook**  
(\$ in Millions)

	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>	<b>FY 2028</b>	<b>FY 2029</b>
Water Sales	\$609.2	\$689.0	\$743.1	\$819.5	\$885.0	\$946.5
Capacity Charges	\$16.9	\$15.0	\$15.0	\$15.0	\$15.0	\$15.0
Revenue from Use of Property	\$7.0	\$7.0	\$7.0	\$7.0	\$7.0	\$7.0
Other Revenue	\$51.4	\$53.1	\$50.2	\$45.9	\$48.2	\$50.0
<b>TOTAL SYSTEM REVENUES</b>	<b>\$684.4</b>	<b>\$764.0</b>	<b>\$815.3</b>	<b>\$887.4</b>	<b>\$955.2</b>	<b>\$1,018.5</b>
Salaries & Wages	\$73.7	\$77.9	\$81.8	\$84.3	\$86.8	\$89.5
Fringe Benefits	\$47.1	\$49.1	\$50.1	\$51.1	\$52.1	\$53.2
Water Purchases	\$263.1	\$283.6	\$331.9	\$316.8	\$314.6	\$331.1
Other Non-Personnel Expenditures	\$169.2	\$172.4	\$183.7	\$189.4	\$190.5	\$195.2
<b>BASELINE OPERATING EXPENDITURES</b>	<b>\$553.1</b>	<b>\$583.0</b>	<b>\$647.4</b>	<b>\$641.6</b>	<b>\$644.1</b>	<b>\$669.0</b>
<b>CRITICAL OPERATING EXPENDITURES</b>	<b>\$0.0</b>	<b>\$11.8</b>	<b>\$22.4</b>	<b>\$30.0</b>	<b>\$30.1</b>	<b>\$30.3</b>
Contribution to CIP	(\$1.2)	(\$32.7)	\$226.2	\$60.4	(\$7.5)	\$147.8
Debt Service	\$101.4	\$124.4	\$146.3	\$152.7	\$183.3	\$190.0
(Use of) / Contribution to Reserves	(\$18.0)	(\$4.6)	(\$48.2)	\$18.1	\$10.5	\$8.6
<b>NON-OPERATING EXPENDITURES</b>	<b>\$82.1</b>	<b>\$87.2</b>	<b>\$324.4</b>	<b>\$231.2</b>	<b>\$186.3</b>	<b>\$346.5</b>
<b>TOTAL EXPENDITURES</b>	<b>\$635.2</b>	<b>\$682.0</b>	<b>\$994.1</b>	<b>\$902.8</b>	<b>\$860.7</b>	<b>\$1,045.7</b>
<b>Impact to Fund Balance</b>	<b>\$49.2</b>	<b>\$82.0</b>	<b>(\$178.9)</b>	<b>(\$15.4)</b>	<b>\$94.5</b>	<b>(\$27.2)</b>
<b>Debt Service Coverage Ratio</b>	<b>1.53 x</b>	<b>1.43 x</b>	<b>1.39 x</b>	<b>1.36 x</b>	<b>1.50 x</b>	<b>1.66 x</b>
<b>Assumed Rate Increase<sup>1</sup></b>	<b>10.2%</b>	<b>8.7%</b>	<b>11.8%</b>	<b>8.9%</b>	<b>8.2%</b>	<b>7.4%</b>

<sup>1</sup> City Council has approved maximum rate levels for water through January 1, 2025. All rate increases reflect the value effective on the date of the rate increase, apart from FY 2024, which reflects the cumulative impact from the December 1, 2023 (5.0%) and July 1, 2024 (5.2%) increases. Revenues in the PUD Outlook reflect the impact of those increases from the effective date in that fiscal year

**Table 1.2 - Water System Fiscal Year 2025-2029 Financial Outlook  
Summary of Capital Improvements Program Key Financial Data  
(\$ in Millions)**

	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>	<b>FY 2028</b>	<b>FY 2029</b>
--	--------------------	--------------------	--------------------	--------------------	--------------------	--------------------

Baseline CIP	\$144.2	\$249.7	\$319.8	\$304.0	\$274.7	\$247.9
Pure Water CIP	\$349.3	\$140.2	\$50.6	\$26.2	\$32.6	\$38.3
<b>TOTAL CIP EXPENDITURES</b>	<b>\$493.5</b>	<b>\$389.9</b>	<b>\$370.4</b>	<b>\$330.2</b>	<b>\$307.3</b>	<b>\$286.2</b>

Sources of Funds						
Bonds	\$127.0	\$273.0	\$50.0	\$190.0	\$260.0	\$100.0
State Revolving Funds	\$1.8	\$29.9	\$48.1	\$78.4	\$54.8	\$38.4
WIFIA	\$365.9	\$119.7	\$46.0	\$1.4	\$0	\$0
Grants	\$0	\$0	\$0	\$0	\$0	\$0
Cash	(\$1.2)	(\$32.7)	\$226.2	\$60.4	(\$7.5)	\$147.8
<b>REVENUE SOURCES</b>	<b>\$493.5</b>	<b>\$389.9</b>	<b>\$370.4</b>	<b>\$330.2</b>	<b>\$307.3</b>	<b>\$286.2</b>

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**Table 1.3 - Wastewater System Fiscal Year 2025-2029 Financial Outlook**  
(\$ in Millions)

	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>	<b>FY 2028</b>	<b>FY 2029</b>
Sewer Service Charges	\$311.8	\$323.3	\$340.7	\$364.8	\$387.6	\$411.9
Capacity Charges	\$23.2	\$23.2	\$23.2	\$23.2	\$23.2	\$23.2
Grants	\$0	\$0	\$0	\$0	\$0	\$0
Other Revenue	\$126.7	\$115.6	\$115.8	\$117.9	\$116.5	\$115.1
<b>TOTAL SYSTEM REVENUES</b>	<b>\$461.7</b>	<b>\$462.2</b>	<b>\$479.7</b>	<b>\$505.9</b>	<b>\$527.2</b>	<b>\$550.1</b>
Salaries & Wages	\$74.2	\$78.4	\$82.3	\$84.8	\$87.4	\$90.1
Fringe Benefits	\$44.8	\$46.6	\$48.5	\$49.5	\$50.4	\$51.5
Other Non-Personnel Expenditures	\$210.2	\$210.0	\$217.5	\$223.8	\$230.2	\$236.9
<b>BASELINE OPERATING EXPENDITURES</b>	<b>\$329.1</b>	<b>\$335.1</b>	<b>\$348.3</b>	<b>\$358.1</b>	<b>\$368.1</b>	<b>\$378.4</b>
<b>CRITICAL OPERATING EXPENDITURES</b>	<b>\$0</b>	<b>\$2.8</b>	<b>\$3.0</b>	<b>\$3.7</b>	<b>\$2.8</b>	<b>\$3.0</b>
Contribution to CIP	\$128.5	(\$53.2)	\$67.4	(\$100.8)	\$188.0	(\$80.9)
Debt Service	\$97.7	\$112.2	\$90.9	\$116.6	\$114.1	\$128.0
(Use of) / Contribution to Reserves	(\$13.5)	(\$28.3)	\$2.6	(\$18.0)	\$0.4	(\$1.9)
<b>NON-OPERATING EXPENDITURES</b>	<b>\$212.7</b>	<b>\$30.7</b>	<b>\$160.9</b>	<b>(\$2.3)</b>	<b>\$302.6</b>	<b>\$45.3</b>
<b>TOTAL EXPENDITURES</b>	<b>\$542.7</b>	<b>\$369.6</b>	<b>\$512.4</b>	<b>\$359.6</b>	<b>\$673.5</b>	<b>\$426.6</b>
<b>Impact to Fund Balance</b>	<b>(\$81.1)</b>	<b>\$92.5</b>	<b>(\$32.7)</b>	<b>\$146.3</b>	<b>(\$146.2)</b>	<b>\$123.5</b>
<b>Debt Service Coverage Ratio</b>	<b>1.41 x</b>	<b>1.36 x</b>	<b>1.38 x</b>	<b>1.39 x</b>	<b>1.40 x</b>	<b>1.38 x</b>
<b>Assumed Rate Increase<sup>2</sup></b>	<b>4.0%</b>	<b>3.0%</b>	<b>7.0%</b>	<b>6.0%</b>	<b>6.0%</b>	<b>6.0%</b>

<sup>2</sup> City Council has approved maximum rate levels for wastewater through January 1, 2025. All rate increases reflect the value effective on the date of the rate increase. Revenues in the PUD Outlook reflect the impact of those increases from the effective date in that fiscal year

**Table 1.4 - Wastewater System Fiscal Year 2025-2029 Financial Outlook**  
**Summary of Capital Improvements Program Key Financial Data**  
(\$ in Millions)

	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>	<b>FY 2028</b>	<b>FY 2029</b>
Baseline CIP	\$128.7	\$216.7	\$147.7	\$191.1	\$208.3	\$131.9
Pure Water CIP	\$230.6	\$166.0	\$43.6	\$20.0	\$16.9	\$17.2
<b>TOTAL CIP EXPENDITURES</b>	<b>\$359.3</b>	<b>\$382.7</b>	<b>\$191.3</b>	<b>\$211.2</b>	<b>\$225.2</b>	<b>\$149.1</b>

Sources of Funds						
Commercial Paper / Bonds	\$2.5	\$210.0	\$0	\$260.0	\$0	\$200.0
State Revolving Funds	\$205.2	\$202.8	\$100.6	\$28.8	\$14.0	\$6.8
Grants	\$0	\$0	\$0	\$0	\$0	\$0
Cash	\$151.6	(\$30.1)	\$90.6	(\$77.7)	\$211.1	(\$57.7)
<b>REVENUE SOURCES</b>	<b>\$359.3</b>	<b>\$382.7</b>	<b>\$191.3</b>	<b>\$211.2</b>	<b>\$225.2</b>	<b>\$149.1</b>

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## REPORT OUTLINE

The PUD Outlook is organized into two main sections: Water System and Wastewater System. The Water System is comprised of the Water Utility Fund and the Wastewater System is comprised of the Metropolitan and Municipal Sewer Funds, collectively known as the Sewer Revenue Funds.

Similar to the organization of the Five-Year Financial Outlook for the General Fund, the PUD Outlook provides a brief overview of the Water and Wastewater Systems and the impacts of the Pure Water Program, as well as a discussion of projected operating and capital expenditures, projected revenues, and potential rate adjustments. This Outlook also reflects the impacts of the commissioning of Phase 1 of the Pure Water Program which factors in the cost competitive, reliable and sustainable increase in local water supplies as well as the debt service for the project. The PUD Outlook is presented in a different order than the General Fund Outlook; expenditures are discussed first, followed by a discussion of revenue. This is due to the nature of rate forecasts, which are driven by the need to support operations and achieve key financial metrics.

The Water System and Wastewater System sections of the PUD Outlook include additional details on the projections for the next five years of ongoing revenues and expenditures that were displayed in Table 1.1 – Water System Fiscal Year 2025-2029 Financial Outlook, and Table 1.3 – Wastewater System Fiscal Year 2025-2029 Financial Outlook, respectively. Each section begins with a discussion of operating expenditures. ‘Baseline’ projections for operating expenditures represent those necessary to support current service levels provided by PUD. Unaudited Expenditures<sup>3</sup> for FY 2023 are presented for context but FY 2024 projections are the starting point for personnel and non-personnel baseline expenditures unless otherwise noted. As noted earlier, the PUD Outlook projections in any given year may not correspond exactly to the revenues and expenditures in future Proposed Budgets.

For this PUD Outlook, the primary Critical Operating Expenditures associated with implementing the Pure Water Program have been called out separately from baseline expenditures<sup>4</sup>. The Critical Operating Expenditures are discussed within each expenditure category. In some cases, expenditures are allocated in both water and wastewater funds. For instance, the Pure Water Program is displayed in both Water and Wastewater sections as both systems benefit. Previous Critical Operating Expenditures that were identified in prior PUD Outlooks and the FY 2024 budget were incorporated as baseline expenses in the PUD Outlook. All expenditures projected in this report will be further refined during the budget development process for each respective fiscal year.

Projections for CIP expenditures and funding sources are also provided, with Pure Water CIP expenses and funding sources broken out from the Department’s baseline capital program which covers pumps, treatment plants, pipelines, and reservoirs, among other capital infrastructure.

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<sup>3</sup> The City’s Annual Comprehensive Financial Report (ACFR) includes the financial statements of all funds of the City, is prepared in accordance with Generally Accepted Accounting Principles, including those standards established by the Governmental Accounting Standards Board and portions of it at audited by an independent audit. The financial activity presented in this report was prepared in advance of the 2023 ACFR.

<sup>4</sup> Note – this presentation differs from PUD’s financial disclosure documents. Critical Operating Expenditures in the PUD Outlook are broken out from Baseline Operating Expenditures to show programmatic additions to Department operations. Disclosure documents do not show these expenditures separately.

Finally, each section includes revenue projections and a discussion of the projected water and wastewater rates that are assumed in those revenue projections. Rates adjustments are determined through a process prescribed by state law and require a cost of service analysis and City Council approval at a public hearing.

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## OVERVIEW OF THE WATER AND WASTEWATER SYSTEMS

The City of San Diego is a major metropolis, ranked as the eighth largest city by population in the United States and the second largest city in California. The City's total population is over 1.4 million. The City's climate is semiarid with cycles of multi-year droughts. Average rainfall does not provide adequate local water supplies for the City and is supplemented with water imported from outside the region.

The City's Water and Wastewater Systems are maintained and operated by the City of San Diego (City) Public Utilities Department. The Public Utilities Department (PUD) provides water to the City of San Diego as well as to the cities of Del Mar, Coronado and Imperial Beach, primarily from two water sources: (1) local supplies, which provide on average 10 - 15% of water needs, and (2) the San Diego County Water Authority (CWA), which provides 85 - 90% of water needs. The City's Water System extends over 404 square miles, with average (FY 2018–2022) potable water deliveries of approximately 162,619 acre-feet (AF) per year. PUD's extensive raw water system includes nine reservoirs, which capture rain and local runoff from rainfall and store purchased imported water. The water is then sent to PUD's three water treatment plants for treatment and distribution. While PUD expects water conservation efforts to continue, it also expects the demand for potable water to follow changes in population and the single largest variable for yearly water demands is the weather patterns each fiscal year.

The City's Wastewater System owns and operates wastewater treatment plants that serve the City as well as other agencies of other cities and districts outside San Diego City boundaries (Participating Agencies). The Wastewater System serves over 2.3 million regional customers by providing wastewater collection, treatment, and disposal services. The Wastewater System is comprised of two sub-systems, the Municipal Sub-System and the Metropolitan ("Metro") Sub-System. The Municipal Sub-System is a sewage collection system for the City's customers and consists of all elements required for the collection and conveyance of wastewater generated by the service area, which currently consists of more than 275,000 accounts. The Metropolitan Sub-System is a regional sewage treatment and disposal system that serves the City and twelve other Participating Agencies near the City. The Wastewater System covers approximately 450 square miles, including most of the City, and stretches from Del Mar and Poway to the north, Alpine and Lakeside to the east, and San Ysidro to the south. The communities and agencies served by the PUD Wastewater System form the third largest metropolitan area in the State, surpassed only by the Los Angeles and San Francisco metropolitan areas. The Point Loma Wastewater Treatment Plant serves as a regional treatment facility handling sanitary waste from both Municipal Sub-System and Metropolitan Sub-System customers. Additionally, the Wastewater System operates and maintains two water reclamation plants (North City and South Bay), and a solids management facility (Metropolitan Biosolids Center).

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## Regional Water Supply

In any given year, the City uses local water supplies to meet 10 - 15% of demand and relies on imported water from the CWA to meet the other 85 - 90% of demand. The CWA is a wholesale water agency that provided approximately 398,218 AF of imported and desalinated water to its member agencies in FY 2023, including 158,880 AF supplied to PUD. CWA currently acquires the majority of its water from three main sources: conserved water from the Imperial Irrigation District, water from the Metropolitan Water District (MWD), and desalinated water. MWD obtains its water from the Colorado River through the United States Bureau of Reclamation, and from northern California via the State Water Project through the California Department of Water Resources (DWR). MWD is one of 29 public water agencies that have long-term contracts for water service from DWR, and it is the largest agency in terms of the number of people its water serves (approximately 19 million).

Both CWA and MWD are actively engaged in developing strategies for enhancing long-term water supply reliability in the face of challenges related to drought and decreased reliance on Colorado River water. These strategies encompass storage initiatives and the pursuit of supplementary water sources, such as water transfers, with the aim of reducing dependence on imported water. These efforts gain significance in light of the dwindling water resources from both the State Water Project, responsible for transporting water from Northern California to Southern California, and the Colorado River, which provides water to the basin states of Arizona, California, Colorado, New Mexico, Nevada, Utah, and Wyoming. Furthermore, there is a looming threat of unilateral cuts to Colorado River allocations by the Federal government if the basin states fail to take decisive actions to curtail water consumption.

In response to the ongoing water challenges in California, the Governor unveiled a long-term strategy aimed at bolstering the state's water supply resilience. This multifaceted plan entails the expansion of reservoir storage capacity and a significant upscaling of water recycling efforts throughout the state, all designed to augment the long-term viability of California's water resources. In the short-term the State and the southwest have benefited from a historically wet winter in FY 2023, which has augmented local supplies as well as recharged a portion of the Colorado Watershed, but these short-term gains pale in comparison to the long-term declines in water supply for the southwest region.

PUD operates a recycled water system that supplies a portion of the San Diego region, with non-potable recycled water. Recycled water is wastewater treated to a level that makes it safe for a variety of uses including irrigation, dust suppression and soil compaction at construction sites, in cooling towers, in ornamental fountains, and office building toilet and urinal flushing; that system is supplied by two water reclamation plants – the North City Water Reclamation Plant (NCWRP) and South Bay Water Reclamation Plant (SBWRP). The City supplies recycled water to retail customers and three wholesale customers: the City of Poway, the Olivenhain Municipal Water District, and the Otay Water District. Recycled water is a joint venture between the Water (for distribution) and Wastewater (for treatment) Systems. Recycled water revenue is split between the two utilities once debt for the recycled water distribution network is paid off, which is expected to occur by the end of FY 2024.

## Participating Agencies

Pursuant to the Regional Wastewater Disposal Agreement, the Metropolitan Sub-System provides “wholesale” treatment and disposal services, including some sewage transportation, to the cities of

Chula Vista, Coronado, Del Mar, El Cajon, Imperial Beach, La Mesa, National City and Poway, the Lemon Grove Sanitation District, the Otay Water District, the Padre Dam Municipal Water District, and the County of San Diego (on behalf of Winter Gardens Sewer Maintenance District and the Alpine Lakeside and Spring Valley Sanitation Districts). These cities and districts are collectively referred to as the Participating Agencies.

The Regional Wastewater Disposal Agreement requires the Participating Agencies to pay their respective share of planning, design, and construction of Metropolitan Sub-System facilities, as well as costs related to the operation and maintenance of the Metropolitan Sub-System. Since FY 2011, the Participating Agencies have constituted approximately 33% of the total Metropolitan Sub-System costs. Recently, the City of El Cajon, San Diego County and the Padre Dam Municipal Water District, formed the East County Advanced Water Purification Joint Powers Authority, which is expected to divert up to 25% of the Participating Agencies flow away from the Metropolitan Sub-System when the Advanced Water Purification goes live during the Outlook period. The Outlook assumes that this action will reduce projected costs attributed to the agencies by \$10 million per year. The City is in negotiations with the participating agencies on changes to the billing structure which may mitigate this impact revenue in future years. Negotiations and ratification of the new agreement is expected to be complete before Pure Water Phase 1 is operational.

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## Pure Water Program

### Background

The Pure Water Program will provide a safe, secure, cost competitive, and sustainable local drinking water supply for San Diego. Advanced water purification technology will be used to produce potable water from recycled water. The City and its regional partners face significant issues with water supply and wastewater treatment primarily due to the increasing cost of imported water and the increasingly stringent regulations on wastewater treatment and disposal. The region's reliance on imported water causes the water supply to be vulnerable to shortages and susceptible to price increases beyond the control of the City.

The Pure Water Program is a 20-year (2015-2035) multi-phased water and wastewater capital improvements program that is expected, upon full implementation by the end of Calendar Year (CY) 2035, to create 83 million gallons per day (mgd) of locally controlled water, which will provide nearly half of the City's total potable water needs. The Pure Water Program will divert treated wastewater from the Point Loma Wastewater Treatment Plant's (PLWTP) ocean outfall and recycle a valuable and limited resource that is currently discharged to the ocean.

In 2010, the City received a renewal of the Modified Permit for the PLWTP and agreed to identify opportunities to maximize recycling of wastewater for potable and non-potable uses. The City submitted its renewal application on March 24, 2022, 180 days prior to the expiration of the current permit, which is jointly issued by the EPA and the San Diego Regional Water Quality Control Board. The modified permit was administratively extended by the EPA on September 27, 2022. Administrative extension of NPDES permits by the State of California (through the San Diego Regional Water Quality Control Board) are automatic upon expiration (and upon submittal of a timely renewal application) prior to adoption of a subsequent permit. It is anticipated that continuation of the Pure Water Program will be reflected in future permits, which will eliminate the need for the City to make over \$1.8 billion in upgrades to the PLWTP that would otherwise be necessary, based on the City's 2018 cost estimate.

Phase 1 of the Pure Water Program is estimated to cost approximately \$1.56 billion. The Water and Wastewater Funds will share in these expenditures according to allocating cost based on completed design and engineering studies. Approximately \$906 million (58%) is allocated to the Water Utility Fund and approximately \$656 million (42%) is allocated to the Sewer Revenue Fund. Total cost allocations will continue to be adjusted as any potential change orders are issued for the project. Final cost allocation will be done in the fiscal year following substantial completion of the project.

### Project Update

Pure Water Phase 1 is the largest construction effort the City has ever taken on and significant progress has been made towards completion. Each of the eleven construction contracts (early site work contract has been completed) have been awarded and construction is currently estimated to be about 40% through construction. Although Phase 1 is being constructed through ten individual construction contracts via eight independent prime contractors and numerous subcontractors; it is one interconnected project. The Morena Pump Station dewatering changed condition has delayed the pump station's completion by more than a year. The full extent of the delay is not yet known but is

anticipated to be clear during FY 2024. The strategy referred to as “Partial Flow Commissioning” was conceived when the significance of the Morena Pump Station delay became apparent. Partial Flow Commissioning accelerates the start of Pure Water production compared to waiting for the Morena Projects to complete by gradually producing potable reuse water.

To achieve Pure Water Phase 1 full production of 30 mgd, a partial flow commission schedule has been developed. Partial Flow Commissioning will mitigate Morena Pump Station’s impact on the timeline for producing 30 mgd of purified water. Based on current contractor forecast schedules, purified water production can begin nine to 12 months sooner than waiting for the Morena Projects to complete before proceeding with system-wide commissioning. Currently, the North City Water Reclamation Plant receives more wastewater than is needed to meet recycled water customer demands; the surplus can be used to produce between 8 and 18 mgd of purified water.

Following Partial Flow Commissioning activities, purified water deliveries to the Miramar Reservoir would be started at 7.5 mgd. After demonstrating to the regulators that all water quality and other permit requirements are sufficiently met, purified water deliveries could be increased to 10 mgd. At that point additional wastewater via the Morena Projects will be needed to further increase production and reach Phase 1’s ultimate goal of producing 30 mgd of purified water by December 31, 2027. A more detailed update on the Pure Water program was provided to the Environment Committee on October 12, 2023.

## Cost of Service Analysis

Pursuant to State law, PUD uses a cost of service process to determine how to set its rates to ensure they meet PUD’s overall revenue requirements. Cost of service studies detail projected expenditures determine the total revenue required to cover those expenditures and allocate those revenue needs based on the demands each customer class places on PUD’s systems. Revenue requirements not only support operating and capital costs but are set to ensure appropriate reserve and debt service coverage ratios.

The City concluded a cost of service study and rate case for the Wastewater System in September 2021, which included rate adjustments for FY 2022 through FY 2025, as approved by the City Council. The City concluded a cost of service study and rate case for the Water System in September 2023, which included rate adjustments for FY 2024 and FY 2025. At the Public Hearing, the City Council modified the proposed rate adjustments by splitting the December 1, 2023 rate increase of 10.2% into two, 5.2% effective December 1, 2023 and 5.0% effective July 1, 2024. As a result, the revenue assumed for FY 2023 has been reduced by \$12 million.

Council’s approval provides a maximum authority for the rate increases through FY 2025 for both Systems. Any adjustments in assumptions utilized to support the rate adjustments, will require mitigating actions, including the additional use of rate stabilization reserves, modifications to the capital spending plan, and/or higher projected rate adjustments in years beyond FY 2025. This and future PUD Outlook’s will define these actions in the financial sections of the report.

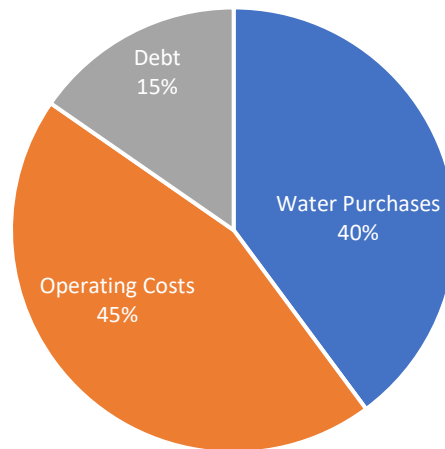
## WATER SYSTEM

This section discusses baseline expenditure projections, upcoming critical operational expenditures, and projected capital improvements program needs and financing options for the next five years for the Water Utility Fund. An overview of Water System revenue projections is also included.

### Water System Expenditures

Water Utility Fund expenditures are comprised of both personnel and non-personnel expenditures including debt service and other non-discretionary payments. The largest single expenditure of the Water Utility Fund is for water purchases, representing approximately 40% of FY 2023 operating expenditures. As show in Figure 1.5

**Figure 1.5 Fiscal Year 2024 Water Operations and Maintenance Expenses**



These expenditures are therefore discussed separately. The following sections discuss in detail each expenditure category and include a description of the category, projected growth rates, and a discussion of any related critical strategic expenditures. Strategic critical expenditures identified in prior Outlooks are now included in baseline expenditures for the FY 2025-2029 Outlook, including positions associated with Dam Safety, distributed control system and customer support.

### Water Purchases

The City currently imports approximately 85-90% of its water through the CWA. Water purchases contribute to the largest expense in the Water Utility Fund and make up approximately 40% of the Water Utility Fund's operating budget. CWA charges a volumetric rate that includes both a commodity

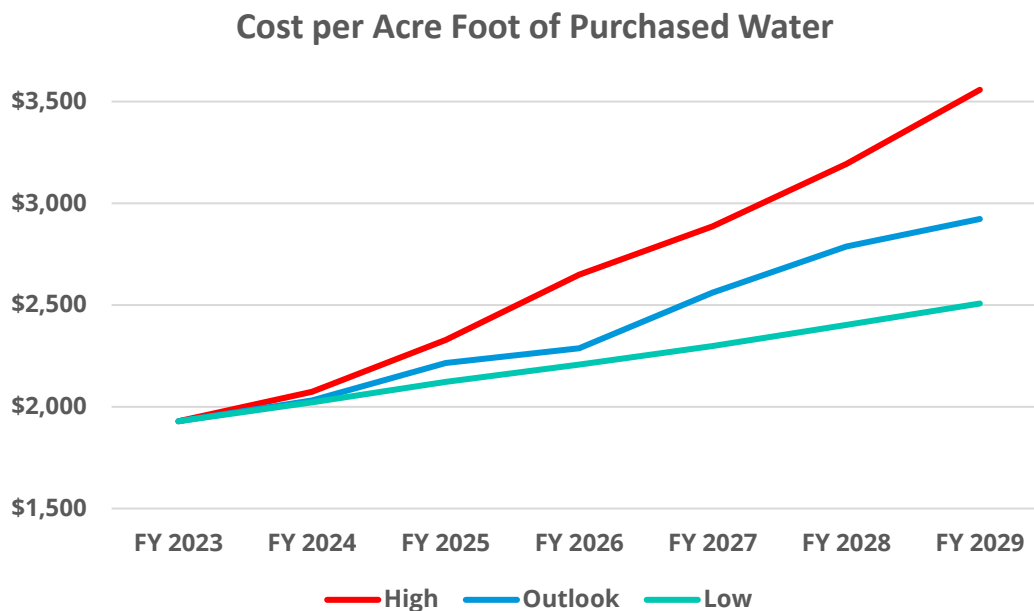
rate and a transportation rate. In addition to the rate charged by acre foot, CWA and MWD also levy fixed charges on their member agencies.

Table 2.1 – Water Purchases - Baseline Expenditures (\$ in Millions)							
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Projections	\$263.7	\$263.1	\$283.6	\$331.9	\$316.8	\$314.6	\$331.1
Acre Feet	136,686	129,472	128,012	144,992	123,689	112,888	113,287

Table 2.1 presents projected costs for purchasing water from CWA. As a result of the significant rain events that occurred in Fiscal Year 2023 and are projected in Fiscal Year 2024, the Outlook assumes less water purchases as demands are depressed and the water stored in the City's dams is used instead of buying from the CWA. The Outlook assumes a return to a normalized level of purchases in Fiscal Year 2025, but then forecasts a decline in Fiscal Year 2027 as Phase 1 of the Pure Water Program is expected to be substantially complete. From a financial perspective, the Outlook assumes a conservative approach for forecasting the impact from Pure Water being operational. If water from Pure Water is delivered earlier, the costs for water purchases will be reduced.

During the forecast period, PUD is forecasting to spend \$263M to \$331.9M per year to buy water from the CWA and is dependent on the rate increases projected by the CWA. In September 2021, CWA adopted a Long-Range Financing Plan (2021 Financing Plan) which identified high and low rate and charge forecasts. Figure 1.6 below shows the impact of these scenarios vs the assumptions used in the PUD Outlook.

**Figure 1.6 High/Low and Outlook Cost Per Acre foot of Purchased Water**



The PUD Outlook assumes a mid-range forecast; however, there is a strong probability that the increases will be different than the assumptions for following reasons:

1. The guidance provided by CWA is at the “all in” level but actual rate increases will be implemented based on multiple rate and charge categories. For the City of San Diego, applicable rate and charge categories include four fixed categories (Storage, Customer Service, Supply Reliability and Infrastructure Access) and a volumetric rate based on the actual volume of water purchased. Depending on rate increases per category, the result may have a different impact on the City. For instance, if fixed charges are increased, the City could be impacted substantially more than if volumetric rates are increased.
2. CWA's historical approach has been to maintain their projected rates within the range defined by the high and low forecasts outlined in the 2021 Financing Plan. Consequently, the decision to opt for lower rates in earlier years does not limit their ability to raise rates in subsequent years to realign with the higher rates projected for the future. This adjustment is evident in the 2024 rates, as they shifted from the lower end of the rate increase spectrum in 2023 to match the high scenario for 2024 as originally projected in the 2021 Financing Plan.
3. CWA is currently evaluating their rate structure and the PUD Outlook does not make any assumptions on the outcome of this effort. The rate structure review is focusing on adjustments to fixed charges, which if that does occur, would have a substantive impact on the City.
4. Additionally, the results of two agencies approved detachment from CWA will have an impact, but that is still unknown.

## Personnel Expenditures

Personnel expenditures include salaries, wages, and fringe benefits. Salaries and wages are comprised of regular salaries and wages, hourly wages, special pay, overtime, and pay in lieu of annual leave. Fringe benefits include pension payment or Actuarially Determined Contribution (ADC), flexible benefits, retiree health or Other Post-Employment Benefits (OPEB), workers’ compensation, Supplemental Pension Savings Plan (SPSP), and other fringe benefits. Projected FY 2024 Water Utility Fund salaries, wages, and fringe benefits are \$120.8 million and includes 979.9 full-time equivalent (FTE) positions. Table 2.2 displays unaudited actuals for FY 2023 and projections through FY 2029 for Water System personnel expenditures.

Table 2.2 – Baseline Personnel Expenditures (\$ in Millions)							
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Salary and Wages	\$62.4	\$73.7	\$77.9	\$81.8	\$84.3	\$86.8	\$89.5
Fringe	\$42.9	\$47.1	\$49.1	\$50.1	\$51.1	\$52.1	\$53.2

The salary and wages category incorporates only those expenditures associated with staff included in the FY 2024 Adopted Budget. FY 2024 salaries and wages were double (6.85% vs 3.05%) assumed in



prior outlooks. This increases compounds throughout the years included in the Outlook. Position adds identified for FY 2025-2029 to support critical expenditures are discussed below. Consistent with the General Fund, the PUD Outlook accounts for all current negotiated MOUs and an assumed 3.05 percent salary increase for pending MOU negotiations in future years; 3.05 percent is aligned with the assumptions included in the San Diego City Employees' Retirement System (SDCERS) Actuarial Valuation Report as of June 30, 2022. Any future negotiated general wage increases that deviate from the 3.05 percent assumption will impact future year personnel costs included in the outlook period and increase the rate revenue requirement.

The Department's fringe budget has been increased based on its past proportional relationship between it and salaries and wages category.

### Critical Operating Expenditures

Table 2.3 - Critical Strategic Expenditures - Personnel						
Request	FTE/Exp	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Dam Repairs and Replacement	FTE	4.00	4.00	4.00	4.00	4.00
	Expense	\$509,949	\$523,739	\$537,950	\$552,594	\$567,684
Pure Water Phase 1 Operations	FTE	16.24	16.24	19.24	19.24	19.24
	Expense	\$1,758,957	\$1,805,446	\$2,194,264	\$2,252,708	\$2,312,933
Regulatory Compliance and Equipment	FTE	5.75	8.75	8.75	8.75	8.75
	Expense	\$515,213	\$797,150	\$817,606	\$838,686	\$860,408
Street Preservation Ordinance	FTE	5.17	9.87	14.57	19.27	19.27
	Expense	\$439,348	\$835,826	\$1,252,007	\$1,688,785	\$1,731,798
	<b>Total FTE</b>	<b>31.16</b>	<b>38.86</b>	<b>46.56</b>	<b>51.26</b>	<b>51.26</b>
	<b>Total Expense</b>	<b>\$3,223,467</b>	<b>\$3,962,162</b>	<b>\$4,801,827</b>	<b>\$5,332,772</b>	<b>\$5,472,824</b>

Table 2.3 identifies personnel expenditures, including fringe benefits, for the addition of staff to support Department new programs and/or critical needs as detailed below:

- The Dam Repairs and Replacement critical strategic add addresses two different aspects of the City's dam and reservoir system: short-term repairs and other maintenance projects and long-term improvements and/or replacements of existing dams. It is estimated that the City's dam system has at least \$1 billion of short and long-term projects needed to safely operate and maintain these assets, which are critical for local water storage in the region. Given the size, scale, timeline and specialization of this work, a dedicated team within the Public Utilities Department is needed. This request creates a team to design, manage and execute the needed improvements. The team includes resources for both operational staff that manage the day-to-day operations of the facilities and the project teams that are required to design, engineer and construct replacement facilities as the dams reach the end of life design. Items approved in the Fiscal Year 2024 Adopted budget are included in the baseline, with the critical adds representing the increases over the budgeted positions in outyears.
- The identified funding needs for the Pure Water Program are for the operation and maintenance of new and expanded Pure Water facilities and related staffing needs. Pure



Water positions are gradually being ramped up, so personnel are fully trained to operate and maintain the facilities when they come online. A total of 19.24 FTEs from the Water System (of 22.00 total FTEs) are anticipated to be required when Pure Water Phase 1 becomes fully operational. These estimates will be further refined as the City gets closer to bringing the facilities online.

- Regulatory compliance includes staffing needed to comply with new and updated discharge regulations.
- The Street Preservation Ordinance is the City's policy on how to restore streets after work is done in the public right-of-way. The critical strategic add will meet the needs for Trench Restoration and Repair Program for Public Utilities projects. This work is currently handled by the Transportation Department, but as part of this Outlook the Public Utilities Department is taking that work in house, to allow Transportation staff to address general city road work. The additions are expected to be cost neutral for the Public Utilities Department, since the existing Transportation staff charge Public Utilities for work performed on Public Utilities Projects.

## Supplies

The Supplies category includes costs for chemicals, water meters, pipe fittings, asphalt road materials, machine parts, and low value assets. Table 2.4 displays the FY 2023 unaudited actuals and projections through FY 2029 for the Supplies category.

Table 2.4 - Baseline Supplies (\$ in Millions)							
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
YOY Growth	N/A	6.7%	3.0%	2.8%	2.8%	2.8%	3.0%
Projection <sup>1</sup>	\$21.6	\$23.0	\$23.7	\$24.4	\$25.0	\$25.7	\$26.5

<sup>1</sup>Figure excludes expenditures associated with water purchases

The Supplies category includes various components. The Supplies baseline projection is increased by the forecasted growth in the CPI to account for the average change of costs over the Outlook period; the forecast for CPI growth is based on the UCLA Anderson October 2023 Economic Forecast, with a small increase specifically for chemicals. In FY 2022 and FY 2023, the City saw a sharp increase in key chemicals, including chlorine, which has driven large growth in the Department's supplies costs over past years. This rate of increase slowed in Fiscal Year 2023 and Fiscal Year 2024 but are not expected to return to pre-FY 2023 levels. Given the importance of these chemicals in the treatment process, the Department would prioritize the use of other resources to ensure sufficient supplies of treatment chemicals were available in any applicable fiscal year and will continue closely monitoring these costs.

## Critical Operating Expenditures

Table 2.5 - Critical Strategic Expenditure - Supplies					
Request	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Pure Water Phase 1 Operations	\$500,000	\$2,450,000	\$3,670,556	\$7,341,112	\$7,341,112
Street Preservation Ordinance	\$15,000	\$30,000	\$45,000	\$60,000	\$75,000
<b>Total Expense</b>	<b>\$515,000</b>	<b>\$2,480,000</b>	<b>\$3,715,556</b>	<b>\$7,401,112</b>	<b>\$7,416,112</b>

Table 2.5 identifies increased expenditures in the Supplies category for critical expenditures. Pure Water supply expenses are anticipated to become necessary as facilities come online, and include chemical costs, consumables, pumps, and other materials necessary for operation and maintenance of facilities and equipment. The supplies for Street Preservation Ordinance support trench restoration and repair include asphalt/concrete and slurry seal.

## Contracts

Contracts are a non-personnel expense category that include the cost of contractual services, professional consultant fees, general government services billing, City services billings, fleet vehicle usage and assignment fees, rental expenses, security services, and other contractual expenses. Table 2.6 displays the FY 2023 unaudited actuals and projections through FY 2029 for the Contracts category.

Table 2.6 - Baseline Contracts (\$ in Millions)							
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
YOY Growth	N/A	10.5%	1.1%	2.8%	2.8%	2.8%	2.0%
Projection <sup>1</sup>	\$92.5	\$102.2	\$103.3	\$106.2	\$109.2	\$112.2	\$114.5

<sup>1</sup>Figure excludes expenditures associated with water purchases

The Contracts baseline projection is increased by the forecasted growth in the CPI to account for the average change of costs over the Outlook period; the forecast for CPI growth is based on the UCLA Anderson October 2023 Economic Forecast. Adjustments are based on known and anticipated events, including prior critical strategic expenditures and prior spending levels. The 1.1% growth rate for Fiscal Year 2025 will ultimately be dependent on actual level of expenditures in Fiscal Year 2024, which will be re-forecasted in the Mid-Year Monitoring Report. In addition, the PUD Outlook assumes additional transfers from the Water Fund to the Metropolitan Wastewater Fund, per their revenue sharing agreement.

## Critical Operating Expenditures

Table 2.7 - Critical Strategic Expenditure - Contracts					
Request	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Pure Water Phase 1 Operations	\$400,000	\$400,000	\$417,500	\$267,500	\$287,500
Pure Water Phase 2	\$2,805,000	\$3,490,000	\$1,840,000	\$1,590,000	\$1,640,000
Street Preservation Ordinance	(\$739,044)	(\$1,412,415)	(\$2,115,968)	(\$1,749,032)	(\$1,815,968)
<b>Total Expense</b>	<b>\$2,465,956</b>	<b>\$2,477,585</b>	<b>\$141,532</b>	<b>\$108,468</b>	<b>\$111,532</b>

Table 2.7 identifies increased contractual expenditures associated with increased support for Phase 1 of the Pure Water Program for operational contracts, and the on ramping of costs for planning and studies required for Phase 2 of Pure Water.

The Street Preservation Ordinance request includes contract repair funding to address trench restoration and repairs. The adds are a negative at the bottom-line level due to the decreases in charges from the Transportation Department which shows as a contract expense., As work moves in-house, transportation department charges go down but PUD sees corresponding increases in other categories likes supplies and personnel. The Outlook assumes PUD fully in-housing trench repairs by the end of Fiscal Year 2027.

## Information Technology

The Information Technology category includes both discretionary expenses and non-discretionary allocations to the Water Utility Fund. The Information Technology category includes the costs related to hardware and software maintenance, help desk support, and other information technology (IT) services. Table 2.8 displays the FY 2023 unaudited actuals and projections through FY 2029 for the Information Technology category.

<b>Table 2.8 - Baseline Information Technology (\$ in Millions)</b>							
	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>	<b>FY 2028</b>	<b>FY 2029</b>
YOY Growth	N/A	59.5%	3.0%	2.8%	2.8%	2.8%	2.0%
Projection	\$12.1	\$19.2	\$19.8	\$20.3	\$20.9	\$21.5	\$21.9

The projections include estimates of IT costs and systems critical to treatment plant and distribution system operations, which accounts for the majority of the increase between Fiscal Year 2023 and Fiscal Year 2024. The baseline discretionary costs are then increased by the forecasted growth in the CPI to reflect the average change of costs over the outlook period; the forecast for CPI growth is based on the UCLA Anderson October 2023 Economic Forecast. The majority of the growth is seen in centralized IT costs maintained by the Department of IT also includes PC replacement costs that spike in Fiscal Year 2024 and 2025.

There are no critical strategic adds for Information Technology for this outlook period.

## Energy & Utilities

The Energy & Utilities category includes the Water Utility Fund's costs for electricity, water services, fuel, and other utility and energy expenses. Table 2.10 displays the FY 2023 unaudited actuals and projections through FY 2029 for the Energy & Utilities category.

<b>Table 2.10- Baseline Energy &amp; Utilities (\$ in Millions)</b>							
	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>	<b>FY 2028</b>	<b>FY 2029</b>
YOY Growth	N/A	13.2%	3.8%	4.0%	3.7%	3.8%	4.5%
Projection	\$19.0	\$21.5	\$22.3	\$23.2	\$24.0	\$24.9	\$26.1

The Energy & Utilities category includes various costs including prior critical strategic expenditures. The majority of the rates for each category are based on the Annual Energy Outlook 2023 Report prepared by the U.S. Energy Information Administration and forecasted CPI growth based on the UCLA Anderson October 2023 Economic Forecast. Fuel growth rates are developed by the General Services Department. The Sustainability and Mobility Department prepared the forecasts for electric and gas services. The General Fund Five Year Outlook expands on how these forecasts were developed in more detail.

## Critical Operating Expenditures

Table 2.11 - Critical Strategic Expenditures - Energy & Utilities (\$ in Millions)					
Request	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Pure Water Phase 1 Operations	\$0	\$7,241,181	\$14,482,361	\$14,482,361	\$14,482,361
<b>Total Expense</b>	<b>\$0</b>	<b>\$7,241,181</b>	<b>\$14,482,361</b>	<b>\$14,482,361</b>	<b>\$14,482,361</b>

Table 2.11 identifies increased energy and utility expenditures associated with the Pure Water Program. These expenditures are necessary as new and expanding Pure Water facilities come online and include increased electricity, water, and natural gas expenditures necessary for the daily operation of facilities.

## Other Expenditures

Expenses included in this category are transfers to other funds, capital expenses, taxes, and other miscellaneous expenditures. Debt service obligations, including payments for bonds, commercial paper, State Revolving Fund (SRF) loans and WIFIA payments, are excluded from this category and are discussed in the Water System Capital Improvements Program section of this report. Table 2.12 displays the FY 2023 unaudited actuals and projections through FY 2029 for the Other Expenditures category.

Table 2.12 - Baseline Other Expenditures (\$ in Millions)							
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
YOY Growth	N/A	75.2%	0%	0%	0%	0%	0%
Projection	\$0.3	\$0.6	\$0.6	\$0.6	\$0.6	\$0.6	\$0.6

The increase between Fiscal Year 2023 and Fiscal Year 2024 is related to ongoing laboratory equipment purchases that were added in the Fiscal year 2023 budget. The current forecasts do not take into account the additional costs associated with converting PUD fleet to electric, which requires coordination with the General Services Department for charging infrastructure and vehicle procurement.

## Critical Strategic Expenditures

Table 2.13 - Critical Strategic Expenditure - Other Expenditures					
Request	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Dam Repairs and Replacement	\$3,200,000	\$3,650,000	\$4,100,000	\$0	\$0
Pure Water Phase 1 Operations	\$1,948,000	\$2,156,000	\$2,600,000	\$2,600,000	\$2,600,000
Regulatory Compliance and Equipment	\$450,000	\$360,000	\$54,000	\$0	\$0
Street Preservation Ordinance	\$51,000	\$102,000	\$153,000	\$204,000	\$255,000
<b>Total Expense</b>	<b>\$5,649,000</b>	<b>\$6,268,000</b>	<b>\$6,907,000</b>	<b>\$2,804,000</b>	<b>\$2,855,000</b>

Table 2.13 identifies increased other expenditures. Significant expenditures are associated with new laboratory operating equipment needed for Phase 1 of the Pure Water Program, for new regulatory equipment including those specifically related to microplastics and vehicles and other equipment for dam repairs and street preservation.

## Reserves Contributions

The City has established accounts within the Water Utility Fund for four reserve funds: The Emergency Operating Reserve (Operating Reserve), the Secondary Purchase Reserve, the Rate Stabilization Fund Reserve (Rate Stabilization Fund), and the Emergency Capital Reserve (Capital Reserve). The Department maintains these reserve funds in accordance with the City's Reserves Policy (the City Reserves Policy). At the end of FY 2022, the Water Utility Fund is estimated to have total reserves of approximately \$176 million.

Table 2.14 details reserve targets and projected funding levels. Reserves are projected to be fully funded throughout the PUD Outlook period., except for the rate stabilization reserve.

Table 2.14 - Reserve Targets and Estimated Funding Levels (\$ in Millions)						
	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Operating Reserve Target (\$)	\$56.7	\$60.3	\$65.3	\$66.8	\$67.8	\$68.5
Operating Reserve Level (\$)	\$56.7	\$60.3	\$65.3	\$66.8	\$67.8	\$68.5
Secondary Purchase Reserve Target (\$)	\$15.8	\$17.0	\$19.9	\$19.0	\$18.9	\$19.9
Secondary Purchase Reserve Level (\$)	\$16.7	\$17.0	\$19.9	\$19.9	\$19.9	\$19.9
Rate Stabilization Fund Target (\$)	\$29.4	\$31.3	\$35.3	\$38.0	\$41.9	\$45.1
Rate Stabilization Fund Level (\$)	\$78.1	\$69.1	\$14.1	\$29.1	\$38.1	\$45.1
Capital Reserve Target (\$)	\$5.0	\$5.0	\$5.0	\$5.0	\$5.0	\$5.0
Capital Reserve Level (\$)	\$5.0	\$5.0	\$5.0	\$5.0	\$5.0	\$5.0

The Secondary Purchase Reserve Target for FY 2028 reflects a decrease in water purchases as Phase 1 of the Pure Water Program is completed.

The Rate Stabilization Reserve Fund is funded above targeted levels until Fiscal year 2026. This is due to several one-time revenue sources from prior years, including the sale of the stadium site, one-time grant funding and legal settlements from the MWD that have allowed the City to make large contributions to the stabilization reserve. Saving one-time revenue for use in a reserve is a financial best practice so that the funds can be used to provide one-time operating revenue to offset or mitigate the need for sudden or dramatic rate increases in the future. The PUD Outlook projects use of the Rate Stabilization Reserve Fund in FY 2023 through FY 2026. In FY 2026, rate stabilization reserve is projected to dip below target level but forecasted to return to target levels by FY 2029. The use of the reserves allows for a more gradual increase in rate increases than would otherwise be required to meet financial targets. In accordance with the reserve policy, a plan to address this dip below the target will be included in the next COSS.

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## Water System Capital Improvements Program

The Water System CIP is established to address current and future system needs in a cost-effective manner. The program’s principal drivers are:

- continuing the implementation of the Pure Water Program;
- improving infrastructure to reduce pipeline breaks and emergency repairs;
- funding for improvements to Hodges Dam;
- improving treatment and distribution process technology;
- Support for SAP Modernization and smart meters
- expanding the Water System to accommodate growth; and
- complying with the Federal Safe Drinking Water Act and the Division of Drinking Water (DDW) Compliance Order.

Table 3.1 shows categories of projects with the estimated cost of expenditures contained in the CIP for the period of FY 2025 through FY 2029. The City’s Adopted Budget includes multi-year project pages for non-routine and large projects. The PUD Outlook includes a high-level summary of the CIP to understand the financial impact on the Water System; the City’s Five-Year Capital Infrastructure Planning Outlook provides additional information on the capital infrastructure needs for the entire city.

<b>Table 3.1 - Summary of Projected CIP Projects</b>								
<b>Fiscal Year 2024-2028</b>								
<b>(\$ in Millions)</b>								
<b>Water CIP Projects</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>	<b>FY 2028</b>	<b>FY 2029</b>	<b>Outlook Total</b>
Pure Water Program	\$166.0	\$349.3	\$140.2	\$50.6	\$26.2	\$32.6	\$38.3	<b>\$287.9</b>
Transmission Pipelines	\$34.4	\$23.9	\$75.6	\$90.6	\$59.3	\$59.0	\$77.3	<b>\$361.9</b>
Pipelines	\$87.8	\$99.2	\$139.1	\$148.5	\$145.8	\$108.6	\$26.0	<b>\$568.1</b>
Storage Facilities	\$3.0	\$7.1	\$9.4	\$26.9	\$30.0	\$34.6	\$72.3	<b>\$173.3</b>
Water Treatment Plants	\$4.4	\$9.3	\$9.5	\$17.2	\$13.9	\$19.7	\$33.1	<b>\$93.4</b>
Pump Stations	\$3.5	\$1.6	\$3.8	\$11.2	\$13.9	\$17.6	\$14.7	<b>\$61.3</b>
Miscellaneous Projects	\$0.4	\$3.2	\$12.3	\$25.3	\$41.1	\$35.2	\$24.4	<b>\$138.3</b>
<b>Total</b>	<b>\$299.5</b>	<b>\$493.5</b>	<b>\$389.9</b>	<b>\$370.4</b>	<b>\$330.2</b>	<b>\$307.3</b>	<b>\$286.2</b>	<b>\$1,684.1</b>

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## Capital Improvements Program (CIP) Financing Plan

Table 3.2 describes the projected sources of funds to finance the Water System CIP during the PUD Outlook period for FY 2025 through FY 2029; FY 2023 and FY 2024 activity are provided for reference and are not a part of the PUD Outlook period.

PUD anticipates incurring approximately \$1.1 Billion of additional debt obligations for the Baseline Water System CIP and \$167.2 million of additional obligations for the Pure Water CIP over the PUD Outlook period. The City is projecting an increase in borrowing rates, related to the Federal Reserve's attempts to combat inflation, and the increase in federal borrowing costs for risk-free treasury offerings. Capacity fees and cash are anticipated to fund an additional \$393.8 million.

Although grant funding is currently not reflected during the PUD Outlook period, the Department is actively applying for additional grant funding and continually searching for new grant opportunities. Any grant funding awarded will be used to offset cash funding. The City has identified many grant opportunities in recent federal bills but would note that a large portion of funding has been restricted to specific agencies, for smaller jurisdictions or capping the value of the grants at relatively low dollar values. Please note fiscal years that show the use of negative cash reflect reimbursement of prior cash expenditures from grant, bonds, or loans.

Table 3.2 - Sources of Funds for the Water Capital Improvement Program								
(\$ in Millions)								
Source of Funds	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Outlook Total
<b>Pure Water CIP</b>								
Commercial Paper/ Bonds	\$0	\$0	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
WIFIA Loans	\$112.1	\$365.9	\$119.7	\$46.0	\$1.4	\$0	\$0	<b>\$167.2</b>
SRF Loans	\$0	\$0	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Grants	\$0	\$0	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Cash	\$53.9	(\$16.5)	\$20.4	\$4.5	\$24.8	\$32.6	\$38.3	<b>\$120.7</b>
<b>Total</b>	<b>\$166.0</b>	<b>\$349.3</b>	<b>\$140.2</b>	<b>\$50.6</b>	<b>\$26.2</b>	<b>\$32.6</b>	<b>\$38.3</b>	<b>\$287.9</b>
<b>Baseline CIP</b>								
Revenue Bonds/ Commercial Paper	\$30.0	\$127.0	\$273.0	\$50.0	\$190.0	\$260.0	\$100.0	<b>\$873.0</b>
SRF Loans	\$0	\$1.8	\$29.9	\$48.1	\$78.4	\$54.8	\$38.4	<b>\$249.5</b>
Grants	\$0	\$0	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Capacity Fees/Cash	\$103.5	\$15.3	(\$53.1)	\$221.7	\$35.7	(\$40.1)	\$109.5	<b>\$273.7</b>
<b>Total</b>	<b>\$133.5</b>	<b>\$144.2</b>	<b>\$249.7</b>	<b>\$319.8</b>	<b>\$304.0</b>	<b>\$274.7</b>	<b>\$247.9</b>	<b>\$1,396.2</b>
<b>Total Funding</b>	<b>\$299.5</b>	<b>\$493.5</b>	<b>\$389.9</b>	<b>\$370.4</b>	<b>\$330.2</b>	<b>\$307.3</b>	<b>\$286.2</b>	<b>\$1,684.1</b>

The City expects several large projects to be financed over the outlook period, including Phase 1 & 2 of Pure Water and the Dam rehabilitation projects. The City has secured financing of up to \$733.5

million for the Water System's share of the Pure Water Program Phase 1 through the EPA's Water Infrastructure Finance and Innovation Act (WIFIA) Loan Program which will provide funding through FY 2027. Additional funding for the Water System's portion of Pure Water CIP (including Phase 2) expenses includes \$120.7 million in cash. The Department has assumed that similar to Phase 1 of Pure Water, Pure Water Phase 2 and Dam Rehabilitation will initially be cashed funded with the potential to be reimbursed through loans and grants. The Department expects to create a financing plan in conjunction with the Department of Finance Debt Management team during the Outlook period, which will be incorporated into future Outlooks.

For the Water System's baseline CIP, the Department anticipates financing the costs of certain projects in the amount of \$249.5 million through SRF loans the City has already secured or for which it plans to apply for. The proceeds from additional SRF loans are assumed to provide funding in FY 2025 through FY 2029. SRF loans are one of the least expensive sources of financing available to the City. This year's outlook reflects a lower level of assumed SRF funding due to limited funding at the State level for the program and unprecedented demand for funding. The City has increases the amount of non-SRF funding during this period, which has resulted in debt service expenses than in past outlooks.

## Debt Service Coverage Ratios

As the Water System makes use of various financing instruments to fund its CIP, it is important that it maintain good financial metrics to ensure its creditworthiness and its ability to issue debt at advantageous terms. One of the key components to measuring the Water System's credit quality is its debt service coverage ratio (DSCR). The DSCR is a measure of a system's ability to make payments on its existing and projected debt service and compares the system's net operating revenues against its debt service payments.

While variations in revenues and expenditures will result in varying DSCRs in given years, the Department generally targets a DSCR of 1.5x, a financial target that gives the Department the ability to maintain high credit quality leading to continued low borrowing rates. Additionally, the Department's bond covenants require it to maintain a DSCR of 1.2x for its senior debt and 1.1x for its aggregate debt. The projected DSCRs over the PUD Outlook period are displayed in Table 3.3. In FY 2025, the DSCR is projected to dip below target level but is forecasted to return to target levels by FY 2028. The 1.68X coverage ratio in Fiscal Year 2029 is expected to decrease, all else being equal, when the Pure Water Phase 2 and Dams financing plans are complete, since they will likely result in additional long-term debt being issued. However, it is important for rates to continue to increase to support the debt service for Pure Water Phase 2 and loans supporting the City's dams and reservoirs.

Table 3.3 - Projected Debt Service Coverage Ratios (\$ in Millions)						
	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Net Systems Revenues	\$155.4	\$177.9	\$203.9	\$207.7	\$274.8	\$318.8
Debt Service	\$101.4	\$124.4	\$146.3	\$152.7	\$183.3	\$190.0
<b>Debt Service Coverage Ratio</b>	<b>1.53 x</b>	<b>1.43 x</b>	<b>1.39 x</b>	<b>1.36 x</b>	<b>1.50 x</b>	<b>1.68 x</b>

## Water System Revenues

The primary revenue sources of the Water Utility Fund are generated from water sales, capacity fees, interest earnings, and rental income. This section discusses each revenue category, and includes a description of revenue sources, projected growth rates, and a discussion of future revenue streams and how they impact the Water Utility Fund.

### Water Sales

**Background.** The majority of Water Utility Fund revenue is generated from water sales which makes up over 90% of the Water Utility Fund's total revenue. City utility bills include water and sewer charges and storm drain fees, but only receipts from water charges are revenues to the Water Utility Fund. The water charge is comprised of two parts: a fixed monthly service charge and a commodity charge that is based on the volume of water used. The fixed service charge is based on the size of a customer's meter, which provides an approximation of the amount of water the customer could have delivered to the customer's property.

The commodity charge is determined using a set rate based upon each hundred cubic feet (HCF), or approximately 750 gallons, of water consumed. The City has a tiered commodity charge structure for single family residential (SFR) customers that is broken down by water usage within each rate block. The remaining retail customers – Multi-Family Residential (MFR), Non-Residential, Temporary Construction and Irrigation – are billed under a uniform commodity charge for their respective customer classification.

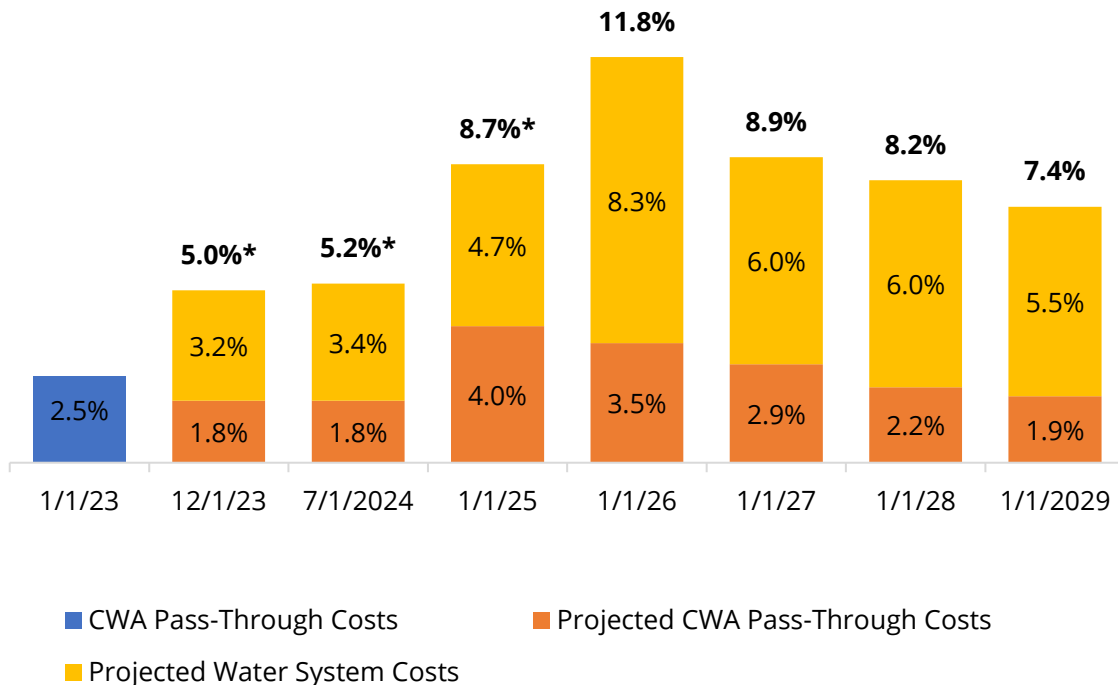
**Water Service Charge Rate Increases** PUD last released a Water System cost of service study in 2022, which produced a two-year rate case (the 2023 Rate Case). The 2023 Rate Case was based on comprehensive forecasted annual operations and maintenance costs, capital cost expenditures and purchased water costs that increase every January 1 from CWA. The 2023 Rate Case covered FY 2024 through FY 2025 and was approved by the City Council in September 2023. Council approved a maximum authority of rate increases of 5% December 1, 2023, 5.2% July 1, 2024 and 8.7% January 1, 2025.

Based on the revenue required to support projected expenditures, fund reserves appropriately, and achieve the target financial metrics, this Outlook includes projected water rate revenue adjustments on a system-wide basis of 11.8% on January 1, 2026, 8.9% on January 1, 2027, 8.2% on January 1,

2028 and 7.4% on January 1, 2029. Actual rate increases and the individual customer class impact will be subject to finalization of the cost of service study for future rate periods and City Council consideration.

Roughly one half to one third of these rate adjustments are necessary to pay for increased CWA water rates, as indicated in Figure 4.1. Increases in revenue necessary to support PUD water operations range from 4.7% to 8.3% in each year.

**Figure 4.1 – Water Service Charge Rate Increases**



\*Rate reflects approved Maximum Authority

**Forecast.** Table 4.2 presents forecasted revenues for FY 2024 through FY 2029 for revenue from water sales. The growth rates reflect overall revenue growth and include revenue impacts of both proposed rate adjustments. Revenue from the MWD’s Local Resources Program, which provides credits for development of local water supplies is tied to the Pure Water production timeline. Upon full production, the incentives are expected to be \$11.4 million per year for 25 years.

Table 4.2 - Water Sales Revenue Projections (\$ in Millions)							
	FY 2023	FY 2024 Projection	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
<b>Potable Water</b>							
YOY Growth	N/A	6.0%	13.2%	8.2%	9.6%	7.8%	7.2%
Projection	\$537.1	\$569.2	\$644.5	\$697.1	\$763.8	\$823.2	\$882.4
<b>Other Water Sales</b>							
YOY Growth	3.7%	18.5%	11.3%	3.7%	21.0%	11.0%	3.6%
Projection	\$33.7	\$39.9	\$44.4	\$46.1	\$55.8	\$61.9	\$64.1

**Economic Trends.** While PUD continues to promote water conservation, the demand for water within the City’s service area is projected to increase as the population continues to grow and development expands over the long-term. The City updated its Urban Water Management Plan (UWMP) in 2021, which projected single-family residential water use to increase by 0.62% over the period of 2025 to 2045. Growth is anticipated in the multi-family residential water use as forecasted in the UWMP which reflects an increase by 34% over the period of 2025 to 2045. The average demand over the last five years has not grown significantly, with some small growth in demand largely caused by increases in population.

On a short-term basis, forecasts due assume a reduction in water usage that was assumed in last year’s Outlook. As discussed in the Water Purchases expenditure section, this is due to a reduction in water sales in FY 2023 from above average rainfall forecasted to continue in FY 2024. The Outlook assumes a return to a normalized level of sales in Fiscal Year 2025,

**Sensitivity Analysis.** While these projections represent PUD’s best estimate of water sales revenues throughout the PUD Outlook period, actual results will depend on the factors discussed above. Assuming the above rates, every 1,000 acre foot reduction in water sales volumes/sales, revenues could decrease by approximately \$3 million, which would require an approximately 1% increase in the rate levels projected in this Outlook.

## Water Capacity Charges

**Background.** Capacity charges are development fees included in permits for new or expanded water connections and are based on an estimate of the increase in water consumption as measured by equivalent dwelling units (EDUs). Capacity charge proceeds are used to construct, improve, and expand the Water System to accommodate the additional business of such added dwellings or commercial or industrial units.

Pursuant to State law, capacity charges can be used only to pay costs associated with capital expansion, bonds, contracts, or other indebtedness of the Water System related to expansion.

Because capacity charges are primarily collected on the issuance of new construction permits within the City, revenues obtained from such charges vary based upon construction permitting activity.

In February 2007, the Mayor and City Council approved increasing the water capacity charge by 19.5% to \$3,047 per EDU, which was estimated to provide full cost recovery for Water System expansion projects.

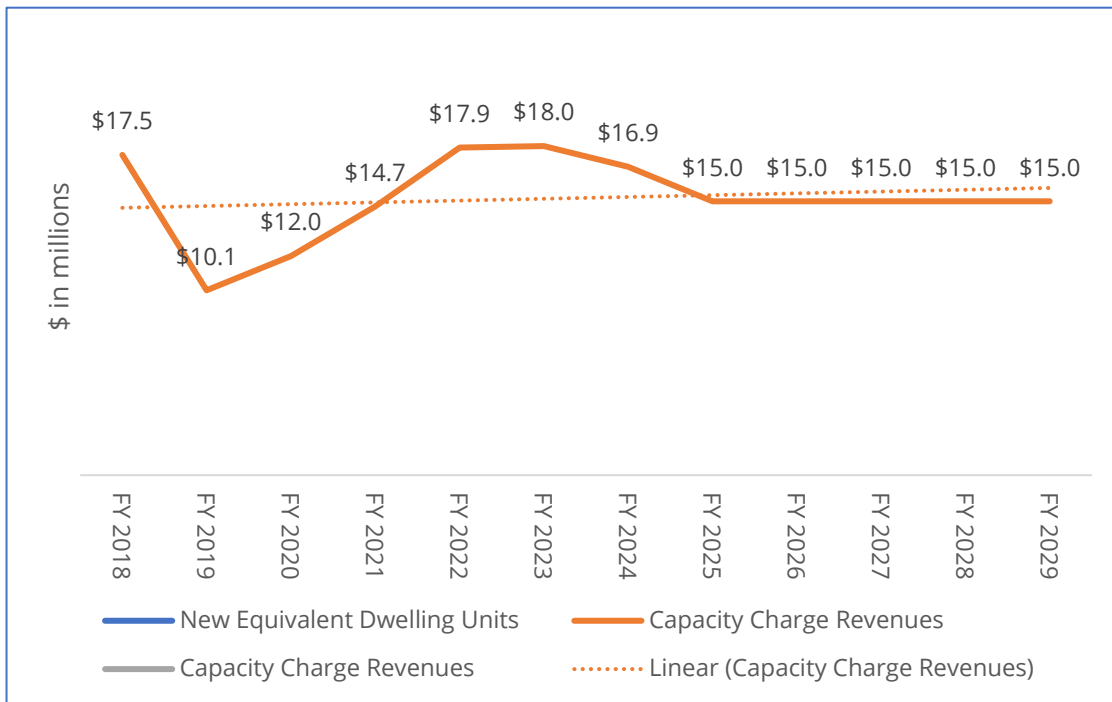
AB 2536 (2022) "Development fees: impact fee nexus studies: connection fees and capacity charges" became law on July 19, 2022. This bill increased the requirements for connection and capacity charges effective January 1, 2022, to be in alignment with other development impact fees, which have more specific reporting and project listing requirements than what had previously required. The City had planned to include a proposal to increase capacity charges in the COSS, but as a result of these new requirements, adjustments to water capacity fees will be addressed in a future nexus study.

**Forecast.** Table 4.3 displays the FY 2023 unaudited actuals and projections through FY 2028 for water capacity charges. This revenue source represents less than 2% of the Water System's overall revenue receipts.

Table 4.3 - Capacity Charges (\$ in Millions)							
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
YOY Growth	N/A	(6.3%)	(11.2%)	0%	0%	0%	0%
Projection	\$18.0	\$16.9	\$15.0	\$15.0	\$15.0	\$15.0	\$15.0

Projected revenues for capacity charges are determined using conservative growth estimates, primarily relying on historical spending patterns observed from FY 2018 through FY 2022, as illustrated in Figure 4.4. During the period spanning FY 2016 to FY 2020, the average capacity fee revenue stood at approximately \$15.0 million. The projections are based on the assumption that development activity may slow down in FY 2024 and FY 2025. It's important to note that this revenue projection follows a distinct trend compared to the wastewater forecast. This distinction arises from the fact that water revenue tends to exhibit greater variability compared to wastewater, mainly due to factors like outdoor water usage. Consequently, changes in capacity revenue have a relatively milder impact on rate adjustments, allowing for a more gradual decline in revenue projections compared to what is indicated in the wastewater forecast.

**Figure 4.4 - Water Capacity Charge Revenue Forecast**



**Economic Trends** As previously mentioned, water capacity charges are primarily based on new water connections related to new construction and are directly influenced by population growth and residential and commercial development. The current population for the City of San Diego is 1.4 million. San Diego's population grew by approximately 7% between the 2000 Census and the 2010 Census and 6.6% between 2010 and 2020. As population continues to change in the region, the demand for housing is also expected to change in order to meet population demands.

According to SANDAG's 2013 study, multi-family units will make up over half of the new housing that will need to be built over the next 30 years. As a result, SANDAG forecasts that 40% of the total units in the region will be multi-family by 2030.

The uncertainty surrounding any recessionary impacts on residential construction contribute to generally flat capacity fee revenue projections over the next five years.

### Revenue from Use of Property

Revenue from Use of Property includes revenues from non-agricultural lease of land, such as the San Diego Zoo Safari Park; storage by private companies on utility-owned lands; agricultural leases of land in San Pasqual Valley; and telecom leases for cell towers on utility-owned properties.

Table 4.5 displays the FY 2023 unaudited actuals and projections through FY 2029 for use of property. This revenue source represents less than 1% of the Water System's overall revenue receipts.

Table 4.5 - Revenue from Use of Property (\$ in Millions)							
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
YOY Growth	N/A	0%	0%	0%	0%	0%	0%
Projection	\$7.0	\$7.0	\$7.0	\$7.0	\$7.0	\$7.0	\$7.0

Actual revenues in this category can vary slightly each year as new lease agreements are entered into while other lease agreements expire; however, the projections are kept flat.

### Other Revenue

The Other Revenue category includes refunds or reimbursements from private parties for damages to utility-owned equipment, buildings, or fire hydrants; refunds from vendors; reimbursements from services provided to other City departments/funds; receipts from the sale of recycled materials or equipment (paper, computers, metal); grant revenue; and interest earnings on pooled investments.

Table 4.6 displays the FY 2023 unaudited actuals and projections through FY 2029 for the other revenue category. This revenue source traditionally represents 2.0% of the Water System's overall revenue receipts.

Table 4.6 - Other Revenue (\$ in Millions)							
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
YOY Growth	N/A	6.2%	3.2%	(5.4%)	(8.5%)	5.0%	3.9%
Projection	\$48.4	\$51.4	\$53.1	\$50.2	\$45.9	\$48.2	\$50.1

Other revenue in FY 2026 through FY 2026 is projected to decline due to higher expenses than forecast in the 2023 rate study resulting in less unrestricted cash, decreasing interest earning. Changes from year to year are largely due to changes to projected interest income, as well as charges for services, including storage and transportation agreements with other local agencies.

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## Other Assumptions and Considerations

### Litigation

The City's Water System is currently involved in litigation in *Patz v. City of San Diego* regarding the use of tiered water rate structure for single-family residential customers. The lawsuit alleges that the City's rates for water service do not reflect the actual cost to provide the water service to each parcel in violation of Article XIII D of the California Constitution (Proposition 218). The City contends that its water rates are strictly based on cost of service principles and compliant with Proposition 218.

On September 13, 2021, the court ruled in favor of plaintiffs on the Proposition 218 claim and on March 25, 2022 the petitioner class was awarded \$79.5 million in refunds based on estimated overcharges from August 14, 2014 to March 31, 2022. In addition, the class was also awarded pre and post judgement interest and refunds would increase \$644,000 each month until the rates were put in compliance with the order. The City disagrees with the ruling and filed an appeal on April 1, 2022. Single family residences are the largest customer class of the Water System and a ruling against the City will have a wide-ranging impact of the rates charged to that customer group moving forward. The PUD Outlook has assumed the liability through the end of Calendar Year 2023, when new rates go into effect that are not covered under the litigation. The City expects a ruling on the appeal in Fiscal Year 2024.

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## WASTEWATER SYSTEM

The Wastewater System is comprised of the Metropolitan and Municipal Utility Funds, collectively known as the Sewer Revenue Funds. This section discusses the Wastewater System’s baseline expenditure projections, upcoming critical operational expenditures, projected capital improvement program needs and financing options for the next five years. Wastewater System revenues are also discussed.

### Wastewater System Expenditures

The Wastewater System expenditures are comprised of both personnel and non-personnel expenditures including debt service and other non-discretionary payments. The following sections will discuss in detail each expenditure category and will include a description of the expenditures, projected growth rates, and a discussion of critical strategic expenditures.

The following are some of prior strategic critical expenditures that are now included in the baseline for FY 2025-2029:

- Cost increases for Treatment Chemicals
- Positions to support system resiliency; and
- Positions and resources for customer service support.

### Personnel Expenditures

Personnel expenditures include the salaries and wages category as well as fringe benefits category. The salaries and wages category is comprised of regular salaries and wages, special pays, overtime, step increases, and vacation pay in lieu, whereas the fringe benefits category includes pension payments or Actuarially Determined Contribution (ADC), flexible benefits, retiree health or Other Post-Employment Benefits (OPEB), workers’ compensation, Supplemental Pension Savings Plan (SPSP), and other fringe benefits. The FY 2024 Adopted Budget for the Sewer Funds salaries, wages, and fringe benefits was \$119 million and included 952.4 FTEs. Table 5.1 displays the FY 2023 unaudited actuals and projections through FY 2029 for personnel expenditures.

Table 5.1 – Baseline Personnel (\$ in Millions)							
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Salary and Wages	\$64.5	\$74.2	\$78.4	\$82.3	\$84.8	\$87.4	\$90.1
Fringe	\$42.3	\$44.8	\$46.6	\$48.5	\$49.5	\$50.4	\$51.5

The salary and wages category incorporates only those expenditures associated with staff included in the FY 2024 Adopted Budget. Position adds identified for FY 2024-2028 to support critical expenditures are discussed below. Consistent with the General Fund, the PUD Outlook accounts for all current negotiated MOUs and an assumed 3.05 percent salary increase for pending MOU negotiations in

future years; 3.05 percent is aligned with the assumptions included in the San Diego City Employees' Retirement System (SDCERS) Actuarial Valuation Report as of June 30, 2022. Any future negotiated general wage increases that deviate from the 3.05 percent assumption will impact future year personnel costs included in the outlook period and increase the rate revenue requirement.

The Department's fringe budget has been increased based on its past proportional relationship between it and salaries and wages category.

## Critical Strategic Expenditures

Table 5.2 - Critical Strategic Expenditure - Personnel						
Request	FTE/Exp	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Pure Water Phase 1 Operations	FTE	1.76	1.76	1.76	2.76	2.76
	Expense	\$195,377	\$200,560	\$205,901	\$331,197	\$340,082
Regulatory Compliance and Equipment	FTE	2.25	2.25	2.25	2.25	2.25
	Expense	\$250,650	\$257,303	\$264,158	\$271,223	\$278,504
Street Preservation Ordinance	FTE	5.83	11.13	16.43	21.73	21.73
	Expense	\$495,435	\$942,528	\$1,411,837	\$1,904,375	\$1,952,879
	<b>Total FTE</b>	<b>9.84</b>	<b>15.14</b>	<b>20.44</b>	<b>26.74</b>	<b>26.74</b>
	<b>Total Expense</b>	<b>\$941,462</b>	<b>\$1,400,390</b>	<b>\$1,881,897</b>	<b>\$2,506,796</b>	<b>\$2,571,465</b>

Table 5.2 identifies increased personnel expenditures, including fringe benefits, for the addition of staff to support various key Department functions. This includes laboratory staff and industrial discharge staff for regulatory compliance and labor force staff for street repaving program needs.

The identified funding needs for the Pure Water Phase 1 are for the operation and maintenance of new and expanding Pure Water facilities under Phase 1. The Wastewater System is responsible for all work done before secondary treatment or ocean discharge standard of treatment. Pure Water positions are gradually being ramped up so personnel are fully trained to operate and maintain the facilities when they come online. A total of 2.76 FTEs from the Wastewater System (of 22.00 total FTEs) are anticipated to be required when Pure Water becomes fully operational. These estimates will be further refined as the City gets closer to bringing the facilities online.

## Supplies

The Supplies category includes costs for chemicals, machine parts, electrical materials, laboratory supplies, and pipe fittings. Table 5.3 displays the FY 2023 unaudited actuals and projections through FY 2029 for the Supplies category.

Table 5.3 - Baseline Supplies (\$ in Millions)							
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
YOY Growth	N/A	6.0%	2.8%	2.8%	2.8%	2.8%	2.8%
Projection	\$43.2	\$45.8	\$47.1	\$48.4	\$49.8	\$51.1	\$52.6

The Supplies category includes various components. The Supplies baseline projection is increased by the forecasted growth in the CPI to account for the average change of costs over the outlook period; the forecast for CPI growth is based on the UCLA Anderson October 2023 Economic Forecast, with a small increase specifically for chemicals. In prior fiscal years, the City saw a sharp increase in key chemicals, including chlorine, which has driven large growth in the Department’s supplies costs. This rate of increase slowed in Fiscal Year 2023 and Fiscal Year 2024, but future increases could exceed the level of expenses assumed in this Outlook. Given the importance of these chemicals in the treatment process, the Department would prioritize the use of other resources to ensure sufficient supplies of treatment chemicals were available in any applicable fiscal year and will continue closely monitoring these costs.

### Critical Strategic Expenditures

Table 5.4 - Critical Strategic Expenditures - Supplies (\$ in Millions)					
Request	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Street Preservation Ordinance	\$5,000	\$10,000	\$15,000	\$20,000	\$25,000
<b>Total Expense</b>	<b>\$5,000</b>	<b>\$10,000</b>	<b>\$15,000</b>	<b>\$20,000</b>	<b>\$25,000</b>

Table 5.4 identifies increased expenditures associated with the Street Preservation Ordinance. These expenditures are necessary for supplies needed for trench restoration and repair and include asphalt/concrete and slurry seal.

### Contracts

Contracts are a non-personnel expense category that includes the cost of professional consultant fees, general government services billing, rent, city services billings, fleet vehicle usage and assignment fees, contractual services, and other contractual expenses. Table 5.5 displays the FY 2023 unaudited actuals and projections through FY 2029 for the Contracts category.

Table 5.5 - Baseline Contracts (\$ in Millions)							
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Growth Rate	N/A	19%	(0.8%)	3.7%	2.8%	2.8%	2.8%
Projection	\$88.1	\$105.0	\$104.2	\$108.1	\$111.1	\$114.2	\$117.4

The Contracts & Services baseline projection is increased by the forecasted growth in the CPI to account for the average change of costs over the outlook period; the forecast for CPI growth is based on the UCLA Anderson October 2023 Economic Forecast. Adjustments are based on known and anticipated events, including prior critical strategic expenditures and prior spending levels. The 1.1% growth rate for Fiscal year 2024 will ultimately be dependent on actual level of expenditures in Fiscal Year 2024, which will be re-forecasted in the Mid-Year Monitoring Report.

### Critical Strategic Expenditures

Table 5.6 - Critical Strategic Expenditure - Contracts (\$ in Millions)					
Request	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Pure Water Phase 2	\$1,520,000	\$1,520,000	\$1,520,000	\$0	\$0
Street Preservation Ordinance	(\$285,739)	(\$545,939)	(\$817,876)	(\$757,876)	(\$697,876)
<b>Total Expense</b>	<b>\$1,234,261</b>	<b>\$974,061</b>	<b>\$702,124</b>	<b>(\$757,876)</b>	<b>(\$697,876)</b>

Table 5.6 identifies increased contractual expenditures associated with support for Phase 1 of the Pure Water Program as it comes online and then decreases in the outer years reflecting movement of resources to Phase 2 of Pure Water. These are updated estimates that were included in last year's Outlook.

The Street Preservation Ordinance request includes contract repair funding to address trench restoration and repairs. The bottom-line reductions in costs are associated to the decreases in charges from the Transportation Department, as work moves in-house, which are categorized as internal contract charges. The Outlook assumes PUD fully in-housing trench repairs by the end of Fiscal Year 2027.

### Information Technology

The Information Technology category includes both discretionary expense and non-discretionary allocations. The Information Technology category includes the costs related to hardware and software maintenance, help desk support, and other information technology (IT) services. Table 5.7 displays

the FY 2023 unaudited actuals and projections through FY 2029 for the Information Technology category.

Table 5.7 - Baseline Information Technology (\$ in Millions)							
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
YOY Growth	N/A	51.8%	2.9%	2.8%	2.8%	2.8%	2.8%
Projection	\$11.9	\$18.0	\$18.6	\$19.1	\$19.6	\$20.2	\$20.7

The projections include estimates of IT costs and systems critical to treatment plant and distribution system operations, which accounts for the majority of the increase between Fiscal Year 2023 and Fiscal year 2024. The baseline discretionary costs are then increased by the forecasted growth in the CPI to reflect the average change of costs over the outlook period; the forecast for CPI growth is based on the UCLA Anderson October 2023 Economic Forecast. The majority of the growth is seen in centralized IT costs maintained by the Department of IT also includes PC replacement costs that spike in Fiscal Year 2024 and 2025.

There are no critical strategic adds for Information Technology for this outlook period.

## Energy & Utilities

The Energy & Utilities category includes costs for electricity, water services, fuel, and other utility and energy expenses. Table 5.9 displays the FY 2023 unaudited actuals and projections through FY 2029 for the Energy & Utilities category.

Table 5.9 - Baseline Energy & Utilities (\$ in Millions)							
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
YOY Growth	N/A	14.4%	(3.0%)	5.0%	3.6%	3.6%	3.6%
Projection	\$31.8	\$36.4	\$35.3	\$37.1	\$38.4	\$39.8	\$41.2

The Energy & Utilities category includes various costs including prior critical strategic expenditures. The majority of the rates for each category are based on the Annual Energy Outlook 2023 Report prepared by the U.S. Energy Information Administration and forecasted CPI growth based on the UCLA Anderson October 2023 Economic Forecast. Fuel growth rates are developed by the General Services Department. The Sustainability and Mobility Department prepared the forecasts for electric and gas services, The General Fund Five Year Outlook expands on how these forecasts were developed. The sewer system sees a spike in energy usage in FY 2024, which the department expects to decrease in Fiscal Year 2025, with the expected decrease in wet-weather flows as the system sees less rain.

## Critical Strategic Expenditures

Table 5.10 - Critical Strategic Expenditures - Energy & Utilities (\$ in Millions)					
Request	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Pure Water Phase 1 Operations	\$0	\$0	\$1,000,000	\$1,000,000	\$1,000,000
<b>Total Expense</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>

Table 5.10 identifies increased energy and utility expenditures for the Wastewater System. Expenditures for Pure Water are necessary as new and expanding Pure Water facilities come online and include expenditures for the Morena Pump Station, North City Water Reclamation Plant, and the Metropolitan Biosolids Center.

### Other Expenditures

Expenses included in this category are transfers to other funds, capital expenses, and other miscellaneous expenditures. Debt service obligations, including bond and State Revolving Fund (SRF) loan payments, are excluded from this category and are discussed in detail within the Wastewater System Capital Improvements Program section of this report. Table 5.11 displays the FY 2023 unaudited actuals and projections through FY 2029 for the Other Expenditures category.

Table 5.11 - Baseline Other Expenditures (\$ in Millions)							
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
YOY Growth	N/A	(1.9%)	0%	0%	0%	0%	0%
Projection	\$5.0	\$4.9	\$4.9	\$4.9	\$4.9	\$4.9	\$4.9

No growth rate was applied to Other Expenditures as the expenses in this category do not typically recur on an annual basis. Due to the small expenses in this category, minor changes under \$100,000, such as equipment purchases, can result in large percentage changes. The current forecasts do not consider the additional costs associated with converting PUD fleet to electric; the Department is currently working on developing that forecast, which requires coordination with the General Services Department for charging infrastructure and vehicle procurement.

### Critical Strategic Expenditures

Table 5.12 - Critical Strategic Expenditure - Other Expenditures					
Request	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Pure Water Phase 1 Operations	\$600,000	\$600,000	\$0	\$0	\$0
Street Preservation Ordinance	\$19,000	\$38,000	\$57,000	\$76,000	\$95,000
<b>Total Expense</b>	<b>\$619,000</b>	<b>\$638,000</b>	<b>\$57,000</b>	<b>\$76,000</b>	<b>\$95,000</b>

Table 5.12 identifies increased capital equipment expenditures for setting up the Pure Water Phase 1 operations and resources to address enhanced testing requirements, replacement of equipment for regulatory compliance and a preliminary estimate to replace the ocean monitoring vessel.

Street Preservation Ordinance equipment needed for the trench restoration and repair program.

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## Reserves Contributions

The City has established accounts within the Sewer Revenue Fund for three reserve funds: The Emergency Operating Reserve (Operating Reserve), the Rate Stabilization Fund Reserve (Rate Stabilization Fund), and the Emergency Capital Reserve (Capital Reserve). The Department operates these reserve funds in accordance with the City's reserve policy. At the end of FY 2024, the Sewer Revenue Fund is estimating total reserves of approximately \$142.4 million. Table 5.13 details reserve targets and projected funding levels. Reserves are projected to be fully funded throughout the PUD Outlook period, with the exception of the rate stabilization reserve.

The PUD Outlook projects use of the Rate Stabilization Reserve Fund in FY 2023 through FY 2026. In FY 2026, rate stabilization reserve is projected to dip below target level and expected to return to target levels by FY 2030. The use of the reserves allows for a more gradual increase in rate increases than would otherwise be required to meet financial targets. In accordance with the reserve policy, a plan to address this dip below the target will be included in the next COSS.

<b>Table 5.13 - Reserve Target Levels and Estimated Funding Levels</b>						
<b>(\$ in Millions)</b>						
	<b>FY</b>	<b>FY</b>	<b>FY</b>	<b>FY</b>	<b>FY</b>	<b>FY</b>
	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>
Operating Reserve Target (\$)	\$63.1	\$64.5	\$66.8	\$68.7	\$70.6	\$72.7
Operating Reserve Level (\$)	\$63.1	\$64.5	\$66.8	\$68.7	\$70.6	\$72.7
Rate Stabilization Fund Target (\$)	\$19.6	\$20.8	\$20.9	\$21.7	\$22.9	\$24.1
Rate Stabilization Fund Level (\$)	\$69.3	\$39.3	\$39.3	\$19.3	\$17.9	\$14.1
Capital Reserve Target (\$)	\$10.0	\$10.0	\$10.0	\$10.0	\$10.0	\$10.0
Capital Reserve Level (\$)	\$10.0	\$10.0	\$10.0	\$10.0	\$10.0	\$10.0

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## Wastewater System Capital Improvements Program

The Wastewater System CIP is established to address current and future system needs in a cost-effective manner. The program's principal drivers are:

- continuing the implementation of the Pure Water Program;
- modernization of key equipment for Pump Station 1, Pump Station 2 and Point Loma Treatment plant
- improving infrastructure to reduce emergency spills and repairs;
- improving process technology;
- Support for SAP Modernization and smart meters
- ongoing replacement and rehabilitation of 40 miles of sewer pipelines each year.

Infrastructure improvements generally consist of wastewater treatment plants, pipelines, pump stations, and projects required by or related to applicable State and Federal regulations and orders. The Wastewater System's CIP for this PUD Outlook period includes improvements to the Wastewater System infrastructure, as well as Phase 1 and Phase 2 of the multi-year Pure Water Program.

Table 6.1 shows categories of projects with the estimated cost of expenditures contained in the CIP for the period of FY 2025 through FY 2029. The City's Adopted Budget includes multi-year project pages for individual capital projects. The PUD Outlook includes a high-level summary of the CIP to understand the financial impact on the Wastewater System; the City's Five-Year Capital Infrastructure Planning Outlook provides additional information on the capital infrastructure needs for the entire city.

Table 6.1 - Summary of Projected CIP Projects Fiscal Year 2025-2029 (\$ in Millions)								
Wastewater CIP Projects	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Outlook Total
Pure Water Program	\$86.7	\$230.6	\$166.0	\$43.6	\$20.0	\$16.9	\$17.2	<b>\$263.6</b>
Trunk Sewers	\$6.2	\$13.6	\$21.1	\$23.7	\$34.7	\$52.0	\$49.5	<b>\$181.0</b>
Municipal Pump Station	\$0.4	\$0.6	\$0.5	\$1.5	\$1.8	\$6.6	\$10.2	<b>\$20.6</b>
Sewer Pipelines	\$69.7	\$85.4	\$144.3	\$88.8	\$97.2	\$90.1	\$27.3	<b>\$447.7</b>
Miscellaneous Projects	\$4.8	\$3.0	\$5.1	\$8.3	\$22.1	\$28.0	\$14.0	<b>\$77.6</b>
SDG&E Relocation	\$14.7	\$0	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Sewer Treatment Plants	\$20.8	\$27.0	\$38.1	\$17.7	\$18.5	\$15.2	\$7.2	<b>\$96.7</b>
Large Sewer Pump Station	\$2.8	(\$0.8) <sup>5</sup>	\$7.6	\$7.6	\$16.8	\$16.4	\$23.7	<b>\$72.3</b>
<b>Total</b>	<b>\$206.0</b>	<b>\$359.3</b>	<b>\$382.7</b>	<b>\$191.3</b>	<b>\$211.2</b>	<b>\$225.2</b>	<b>\$149.1</b>	<b>\$1,159.4</b>

<sup>5</sup> Adjustment to account for prior year activity

## Capital Improvements Program (CIP) Financing Plan

Table 6.2 below describes the projected sources of funds to finance the Water System CIP during the PUD Outlook Period for FY 2025 through FY 2029; FY 2023 and FY 2024 activity are provided for reference and are not a part of the PUD Outlook Period.

PUD anticipates incurring approximately \$670.0 million of additional debt obligations for the Baseline Wastewater System CIP and \$353.1 million of additional obligations for the Pure Water CIP over the PUD Outlook period. Additional amounts will be funded with capacity fee revenue and cash. The City is projecting an increase in borrowing rates, due to the Federal Reserve's attempts to combat inflation and the increase in federal borrowing costs for risk-free treasury offerings. Although grant funding is currently not reflected during the PUD Outlook period, the Department is actively applying for additional grant funding and continually searching for new grant opportunities. Any grant funding awarded will be used to offset cash funding. The City has identified many grant opportunities in recent federal bills but, would note a large portion of funding has been restricted to specific agencies, for smaller jurisdictions or grant awards being capped at relatively low dollar values. Please note fiscal years that show the use of negative cash reflect reimbursement of prior cash expenditures from grant, bonds, or loans.

Table 6.2 - Revenues Sources for the Wastewater Capital Improvement Program (\$ in Millions)								
Revenue Sources	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Outlook Total
<b>Pure Water CIP</b>								
SRF Loans	\$25.1	\$194.5	\$202.8	\$100.6	\$28.8	\$14.0	\$6.8	<b>\$353.1</b>
Grants	\$0	\$0	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Capacity Fees/Cash	\$61.5	\$36.1	(\$36.8)	(\$57.1)	(\$8.8)	\$2.8	\$10.4	<b>(\$89.4)</b>
<b>Total</b>	<b>\$86.7</b>	<b>\$230.6</b>	<b>\$166.0</b>	<b>\$43.6</b>	<b>\$20.0</b>	<b>\$16.9</b>	<b>\$17.2</b>	<b>\$263.6</b>
<b>Baseline CIP</b>								
Revenue Bonds	\$70.7	\$2.5	\$210.0	\$0	\$260.0	\$0	\$200.0	<b>\$670.0</b>
SRF Loans	\$0.6	\$10.7	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Grants	\$0	\$0	\$0	\$0	\$0	\$0	\$0	<b>\$0</b>
Capacity Fees/Cash	\$48.1	\$115.5	\$6.7	\$147.7	(\$68.9)	\$208.3	(\$68.1)	<b>\$225.8</b>
<b>Total</b>	<b>\$119.4</b>	<b>\$128.7</b>	<b>\$216.7</b>	<b>\$147.7</b>	<b>\$191.1</b>	<b>\$208.3</b>	<b>\$131.9</b>	<b>\$895.8</b>
<b>Total Funding</b>	<b>\$206.0</b>	<b>\$359.3</b>	<b>\$382.7</b>	<b>\$191.3</b>	<b>\$211.2</b>	<b>\$225.2</b>	<b>\$149.1</b>	<b>\$1,159.4</b>

The City anticipates financing approximately \$667 million of the Wastewater System's portion of Pure Water Phase 1 and \$353.1 in the Outlook Period through low-interest State Revolving Fund (SRF) loans which will provide funding through FY 2029. The SRF proceeds will reimburse not only projected expenditures for FY 2025 through FY 2029, but also expenditures from prior years. Because SRF loans are provided on a reimbursable basis, cash is initially used to fund construction before reimbursements are received; this is reflected in the Table 6.2 by negative cash values for Pure Water

financing in FY 2025 through FY 2027. The Department has assumed like with Phase 1 of Pure Water, Phase 2 will initially be cashed funded seeking reimbursement through loans and grants. The Department expects to create a financing plan during the Outlook period, which will be incorporated into future outlooks.

As noted in the discussion of the Water System CIP, SRF loans are one of the least expensive sources of financing available to the City. If the City is not awarded the SRF loans projected over this PUD Outlook period, it will need to seek financing sources that carry higher interest rates.

The City anticipates financing approximately \$670 million of the Wastewater System for Baseline CIP through revenue bonds over the outlook period. It is expected that a total of \$225.8 million will come from capacity fees and cash on a pay-as-you-go-basis.

### Debt Service Coverage Ratio

Similar to the Water System, as the Wastewater System makes use of various financing instruments to fund its capital program, it is important that it maintain good financial metrics to ensure its creditworthiness and its ability to issue debt at advantageous terms. One of the key components to measuring the Wastewater System’s credit quality is its debt service coverage ratio (DSCR). The DSCR is a measure of a system’s ability to make payments on its existing and projected debt service and compares the system’s net operating revenues against its debt service payments.

While variations in revenues and expenditures will result in varying DSCRs in given years, the Department generally targets a DSCR of 1.5x, a financial target that gives the Wastewater system the ability to maintain high credit quality leading to continued low borrowing rates. Additionally, the Department’s bond covenants require it to maintain a DSCR of 1.2x for its senior debt and 1.1x for its aggregate debt. Table 6.3 displays the projections through FY 2029.

<b>Table 6.3 - Estimated Debt Service Coverage Ratios (\$ in Millions)</b>						
	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>	<b>FY 2028</b>	<b>FY 2029</b>
Net System Revenues	\$137.5	\$152.6	\$125.7	\$162.1	\$159.6	\$176.7
Debt Service	\$97.7	\$112.2	\$90.9	\$116.6	\$114.1	\$128.0
<b>Debt Service Coverage Ratio</b>	<b>1.41 x</b>	<b>1.36 x</b>	<b>1.38 x</b>	<b>1.39 x</b>	<b>1.40 x</b>	<b>1.38 x</b>

During the PUD Outlook period the debt service peaks in FY 2029 associated with the debt service on Pure Water and bond offerings during the Outlook Period. In FY 2025, the DSCR is projected to dip below target level but is forecasted to return to target levels after the outlook period. The changes in net system revenue are discussed in the expenditures and revenues sections of this report.

### Wastewater System Revenue

The following section provides details of revenue projections for the Sewer Revenue Funds. The primary revenue sources of the Wastewater System are generated from wastewater service charges, capacity fees, interest earnings from the investments of available funds, and revenues from the

Participating Agencies. This section will discuss in detail each revenue category and will include a description of the revenue source, projected growth rates, and a discussion of future revenue streams and how they impact the Wastewater System.

## Sewer Service Charges

**Background.** PUD manages and operates the Wastewater System with funds derived primarily from service charges that are deposited in the Sewer Revenue Funds and are used for the operation, maintenance and capital improvements of the Metropolitan Sub-System and the Municipal Sub-System.

The City establishes fees based upon the costs incurred by the City to collect, treat and discharge wastewater and cover debt service on capital improvements.

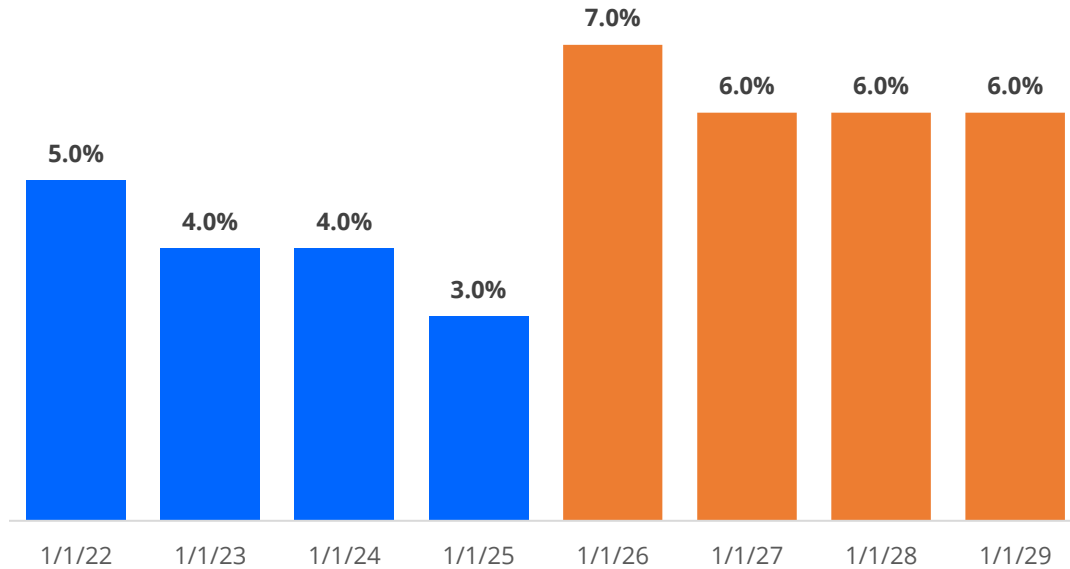
Sewer service charges are based on the characteristics of the wastewater discharged by each wastewater user. All wastewater users are charged based upon the amount of flow, and the solids and organic material which they discharge into the Sewer System. As sewage discharge is not metered, water consumption is used to approximate each customer's sewage flow.

Sewer service charge revenues are comprised of two parts: a base fee and a sewer service charge (flow charge). The base fee is a fixed service fee charged to all customers to recover certain fixed and indirect costs. The flow charge is based on the amount (flow) and strength of the wastewater discharged to the system and incorporates allowances for system return that differs by customer class. This adjustment factor recognizes that not all water consumed discharges to the Wastewater System. The flow charge for both Single Family Residential (SFR) and Multi-Family Residential (MFR) customers include a 95% return to sewer factor, while Commercial/Industrial (C/I) customers average between a 73% and 79% return to sewer factor, which varies depending on the type of business. Additionally, the flow charge for SFR customers is based on the least amount of water used during the previous winter and includes a water usage cap of 20 HCF.

**Wastewater Service Charge Rate Increases.** The City Council approved the Department's Wastewater Rate Case in September of 2021 (the 2021 Rate Case). The 2021 Rate Case covers increases for four years from January 1, 2022, to January 1, 2025, and was based on a comprehensive forecast of annual operations and maintenance costs and projected capital expenditures. The 2021 Rate Case included a maximum rate increases of 5.0% on January 1, 2022, 4.0% on January 1, 2023, 4.0% on January 1, 2024, and 3.0% on January 1, 2025. This was the first wastewater rate increase in over ten years. The rates are the maximum authority authorized, which each rate being evaluated during the budget process and finalized in November of each year.

The figure below shows the maximum rate increases that have been approved (blue) and proposed (orange)

**Figure 7.1 – Wastewater Rate Increases assumed in the Outlook.**



**Forecast** Table 7.2 displays the FY 2023 unaudited actuals and projections through FY 2029 for wastewater sewer service charge revenue. This revenue source represents approximately 72% of the Sewer Revenue Funds’ overall revenue receipts for the Outlook Period. The forecast assumes a 0.25% increase in accounts and reflects rate increases beginning January 1, 2023 and each January thereafter through January 1, 2025. The PUD Outlook currently assumes the maximum 4.0% increase is implemented on January 1, 2024. The Department will include in the FY 2025 Budget presentation the level of rate increase assumed for January 2025.

Table 7.2 - Sewer Service Charge Revenue (\$ in Millions)							
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
YOY Growth	N/A	8.5%	3.7%	5.4%	7.1%	6.3%	6.3%
Projection	\$287.5	\$311.8	\$323.3	\$340.7	\$364.8	\$387.6	\$411.9

**Economic Trends.** Overall demand for sewer services closely tracks with population growth and overall water use. The demand for sewer services within the City’s service area is tracked with changes in populations. The average demand over the last five years has not grown significantly, with some small growth in demand largely caused by increases in population. The Wastewater forecasts assumed water reduction shown in the water portion of this report, will primarily come from outdoor water usage, which does not impact expected sewer flows.

**Sensitivity Analysis.** While these projections represent PUD’s best estimate of wastewater revenues throughout the PUD Outlook period, actual results will depend on the factors discussed above. The impact in revenue from potential rate increases ranges from \$2 to \$4 million for each percent added or subtracted from projected rate increases depending on the year in which sewer service charges are adjusted, for those years outside of the approved rate case through FY 2025.

## Wastewater Capacity Charges

**Background.** Capacity charges are development fees within permits for new or expanded wastewater connections and are based on an estimate of the increase in wastewater discharge as measured by equivalent dwelling units (EDU). Capacity charge proceeds are used to construct, improve and expand the Wastewater System to accommodate the additional impacts of such added dwellings or commercial or industrial units.

As with water capacity charges, wastewater capacity charges can be applied only for the purpose of paying costs associated with capital expansion, bonds, contracts, or other indebtedness of the Wastewater System related to expansion. Because capacity charges are primarily collected on new construction within the City, revenues obtained from such charges vary based upon construction activity.

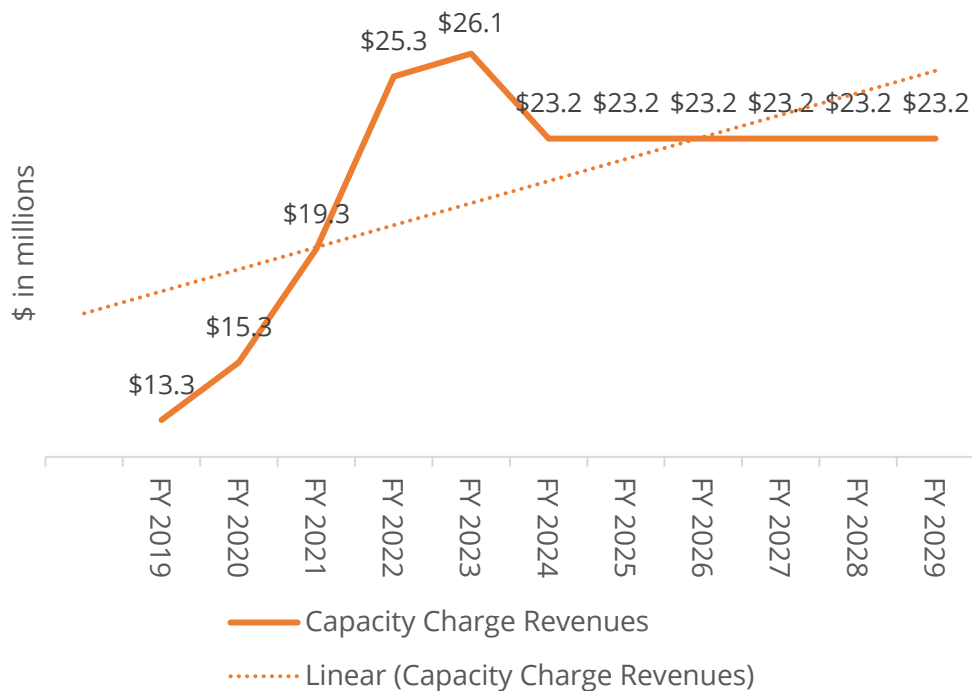
In September 2021, the City Council approved raising the capacity charge to \$5,154 per EDU, which was estimated to provide for full cost recovery for Wastewater System expansion projects.

**Forecast.** Table 7.3 displays the FY 2023 unaudited actuals and projections through FY 2029 for wastewater capacity charge revenue. This revenue source represents approximately 4% of the Wastewater System’s overall revenue receipts.

Table 7.3 - Capacity Charge Revenue (\$ in Millions)							
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
YOY Growth	N/A	(11.4%)	0%	0%	0%	0%	0%
Projection	\$26.1	\$23.2	\$23.2	\$23.2	\$23.2	\$23.2	\$23.2

Projected revenues for wastewater capacity charges use conservative growth estimates based on historical trends for the previous five-year period. The fluctuation by year reflects the fluctuations from the past as depicted in Figure 7.4. Because wastewater revenues are less volatile than water revenues, the wastewater system projects a quicker return to historical trends to ensure the volatility of development doesn’t result in an over dependence on capacity fee revenue.

**Figure 7.4 - Wastewater Capacity Charge Revenue Forecast**



**Economic Trends.** As previously mentioned, wastewater capacity charges are primarily based on new wastewater connections related to new construction and are directly influenced by population growth and residential and commercial development. As discussed in the Water Capacity Charges section of this report, The current population for the City of San Diego is 1.4 million. San Diego's population grew by approximately 7% between the 2000 Census and the 2010 Census and 6.6% between 2010 and 2020. As population changes in the region, the demand for housing and business creation is also expected to change proportionate to population demands. Long-term projections mirror those of Water Capacity Charges by remaining flat. For a more detailed discussion on population and housing growth, refer to the Water Capacity Charges section of this report.

### Other Revenue

The primary component of the Other Revenue category is revenue received from Participating Agencies (PAs) for use of the City's wastewater treatment system. As discussed earlier, PAs are other cities and districts that collect wastewater from their customers and send it to the City's wastewater treatment facilities. Currently, each PA pays for its actual impact on the Wastewater System based on a measurement of the strength and flow of wastewater.

Revenue from the PAs averages \$85 million per year over the PUD Outlook period, which is \$10 million below prior years and represents approximately 73% of revenues in the Other Revenue category. This percentage could change as the East County Advanced Water Purification Joint Powers Authority (ECAWP JPA), which includes the City of El Cajon, County of San Diego and the Padre Dam Municipal Water District, start directing sewer flow to their advanced water purification facility.



Currently, the City and the Metro JPA are in negotiations on modifications to its billing structure. As mentioned before the existing billing methodology is based on the strength and flow of wastewater. However, its been identified that with agencies developing local supply projects, the impact would significantly decrease flows. This decrease in wastewater flows would be during average, dry weather periods; however, during higher volume rainfall events (commonly referred to as “peak” events) a significant increase in wastewater flows would need to be transported by the wastewater system. As such the system needs to be maintained and operated at all times, regardless of low or high volume flows. To address this change in how the system will be utilized, a rate structure that equitably treats all agencies is being considered. Changes to the rate structure are anticipated to be finalized during the Outlook period and any impact would be included in future Outlooks.

The Other Revenue category also includes revenue received for the sale of recycled water, interest on pooled investments, reimbursements from services provided to other City departments/funds, grants revenue, and other miscellaneous revenues.

Table 7.5 displays the FY 2023 unaudited actuals and projections through FY 2029 for the Other Revenue category.

<b>Table 7.5 - Other Revenue Projections</b>							
<b>(\$ in Millions)</b>							
	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>	<b>FY 2028</b>	<b>FY 2029</b>
YOY Growth	N/A	(0.7%)	(8.7%)	0.2%	1.8%	(1.2%)	(1.2%)
Projection	\$127.5	\$126.7	\$115.6	\$115.8	\$117.9	\$116.5	\$115.1

The decline seen in Fiscal Year 2025 is the modeling the potential impact the East County Advanced Water Purification Joint Powers Authority, which is expected to divert up to 25% of the Participating Agencies flow away from the Metropolitan Sub-System when the Advanced Water Purification goes live during the Outlook period. The Outlook assumes that this action will reduce projected costs attributed to the agencies by \$10 million per year. The City is in negotiations with the participating agencies on changes in the billing structure which may lessen or increase these changes in revenue in future years. Negotiations and ratification of the new agreement is expected to be complete before Pure Water Phase 1 is operational.

# **EXHIBIT F**

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 8751 / November 14, 2006**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 54745 / November 14, 2006**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12478**

<p><b>In the Matter of</b></p> <p style="text-align:center"><b>City of San Diego, California,</b></p> <p><b>Respondent.</b></p>
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**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against the City of San Diego, California (the “City” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, the City has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, the City consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

### III.

On the basis of this Order and the City's Offer, the Commission finds that:<sup>1</sup>

#### A. SUMMARY

This matter involves the City of San Diego's violations of the antifraud provisions of the federal securities laws in connection with the offer and sale of over \$260 million in municipal bonds in 2002 and 2003. At the time of these offerings, City officials knew that the City faced severe difficulty funding its future pension and health care obligations unless new revenues were obtained, pension and health care benefits were reduced, or City services were cut. The City's looming financial crisis resulted from (1) the City's intentional under-funding of its pension plan since fiscal year 1997; (2) the City's granting of additional retroactive pension benefits since fiscal year 1980; (3) the City's use of the pension fund's assets to pay for the additional pension and retiree health care benefits since fiscal year 1980; and (4) the pension plan's less than anticipated earnings on its investments in fiscal years 2001 through 2003.

Despite the magnitude of the problems the City faced in funding its future pension and retiree health care obligations, the City conducted five separate municipal bond offerings, raising more than \$260 million, without disclosing these problems to the investing public. In each of these offerings, the City prepared disclosure documents that are used with municipal securities offerings—that is, preliminary official statements and official statements—and made presentations to rating agencies.<sup>2</sup> In addition, in 2003 it prepared and filed information pursuant to continuing disclosure agreements under Exchange Act Rule 15c2-12 with respect to \$2.29 billion in outstanding City bonds and notes.<sup>3</sup> Although the City provided some disclosure about its pension and retiree health care obligations, it did not reveal the gravity of the City's financial problems, including that:

- The City's unfunded liability to its pension plan was expected to dramatically increase, growing from \$284 million at the beginning of fiscal year 2002 and \$720

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<sup>1</sup> The findings herein are made pursuant to the City's offer of settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> An official statement is a document prepared by an issuer of municipal bonds that discloses material information regarding the issuer and the particular offering. A preliminary official statement is a preliminary version of the official statement that is used to describe the proposed new issue of municipal securities prior to the determination of the interest rate(s) and offering price(s). The preliminary official statement may be used to gauge interest in an issue and is often relied upon by potential purchasers in making their investment decisions.

<sup>3</sup> Continuing disclosures are disclosures of material information relating to prior years' municipal bond offerings that are periodically provided to the marketplace by the bonds' issuer pursuant to contractual agreements and Exchange Act Rule 15c2-12.

million at the beginning of fiscal year 2003 to an estimated \$2 billion at the beginning of fiscal year 2009;

- The City's total under-funding of the pension plan was also expected to increase dramatically, growing tenfold from \$39.2 million in fiscal year 2002 to an estimated \$320 to \$446 million in fiscal year 2009;
- The City's projected annual pension contribution would continue to grow, from \$51 million in 2002 to \$248 million in 2009; and
- The estimated present value of the City's liability for retiree health benefits was \$1.1 billion.

The City's enormous pension and retiree health liabilities and failure to disclose those liabilities placed the City in serious financial straits. When the City eventually disclosed its pension and retiree health care issues in fiscal year 2004, the credit rating agencies lowered the City's credit rating. The City also has not obtained audited financial statements for fiscal years 2003, 2004, and 2005.

Consequently, the City violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit the making of any untrue statement of material fact or omitting to state a material fact in the offer or sale of securities.<sup>4</sup>

## **B. THE RESPONDENT**

**City of San Diego, California** is a California municipal corporation with all municipal powers, functions, rights, privileges, and immunities authorized by the California Constitution and laws, including the power to issue debt. The City is the seventh most populous city in the country, with approximately 1.3 million residents.

## **C. RELATED PARTY**

**San Diego City Employees' Retirement System** ("CERS") is a defined benefit plan<sup>5</sup> established by the City to provide retirement, disability, death, and retiree benefits to its members,

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<sup>4</sup> The Commission acknowledges that in the City's offering documents for sewer revenue bonds issued in 1995, 1997, and 1999 and sewer revenue bonds that were offered but not issued in 2003, in its continuing disclosures, and in its communications with rating agencies, the City failed to disclose that the City's wastewater fee rate structure did not comply with certain federal and state clean water laws, that the City was not in compliance with the terms of certain government grants and loans, and that the City could have been required to repay those grants and loans due to such non-compliance. The offerings in the 1990s, however, predate the offerings that are the subject of this Order, and the City did not consummate the 2003 offering because issues arose regarding the adequacy of its pension disclosure. In addition, in 2004, the City came into compliance with the federal and state clean water laws and the grant and loan covenants by adopting a new fee rate structure. The City thereby avoided having immediately to repay the government grants and loans.

<sup>5</sup> A defined benefit plan is a traditional pension plan under which pre-determined retirement benefits are based on a formula established by factors such as age, years of service, and

i.e., City employees and their beneficiaries. CERS is administered by the CERS Board, which during the relevant period included eight City employees, including the City Treasurer and the Assistant City Auditor and Comptroller, one retiree, and three non-employee City citizens appointed by the City Council as CERS Board members.

## **D. FACTS**

### **1. Background**

#### **a. Structure of the City's Government**

Until January 2006, the City's form of government was a city manager system.<sup>6</sup> Legislative powers of the City were vested in the City Council ("Council"), which made policies and appointed a professional city manager to carry out those policies. The Council was composed of nine full-time Council members who served for staggered four-year terms. Eight of the Council members represented the City's eight districts. The Mayor, who was elected at large, presided at the meetings of the Council and served as the official head of the City for ceremonial purposes. The Mayor and each Council member had one vote; the Mayor had no veto power.

Prior to 2006, the City Manager ("Manager") was the City's chief administrative officer and had substantial control over local government decisions. The Manager, appointed by the Mayor and Council, advised the Council of the City's present and projected financial condition, appointed and removed all city department heads (except the City Auditor and Comptroller ("City Auditor"), City Attorney, and City Clerk), prepared the City's budget, and carried out the Council's budget plan. During the relevant time period, the City's general fund budget was less than \$900 million. The City Manager had several Deputy City Managers, one of whom was in charge of the Financing Services Department, which had responsibility for overseeing the City's issuance of municipal securities.

Prior to 2006, the City Auditor was also appointed by the Council, and was required to file at least monthly with the City Manager and Council a summary statement of revenues and expenses for the preceding accounting period.<sup>7</sup> The Auditor was the City's chief financial officer and was responsible for the preparation and issuance of the City's Comprehensive Annual Financial Reports, also referred to as CAFRs. The City's Comprehensive Annual Financial Reports included audited financial statements prepared pursuant to standards established by the

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compensation, and in which the employer bears risk if the employer and employee contributions and the investment return on those contributions are not sufficient to fund the pension benefits.

<sup>6</sup> In January 2006, the City transitioned from a City Manager / Council form of government to a strong Mayor form of government. Under the new system, the Mayor became the City's chief executive officer and the City Manager's position was eliminated. The Council continues to act as the legislative body. City of San Diego City Charter, Article XV.

<sup>7</sup> City of San Diego City Charter, Article V, Section 39.

Government Accounting Standards Board (“GASB”)<sup>8</sup> and various statistical, financial, and other information about the City. Portions of the Comprehensive Annual Financial Reports for the years ended June 30, 2001, and June 30, 2002 were attached as appendix B to the preliminary official statements and the official statements. The Comprehensive Annual Financial Reports for 2001 and 2002 were also filed as continuing disclosures.

The elected City Attorney served as the chief legal officer for the City. The City Attorney’s office advised the Council, City Manager, and all City departments on legal matters, including disclosure in the City’s securities offerings. The City Attorney was responsible for preparing all ordinances, resolutions, contracts, and other legal documents.

### **b. The City’s Pension Plan**

The City provided a defined benefit pension plan and retiree health care benefits to its employees through CERS. CERS functioned as a trust for the benefit of its members (i.e., approximately 18,500 current and former City employees and officials). The City was the creator of the trust and determined its terms, including the members’ required contributions and the levels of benefits. CERS was administered by a Board of Administration, which controlled the investment of CERS’s funds and which owed fiduciary duties to CERS members. CERS’s assets consisted of past contributions by the City and CERS members and investment earnings on those funds. CERS’s liabilities consisted of operating expenses and the future pension benefits that were owed to members.

Each year, CERS hired an actuary to determine the value of the plan’s assets and liabilities based on certain actuarial assumptions and the amount that needed to be contributed to the plan so that the plan accumulated sufficient assets to pay pension (but not health care) benefits when due.<sup>9</sup> Pursuant to the City Charter, the City was to contribute half of that amount, which was expressed in terms of a percentage of payroll expenses, with the other half to be contributed by the employees, which amount was determined as a percentage of compensation based on the employee’s age upon entry into CERS.

At least three concepts were particularly important in the disclosure to the public of the City’s pension obligations and funding of those obligations: (1) CERS’s funded ratio; (2) the

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<sup>8</sup> GASB is the organization that establishes standards of state and local governmental accounting and financial reporting.

<sup>9</sup> An actuarial valuation is a determination by an actuary, as of a specified date, of the normal cost, actuarial accrued liability, actuarial value of the assets, and other relevant values for a pension plan based on certain actuarial assumptions. The actuarial value of assets refers to the value of cash, investments, and other property belonging to a pension plan as used by the actuary for the purpose of preparing the actuarial valuation for the pension plan. The actuarial accrued liabilities are what is owed in connection with past services, as determined by one of the actuarial cost methods. Actuarial assumptions are estimates of future events with respect to certain factors affecting pension costs, including rates of mortality, disability, employee turnover, retirement, rates of investment income, and salary increases. Actuarial assumptions are generally based on past experience, often modified for projected changes in conditions.

City's unfunded liability to CERS; and (3) the City's net pension obligation, also called the NPO. CERS's funded ratio was the ratio of its assets to liabilities. The City's unfunded liability to CERS was the dollar shortfall between CERS's assets and liabilities. The City's net pension obligation was the cumulative difference between what the City actually contributed to CERS and the amount that the City would have contributed had it conformed to a funding method recognized by GASB.

## **2. The City's Pension and Retiree Health Care Benefits and Funding of CERS**

The City failed to disclose material information regarding substantial and growing liabilities for its pension plan and retiree health care and its ability to pay those obligations in the future in the disclosure documents for its 2002 and 2003 offerings, in its continuing disclosures filed in 2003, and in its presentations to the rating agencies. As more fully described below, the City's substantial and growing pension and retiree health care liabilities resulted from several factors, including: (1) the City's intentional under-funding of its annual pension contribution; (2) the City's granting of new retroactive pension benefits; (3) the City's use of certain CERS earnings to pay for various additional pension and retiree health care benefits and to pay a portion of employees' pension contributions; and (4) CERS's earning less than anticipated returns on its investments.

### **a. The City's Historical Practice of Using "Surplus Earnings" to Fund Pension and Retiree Health Care Benefits**

In fiscal year 1980, the City began instructing CERS to use "surplus earnings"—i.e., earnings above the actuarially projected 8% return rate<sup>10</sup>—to fund an ever-increasing amount of additional benefits for CERS members. Pension plans typically retain surplus earnings to support the plan's financial soundness and to make up for years in which earnings fall short of the assumed return rate. Rather than retaining its surplus earnings, the City began using surplus earnings in fiscal year 1980 to fund an annual extra or "13<sup>th</sup> check" to retirees. The City continued using surplus earnings to pay for retiree health care benefits in fiscal year 1982 and to pay an ever-increasing amount of the employees' CERS contributions in fiscal year 1998.<sup>11</sup>

In total, the City used surplus earnings to pay pension benefits and employees' contributions totaling \$150 million as of the end of fiscal year 2001 and an additional \$25 million as of the end of fiscal year 2002. According to a 2005 CERS audit, the City's use of surplus

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<sup>10</sup> Without regard to its actual historical rate of return on investments, the CERS Board assumed an annual rate of investment return of 8%, which the actuary incorporated into his calculations. CERS defined surplus earnings as the amount of realized investment earnings in excess of the actuarially projected 8% return rate.

<sup>11</sup> In fiscal years 2003 and 2004, the City used CERS's surplus earnings from prior years to pay up to 27% of the employees' contributions.



earnings accounted for 17% of the increase in the City's unfunded liability to CERS from fiscal year 1997 through fiscal year 2003.

**b. Manager's Proposal 1: The City Proposes Additional Benefits in Exchange for Contribution Relief**

In fiscal year 1996, the City agreed to increase significantly and retroactively all employees' pension benefits. The City, however, could not afford to fund the cost of the benefit increases. The City therefore made the pension benefit increases contingent on CERS's agreement to the City's under-funding of its annual contribution to CERS.

In fiscal year 1997, the City and CERS entered into an agreement, which was referred to as Manager's Proposal 1, that set the City's annual contribution at gradually increasing rates through fiscal year 2008. This funding method, which the City termed "Corridor" funding, was not recognized by GASB and set annual funding rates that were not actuarially determined and were projected to be below GASB-recognized funding rates through fiscal year 2006. In other words, under Corridor funding, the City would be intentionally under-funding its annual liability to CERS in fiscal years 1997 through 2006.<sup>12</sup> After fiscal year 2006, it was estimated that the funding rate of Manager's Proposal 1 would equal a GASB-accepted rate. Manager's Proposal 1 also contained a provision intended to protect CERS's financial soundness. Specifically, if CERS's funded ratio fell below 82.3%, the City would have to increase its CERS contribution rate.

In fiscal years 1996 and 1997, the City estimated that under Manager's Proposal 1, by the end of fiscal year 2008, the City's net pension obligation would be \$110.35 million. Because the City's Corridor funding method was not GASB-recognized, GASB required that the City disclose its net pension obligation in its annual financial statements.

**c. The *Corbett* Litigation Requires the City to Fund Additional Retroactive Benefits**

In March 2000, the City again retroactively increased pension benefits. Specifically, the City and CERS settled a class action lawsuit brought by CERS members, with *Corbett* as the named class plaintiff.<sup>13</sup> Under the *Corbett* settlement, the City retroactively gave increased pension benefits to both current and retired City employees, increasing CERS's liabilities. Under

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<sup>12</sup> Manager's Proposal 1 was viewed skeptically by some members of the CERS Board who were not City employees. The majority of the CERS Board, however, consisted of City officials who received benefit increases that were contingent on the Board's approval of Manager's Proposal 1. Moreover, CERS's actuary informed the CERS Board that Manager's Proposal 1 was a sound proposal and CERS's fiduciary counsel opined that the Board would be acting within the ambit of its fiduciary discretion in approving Manager's Proposal 1.

<sup>13</sup> The *Corbett* plaintiffs raised various claims based on a 1997 California Supreme Court decision which held that an employee's salary for purposes of calculating basic pension benefits included the value of overtime and accrued leave.

Manager's Proposal 1, however, the City's contributions to CERS did not increase. As a result, the City's unfunded liability to CERS increased by \$185 million.

In negotiating the *Corbett* settlement, however, the City purposefully structured certain of the increased *Corbett* benefits to avoid having those benefits adversely affect CERS's reported funded ratio and the City's reported unfunded liability to CERS. Specifically, the City structured the *Corbett* settlement so that the increased benefits for retired CERS members were to be paid in a given year only if there were sufficient surplus earnings from that year to pay the benefit. If there were insufficient surplus earnings in a given year to pay the increased benefit, then the cost of the increased benefit would become CERS's liability and would eventually be paid from future years' surplus earnings. The City and CERS treated the increased benefits to retired CERS members as contingent liabilities that were not taken into account in determining CERS's funded ratio or the City's unfunded liability to CERS. As of June 30, 2001, according to CERS's actuary, if the contingent portion of the *Corbett* settlement had been included in CERS's valuation, the City's unfunded liability to CERS would have increased by \$70 to \$76 million and CERS's funded ratio would have decreased by 2% to 2 ½ % from what was actually reported by the City. Thus, the City's pension situation was even more dire than the numbers, as they were reported by the City, indicated.

**d. CERS's Actuary Report for Fiscal Year 2001 Shows a Dramatic Increase in the City's Pension Liabilities**

In fiscal year 2001, CERS's investment return began to fall short of its anticipated 8% annual return. The City was informed of CERS's declining performance in February 2002, when it received CERS's annual actuarial valuation for fiscal year 2001. This report stated that as of the end of fiscal year 2001, CERS's funded ratio was 89.9% and the City's unfunded liability to CERS was \$284 million, as compared to a funded ratio of 97.3% and an unfunded liability of \$69 million only one year earlier. Moreover, the report noted that if the *Corbett* contingent benefit to CERS retired members were included, the City's unfunded liability to CERS would have increased to at least \$354 million and CERS's funded ratio would have fallen to at least 87.9%.

CERS's actuary attributed these changes to a number of factors, including CERS's actuarial investment losses<sup>14</sup> of \$95.6 million (and warned that there would be further actuarial investment losses in fiscal year 2002 unless the markets improved during the remaining five months of the fiscal year). In his report, CERS's actuary also warned that "all parties" should be "acutely aware that the current practice of paying less than the [actuarial] computed rate of contribution ... will help foster an environment of additional declines in the funded ratio in absence of healthy investment returns."

In May 2002, the City learned that CERS would likely not have any surplus earnings from fiscal year 2002 to pay for the contingent benefits—specifically, retiree health care benefits, the 13<sup>th</sup> check, and the *Corbett* increase to retirees.

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<sup>14</sup> Actuarial investment losses are the difference between the assumed investment rate, which in the City's case was 8% annually, and the actual investment results.

**e. The Blue Ribbon Committee Report Puts the City on Notice about its Growing Pension and Retiree Health Care Liabilities**

In April 2002, the City received a warning that the City's pension and retiree health care liabilities would continue to grow and that the City was not adequately planning to meet those liabilities. This came in the form of a report from the City's Blue Ribbon Committee to the City Council.<sup>15</sup> The report stated that the Blue Ribbon Committee had three principal concerns regarding CERS. First, the City was granting retroactive retirement benefit increases but pushing the cost of those benefit increases into the future, long after the individuals involved in the decisions were gone. Second, the City's budgetary process did not adequately comprehend the steadily growing annual expense of the pension contribution, "particularly given the uncontrollable and non-discretionary nature of this liability." The Committee stated that the City's pension contribution would substantially increase and warned that any future benefit increases, particularly retroactive increases, would "significantly exacerbate this problem." Third, the City's budgetary process did not recognize that retiree health care costs were a non-discretionary expense that would grow at an increasing rate and that the City was not paying out of its current year's budget the full cost for their future retiree health benefits. This report thus squarely put the City on notice that it had substantial future pension and healthcare liabilities it would probably be unable to pay under the current system.

**f. Manager's Proposal 2: The City Again Proposes Additional Pension Benefits in Exchange for Relief from an Impending Lump Sum Payment**

In fiscal year 2003, the City again increased its pension liability by granting additional retroactive benefits, used additional CERS assets to pay for additional pension and retiree health care benefits and an increased portion of the employees' contribution, and obtained additional time to under-fund its annual CERS contribution.

In the second half of fiscal year 2002, the City agreed to increase pension benefits for fiscal year 2003. From as early as October 2001, however, the City was concerned that CERS's funded ratio would fall below the 82.3% floor established by Manager's Proposal 1, which would require the City, at the very least, to increase its contributions to CERS by at least \$25 million to be at a higher GASB-accepted rate.

Concerned about having to pay the additional \$25 million, the City sought to condition the pension benefit increases on the City's obtaining from CERS relief from the floor of Manager's Proposal 1. In November 2002, the City and CERS agreed to Manager's Proposal 2 and the City

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<sup>15</sup> In April 2001, the Mayor had appointed a nine-member committee of San Diego citizens, known as the Mayor's Blue Ribbon Committee on City Finances, to independently evaluate the City's fiscal health and make any appropriate recommendations. In February 2002, the Blue Ribbon Committee presented its report to the Council's Rules Committee, identifying nine areas of concern, two of which related to the City's pension fund. The same report was made to the full Council in April 2002.

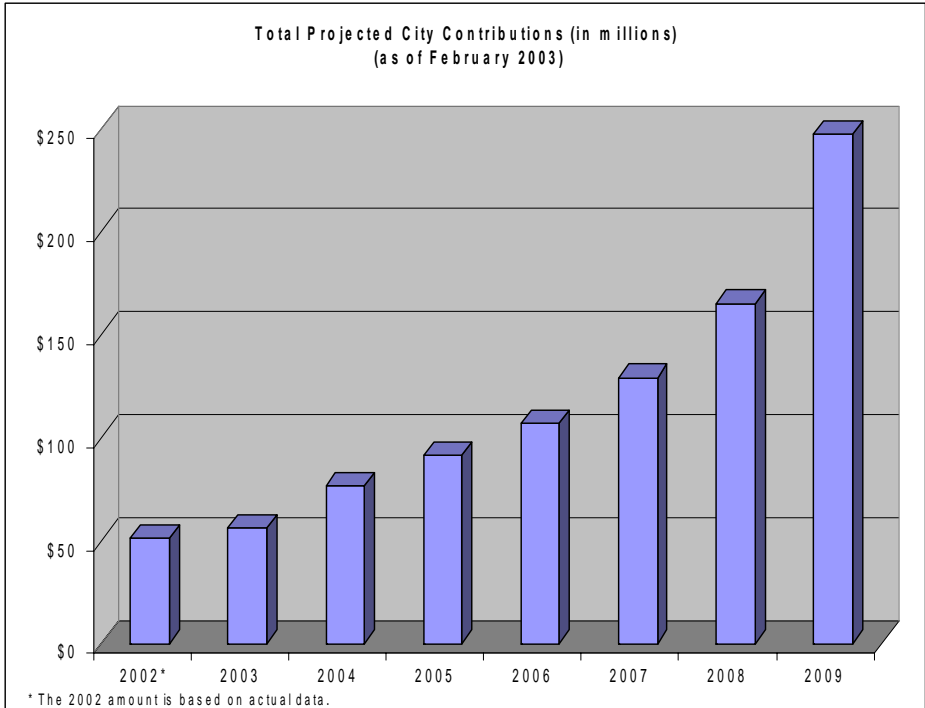
adopted the increased pension benefits as of July 2002. Under Manager's Proposal 2, once CERS's funded ratio fell below 82.3%, the City would have five years to increase its contributions to CERS to reach a GASB-recognized funding rate.

As a result of CERS's actuarial losses in fiscal year 2002, CERS did not have surplus earnings to pay the 13<sup>th</sup> check, the cost of retiree health care, and the *Corbett* benefit increase to retired CERS members. In conjunction with Manager's Proposal 2, however, the City directed CERS to use certain of its reserve accounts to pay the 13<sup>th</sup> check and the retiree health care benefits, and to pay an increased portion of certain City employees' CERS contributions. The reserve funds could have been used to increase CERS's funded ratio and decrease the City's unfunded liability to CERS; instead, the City directed that CERS use the reserve funds to pay additional benefits.

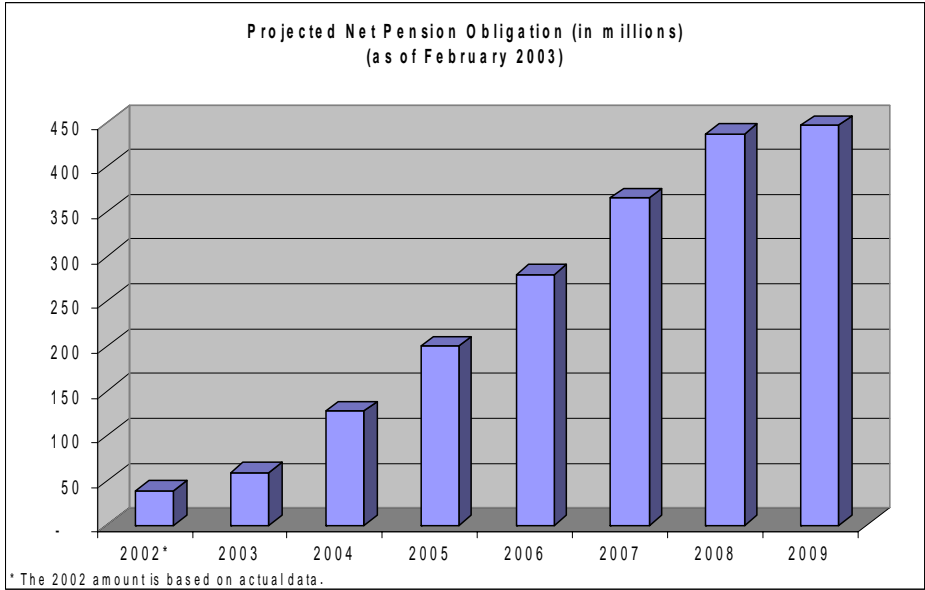
**g. CERS's Actuary Report for Fiscal Year 2002 and Projections for the Future Show that the City Faces Substantial Problems Funding its Pension and Retiree Health Care Liabilities**

In early 2003, the City received two reports from CERS's actuary. These reports provided the City with negative information regarding the present and projected status of CERS's funded ratio and the City's unfunded liability to CERS. First, in January 2003, the City received CERS's actuary report for fiscal year 2002. This report stated that during fiscal year 2002, CERS suffered an actuarial loss of \$364.8 million and that as of the end of fiscal year 2002, CERS's funded ratio was 77.3% and the City's unfunded liability to CERS was \$720 million, as compared to a funded ratio of 89.9% and unfunded liability of \$284 million only one year earlier. The actuary's report further stated that if the *Corbett* contingent benefit to CERS retired members had been included, the City's unfunded liability to CERS would have been at least \$790 million, and CERS's funded ratio would have been approximately 75.3%. In the concluding comment, the actuary stated that CERS was "in adequate condition," which was the first time that the actuary had not described CERS as "actuarially sound."

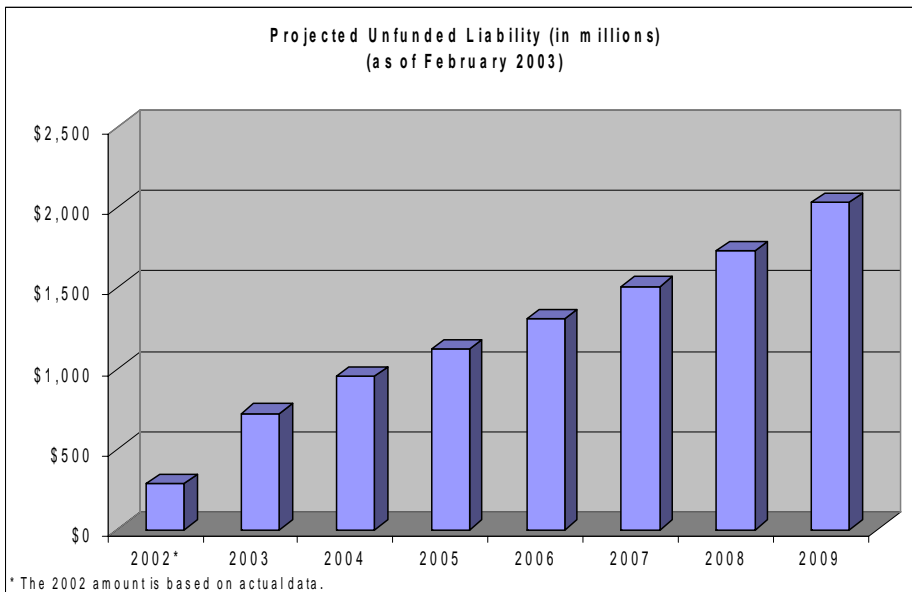
Second, in February 2003, CERS's actuary provided to the City projections of the City's contributions under Manager's Proposal 2, the City's net pension obligation, the City's unfunded liability to CERS, and CERS's unfunded ratio. Specifically, the City's contribution rate was projected to more than quadruple—from 9.83% of payroll in fiscal year 2002 (\$51 million) to 35.27% of payroll in fiscal year 2009 (\$248 million). The following chart illustrates the growth in the City's projected annual contribution to CERS:



The City’s net pension obligation was projected to grow by tenfold—from \$39.23 million in fiscal year 2002 to as much as \$446 million in fiscal year 2009. The following chart illustrates the growth in the City’s projected net pension obligation:



The City’s unfunded liability was projected to increase more than seven fold—from \$284 million at the beginning of fiscal year 2002 to \$2 billion at the beginning of fiscal year 2009. CERS’s funded ratio was projected to continue to fall—from 77.3% at the beginning of fiscal year 2003 to 65.6% at the beginning of fiscal year 2009. The following chart illustrates this dramatic increase in the City’s projected unfunded liability to CERS:



The City had knowledge of these projections prior to all of its 2003 municipal securities offerings.

**h. The *Gleason* Litigation: CERS Members Challenge Manager’s Proposal 1 and Manager’s Proposal 2**

Further evidence that the City’s under-funding of CERS was potentially threatening the City’s future fiscal health came in January 2003, when CERS members filed a class action, with *Gleason* as the named class plaintiff, against the City and CERS alleging breaches in connection with the City’s under-funding of CERS under Manager’s Proposal 1 and Manager’s Proposal 2. Among other things, the *Gleason* complaint alleged that by 2009, the City would owe approximately \$2.8 billion to CERS, with an annual City budget expense of more than \$250 million. In March 2003, the CERS attorney in the *Gleason* litigation advised CERS that (1) certain CERS Board members had breached their fiduciary duty by adopting Manager’s Proposal 2; and (2) CERS should exercise its right to nullify Manager’s Proposal 2. The CERS Board, which included the City Treasurer and the Assistant City Auditor and Comptroller, rejected this advice. If Manager’s Proposal 2 had been nullified, the City would have been required to make an immediate potential payment to CERS of up to \$159 million.

**i. CERS's Response to the Blue Ribbon Committee Report Advises the City's Officials of the Growing Pension and Retiree Health Care Crisis.**

In February 2003, additional detailed information about the City's pension funding crisis was presented to City officials when CERS responded to the Blue Ribbon Committee's report.<sup>16</sup> In its response, CERS advised the City that as of June 30, 2002, CERS's funded ratio had fallen to 77.3% and the City's unfunded liability to CERS had increased to \$720 million. The response also stated that the falling funded ratio and the increasing unfunded liability resulted from three factors: a dramatic decline in CERS's investment performance in fiscal years 2001 and 2002; the City's granting of increased benefits; and the City's contributions to CERS at less than a GASB-recognized rate.

With respect to the City's under-funding, the response stated that the annual amount of the City's under-funding of CERS continued to increase in fiscal years 2002 and 2003, which was contrary to the initial projections from Manager's Proposal 1 that the annual amount of under-funding would decline beginning in fiscal year 2001. The response further stated that the City's net pension obligation would reach \$102 million by the end of fiscal year 2003 and \$423 million by the end of fiscal year 2009.

The response also discussed the City's future liability for retiree health care. CERS's actuary had estimated that the present value of the City's liability for future retiree health care was in excess of \$1.1 billion. The response further stated that the City was not making any contributions to CERS to pay for this liability, that CERS had been paying for this liability with money in a reserve funded with CERS's surplus earnings from prior years, that the reserve would be depleted in fiscal year 2006, and that in fiscal year 2006, the City would have to pay an estimated \$15 million for retiree health care. The response warned that absent a change in the benefit and a dramatic decrease in future health care costs, the City could be facing significant future funding obligations. The response recommended that the City consider funding this future health care liability as part of its annual contribution to CERS.

**j. The City's Study of Its Pension Obligations Concludes that the City's Pension Liabilities Could Negatively Impact the City's Credit Rating**

In April 2003, the City received additional information regarding the projected growth of its future pension liabilities and the possible negative effect those liabilities would have on the City's credit rating and ability to issue municipal securities. In February 2003, the City hired a financial adviser to analyze CERS's funding and to develop potential solutions. On April 16,

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<sup>16</sup> From February 9 through 13, 2003, the local newspaper wrote three front page, above-the-fold articles about the City's under-funded pension system and the CERS response. The newspaper articles explained that (1) by the end of FY 2009 the City's unfunded liability to CERS was projected to increase to almost \$2 billion; and (2) the City's unfunded liability for retiree health care was estimated to be \$1.1 billion.

2003, the financial adviser provided to the City a preliminary pension analysis. In its analysis, the financial adviser stated that because of the City's under-funding, the City's unfunded liability would continue to grow and CERS's funded ratio would continue to fall through fiscal year 2021 regardless of actuarial gains or losses. The financial adviser estimated that under Manager's Proposal 2, the City's unfunded liability to CERS would grow to \$1.9 billion at the end of fiscal year 2009 and to \$2.9 billion at the end of fiscal year 2021, and CERS's funded ratio would fall to 66.5% at the end of fiscal year 2009 and would be 67% at the end of fiscal year 2021.

The preliminary pension analysis also stated that the City's large unfunded liability to CERS would cause the City's contribution to CERS to increase dramatically. The analysis estimated that the City's contribution rate to CERS would more than double—from 18.87% of payroll (or \$107.5 million) in fiscal year 2004 to 40.9% of payroll (\$286.9 million) in fiscal year 2009.

The preliminary pension analysis also discussed the effect that the City's unfunded liability would have on the City's credit rating. The financial adviser stated that the City's current unfunded liability would not only trigger an adverse credit event but that the rating agencies would expect the City to develop a plan to reduce its unfunded liability by increasing its annual contributions and/or funding the unfunded liability by issuing bonds. The financial adviser further stated that if the City did not develop and implement such a plan, the City's unfunded liability could cause the City "significant credit and legal challenges." The City's disclosures in 2003 failed to inform investors of the financial adviser's analysis.

### **3. The Offerings, Continuing Disclosures, and Rating Agency Presentations**

#### **a. The Bond Offerings and the City's Preparation of the Offerings' Disclosure Documents**

During 2002 and 2003, the City conducted the following five municipal securities offerings totaling \$261,850,000 in par value:

- \$25,070,000 Public Facilities Financing Authority of the City of San Diego Lease Revenue Bonds, Series 2002B (Fire and Safety Project ) (June 2002)
- \$93,200,000 City of San Diego, 2002-03 Tax Anticipation Notes Series A (July 2002)
- \$15,255,000 City of San Diego/Metropolitan Transit Development Board Authority 2003 Lease Revenue Refunding Bonds (San Diego Old Town Light Rail Transit Extension Refunding (April 2003)
- \$17,425,000 City of San Diego 2003 Certificates of Participation (1993 Balboa Park/Mission Bay Park Refunding) (May 2003)
- \$110,900,000 City of San Diego 2003-04 Tax Anticipation Notes Series A (July 2003)

A transactional financing team prepared the offering documents, that is, the preliminary official statement and the official statement, for each of the five municipal bond offerings. The



financing team consisted of outside consultants and officials from the City Manager's office (financing services division), Auditor and Comptroller's office, and the City Attorney's office. The outside consultants included, among others, bond counsel, disclosure counsel, and underwriters. The preliminary official statement and the official statement for each of the five offerings consisted of a description of the offering, a general description of the City, including financial, economic, statistical, and other information in appendix A, and audited annual financial statements from the City's Comprehensive Annual Financial Reports in appendix B. Information regarding its pension and retiree health care obligations was provided in both appendices A and B.

The outside consultants took the lead in drafting the description of the bond offerings. City officials in the financing services division were responsible for drafting appendix A. The financing services division updated Appendix A on an ongoing basis and at the time of a bond offering, forwarded the latest version of Appendix A to the entire financing team. The team met several times to review, comment on, and ultimately finalize the preliminary official statements and official statements at "page-turner meetings." Appendix B was prepared by the Auditor's office and the City's outside auditor. The Council approved all of the 2002 and 2003 offerings at open session meetings.

#### **b. The Continuing Disclosures**

During the relevant period, the City also filed annual continuing disclosures relating to its \$2.29 billion in outstanding bonds for the purpose of updating investors on the state of the City's finances.<sup>17</sup> City officials in the financing services division coordinated, reviewed, and filed the 2002 and 2003 continuing disclosures. Almost all of these continuing disclosures included appendix A and portions of the City's Comprehensive Annual Financial Reports. The financing services division was responsible for ensuring that the most updated and accurate version of appendix A was attached to the continuing disclosures before they were filed.

#### **c. The 2003 Rating Agency Presentations**

The City made presentations to the rating agencies on a yearly basis, both in connection with specific bond offerings and to update the rating agencies on the City's general credit. The presentations were made orally with PowerPoints in meetings with representatives from Fitch Ratings, Moody's Investors Service, and Standard and Poor's. In 2003, the rating agencies specifically asked the City to address the pension plan as part of its annual presentations. These presentations were important because they directly affected the City's bond ratings. The 2003

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<sup>17</sup> An underwriter of municipal securities covered by Exchange Act Rule 15c2-12 may not purchase or sell municipal securities in connection with an offering unless the issuer has undertaken in a written agreement or contract for the benefit of the bondholders to provide its audited annual financial statements and certain other annual financial and operating information, to nationally recognized municipal securities information repositories and state information depositories designated by the Commission and to provide notices of certain material events and notices of any failures to file on the nationally recognized municipal securities information repositories or the Municipal Securities Rulemaking Board and state information depositories.

PowerPoint presentations were prepared and presented by officials from the City Manager's office, including the financing services division, and the City Auditor and Comptroller's office. The financing services division drafted the pension portion of the 2003 PowerPoint presentation. Officials from the City Auditor's office made the oral presentation on the pension plan and fielded numerous questions on that topic from the rating agencies.

#### **4. The False and Misleading Disclosures**

In the preliminary official statement and the official statements for the 2002 and 2003 offerings, the 2003 presentations to the rating agencies, and the 2003 continuing disclosures, the City made substantial disclosures regarding (1) the City's policies for funding CERS; and (2) the status of CERS's funding and the City's liability to CERS. Additionally, in the preliminary official statements, the official statements, and continuing disclosures, the City made certain representations regarding its retiree health care obligations. The disclosures (collectively "Disclosures"), however, were misleading because the City failed to include material information regarding the City's current funding of its pension and retiree health care obligations, the City's future pension and retiree health care obligations, and the City's ability to pay those future obligations.

First, with respect to the pension issues, the City failed in the Disclosures to reveal several material facts, including that (1) the City was intentionally under-funding its pension obligations so that it could increase pension benefits but push off the costs associated with those increases into the future; (2) because of the City's under-funding of its pension plan, its net pension obligation was expected to continue to grow at an increasing rate, reaching from \$320 million to \$446 million by the end of fiscal year 2009; (3) the City's unfunded liability was expected to continue to grow at a substantial rate, reaching approximately \$2 billion by fiscal year 2009; (4) this growth in the City's unfunded liability resulted from the City's intentional under-funding of its pension plan, the City's granting of new retroactive pension benefits, the City's use of pension plan earnings to pay additional benefits, and the pension plan's less than anticipated investment return; (5) the City's annual pension contribution was expected to more than quadruple by fiscal year 2009; and (6) the City would have difficulty funding its future annual pension contributions unless it obtained new revenues, reduced pension benefits, or reduced City services. Moreover, the City falsely disclosed in Appendix B to its preliminary official statements and its official statements that its net pension obligation was funded in a reserve.

Additionally, with respect to retiree health care benefits, the City failed to disclose in its preliminary official statements, official statements, and continuing disclosures that<sup>18</sup> (1) the estimated present value of its liability for retiree health care was \$1.1 billion; (2) the City had been covering the annual cost for retiree health care with pension plan earnings from prior years that were expected to be depleted in fiscal year 2006; (3) after fiscal year 2006, the City would have to pay for the retiree health care benefits from its own budget at an estimated annual cost of \$15 million; and (4) the City had not planned for paying such additional costs.

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<sup>18</sup> The issue of retiree health care was not addressed in the rating agency presentations.

## **5. The City's Knowledge of the Misleading Disclosures**

The City, through certain of its officials, knew that its Disclosures were misleading. The Mayor and Council were responsible for approving the issuance of the bonds and notes, including issuance of the preliminary official statements and official statements. The Mayor and Council delegated final approval of the official statements to the City Manager. The City Manager's office was responsible for the preparation of the preliminary official statements and the official statements, including appendix A. The City Auditor's office was responsible for the preparation of appendix B to the preliminary official statements and official statements. Through their designees on the CERS Board, among other things, both the City Manager's and the City Auditor's offices had knowledge about the City's use of CERS's surplus earnings, Manager's Proposals 1 and 2, CERS's actuary reports for fiscal years 2001 and 2002, and CERS's response to the Blue Ribbon Committee Report. Also, several representatives of the City Manager's office, City Attorney's office, and Auditor and Comptroller's office attended relevant closed session meetings of the Council where Manager's Proposals 1 and 2 and the *Corbett* and *Gleason* litigations were discussed. Moreover, the Blue Ribbon Committee Report and CERS's response to the Blue Ribbon Committee Report were both presented to a committee of the Council at which officials from the City Manager's and Auditor and Comptroller's office were present. Finally, the offices of the City Manager and the City Auditor were responsible for the City's study of its pension obligations that occurred in early 2003. Through their participation and involvement in the above-referenced matters, certain city officials knew or were reckless in not knowing that the Disclosures were false and misleading.

Specifically, by early 2002, the City, through its officials, knew, among other things, that (1) CERS's funded ratio would likely fall below the 82.3% floor set by Manager's Proposal 1; (2) the City was proposing Manager's Proposal 2 to avoid the effects of CERS's falling below the floor; (3) Manager's Proposal 2 allowed the City more time to under-fund CERS; and (4) the Blue Ribbon Committee had raised concerns about the City's under-funding of CERS and the future retiree health care liability. By early 2003, the City, through its officials, knew, among other things, that (1) the City's projected total contributions to CERS would grow from \$77 million in fiscal year 2004 to \$248 million in fiscal year 2009; (2) CERS had fallen below the 82.3% floor of Manager's Proposal 1; (3) the City and CERS had adopted Manager's Proposal 2 to allow the City more time to under-fund CERS; and (4) CERS was using reserved surplus earnings to pay certain benefits and to pay an increased portion of the employees' CERS contribution.

## **6. Materiality and the City's Voluntary Disclosure**

The misleading Disclosures were material in view of the City's overall financial health. The Disclosures were also material given the magnitude of the City's projected annual CERS payments in the future and the potential consequences of those liabilities to the City, including inability to make the payments without reduction in other services.

The nature and level of under-funding brought into question the City's ability to fund the pension and health care benefits in the future as well as its ability to repay the bonds and notes. Under such a scenario, the City could be forced to choose between paying pension contributions, paying what the City owes on its bonds and notes, reducing services, and/or raising fees and taxes.

The materiality of the misleading Disclosures was demonstrated by the impact on the City's bond ratings when it finally disclosed key facts about the pension plan on January 27, 2004 in a voluntary report of information, after a non-employee CERS Board member raised concerns about the City's disclosure. The voluntary report provided information regarding (1) CERS's current and estimated future funded status; (2) the City's current and estimated future liabilities to CERS; (3) the reasons for the substantial decrease in CERS's funded ratio and increase in the City's liability to CERS; (4) the City's previous use of CERS funds to pay for retiree health care and the City's estimated future liabilities for retiree health care; and (5) the City's anticipated difficulty funding its increasing CERS contribution without new City revenues, a reduction in pension benefits, a reduction in City services, or other actions. Shortly after the disclosures in the voluntary report, the rating agencies lowered their ratings on the City's bonds and notes.

## **E. Legal Discussion**

### **1. The Securities Act and Exchange Act Antifraud Provisions**

State and local governments are exempt from the registration and reporting provisions of the Securities Act and the Exchange Act. Similarly, the Commission's authority to establish rules for accounting and financial reporting under Section 19 of the Securities Act and Section 13(b) of the Exchange Act does not extend to municipal securities issuers. The City and other municipal securities issuers, however, are subject to the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. In addition, the Commission has promulgated a broker-dealer rule, Exchange Act Rule 15c2-12, which in general limits market access for certain municipal securities issues to those offerings in which the issuer agrees to file annual financial disclosures of specified financial and operating information as well as notices of certain events, if material, and notices of any failures to file with repositories designated by the Commission. The antifraud rules apply to such disclosure and to any other statements made to the market.

Section 17(a) of the Securities Act prohibits misrepresentations or omissions of material facts in the offer or sale of securities. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit misrepresentations or omissions of material fact in connection with the purchase or sale of any security. These provisions prohibit the making of any untrue statement of material fact or omitting to state a material fact in the offer, purchase, or sale of securities. A fact is material if there is a substantial likelihood that its disclosure would be considered significant by a reasonable investor. Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1987); TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976).

Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 require a showing that defendants acted with scienter. Aaron v. SEC, 446 U.S. 680, 701-02 (1980). Scienter is "a mental state embracing intent to deceive, manipulate or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976). In the Ninth Circuit, recklessness satisfies the scienter requirement. Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1569 (9th Cir. 1990) (en banc). Recklessness is "an extreme departure from the standards of ordinary care, and which presents a danger of misleading [investors] that is either known to the defendant or is so obvious

that the actor must have been aware of it.” Id., 914 F.2d at 1569. Scier, however, need not be shown to establish a violation of Section 17(a)(2) or (3). Aaron v. SEC, 446 U.S. 680, 697 (1980). Violations of these sections may be established by showing negligence. SEC v. Hughes Capital Corp., 124 F.3d 449, 453-54 (3d Cir. 1997); SEC v. Steadman, 967 F.2d 636, 643 n. 5 (D.C. Cir. 1992).

## **2. The City’s Violations of the Antifraud Provisions of the Securities Act and the Exchange Act**

The City’s public disclosures in the preliminary official statements and official statements for its 2002 and 2003 offerings, its 2003 continuing disclosures, and presentations to the rating agencies failed to disclose material information regarding the City’s current funding of its pension and retiree health care obligations, the City’s future pension and retiree health care obligations, and the City’s ability to pay those future obligations. The omission of this information caused the information that was disclosed to be misleading.

This information was material to investors. The magnitude of the City’s unfunded liabilities was enormous. For example, the City knew that by 2009 the unfunded liability would reach \$1.9 billion and its actuarially required contribution would be approximately \$240 million compared to \$51 million in FY 2002. The City’s under-funding of CERS and unfunded liabilities to CERS and for retiree health care were projected to continue to grow at an increasing rate. The increase in the City’s under-funding and unfunded liabilities resulted, in part, from the City’s decisions to increase pension and retiree health care benefits but push the costs of those increases into the future, to use CERS’s prior earnings to cover additional benefits, and to pay a portion of the employees’ contribution to CERS. All of this information raised a question whether the City could pay for these pension and retiree health care obligations and repay the bonds and notes issued by and on behalf of the City.

The City, through its officials, acted with scier.<sup>19</sup> City officials who participated in drafting the misleading disclosure were well aware of the City’s pension and retiree health care issues and the magnitude of the City’s future liabilities. Moreover, even though the City officials knew that the City’s pension issues were of concern to the rating agencies, they failed to disclose material information regarding the City’s pension and retiree health care issues. In light of the City’s officials’ detailed knowledge of the magnitude of the City’s pension and retiree health care liabilities and of the rating agencies’ interest in those liabilities, the City officials acted recklessly in failing to disclose material information regarding those liabilities.

## **F. REMEDIAL EFFORTS AND UNDERTAKINGS**

1. Since 2005, Respondent has implemented several remedial measures with a view to detect and prevent securities violations. Specifically, the City has terminated certain officials in the City Manager’s and Auditor and Comptroller’s offices or has allowed them to resign. The City has filled these positions with new employees generally having significant relevant experience with

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<sup>19</sup> The City’s scier is based on the mental state of its officials. SEC v. Manor Nursing Centers, Inc., 458 F.2d 1082, 1089 n.3 (2d Cir. 1972).

other municipal governments or the private sector. The City has hired a full time municipal securities attorney who is responsible for coordinating the City's public disclosure and who has conducted continuing education for the City's deputy attorneys on the City's disclosure requirements.

2. The Mayor resigned and has been replaced by a former City police chief. In January 2006, pursuant to a public referendum, the City changed from a strong city manager form of government to a strong mayor form of government.

3. The City has hired new outside professionals including new auditors for its fiscal year audits. The City also hired individuals not affiliated with the City to act as the City's Audit Committee and charged the Committee with investigating the City's prior disclosure deficiencies and making recommendations to prevent future disclosure failures. The City has also hired new disclosure counsel for all of its future offerings, who will have better and more continuous knowledge on the City's financial affairs. This disclosure counsel has conducted seminars for City employees on their responsibilities under the federal securities laws.

4. The City has also enacted ordinances designed to change the City's disclosure environment. First, the City created a Disclosure Practices Working Group, comprised of senior City officials from across city government. The Working Group is charged with reviewing the form and content of all the City's documents and materials prepared, issued, or distributed in connection with the City's disclosure obligations relating to securities issued by the City or its related entities; and conducting a full review of the City's disclosure practices and to recommend future controls and procedures. Second, the Mayor and City Attorney must now personally certify to the City Council the accuracy of the City's official statements. Third, the City Auditor must annually evaluate the City's internal financial controls and report the results to the City Council.

5. Respondent shall comply with the following undertakings to:

- a. Retain, not later than 60 days after the date of this Order, at its expense, an independent consultant not unacceptable to the Commission's staff (the "Independent Consultant"). The City shall require the Independent Consultant to (a) conduct annual reviews for a three-year period of the City's policies, procedures, and internal controls regarding its disclosures for offerings, including disclosures made in its financial statements, pursuant to continuing disclosure agreements, and to rating agencies, the hiring of internal personnel and external experts for disclosure functions, and the implementation of active and ongoing training programs to educate appropriate City employees, including officials from the City Auditor and Comptroller's office, the City Attorney's office, the Mayor, and the City Council members regarding compliance with disclosure obligations; (b) make recommendations concerning these policies, procedures, and internal controls with a view to assuring compliance with the City's disclosure obligations under the federal securities laws; and (c) assess, in years two and three, whether the City is complying with its policies, procedures, and internal controls, whether the City has adopted any of the Independent Consultant's recommendations from prior year(s) concerning such policies, procedures, and internal controls for disclosures

for offerings, and whether the new policies, procedures, and internal controls were effective in achieving their stated purposes;

- b. No later than 10 days following the date of the Independent Consultant's engagement, provide to the Commission staff a copy of an engagement letter detailing the Independent Consultant's responsibilities pursuant to paragraph 5(a) above;
- c. Arrange for the Independent Consultant to issue its first report within 120 days after the date of the engagement and the following two reports within 60 days following each subsequent one-year period from the date of engagement. Within 10 days after the issuance of the reports, the City shall require the Independent Consultant to submit to Kelly Bowers of the Commission's Pacific Regional Office a copy of the Independent Consultant's reports. The Independent Consultant's reports shall describe the review performed and the conclusions reached and shall include any recommendations deemed necessary to make the policies, procedures, and internal controls adequate and address the deficiencies set forth in Section III.D of the Order. The City may suggest an alternative method designed to achieve the same objective or purpose as that of the recommendation of the Independent Consultant provided that the City's Mayor and City Attorney certify in writing to the Commission staff that they have a reasonable belief that the alternative method is expected to have the same objective or purpose as that of the Independent Consultant's recommendation;
- d. Take all necessary and appropriate steps to adopt, implement, and employ the Independent Consultant's recommendations or the City's alternative method designed to achieve the same objective or purpose as that of the Independent Consultant's recommendation; and
- e. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with the City, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity; provided however, that the Independent Consultant may enter into an agreement with the City to serve as an independent monitor to oversee the City's remedial efforts with respect to enhanced accountability, greater transparency, increased fiscal responsibility, and independent oversight. Except as permitted above, the agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Pacific Regional Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with the City, or any of its present or former affiliates, directors, officers, employees, or agents acting in

their capacity as such for the period of the engagement and for a period of two years after the engagement.

6. In determining whether to accept the City's Offer, the Commission considered these undertakings and remediation measures.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in the City's Offer.

Accordingly, it is hereby ORDERED that:

A. The City cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and

B. The City comply with the undertakings enumerated in paragraph 5 of Section III.F. above.

By the Commission.

Nancy M. Morris  
Secretary



## DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On December 1, 2023, I served the:

- **Current Mailing List dated November 29, 2023**
- **Claimant's Late Comments on the Draft Proposed Decision filed December 1, 2023**

*Lead Sampling in Schools: Public Water System No. 3710020, 17-TC-03-R  
On Remand from City of San Diego v. Commission on State Mandates, Court of  
Appeal, Third Appellate District, Case No. C092800; Judgment and Writ of  
Mandate issued by the Sacramento County Superior Court, Case No. 34-2019-  
80003169-CU-WM-GDS; Permit Amendment No. 2017PA-SCHOOLS, City of  
San Diego Public Water System No. 3710020, effective January 18, 2017  
City of San Diego, Claimant*

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 1, 2023 at Sacramento, California.



Jill L. Magee  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 11/29/23

**Claim Number:** 17-TC-03-R

**Matter:** Lead Sampling in Schools: Public Water System No. 3710020

**Claimant:** City of San Diego

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

, Finance Director, *City of Citrus Heights*  
Finance Department, 6237 Fountain Square Dr, Citrus Heights , CA 95621  
Phone: (916) 725-2448  
Finance@citrusheights.net

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