

CONTRACT BETWEEN

SAN LUIS OBISPO COUNTY FLOOD CONTROL

AND

WATER CONSERVATION DISTRICT

AND

SAN LUIS OBISPO COUNTY SERVICE AREA #12

FOR A WATER SUPPLY

Dated as of

August __, 2000

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CONTRACT BETWEEN SAN LUIS OBISPO COUNTY
FLOOD CONTROL AND WATER CONSERVATION
DISTRICT AND SAN LUIS OBISPO COUNTY SERVICE AREA #12
FOR A WATER SUPPLY

None match this

This Contract (the "Contract"), made this ___ day of August, 2000, by and between the San Luis Obispo County Flood Control and Water Conservation District (the "District"), established under and pursuant to Chapter 1294 of the 1945 Statutes of the State of California (the "State") and the San Luis Obispo County Service Area #12, a public agency organized and existing under the laws of the State of California, acting pursuant to the laws of such State (the "Agency"), amends and restates that certain contract for a water supply by and between the District and the Agency, dated November 21, 1966, as amended (the "Prior Supply Contract"), with reference to the following facts:

WITNESSETH:

WHEREAS, the District has heretofore constructed, improved and operated a public works project (the "Project," as more particularly defined below) that provides a supply of water available for use within the District; and

WHEREAS, the State now requires the District to make certain repairs and improvements to the Project for public safety reasons, which improvements (the "Seismic Remediation Improvements") must be financed with the proceeds of certain future obligations of the District; and

WHEREAS, the lands and inhabitants within the jurisdiction of the Agency are in need of water provided by the Project for beneficial uses; and

WHEREAS, the District has provided water from the Project to the City of Grover Beach, the City of Pismo Beach, the City of Arroyo Grande, the Oceano Community Services District and County of San Luis Obispo Service Area No. 12 (being, collectively, the Agency and the Other Agencies, as hereinafter defined) since 1966, pursuant to several water supply contracts, including the Prior Supply Contract (collectively, the "Prior Supply Contracts"), and the parties now wish to amend and restate the Prior Supply Contracts, preserving the same basic structure and obligations; and

WHEREAS, the District desires to sell to public water distribution agencies, including the Agency and the Other Agencies, the water provided by the Project under terms and conditions which, as far as practicable and consistent with the ultimate use of the water, shall be fair and equitable to all such agencies and to the inhabitants of the District; and

WHEREAS, the Agency desires to contract with the District for a water supply to be for the use and benefit of the lands and inhabitants served by the Agency and for which the Agency will make payment to the District upon the terms and conditions hereinafter set forth; and

WHEREAS, the District and the Agency wish to provide for the financing of the Seismic Remediation Improvements and Additional Projects (as defined herein), and for the future

maintenance of the Project in order to preserve the water supply provided by the Project to the Agency; and

WHEREAS, obtaining the necessary financing for the Seismic Remediation Improvements and Additional Projects (as defined herein) will aid the District in meeting its intended communitywide results of: maintaining and encouraging a safe, healthful and pleasant living environment, and encouraging a strong and viable economy;

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED by the parties hereto, as follows:

Article 1. Definitions. When used in this Contract, the following terms shall have the meanings hereinafter set forth:

"Additional Projects" shall mean those capital projects to be undertaken by the District in addition to the Seismic Remediation Improvements which have the effect of (i) preserving and maintaining the Safe Yield of the Project (a "Type I Additional Project"); (ii) maintaining the quality of water provided by the Project (a "Type II Additional Project"); or (iii) any other capital project agreed to by the Agency and all of the Other Agencies (a "Type III Additional Project").

"Calendar Quarter" shall mean each three-month period commencing on January 1, April 1, July 1 and October 1 of each year.

"Calendar Year" shall mean the twelve-month period from January 1 of a calendar year to December 31 of the same calendar year, both dates inclusive.

“Capital Costs” shall mean costs expended by the District at or appurtenant to the Project, for permanent improvements to the Project or equipment which is capitalizable on the books of the District.

“Capital Reserves” shall mean those reserves established by the District for the Scheduled Maintenance of the Project or for anticipated costs of upgrade and improvements likely to be imposed by Governmental Authority (each, an “External Requirement”) in order for the District to continue to operate the Project for water supply purposes, established either (a) on a year-to-year basis by the District in its annual budgets, copies of which shall be provided to the Agency promptly following adoption, or (b) on a multi-year basis by the District through the development and promulgation to the Agency of a long-term capital improvement plan of the District; provided, however, that no Type III Additional Projects shall be funded from Capital Reserves; and provided further, that the District shall not expend any portion of Capital Reserves for any External Requirement until and unless such External Requirement becomes a final order of such Governmental Authority, not subject to further appeal.

“Contract Payments” shall mean those payments due from the Agency to the District hereunder, as more particularly set forth in Article 14 hereof.

“County Board” shall mean the Board of Supervisors of the County of San Luis Obispo, California.

“Coverage Account” shall mean the account established for the Agency either with the District or with a Depository, as provided in Article 18 hereof.

“Coverage Factor” shall mean 25% of Agency Debt Service, determined in accordance with Article 14 hereof, calculated for each Fiscal Year.

"Debt Service" shall mean, in the aggregate, (a) principal and interest (or mandatory sinking fund payments, installment or lease or similar payments due) with respect to all Tax-Exempt Obligations at the time outstanding in accordance with their terms, provided that capitalized interest funded from the proceeds of Tax-Exempt Obligations need not be taken into account, (b) annual costs of administering the Tax-Exempt Obligations, including the annual fees of any trustee or paying agent therefor, and (c) the costs, if any, of annual credit enhancement for the Tax-Exempt Obligations.

"Depository" shall mean a financial institution designated for the deposit and administration of the Coverage Account of the Agency, as and when appointed in accordance with Article 18 hereof.

"Entitlements" shall mean the quantity of water to be distributed to the Agency under this Contract and to the Other Agencies under their Water Supply Contracts with the District, as established in Article 4(B) hereof and of such other Water Supply Contracts.

"Fiscal Year" shall mean the twelve-month period from July 1 of a Calendar Year to June 30 of the immediately following Calendar Year, both dates inclusive.

"General Obligation Bonds" shall mean those certain general obligation bonds of the District, issued pursuant to authorization received from the voters of the District at the election conducted on March 7, 2000, in an aggregate principal amount of not to exceed \$13,200,000, supported by a levy of *ad valorem* taxes throughout the District.

"Governmental Authority" shall mean any State, federal or local governmental authority with cognizance over the District or the Project, or any portion thereof, empowered to regulate or control any aspect of its or their operations.

“Operating Segment,” as to the Agency, shall mean the segment of the Project constructed for, and providing service directly to, the Agency, which, as at the date hereof, consists of Unit(s) A, B, C, E, F, G, H, I and J.

“Operation and Maintenance Costs” shall mean the reasonable and necessary current expenses of maintaining, repairing and operating the Project, including District administrative expenses directly attributable to Project function, but excluding Capital Reserves and Debt Service, all computed in accordance with generally accepted accounting principles applicable to enterprise funds of government agencies.

“Other Agency” shall mean any other water-distributing public agency of the State, which, having the legal power to do so, executes a water supply contract with the District substantially identical to this Contract, except for agency information, dates, Unit participations, Proportionate Share and Percentage Share, other than for the purpose of purchasing Surplus Water, including, as of the date hereof, The City of Arroyo Grande, The City of Grover Beach, Ocean Community Services District, and The City of Pismo Beach.

“Percentage Share” shall mean the Agency’s aggregate attributed share, by percentage, of charges for Operation and Maintenance Costs and Capital Reserves for any given Water Year for each respective Unit, as compared to all of the charges for Operation and Maintenance Costs and Capital Reserves attributable to each such Unit levied against the Agency and all Other Agencies, and as specified for the Agency below:

Unit A	7.44%
Unit B	7.44
Unit C	17.40
Unit D	0.00

Unit E	29.64
Unit F	45.73
Unit G	100.00
Unit H	100.00
Unit I	100.00
Unit J	100.00

“Project” shall mean (A) the 1965 Zone 3 Project described in Resolution No. 377-65 and Ordinance No. 813 of the District, adopted August 17, 1965, consisting of the following works and improvements: (i) Lopez Dam and Reservoir, (ii) Lopez Dam-Arroyo Grande Conduit System, (iii) Arroyo Grande-Avila Conduit System, (iv) Arroyo Grande-Oceano Conduit System, (v) water treatment plant, (vi) terminal reservoir, (vii) all land, easements, rights-of-way, pumping plants, pipes, valves, fittings, machinery and other property necessary for any of the foregoing, and (B) the Seismic Remediation Improvements.

“Proportionate Share” shall mean the percent of the total Entitlements available to the Agency, as compared to the aggregate of all Entitlements given to the Agency and all Other Agencies hereunder and under all Water Supply Contracts in any given Water Year, as set forth in Article 4(B) hereof.

“Rates and Charges” shall mean the rates and charges imposed and collected by the Agency for the provision of water services by its Water Enterprise, or, if the Agency shall instead have levied special taxes as described in Article 14(C)(b) below, such special taxes.

“Recreational Budget Transfers” shall mean the annual transfer ordered by action of the County Board from revenues earned from recreational uses of the Project, based on the

percentage of recreational usage, initially established under the terms of County Board Resolution No. 2000-133, adopted on April 4, 2000.

“Safe Yield” shall mean the safe yield of the Project, calculated and established from time to time in accordance with the provisions of Article 4 hereof, being 8,730 acre-feet of water as of the date hereof.

“Scheduled Maintenance” shall mean the maintenance tasks for the Project which are required to be accomplished less frequently than annually, a portion of the cost of which is set aside in each annual budget of the District in anticipation of such requirement.

“Seismic Remediation Improvements” shall mean those certain improvement, more particularly described on Exhibit A hereto, to the 1965 Zone 3 Project required by State mandate, and necessary in order for the Project to continue to operate as a supplier of water to the District, the Agency and the Other Agencies.

“Surplus Water” shall mean the water available from the Project following distributions of water described in Article 4, paragraphs (A), (B) and (C) hereof.

“Tax-Exempt Obligations” shall mean those certain obligations executed and delivered by or on behalf of the District, representing and evidencing interests of the owners thereof in certain installment payments to be made by the District for the acquisition of the Project, whose proceeds are to be used to finance or reimburse the costs of the Seismic Remediation improvements, in an aggregate principal amount of not to exceed the net amount, following the application of proceeds of sale of the General Obligation Bonds, required to complete the Seismic Remediation Improvements pursuant to State mandate and the District’s competitive bid process for such Improvements.

"Total Contract Payments" shall mean all of the payments due from the Agency and the Other Agencies pursuant to Article 14 hereof and the same Article of the other Water Supply Contracts.

"Total Project Costs" shall mean, for any given Water Year, the aggregate amount necessary to provide for (i) Operation and Maintenance Costs; (ii) Debt Service; and (iii) Capital Reserves, as calculated by the District in accordance with Article 14 hereof and noticed to the Agency and the Other Agencies.

"Unit" shall mean those facilities which collectively make up the Project, delineated as follows:

(1) "Unit A" shall consist of the Lopez Dam and Reservoir, including access roads, fish trapping facilities and outlet works, all expenses of executing and delivering the Tax-Exempt Obligations, all moneys necessary to fund interest with respect to the Tax-Exempt Obligations prior to receipt of the first payments under this Contract and the other Water Supply Contracts, and all engineering and legal fees for the entire Project.

(2) "Unit B" shall consist of the terminal reservoir, a pumping plant and bypass conduit, the water treatment plant and the Lopez Dam-Arroyo Grande Conduit System. The "Lopez Dam-Arroyo Grande Conduit System" shall be defined as that portion of the pipeline conduit and all appurtenances from the Lopez Dam outlet works to and including a bifurcation structure located at the intersection of the Highway 101 south frontage road and Brisco Road in Arroyo Grande.

(3) "Unit C" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the bifurcation structure which is a part of Unit B to the intersection of the Highway 101 south frontage road and Eighteenth Street in Grover City.

(4) "Unit D" shall consist of the Arroyo Grande-Oceano Conduit System. The "Arroyo Grande-Oceano Conduit System" shall be defined as that portion of the pipeline conduit and all appurtenances from the south end of the Lopez Dam-Arroyo Grande Conduit System to a connection to the Oceano water system at the intersection of Lancaster Drive and Elm Street in Arroyo Grande.

(5) "Unit E" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the

west end of Unit C to the intersection of the Highway 101 south frontage road with Vista del Mar in Shell Beach.

(6) "Unit F" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the west end of Unit E to the intersection of the Sheel Beach Road with El Portal Drive in Pismo Beach.

(7) "Unit G" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the west end of Unit F to the intersection of Avila Road (San Luis Obispo County Road No. 3016) with Ontario Road (San Luis Obispo County Road No. 33090).

(8) "Unit H" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the west end of Unit G to the intersection of First Street and San Juan Street in the community of Avila Beach.

(9) "Unit I" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the west end of Unit H to the Port San Luis Harbor District Tank site.

(10) "Unit J" shall consist of that portion of the Arroyo Grande-Avila Conduit System consisting of the pipeline conduit and all appurtenances from the west end of Unit G to a storage take site at an approximate elevation of 260 feet above sea level located at a point approximately 1,300 feet westerly of the center line of Highway 101 and 1,500 feet southerly of Avila Drive (San Luis Obispo County Road No. 13015).

"Water Enterprise" shall mean the water system operated and to be operated by the Agency for sales of water to the general public within its jurisdiction.

"Water Supply Contracts" shall mean the water supply contracts respecting Project output, entered into by and between the District and the Other Agencies.

"Water Year" shall mean the twelve-month period from April 1 of a Calendar Year to March 31 of the immediately following Calendar Year, both dates inclusive.

"Zone 3" shall mean the area comprising Zone 3 of the District.

"Zone 3 Advisory Committee" shall mean that certain advisory committee comprised of representatives of the District, the Agency and each of the Other Agencies, appointed by the District, the Agency and the Other Agencies, from time to time and meeting at scheduled intervals to advise the District on matters relating to the Project, this Contract and the Water Supply Contracts.

Article 2. Term of Contract. This Contract shall become effective when the District has executed (a) this Contract with the Agency; and (b) Water Supply Contracts with Other Agencies; which, taken in the aggregate, establish Entitlements for at least 4,530 acre-feet of water from the Project, as set forth in Article 4(B) of this Contract and of such other Water Supply Contracts, and the District shall promptly advise the Agency in writing of the effective date hereof. This Contract shall remain in effect through the later of (i) the date which is six (6) months following the repayment of the final Certificate of Participation outstanding; or (ii) the date which is thirty (30) years from the effective date hereof; provided, however, that the term of this Contract shall automatically be extended for additional periods of five (5) years from the scheduled expiration date hereof, so long as the Agency has not, by the date which is 180 days prior to the scheduled expiration date hereof, given written notice to the District to the effect that it wishes to terminate this Contract. The Agency understands and agrees that each of the Other Agencies has the right to terminate its Water Supply Contract on similar terms and that, if any Other Agency shall so elect to terminate its Water Supply Contract, the Entitlement and corresponding obligations of such Other Agency shall be apportioned among the Agency and the remaining Other Agencies, based upon a recalculation of Proportionate Share or Percentage Share, based, where appropriate, on their access to and use of Units, or as otherwise unanimously agreed by the Agency (unless the Agency shall have withdrawn), all remaining Other Agencies and the District.

The parties hereto understand and agree that the Project must be constructed in accordance with State mandate and that its costs are determined through a competitive bid process applicable to public works undertaken by the County and its agencies, now set for a date on or about September 14, 2000 (the "Project Bids"). Notwithstanding the foregoing paragraph, therefore, the Agency and Other Agencies (collectively, the "Participating Agencies") may rescind their approval of their respective Water Supply Contract and declare it cancelled and of no further force or effect, but only if, following the County's opening of the Project Bids, the lowest response bidder for the remaining work on the Project submits a Project Bid which, taken together with the other Project Costs, would result in a total Project Cost in excess of \$30,000,000 (Thirty Million Dollars). The District covenants and agrees to provide prompt notice, and in any event within 48 hours of its determination of the apparent winning Project Bid, to the Participating Agencies of the then-estimated total Project Costs. The Participating Agencies shall have twenty (20) calendar days from the date of receipt of such notice to exercise their rights of termination and rescission hereunder; such exercise shall be evidenced by delivery of written notice of such participating Agency's election to the District and to each other Participating Agency. The District covenants and agrees not to award any construction contract based on the Project Bids until after the foregoing twenty-day period has elapsed.

Article 3. Validation. Either the District, the Agency or any Other Agency may file and diligently prosecute to a final decree in a court of competent jurisdiction a proceeding in *mandamus* or other appropriate proceeding or action for the judicial examination, approval, and confirmation of the proceedings had for the organization of the District and for the participation of the Agency in the Project hereunder, or for the validation of the Installment Purchase Agreement which is the basis for the Tax-Exempt Obligations, or any of them, or the proceedings of the governing body of the

Agency leading up to and including the making of this Contract and the validity of the provisions thereof and hereof.

Article 4. Distribution and Sale of Project Water. The following provisions govern the distribution of water from the Project to the Agency, to the Other Agencies and for other purposes, in the priorities set forth below:

(A) Legally Required Water Releases. The parties hereto acknowledge and agree that Project water is subject to certain releases and minimum storage requirements imposed by law which are not affected by the terms hereof.

(B) Entitlements. Subject to the foregoing, the District shall make available to the Agency in each Water Year, to the extent possible, 337 acre-feet of Project water. The District will, in order to satisfy this entitlement and the entitlements of Other Agencies, set aside from the Safe Yield the total of 4,530 acre-feet of Project water which will be distributed to the Agency and the Other Agencies, as established under Article 4(B) hereof and of their respective Water Supply Contracts. The Agency's Entitlement comprises 7.44 percent of the aggregate Entitlements awarded under all the Water Supply Contracts, including this Contract. Such percentage comprises the Agency's Proportionate Share hereunder. Notwithstanding the foregoing, the aggregate Entitlements available under this Contract and under the Water Supply Contracts may be reduced, following written notice given to the Agency from the District, due to (1) permanent or long-term restrictions imposed upon the District caused by (i) extreme changes in long-term meteorological patterns that reduce the Safe Yield assumptions for the Project; or (ii) multi-year drought conditions; or (2) temporary or short-term limitations based upon (i) reduced ability of the Project either to treat or distribute water because of *force majeure*; (ii) drought conditions; or (iii) water quality standards which reduce the safe, treated output of the Project at the time.

(C) Surplus Water Rates. Project water remaining after the distribution of Project water as described in paragraphs (A) and (B) above shall comprise "Surplus Water" hereunder. Surplus Water shall be sold in accordance with the provisions of this paragraph.

(1) Surplus Water shall first be offered by the District to the Agency and the Other Agencies in accordance with their Proportionate Shares, with a price for such Surplus Water to be established based on the Operation and Maintenance Cost of the District incurred in delivering the Surplus Water actually purchased by the Agency or the Other Agencies. If the Agency or any Other Agency shall commit in writing to purchase Surplus Water from the District under this subparagraph, it shall be obligated to pay for such Surplus Water, whether or not in fact ordered from the District or accepted by the Agency, so long as such Surplus Water was in fact available for the period in question. Neither the Agency nor any Other Agency shall resell Surplus Water at any time to third parties, without the prior written consent of all Other Agencies.

(2) The District may offer to sell and deliver any Surplus Water not purchased by the Agency or the Other Agencies hereunder to any other prospective purchaser without right of renewal, in a manner and at prices which will return to the District the largest net revenue practicable, but in no event at prices less than those at which such Surplus Water is offered to the Agency, unless the Agency is first allowed another opportunity to purchase such Surplus Water at the lower price, and in each case, attempting to recapture the Operation and Maintenance Cost, the variable costs, if any, and Debt Service attributable to the volume of Surplus Water actually purchased by such third parties, at the highest price the market will then bear.

(3) All revenues derived by the District from the sale of Surplus Water to the Agency, any Other Agency or any third party hereunder shall be applied as a credit to the obligations of the Agency and the Other Agencies, based on the Percentage Shares of the Agency and each Other Agency.

(D) Surplus Water. Beginning with the 2000-01 Water Year, Surplus Water shall be the portion of the Safe Yield for Project water remaining after distributions of water during the said previous Water Year, as described below.

Surplus Water shall be calculated for each Water Year by subtracting from the Safe Yield of the Project an amount equal to the sum of the quantity of water released downstream during the immediately prior Water Year, which shall not exceed 4,200 acre feet unless legally required by Article 4(A) hereof, and the quantity of Entitlement water delivered to the Agency and the Other Agencies during the immediately prior Water Year, excluding downstream releases and Entitlement deliveries that occurred during the period of time that the District determined that continuous spillway flow was occurring at Lopez Dam.

The District shall notify the Agency of the total amount of Surplus Water available for the current Water Year, and once so declared by the District, said amount shall not be changed by the District without first obtaining the consent of the Agency and all Other Agencies.

Surplus Water purchased by the Agency will be delivered to Agency in the manner provided for the delivery of its Entitlement and to the extent that all of said surplus water purchased by Agency is not so delivered by the end of the Water Year in question, then such undelivered amount shall revert to District and shall not thereafter be available to Agency.

Article 5. Water Shortages. From time to time during the term of this Contract, there may occur a shortage in the quantity of Project water available for delivery to the Agency by the

District under this Contract, including, without limitation, for the reasons enumerated in Article 4(B). In such event, no liability shall accrue against the District or any of its officers, agents or employees for any damage, direct or indirect, arising from a shortage on account of any reason beyond the control of the District. In any Water Year during which such a shortage has caused a reduction as described in said Article 4(B), so that the total quantity of the Entitlements available for the District to distribute is less than the total established in said Article 4(B), following giving of notice by the District as provided in Article 4(B), the Proportionate Share of the Agency and each Other Agency under its Water Supply Contract shall be applied to such reduced amount in determining the volume of Project water to be delivered to the Agency and such Other Agencies in such Water Year.

Article 6. Completion of Seismic Remediation Improvements. The Agency understands and acknowledges that the District intends to commence and complete the Seismic Remediation Improvements with due diligence; in order to finance the construction of the Seismic Remediation Improvements, the Agency understands and agrees that the District will have to cause the execution and delivery of the Tax-Exempt Obligations on terms and conditions favorable to the District, the Agency and the Other Agencies, to be established at the time of sale of the Tax-Exempt Obligations. In particular, the Agency covenants and agrees that:

(A) The District shall contract for the public works comprising the Seismic Remediation Improvements on such terms as the District, in its sound business judgment, may deem in the best interests of the District, the Agency and the Other Agencies, but only following consideration by the Zone 3 Advisory Committee of any such contracts in excess of the minimum standards for contracts of a similar type then mandated for formal approval by the County Board (the

“County Standards”); provided, however, that no such consideration shall be required as a precondition to any such action in response to an emergency;

(B) The District may engage, but only (except in an emergency, in which case no such consideration shall be required as a precondition) following consideration by the Zone 3 Advisory Committee of any such contracts in excess of County Standards, contractors and consultants, including, without limitation, environmental specialists, engineers, financial consultants, underwriters, attorneys and accountants (collectively, the “Consultants”), as may be necessary in order to plan and construct the Seismic Remediation Improvements and to issue and sell the Tax-Exempt Obligations, on such terms and conditions as the District shall determine; provided, however, that the District and the Agency hereby covenant and agree that all such contracts already in place as of the effective date of this Contract shall be deemed noticed to and considered by the Zone 3 Advisory Committee; and provided further, that no such consideration shall be required as a precondition to any such action in response to an emergency;

(C) The District may authorize and sell at either public or private sale, or cause to be executed and delivered, the Tax-Exempt Obligations at any time following the effective date hereof, to provide for the financing or reimbursement to the District of the costs of the Seismic Remediation Improvements, to establish a reserve fund for the Tax-Exempt Obligations and to pay the costs of delivery thereof;

(D) The Agency will execute and provide such instruments, certificates and agreements as may be necessary in order for the District to deliver the Tax-Exempt Obligations, including, without limitation, information for inclusion in the disclosure document for the Tax-Exempt Obligations and a continuing disclosure agreement to permit compliance with Rule 15c2-12

of the Securities and Exchange Commission, respecting the Agency's financial condition and operations; and

(E) The Agency will cooperate with the District and its Consultants in connection with the planning and construction of the Seismic Remediation Improvements and the authorization and delivery of the Tax-Exempt Obligations.

The District covenants and agrees to use its best efforts to complete the Seismic Remediation Improvements by a date no later than June 30, 2002.

Article 7. Delivery of Water. All water to be furnished to the Agency pursuant to this Contract shall be delivered to the Agency at a point or points mutually agreeable between the District and any entities entering into a contract with the Agency for water services pursuant to this Contract.

If the Agency shall desire at any time during the term of this Contract to change the address at which it receives water from the District hereunder, or to install additional points of delivery, it may do so if it furnishes all funds necessary to cover any District expenses involved, or if it undertakes the construction of the necessary conduits and appurtenances at its own expense; provided that the Agency shall not undertake any such construction until it has first obtained District approval of the plans and specifications for such work. Upon the receipt of a request for a change in or addition to the place of delivery of water thereunder, and the deposit of any required funds as set forth in this paragraph, the District shall, if it has elected to perform its own construction of conduits and appurtenances, diligently proceed to construct the same.

Article 8. Measurement. All water furnished pursuant to this Contract shall be measured by the District at each point of delivery established pursuant to Article 7 hereof with equipment satisfactory to the District and the Agency. Said equipment shall be installed, operated and maintained by the District. All determinations relative to the measuring of Project water shall be

made by the District and, upon request of the Agency, the accuracy of such measurement shall be investigated by the District and certified to the Agency in writing. Any error appearing in the course of such investigation and certification shall be cause for an adjustment by the District. The Agency may inspect any such measuring equipment for the purpose of determining the accuracy thereof, at its own expense at reasonable times upon reasonable notice. The District will install, or cause to be installed, backflow prevention devices in connection with such measuring equipment to prevent Project water delivered to the Agency or to the Other Agencies from returning to the District's lines.

Article 9. Time for Delivery of Project Water. The amounts, times and rates of delivery of Project water to the Agency during any Water Year shall be in accordance with a water delivery schedule determined in the following manner:

(A) On or before October 1 of each Calendar Year, the Agency shall submit in writing to the District a preliminary water delivery schedule subject to the provisions of this Article and Article 4, indicating the amounts of water desired by the Agency during each month of the succeeding three (3) Water Years.

(B) Upon receipt of a preliminary schedule the District shall review it and after consultation with the Agency shall make such modifications in it as are necessary to insure that the amounts, times and rates of delivery to the Agency will be consistent with the available supply of water from the Project, considering the current delivery schedules of all Other Agencies. On or before January 1 of each Calendar Year, the District shall determine and furnish to the Agency a water delivery schedule for the next succeeding Water Year, which shall show the amounts of water to be delivered to the Agency during each month of that Water Year.

(C) A water delivery schedule may be amended by the District upon the Agency's written request, and subject to (i) the circumstances described in Article 4(B) hereof and (ii) the pre-

existing requirements of the District under the water delivery schedules with the Other Agencies for the same period of time. Proposed amendments to such schedules shall be submitted by the Agency within a reasonable time prior to the date the desired change is to become effective, and they shall be subject to review and modification by the District in the same manner as the preliminary water schedule described in paragraph (B) above.

(D) In no event shall the District be obligated to deliver Project water to the Agency at a combined instantaneous rate of flow exceeding 0.47 cubic feet per second.

Article 10. Responsibility for Delivery and Distribution of Water Beyond Delivery Points. After Project water has passed the delivery points established in accordance with Article 7 above, neither the District nor its officers, agents or employees shall be liable for the control, carriage, handling, use, disposal, distribution or changes occurring in the quality of such water supplied to the Agency or for claim of damages of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal, distribution or changes occurring in the quality of such water beyond said delivery points, and the Agency shall defend, indemnify and hold harmless the District and its officers, agents and employees from and against any such damages or claims of damage.

Article 11. Operation and Maintenance of Project and Water Enterprise. The parties hereto acknowledge and agree that the primary goal of the District shall be to maximize deliveries of Project water, subject to Safe Yield and cost considerations, as to which the District shall be expected to exercise sound business judgment.

(A) The District covenants and agrees that it will operate and maintain the Project, as improved by the Seismic Remediation Improvements, in accordance with all governmental laws, ordinances, approvals, rules, regulations and requirements, including, without limitation, such

zoning, sanitary, pollution, environmental and safety ordinances and laws and such rules and regulations thereunder as may be binding upon the District. The District further covenants and agrees that it will maintain and operate the Project and all pumps, machinery, conduits, apparatus, fixtures, fittings and equipment of any kind in or that shall be placed in any building or structure or made a part of any conduit or easement now or hereafter at any time constituting part of the Project in good repair, working order and condition, and that it will from time to time inspect and test all Project facilities against then-current water supply industry standards, and to pursue or recommend all necessary and proper replacements, repairs, renewals and improvements thereto.

(B) In order to satisfy its covenants set forth in this Article, the District shall determine, prior to each Water Year, the amount of Capital Reserves necessary for the Project for the upcoming Water Year, shall prepare its draft annual budget by no later than March 1 to reflect such Capital Reserves, shall provide copies of each such budget to the Zone 3 Advisory Committee, the Agency and the Other Agencies for review and comment, prior to its distribution to and consideration by the Board of Supervisors of the County, and shall, if deemed necessary or advisable, develop and promulgate to the Agency and the Other Agencies a multi-year improvement plan for the Project, reflecting the annual requirements for Capital Reserves.

(C) At any time, or from time to time, without the consent of the Agency or any Other Agency, the District shall be entitled to undertake the construction or equipping of any Additional Project or other improvements to or repairs of the Project not comprising a Type III Additional Project, but only if (i) it shall determine that such Additional Project, improvements or repairs are necessary in order to keep the Project functioning at the levels and to maintain the water supply at the quality required hereunder and under the other Water Supply Contracts; or (ii) competent Governmental Authority shall direct such Additional Projects, improvements or repairs;

provided that before an Additional Project other than a Type III Additional Project, improvements or repairs may be ordered pursuant to direction of competent Governmental Authority, the District, the Agency and the Other Agencies shall be afforded notice thereof and the opportunity to oppose the imposition of such requirement before a court of competent jurisdiction; only if a final judgment is thereafter rendered, in favor of such Additional Project; improvements or repairs, or if no such opposition is filed, shall an Additional Project other than a Type III Additional Project, improvements or repairs be constructed or made pursuant to this clause (ii). Emergency repairs to the Project may, notwithstanding the above, be made by the District without the requirement of notice and opportunity to oppose described herein. It is the intention of the parties hereto that the District shall, as and when necessary, be deemed to assign its rights to pursue opposition to the creation of any obligations hereunder by a Governmental Authority to the Agency and/or the Other Agencies, as their interests may appear, in recognition of the status of the Agency and the Other Agencies as third party beneficiaries hereof and real parties in interest. No preexisting right of the Agency or the Other Agencies to pursue actions administratively, by law or in equity associated with the construction, maintenance and operation of the Project shall be abrogated by the Agency or such Other Agencies by its or their execution of this Contract or the other Water Supply Contracts.

(D) For its part, the Agency covenants and agrees:

(1) not to sell, lease or otherwise dispose of its Water Enterprise or any part thereof essential to the proper operation thereof or to the earning or collection of the gross revenues of the Water Enterprise, nor to enter into any agreement or lease which would impair the operation of the Water Enterprise or any part thereof necessary in order to secure adequate revenues for the payment of amounts due under this Contract; *provided, however*, that any real or personal property which has become nonfunctional or obsolete or which is not needed for the efficient operation of the Water

Enterprise may be sold or disposed of if such disposition will not have the effect of reducing revenues of the Water Enterprise below the levels required under this Contract;

(2) to maintain and preserve the Water Enterprise in good repair and working order at all times, operate the same in an efficient and economical manner and pay all operation and maintenance costs of the Water Enterprise as they become due;

(3) not later than the first day of each Fiscal Year, to adopt and make available to the District a budget approved by its governing board setting forth the amounts budgeted to be paid under this Contract;

(4) to comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in all contracts for the use of the Water Enterprise and all other contracts affecting or involving the Water Enterprise to the extent that the Agency is a party thereto;

(5) not to create or allow any lien on or payment from the revenues of the Water Enterprise or any part thereof prior to or superior to its obligation to pay amounts payable under this Contract;

(6) to procure and maintain such insurance relating to the Water Enterprise which it shall deem advisable or necessary to protect its interests, which insurance shall afford protection in such amounts and against such risks as are usually covered in connection with similar water enterprises in the State of California; *provided*, that the Agency shall not be required to procure or maintain any such insurance unless such insurance is commercially available at reasonable cost; and *provided further*, that any such insurance may be maintained under a self-insurance program, so long as such self-insurance program is maintained in accordance with standards and in such amounts as are then usually maintained for similar water enterprises in the State of California;

(7) to pay and discharge all taxes, assessments and others governmental charges which may hereafter be lawfully imposed upon the Water Enterprise or any part thereof when the same shall become due; duly observe and conform with all valid regulations and requirements of any governmental authority relative to the operation of the Water Enterprise, that are not being contested in good faith; and

(8) if all or any material part of the Water Enterprise shall be taken by eminent domain proceedings, or if the Agency receives any insurance proceeds resulting from a casualty loss to any material portion of the Water Enterprise, the proceeds thereof shall be used to construct or install replacements for the condemned or destroyed components of the Water Enterprise or to prepay the Agency's share of Debt Service under this Contract.

Article 12. Water Quality. All water delivered to the Agency under this Contract shall meet all State of California and San Luis Obispo County minimum water quality standards for water for domestic use.

Article 13. Curtailment of Delivery of Project Water for Maintenance Purposes. The District may temporarily discontinue or reduce the amount of water to be furnished to the Agency for purposes of maintaining, repairing, replacing and investigating or inspecting, any of the facilities necessary for the furnishing of Project water to the Agency hereunder. Insofar as it is feasible, the District will give the Agency advance notice of any such temporary discontinuance or reduction, except in the case of emergency, in which case no advance notice need be given. In the event of such discontinuance or reduction, the District will apply its best efforts to minimize the duration and severity of service interruption hereunder and shall, as nearly as possible, make available to the Agency Project water sufficient to make up for any shortfall in deliveries of water to the Agency during the period of curtailment.

Article 14. Rate and Method of Payment. Commencing with the first Water Year during which Project water is made available to the Agency hereunder, the Agency shall pay to the District in advance and on a semiannual basis, its Contract Payments, calculated and paid in accordance with the further provisions of this Article, for the Project water made available under this Contract for such Water Year, plus a variable charge, to be determined as set forth in paragraph (D) of this Article, to be calculated on a quarterly basis and paid in arrears.

(A) *Allocation of Total Project Costs and Debt Service.* On or before April 1 of each Calendar Year, the District shall calculate, or cause to be calculated, Total Project Costs for the Fiscal Year commencing on the immediately following July 1. The District shall deduct from the calculated Total Project Costs for such Fiscal Year: (1) the general *ad valorem* property taxes to be received by the District during the Fiscal Year in question; provided that any *ad valorem* taxes levied and paid to provide debt service on the District's General Obligation Bonds outstanding at any time shall be restricted to use for the payment of debt service on such General Obligation Bonds and shall not be included in the deducted amount represented by the foregoing clause; and (2) a sum equal to Recreational Use Revenues received by the District during the Fiscal Year about to be concluded. The result shall comprise the Total Contract Payments due, collectively, from the Agency hereunder and from the Other Agencies under their respective Water Supply Contracts.

In determining the Debt Service portion of Total Project Costs during any Fiscal Year to be supported by the Agency, the District shall make the following calculations:

- $[(G.O. \text{ Debt Service}) + (\text{Installment Debt Service})] - (\text{District Revenues}) = \text{Allocable Debt Service ("ADS")}$
- $[(\text{Proportionate Share}) \times \text{ADS}] = \text{Annual Agency Obligations ("AAO")}$
- $\text{AAO} - (\text{G.O. Tax Collections}) = \text{Agency Debt Service}$

For purposes of the above calculations, the term "*G.O. Debt Service*" above refers to the debt service on the District's General Obligation Bonds; the term "*Installment Debt Service*" refers to the installment payments due with respect to the Tax-Exempt Obligations; the term "*Proportionate Share*" refers to the Agency's Proportionate Share hereunder; the term "*District Revenues*" refers to the amounts available to the District under the second sentence of this paragraph (A) of Article 14; and the term "*G.O. Tax Collections*" refers to amounts collected to support the General Obligation Bonds within the boundaries of the Agency during the Fiscal Year in question, based upon then-current levies; *provided, however*, that in the case of County Service Area No. 12, such boundaries shall be deemed to include that area comprising Avila Beach Community Services District, as well as the area comprising such County Service Area No. 12. In no event shall Agency Debt Service, as calculated above, be a figure less than zero. The foregoing calculations shall be performed by the District each Fiscal Year and shall be made available to the Agency with respect to each Other Agency, as well.

No more frequently than annually, the District shall retain a certified public accountant, or firm thereof, with the approval of the Zone 3 Advisory Board, which shall be responsible for reviewing and confirming the Agency Debt Service figures resulting from the foregoing calculations, and reporting the same to the Agency, the District and each Other Agency.

(B) *Agency Contract Payments.* Unless the Agency shall, in accordance with paragraph (C) below, be entitled to an offsetting credit, the Agency shall be obligated to pay to the District:

(1) on or before July 1 and the immediately following January 1 of each Fiscal Year, a sum equal to one-half of its Percentage Share of charges for Operation and Maintenance and Capital Reserves for such Fiscal Year;

(2) on or before July 1 of each Fiscal Year, a sum equal to Agency Debt Service, as calculated under paragraph (A) above; and

(3) on or before the fifteenth day following the end of each Calendar Quarter during a Fiscal Year, the variable charge calculated in accordance with paragraph (D) below for the Calendar Quarter ending on the last day of the Calendar Quarter most recently concluded.

(C) *Agency Credits against Contract Payments.* The following shall constitute credits against the obligations of the Agency to pay Contract Payments to the District:

(1) (a) If, prior to the date upon which the District causes the Tax-Exempt Obligations to be sold, the Agency shall contribute, in cash, a sum as and for its Proportionate Share of the total amount of costs and expenses projected by the District as the basis for the Seismic Remediation Project, or any portion of its Proportionate Share, so that the aggregate principal component of the Tax-Exempt Obligations is reduced by such sum, the Agency's Proportionate Share of Debt Service, and therefore, of Total Project Costs, shall be reduced accordingly; and

(b) If the Agency shall, following the date of delivery of the Tax-Exempt Obligations, successfully implement a financing plan within its jurisdiction to fund all or a portion of Debt Service during the term of the Tax-Exempt Obligations through the levy of *ad valorem* property taxes, special assessments or special taxes, then the Agency shall be entitled to a credit from amounts paid under such levy as though such amounts were paid directly by the Agency hereunder, subject to the prior approval of each rating agency then rating the Tax-Exempt

Obligations and any bond insurer then providing insurance therefor; provided, however, that the District shall be made a third-party beneficiary of any pledge of such alternate source of revenues, with the power to enforce collection thereof, in the event the Agency should fail to do so; and

(c) The Agency shall be entitled to a credit equal to a Percentage Share of the net revenues the District shall have received from the sale of Surplus Water and from the delivery of any water wheeled for Wheeling Customers, as defined in and pursuant to the provisions of Article 31, during the Fiscal Year in question; in determining the amount of such wheeling credits against the obligations of the Agency hereunder, the District shall apportion its net revenues from the foregoing sources, taking into account the particular Unit or Units through which delivery of Surplus Water or wheeled water was made, and shall compare the Agency's Percentage Share for such Unit or Units with the aggregate Percentage Share for all Other Agencies and the Agency for such Unit or Units.

(2) On or before December 1 of each year, the District shall deliver to the Agency a statement as to the actual Operation and Maintenance Costs and Capital Reserve charges incurred or imposed during the Fiscal Year most recently concluded, and shall set forth in such statement its determination as to whether the amounts theretofore paid by the Agency as its Percentage Share of estimated charges for Operation and Maintenance Costs and for Capital Reserves were in excess of or less than its Percentage Share of such costs and charges for the Fiscal Year most recently concluded. If the Agency shall have paid less than its Percentage Share of actual Operation and Maintenance Costs and charges for Capital Reserves for such Fiscal Year, the Agency shall remit the difference to the District within (180) days of the date upon which it receives such a statement; if the Agency shall have paid more than its Percentage Share of such costs and charges

for such Fiscal Year, the District shall rebate the difference to the Agency promptly following its delivery of the closing statement, and, in any event, within thirty (30) days thereafter.

(D) *Quarterly Variable Charges.* The sum of quarterly variable charges to the Agency and the Other Agencies shall be an amount which is estimated to be sufficient to compensate the District for actual Project pumping energy charges incurred during the respective Calendar Quarter. The variable charge shall be determined for each Calendar Quarter during which Project water is made available to the Agency under this Contract by (1) dividing the District's actual cost of pumping energy during that Calendar Quarter by the total acre-feet of Project water delivered by the District during such Calendar Quarter to the Agency and all Other Agencies pursuant to this Contract and the other Water Supply Contracts; and (2) multiplying this acre-foot charge by the number of acre-feet of Project water delivered by the District to the Agency during such Calendar Quarter. The District shall notify the Agency in writing of such variable charge by a date no later than the fifteenth day following the end of each Calendar Quarter, for the variable charges attributable to the Calendar Quarter most recently concluded.

(E) *Use by District of Total Contract Payments.* During the term of this Contract and of the other Water Supply Contracts, the District shall proceed with due diligence to collect Total Contract Payments as and when due, and shall apply amounts collected in the following order of priority:

- (1) to the payment of Operation and Maintenance Costs;
- (2) to the payment of Debt Service with respect to the Tax-Exempt Obligations; and
- (3) to the replenishment or funding of Capital Reserves for the Project, in accordance with the provisions set forth in Article 10 hereof.

Article 15. Take-or-Pay Obligation of Agency. Commencing on the first date upon which Project water is provided under this Contract, the Agency shall pay all amounts due hereunder, including, without limitation, under Article 14 hereof, without reduction or offset of any kind, whether or not the Project or any part thereof is then operating or operable or its service is suspended, interfered with, reduced or curtailed or terminated in whole or in part, due to any of the reasons outlined in Articles 4(B), 5 and 13 or otherwise, and such Agency payments shall not be conditional upon the performance or nonperformance by any party for any cause whatsoever, including the Other Agencies; provided, however, that savings from nonoperation of the Project shall be apportioned among the Agency and the Other Agencies in accordance with their Percentage Shares.

The Agency's failure or refusal to accept delivery of Project water to which it is entitled under this Contract shall in no way relieve the Agency of its obligation to make payments to the District as provided for herein.

Article 16. Pledge; Establishment and Collection of Rates and Charges. The Agency, unless it shall have paid cash as its share of the Total Project Costs, as provided in Article 14(C)(1) hereof, hereby pledges gross water sale revenues of its Water Enterprise to its obligations under this Contract, and covenants and agrees to establish, fix and collect Rates and Charges from the customers of its Water Enterprise at levels sufficient to produce revenues from the Water Enterprise at least equal to (A) the costs of operating and maintaining the Water Enterprise, plus (B) the Agency's Contract Payments, calculated in accordance with Article 14(B) hereof, including (C) the Agency's Proportionate Share of Debt Service, plus (D) the Coverage Factor for the Debt Service portion of the Agency's Contract Payments; provided, however, that the provisions of Article 21(C) hereof may impose upon the Agency a surcharge following the occurrence of any payment default

by the Agency. The Agency acknowledges and agrees that its obligations hereunder shall comprise, for accounting purposes, an operation and maintenance expense of its Water Enterprise.

Article 17. Default. (A) The following shall constitute events of default hereunder:

(1) The Agency shall fail to make timely payment in full of all amounts due from the Agency under the terms of this Contract; or

(2) The Agency shall fail to establish or collect, or cause to be collected, all fees, charges and other sums necessary to enable it to make the payments required hereunder, as provided in Article 16 hereof, and, following thirty (30) days' written notice from the District to the Agency, shall fail to remedy such failure to the satisfaction of the District; or

(3) The Agency shall fail to perform any other obligation or covenant hereunder and shall fail to remedy such failure to the satisfaction of the District within thirty (30) days following the Agency's receipt of written notice from the District, or for such additional time as is reasonably required, in the sole discretion of the District, to correct the same; or

(4) The Agency shall file any petition or institute any proceedings under any act or acts, State or federal, dealing with or relating to the subject of bankruptcy or insolvency or under any amendment to such act or acts, either as a bankrupt or as an insolvent or as a debtor or in any similar capacity, wherein or whereby the Agency seeks or prays to be adjudicated a bankrupt or is to be discharged from any or all of its debts or obligations, or offers a reorganization of its obligations for the benefit of creditors, or asks for similar relief.

(B) Upon the occurrence of an event of default hereunder, the District shall be entitled to proceed to protect and enforce the rights vested in the District by this Agreement by appropriate judicial proceedings as the District may deem most effective, either in equity or law.

Without limiting the generality of the foregoing, the District shall be entitled to pursue any of the following remedies:

(1) The District may suspend the delivery of water hereunder during the period when the Agency is delinquent in its payment for or other obligations to the District hereunder, but only following notice to the Agency and the imposition of such remedy following a formal hearing conducted by the County Board;

(2) The District may compel the Agency, or its governing board, by action or suit in equity to account to the District as the trustee of an express trust;

(3) The District may pursue by action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the District hereunder; and

(4) The District may proceed in *mandamus* or other suit, action or proceeding at law or in equity to enforce its rights against the Agency (and its board, officers, agents and employees) and to compel the Agency to perform and carry out its duties and obligations under the law and its covenants and obligations as set forth herein.

The use by either party to this Contract of any remedy specified herein for the enforcement of this Contract is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provide hereunder or by law or equity.

(C) Upon each charge to be paid by the Agency to the District pursuant to this contract which remains unpaid after the same shall have become due and payable, interest shall accrue at an annual rate equal to that earned by the County Treasurer's investment fund as provided in Government Code Section 16480 *et seq.* calculated monthly on the amount of such delinquent payment from and after the due date when the same becomes due until paid, and the Agency hereby agrees to pay such interest; provided, that no interest shall be charged to or be paid by the Agency

unless such delinquency continues for more than thirty (30) days. The Agency hereby agrees to pay such interest to the District, whether or not the District shall pursue any of the remedies specified in this Article. In no event shall default interest be compounded.

Article 18. Failure to Levy, Set or Collect Taxes, Rates and Charges; Establishment of Coverage Account. If the Agency for any reason shall fail or refuse to establish or levy taxes or Rates and Charges sufficient to satisfy the requirements of Article 16 hereof, or if the Agency shall be precluded from establishing rates and charges at the levels required in said Article 16, then the Agency shall promptly notify the District of such fact, in writing, and shall establish either (a) with the District; or (b) with a Depository designated by the Agency to the District in writing; a Coverage Account, into which the Agency shall deposit, from the first lawfully available funds therefor, an amount equal to one year's Coverage Factor for the Debt Service portion of the Agency's Contract Payments hereunder. The Coverage Account shall be invested in accordance with applicable provisions of the Government Code, subject to any limitations established pursuant to Section 148 of the Internal Revenue Code of 1986, as amended, applicable to surplus moneys of the Agency and shall be and remain available to the Agency and to the District as a source of funds to remedy any shortfall in the payment of Agency Contract Payments hereunder. The Coverage Account shall be pledged to the District for the purposes described herein, and the Agency covenants and agrees to execute such instruments as may be necessary in order to effect a pledge of amounts on deposit in the Coverage Account, acknowledging and agreeing as well to follow the advice of special tax counsel to the District in connection with the pledge and investment of the Coverage Account, as may be necessary or advisable in order to maintain the tax status of the Tax-Exempt Obligations.

If at any time following the establishment of the Coverage Account hereunder, the Agency shall again be able to and shall collect rates and charges as required under Article 16 hereof,

the Coverage Account may be released to the credit and name of the Agency for any lawful purpose thereof, upon delivery to the District of evidence satisfactory to the District that (i) the Agency has successfully levied rates and charges for its Water Enterprise at the appropriate levels for at least one full Fiscal or Water Year since the Coverage Account was first created, and (ii) the Agency is then current on all payments due under this Contract; whereupon, the District shall either release the Coverage Account to the Agency or shall direct the Depository to do so, free from the lien described herein.

Article 19. Area Served by Agency. Water delivered to the Agency pursuant to this Contract shall not be sold or otherwise disposed of by the Agency for use outside the boundaries of Zone 3 as they may now or hereafter exist, without the prior written consent of the District.

Article 20. Changes in Organization of Agency. The Agency will furnish the District with maps showing the territorial limits of the Agency and the service area or areas of its water distribution system. Throughout the term of this Contract, the Agency will promptly notify the District of any changes, either by including or exclusion, in said territorial limits and service area or areas. The Agency shall take no action to exclude any lands from the Agency or its service area or areas without the prior written consent of the District.

Article 21. Agency's Obligations Several and Not Joint; Limited Step-up Provisions and Reimbursement. (A) Except as provided in paragraph (B) of this Article, the Agency and the Other Agencies shall be solely responsible and liable for performance under this Contract or under the other Water Supply Contracts, as applicable. Their obligations to the District to make payments under this Contract and the other Water Supply Contracts are expressly recognized by the District as several, and not joint, and no default on the part of one of the Other Agencies shall, in and of itself, create an event of default hereunder. The Coverage Account of the Agency, if any is

established hereunder, shall not be available for any shortfall in payments under any of the other Water Supply Contracts, unless otherwise directed or approved in writing by the Agency.

(B) In the event that the Agency or any Other Agency (each, a "Delinquent Agency") shall fail to pay its Contract Payments hereunder or under the Other Agency's Water Supply Contract, as appropriate, for any reason, then the Contract Payments for each non-delinquent agency (each, a "Non-Delinquent Agency") then participating in the Project shall be increased for the particular Water Year by an amount equal to the sum of Contract Payments not paid in full by Delinquent Agencies (collectively, the "Shortfall"); *provided, however*, that Non-Delinquent Agencies shall contribute to the Shortfall in a proportion determined by dividing the Debt Service portion of the Contract Payments attributable to each particular Non-Defaulting Agency by the aggregate Debt Service portions of the Contract Payments attributable to all Non-Defaulting Agencies; and *provided further*, that the Agency in no event shall be required under this paragraph to contribute to the Shortfall by an amount in any Water Year exceeding the amount which is 20% of the portion of the Agency's Contract Payments representing Debt Service for that Water Year.

(C) If payments are made by Non-Delinquent Agencies under the foregoing paragraph (B) during any Water Year, the District shall, beginning on the first date upon which payments are due from a Delinquent Agency and not paid in accordance with its Water Supply Contract (each, a "Due Date"), declare a default as to such Delinquent Agency under its Water Supply Contract and shall be entitled to curtail all deliveries of Project water under such Water Supply Contract to such Delinquent Agency; notwithstanding the foregoing, such Delinquent Agency shall nonetheless continue to be obligated under its Water Supply Contract for amounts paid on its behalf by the Non-Delinquent Agencies, until it has reimbursed each Non-Delinquent Agency in full. Amounts advanced by the Non-Delinquent Agencies hereunder are immediately due and payable

by the responsible Delinquent Agency, and, if not so paid, and notwithstanding the provisions of Article 17(C), incur interest on the unpaid portion until paid in full at a rate per annum equal to the average rate for the County Treasury Pool, plus two percent (2.0%) per annum, for the month for which the County Treasury Pool rate was most recently calculated, based on a 360-day year of twelve 30-day months; provided, however, that payments to be made as reimbursements under this paragraph (C) are deemed and understood to be subordinate to the obligations of the Delinquent Agencies to pay their Proportionate Shares of Debt Service.

(D) Shortfalls in Total Contract Payments shall be remedied under this Article prior to the District's making any withdrawal from the debt service reserve fund established, or under the reserve surety bond posted, for the Tax-Exempt Obligations, if any, drawings on or under which shall be delayed until and unless insufficient moneys are available from Non-Defaulting Agencies hereunder.

(E) The District covenants and agrees to enforce the provisions of this Water Supply Contract with due diligence, including, without limitation, the provisions of this Section for the benefit of the owners, from time to time, of the Tax-Exempt Obligations.

Article 22. Contracts to Be Uniform. Water Supply Contracts executed by the District with the Other Agencies shall be substantially uniform with respect to basic terms and conditions, when compared with this Contract, but shall provide for different dates, quantities of water to be delivered, water delivery points, Proportionate Shares and Percentage Shares and payment amounts.

Article 23. Amendments. This Contract shall be subject to amendment at any time by mutual agreement of the parties hereto, except insofar as any proposed amendments are in any way contrary to applicable law, or would have a material adverse effect upon the owners of any of the Tax-Exempt Obligations. As a condition to any amendment to this Contract or to the other

Water Supply Contracts, the District shall first have received written confirmation from the rating agency or agencies then providing a rating for the Tax-Exempt Obligations, to the effect that the proposed amendments will not adversely affect the rating of the Tax-Exempt Obligations and, in the event that the Tax-Exempt Obligations, or any portion thereof, shall be covered by municipal bond insurance, the District shall have received prior written consent to such proposed amendments from the provider of such bond insurance. Amendments may be effected upon the following conditions:

(A) Amendments to this Contract or the other Water Supply Contracts which have the effect of replacing the Agency's or any Other Agency's Proportionate Share of Project water or Percentage Share of Total Contract Payments with water purchases by or revenues contributed from either (i) the Agency or some Other Agency or (ii) a new customer, shall be subject to the approval only of those entities whose Proportionate Shares or Percentage Shares will be affected, and the District.

(B) Upon the written request of the Agency or any Other Agency, the District may order the construction or equipping of any Type III Additional Project; provided, however, that the requesting Agency or Other Agency shall first demonstrate to the satisfaction of the District that either (i) the proposed Type III Additional Project will be economically feasible with the financial support of only the requesting Agency and/or Other Agencies who voluntarily participate (whose Percentage Shares will thereafter be appropriately adjusted); or (ii) the Agency and all of the Other Agencies will consent to the funding of the Type III Additional Project and will agree to increase Total Project Costs sufficiently to provide for the costs thereof. The financing of a Type III Additional Project may be accomplished through the levy of additional Capital Reserves, the issuance of additional bonds or other evidences of indebtedness or otherwise. The undertaking of

Type I or Type II Additional Projects shall not require the consent of the Agency or any Other Agency nor the amendment of this Contract.

(C) Amendments to this Contract and to the other Water Supply Contracts other than those specified above shall be approved only upon the prior written and unanimous consent of the District, the Agency and all Other Agencies.

Article 24. Opinions and Determinations; Good Faith; Information to Be Provided to Zone 3 Advisory Committee. (A) Where the terms of this Contract provide for action to be based upon opinion, judgment, approval, review or determination of either party hereto, such terms are not intended to and shall never be construed to permit such opinion, judgment, approval, review of determination to be arbitrary, capricious or unreasonable. The District and the Agency shall each act in good faith in performing their respective obligations as set forth in this Contract.

(B) The Zone 3 Advisory Committee, created by appointment of designated representatives made by the Agency, each Other Agency and the District, is hereby continued for the purpose of advising the District regarding administrative and operational concerns affecting the Project. The District covenants and agrees to present to the Zone 3 Advisory Committee, at its regularly scheduled or specially called meetings, the following items for advice and comment, in each case, prior to final presentation of the same item to the Board of Supervisors of the County:

(i) the annual budgets for the District;

(ii) the approval of each non-emergency Capital Project which has not theretofore been included in an annual budget of the District; it being understood and agreed that emergency repairs and improvements shall be exempt from any requirement for preview established hereby;

(iii) the mid-year review of actual fiscal performance of the Project, provided for the then-current Fiscal Year, and in any event, prior to March 31 of each calendar year, which may, to the extent practicable, be combined with the review of the District's annual budget for the next Fiscal Year; and

(iv) amendments to the methodology or formula established in County Board Resolution No. 2000-133, adopted April 4, 2000, with respect to the making of Recreational Budget Transfers.

Article 25. Waiver of Rights. Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Contract, shall not be deemed to be a waiver with respect to any other breach, default or matter hereunder, nor as to a breach or default occurring or having occurred under any other Water Supply Contract.

Article 26. Notices. All notices that are required either expressly or by implication to be given by either party to the other under this Contract shall, if given in writing, be executed on behalf of the District or for the Agency by such authorized officers as they may each, from time to time, authorize in writing for such purposes. All notices shall be deemed to have been given and delivered if delivered personally or if deposited, postage prepaid, with the United States Postal Service for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses shown on the signature page of this Contract; provided, however, that either party may give written notice to the other of a change in such notice address.

Article 27. Assignment; Pledge. The provisions of this Contract shall apply to and bind the successors and assigns of the respective parties, including any assignee hereof designated in connection with the execution and delivery of the Tax-Exempt Obligations, but no assignment or transfer of this Contract by the Agency, or any part hereof or interest herein, shall be valid until

and unless approved by the District; *provided, however*, that no further assignment by the District shall be valid until and unless approved by the Agency and all of the Other Agencies; and *provided further*, that, so long as any Tax-Exempt Obligations are outstanding, no such assignment shall be effective until such time as the District has received assurances from each rating agency then rating the Tax-Exempt Obligations, to the effect that such transfer shall not adversely affect the rating on the Tax-Exempt Obligations, and, so long as any Tax-Exempt Obligations are then being insured by a municipal bond insurance company, until such time as the District has received the written consent from such bond insurer as to such assignment. The Agency understands and acknowledges that the District intends to pledge amounts received and to be received hereunder and under the other Water Supply Contracts to a financial institution and/or nonprofit corporation as further support for its obligations under the Tax-Exempt Obligations.

Article 28. Inspection of Books and Records. The authorized officers of the Agency shall have full and free access at all reasonable times to the account books and official records of the District insofar as the same pertain to the matters and services provided for in this Contract, with the right at any time during regular office hours of the District to make copies thereof at the Agency's expense, and the authorized officers of the District shall have similar rights in respect to the account books and records of the Agency for its Water Enterprise.

Article 29. Severability. Any provision of this Contract that is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof of affecting the validity, enforceability of legality of such provision in any other jurisdiction.

Article 30. Water Rights. No provision of this Contract shall be considered to be in derogation of any existing waiver of right(s) or claim(s) to Water Right(s) by or any agreements concerning Water Rights of either party hereof, including but not limited to overlying, prescriptive, appropriative, riparian, or pueblo rights, nor shall it be construed to result in any relinquishment or adjustment of any such Water Rights or claims thereof; and, in particular, no provision of this Contract shall be considered to diminish, reduce or affect, in any way, either party's rights pursuant to California Water Code Section 1005.1 and/or Section 1005.2

Article 31. Wheeling of Water. As used in this Article, the term "Existing Contractor" shall refer to this Agency and any Other Agencies presently having a contract with the District for the delivery of Project water; any person other than an Existing Contractor which shall arrange for the delivery of water other than Project water from the District under the terms hereof shall be described as a "Wheeling Customer." The Agency, as an Existing Contractor, shall be entitled to have additional water wheeled to it by the District through the various Units of the Project, at the actual cost of such wheeling, determined in accordance with the terms and conditions of the existing contracts by and between the District and the Agency or Other Agencies for the delivery of State Project Water to the Agency or Other Agencies through the Project.

If at any time during the term of this Contract, the District delivers water, other than Project water, through any Unit of the Project to any Wheeling Customer, said Wheeling Customer shall be required to pay for such delivery service in a manner and at prices which will return to the District the largest net revenue practicable, but in no event shall such deliveries be effected at charges less than those applicable to the delivery of Project water to the Agency through the same Unit or Units.

In determining the appropriate charges for water delivered to a Wheeling Customer hereunder, the District shall take into account the particular Unit or Units through which delivery of such water is made, shall compare the Operation and Maintenance Costs and Debt Service costs apportionable to such Unit or Units with Total Project Costs, and shall further compare the amount of water delivered to Wheeling Customers through such Unit or Units with the amount of Project water delivered to Existing Contractors through such Unit or Units for the same period of time.

In calculating credits to the Existing Contractors from the delivery of water to Wheeling Customers under this Contract and the other Water Supply Contracts, the District shall apportion such credits according to the Unit or Units through which such water was in fact delivered, as described in the preceding paragraph.

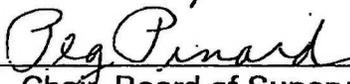
The provisions of this Article shall be subject to any contracts which the District may execute with the United States of America for any grants from the Department of Housing and Urban Development.

Article 32. Execution in Counterparts. This Contract may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same document.

Article 33. Governing Law. This Contract shall be interpreted, governed and enforced in accordance with the laws of the State of California applicable to contracts made and performed in such State.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the date first above written.

SAN LUIS OBISPO COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

By 
Chair, Board of Supervisors

Address for Notices
Engineering Department
County Government Center
San Luis Obispo, California 93408
Attn: County Engineer

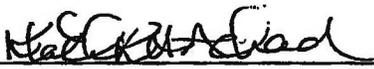
APPROVED AS TO FORM:
COUNTY COUNSEL

By 
Senior Deputy County Counsel

ATTEST: **JULIE L. RODEWALD**
COUNTY CLERK

By 
Deputy

SAN LUIS OBISPO COUNTY
SERVICE AREA #12

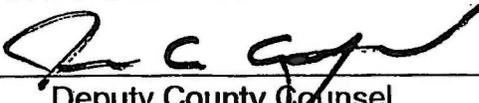
BY 
Vice Chair, Board of Supervisors

Address for Notices
Engineering Department
County Government Center
San Luis Obispo, California 93408
Attn: County Engineer

ATTEST:

By _____
County Clerk

APPROVED AS TO FORM:
COUNTY COUNSEL

By 
Deputy County Counsel