

STAFF REPORT

To: Coastside County Water District Board of Directors

From: Mary Rogren, Assistant General Manager

Agenda: June 12, 2018

Report

Date: June 7, 2018

Subject: Resolution Authorizing the Refinancing of an Outstanding Obligation of the Water System, and Approving Loan Agreement and Related Documents

Recommendation:

Approve Resolution No. 2018-04, A Resolution of the Board of Directors of the Coastside County Water District Authorizing the Refinancing of an Outstanding Obligation of the Water System (the District's 2006 Series B Bonds), and approving the loan agreement and related documents

Background:

At the May 8 Board Meeting, the Board authorized the General Manager to enter into a Placement Agent Services Agreement with Backstrom McCarley Berry & Co., LLC (BMcB) to refinance the District's 2006 B Bonds, and also authorized the General Manager to enter into an agreement with Bond Counsel to assist with the refinancing.

The District has selected Jones Hall, a Professional Law Corporation, as the District's Bond Counsel. Jones Hall has prepared the attached Resolution for the Board's action, as follows:

1. Approval of Loan and Loan Agreement.
2. Designation of the Loan Agreement as "bank qualified" for purposes of Section 265(b)(3) of the Tax Code.
3. Approval of the Irrevocable Refunding Instructions.
4. Authorization/Ratification of the designation of Backstrom McCarley Berry & Co. as the District's Placement Agent and Jones Hall as the District's Bond Counsel.
5. Authorization of the General Manager and Assistant General Manager to execute and deliver certificates, consents, and agreements necessary to refinance the prior obligation.

FISCAL IMPACT

With the refinancing of the 2006 Series B Bonds, the District could potentially save \$450,000 (net present value) over the remaining 14 years of the term of the bonds.

The District has final approval of the refinancing. If the refinancing is not completed, the District is not responsible for the payment of any fees.

Attachments:

- (A) Resolution No. 2018-04
- (B) Loan Agreement between the District and Lender (to be selected based on requests for proposals)
- (C) Irrevocable Refunding Instructions

RESOLUTION NO. 2018-04

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE COASTSIDE COUNTY WATER DISTRICT AUTHORIZING THE REFINANCING OF AN OUTSTANDING OBLIGATION OF THE WATER SYSTEM, AND APPROVING LOAN AGREEMENT AND RELATED DOCUMENTS

WHEREAS, the Coastside County Water District (the "District") owns and operates a system for the supply, treatment and distribution of water within the service area of the District (the "Water System"); and

WHEREAS, in order to finance improvements to the Water System, the District has previously entered into an installment purchase agreement, dated as of June 1, 2006, with the California Statewide Communities Development Authority ("CSCDA") (the "Prior Obligation"); and

WHEREAS, the District desires to refinance the Prior Obligation by entering into a loan agreement or similar instrument (the "Loan Agreement"), on a private placement basis, with a bank or other financial institution to be selected pursuant to a request for proposals undertaken by District staff (the "Lender"); and

WHEREAS, the District is authorized to borrow amounts for the purpose of refinancing the Prior Obligation under the laws of the State of California, including the provisions of Article 10, Chapter 3, Part 1, Division 2 of Title 5 of the California Government Code, commencing with Section 53570 of said Code; and

WHEREAS, pursuant to Section 265 of the Internal Revenue Code of 1986 (the "Tax Code"), issuers of not-to-exceed \$10 million of governmental purpose bonds or other obligations may designate such obligations as "bank qualified," thereby stimulating the demand for said obligations by financial institutions who would otherwise have to disallow the tax-exempt interest paid on such obligations under Section 265 of the Tax Code; and

WHEREAS, the Board of Directors desires to authorize and direct District staff to enter into services contracts with consultants to the District to assist with the refinancing of the Prior Obligation and finalize the Loan Agreement and related financing documents with the Lender.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Coastside County Water District as follows:

Section 1. Approval of Loan and Loan Agreement. The Board of Directors hereby approves the refinancing of the Prior Obligation with funds obtained under the Loan Agreement; provided, that maximum principal amount of the Loan Agreement shall not exceed \$5,500,000, the net present value savings of the refinancing transaction shall be equal to at least 3% of the outstanding principal amount of the Prior Obligation, and the final payment on the Loan Agreement shall be no later than October 1, 2032 (which is the final maturity of the Prior Obligation).

In furtherance of the foregoing, the Board hereby approves the Loan Agreement between the District and the Lender (the "Loan Agreement"), in substantially the form on file with the Board, together with any changes therein or additions thereto deemed advisable by the General Manager, in consultation with the District's special counsel, Jones Hall, A Professional Law Corporation, and placement agent, Backstrom McCarley Berry & Co., LLC. The Board of Directors hereby authorizes and directs the General Manager to execute the final form of the Loan Agreement for and in the name of the District.

Section 2. Bank Qualification. The Board of Directors hereby designates the Loan Agreement as "bank qualified" for purposes of Section 265(b)(3) of the Tax Code.

Section 3. Refunding Instructions. The Board hereby approves the Irrevocable Refunding Instructions to be given by the District to MUFJ Union Bank, N.A., as trustee of the prior bonds issued by CSCDA, in substantially the form on file with the Board, together with any changes therein or additions thereto deemed advisable by the General Manager, in consultation with the District's special counsel, Jones Hall, A Professional Law Corporation, and placement agent, Backstrom McCarley Berry & Co., LLC. The Board of Directors hereby authorizes and directs the General Manager to execute and deliver the final form of the Irrevocable Refunding Instructions for and in the name of the District.

Section 4. Professional Services. In connection with the refinancing transaction described in this Resolution, the firm of Backstrom McCarley Berry & Co., LLC has previously been designated to serve as placement agent to the District, and the firm of Jones Hall, A Professional Law Corporation, is hereby designated to serve as special counsel to the District. Compensation to said firms shall be contingent upon the successful execution and delivery of the Loan Agreement, and paid from a portion of the proceeds received by the District pursuant thereto. The Board of Directors hereby authorizes and/or ratifies the execution by the General Manager of an agreement with each of said firms, in the respective forms on file with the Board.

Section 5. Official Actions. The General Manager and the Assistant General Manager are each hereby authorized and directed to execute and deliver such additional certificates, consents and agreements as may be necessary to accomplish the refinancing of the Prior Obligation as contemplated by this Resolution, including with respect to the District's agreements with the California Infrastructure and Economic Development Bank, which will remain outstanding. Whenever in this Resolution any officer of the District is directed to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

Section 6. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

APPROVED AND ADOPTED this 12th day of June 2018 by the following votes of the Board of Directors:

Attachment A

AYES:

NOES:

ABSENT:

Robert C. Feldman, President
Board of Directors

ATTEST:

David Dickson, General Manager
Secretary of the District

LOAN AGREEMENT

This LOAN AGREEMENT (this "Loan Agreement"), dated _____, 2018, is between _____, a _____, as lender (the "Lender"), and the COASTSIDE COUNTY WATER DISTRICT, a county water district duly organized and existing under the County Water District Law of the State of California, as borrower (the "District").

BACKGROUND:

1. The District owns and operates a system for the supply, treatment and distribution of water within the service area of the District (as further defined herein, the "System").

2. In order to finance improvements to the System, the District has previously enter into an installment purchase agreement, dated as of June 1, 2006, with the California Statewide Communities Development Authority (the "Prior Obligation").

3. In order to provide funds to refinance the Prior Obligation, the District has determined to borrow the amount of \$_____ from the Lender under this Loan Agreement and to make loan repayments (the "Loan Repayments") to the Lender, to be secured by a pledge of and lien on the Net System Revenues of the System as set forth in this Loan Agreement, which pledge and lien shall be on a parity with the 2011 IBank ISA and the 2016 IBank ISA (as such terms are defined herein).

4. The District is authorized to enter into this Loan Agreement and to borrow amounts hereunder for the foregoing purposes under the laws of the State of California, including the provisions of Article 10, Chapter 3, Part 1, Division 2 of Title 5 of the California Government Code, commencing with Section 53570 of said Code.

AGREEMENT:

In consideration of the foregoing and the material covenants hereinafter contained, the District and the Lender formally covenant, agree and bind themselves as follows:

ARTICLE I DEFINITIONS AND APPENDICES

SECTION 1.1. *Definitions.* All terms defined in this Section 1.1 have the meanings herein specified for all purposes of this Loan Agreement.

"Average Annual Debt Service" means, as of the date of any calculation, the sum obtained for the current and all future Fiscal Years during the Term of this Loan Agreement by totaling the aggregate amount of (i) the Loan Repayments coming due in such Fiscal Years, and (ii) the principal and interest coming due and payable in such Fiscal Years on all existing and proposed Parity Debt, including in each case the principal amounts coming due and payable by operation of mandatory sinking fund redemption, and dividing such sum by the total number of Fiscal Years from and including the current Fiscal Year through the Term of this Loan Agreement. There shall be excluded from such calculation any principal of and

interest on any obligations which have been defeased or discharged, or for the payment of which a security deposit has been posted.

“Closing Date” means the date of execution and delivery of this Loan Agreement by the District and the Lender, being _____, 2018.

“District” means the Coastside County Water District, a county water district formed under the County Water District Law of the State of California (constituting Division 12 of the California Water Code, commencing with Section 30000).

“Enterprise Fund” means the water enterprise fund established by the District and in which all System Revenues are deposited and maintained by the District pursuant to the 2011 IBank ISA and/or the 2016 IBank ISA, and in which the Lender has a certain security interest pursuant to the terms of this Agreement. The District’s Enterprise Fund is composed of the funds received from the water production, storage, treatment, transmission, distribution and delivery services provided to the District’s customers.

“Event of Default” means any of the events of default as defined in Section 5.1.

“Federal Securities” means any direct general non-callable obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), or obligations the timely payment of principal of and interest on which are directly guaranteed by the United States of America.

“Fiscal Consultant” means any consultant or firm of such consultants appointed by the District and who, or each of whom: (a) is judged by the District to have experience in matters relating to the financing of water system enterprises; (b) is in fact independent and not under domination of the District; (c) does not have any substantial interest, direct or indirect, with the District other than as purchaser of any debt obligations of the District; and (d) is not connected with the District as an officer or employee of the District, but who may be regularly retained to make reports to the District.

“Fiscal Year” means each twelve-month period during the Term of this Loan Agreement commencing on July 1 in any calendar year and ending on June 30 in the next succeeding calendar year, or any other twelve-month period selected by the District as its fiscal year period.

“IBank” means the California Infrastructure and Economic Development Bank, and its successors or assigns.

“Lender” means _____, a _____, or its successors or assigns.

“Loan” means the loan made by the Lender to the District in the aggregate principal amount of \$_____ under Section 3.1.

“Loan Agreement” means this Loan Agreement dated as of _____, 2018, between the Lender and the District, as may be amended in accordance with the terms hereof.

“Loan Repayment Date” means October 1, 2018, and each succeeding April 1 and October 1 until repayment of the Loan in full.

“Loan Repayments” means all payments required to be paid by the District under Section 3.4, including any prepayment thereof under Section 6.1.

“Net System Revenues” means, for any Fiscal Year, all System Revenues received by the District for such Fiscal Year, less the Operations and Maintenance Costs for such Fiscal Year.

“Operations and Maintenance Costs” means the reasonable and necessary costs paid or incurred by the District for maintaining and operating the System, determined in accordance with generally accepted accounting principles, consistently applied, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all administrative costs of the District that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any), the cost of permits and licenses to operate the System and insurance premiums, and including all other reasonable and necessary costs of the District or charges required to be paid by it to comply with the terms hereof or of any Parity Debt Instruments, but excluding, in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles.

“Parity Debt” means (a) the District’s obligations under the 2011 IBank ISA, (b) the District’s obligations under the 2016 IBank ISA and (c) any bonds, notes or other obligations of the District payable from and secured by a pledge of and lien of Net System Revenues on a parity with the Loan Repayments, which are issued or incurred by the District in accordance with Section 4.7.

“Parity Debt Instruments” means (a) the 2011 IBank ISA, (b) the 2016 IBank ISA and (c) any other documents authorizing any Parity Debt hereafter issued or incurred by the District in accordance with Section 4.7.

“Prior Obligation” means the Installment Purchase Agreement, dated June 1, 2006, between the District and the California Statewide Communities Development Authority.

“Prior Trustee” means MUFJ Union Bank, N.A., as trustee for the \$19,715,000 original principal amount of California Statewide Communities Development Authority Water Revenue Bonds, Series 2006B, a portion of which will be refunded in connection with the optional prepayment of the Prior Obligation.

“System” means the entire water production, storage, treatment, transmission, distribution, and delivery system owned or operated by the District, including but not limited to all facilities, properties, works and improvements at any time owned, operated or determined to be part of the System by the District for the production, storage, treatment, transmission, distribution, and delivery of water within the service area of the District, together with all necessary lands, rights, entitlements and other property useful in connection therewith, together with all extensions thereof and improvements or additions thereto hereafter acquired, constructed or installed by the District.

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

“Tax Code” means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published thereunder.

“Term of this Loan Agreement” or “Term” means the time during which this Loan Agreement is in effect, as provided in Section 3.3.

“2011 IBank ISA” means the Enterprise Fund Installment Sale Agreement, by and between the District and IBank, dated as of October 10, 2011, Agreement No. CIEDB-11-099, as amended.

“2016 IBank ISA” means the Installment Sale Agreement, dated as of May 1, 2016, by and between the District and IBank, Agreement No. ISRF 16-111.

SECTION 1.2. *Appendix A.* The following Appendix is attached to, and by reference made a part of, this Loan Agreement:

APPENDIX A: The schedule of Loan Repayments to be paid by the District during the Term.

ARTICLE II REPRESENTATIONS, WARRANTIES AND COVENANTS

The District represents, warrants and covenants to the Lender as follows:

- (a) Due Organization and Existence. The District is a county water district, duly organized and existing under the County Water District Law (being Section 30000 et seq. of the Water Code of the State of California).
- (b) Authorization. The District is authorized under the laws of the State of California to enter into this Loan Agreement, to enter into the transactions contemplated hereby and to carry out its obligations hereunder, and the Board of Directors of the District has duly adopted its resolution authorizing the execution and delivery of this Loan Agreement.

- (c) No Violations. Neither the execution and delivery of this Loan Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrances whatsoever upon any of the property or assets of the District, other than as set forth herein.
- (d) Prior Indebtedness. The District has not issued or incurred any obligations which are currently outstanding having any priority in payment out of the System Revenues or Net System Revenues over the payment of the Loan Repayments. The 2011 IBank ISA and the 2016 IBank ISA are secured by a pledge of Net System Revenues on a parity basis with the pledge in favor of the Lender under this Loan Agreement.
- (e) Financial Condition. The financial statements of the District for the year ended June 30, 2017, supplied to the Lender (i) were prepared in accordance with generally accepted accounting principles, consistently applied, and (ii) fairly present the District's financial condition as of the date of the statements. Other than as described in such financial statements or otherwise disclosed to the Lender, there has been no material adverse change in the District's financial condition subsequent to June 30, 2017.
- (f) No Financial Advisory or Fiduciary Relationship. The District represents, warrants and covenants that: (i) the transaction contemplated herein is an arm's length commercial transaction among the District and the Lender and its affiliates, (ii) in connection with such transaction, the Lender and its affiliates are acting solely as a principal and not as an advisor including, without limitation, a "Municipal Advisor" as such term is defined in Section 15B of the Securities and Exchange Act of 1934, as amended, and the related final rules (the "Municipal Advisor Rules"), agent or a fiduciary of the District, (iii) the Lender and its affiliates are relying on the bank exemption in the Municipal Advisor Rules, (iv) the Lender and its affiliates have not provided any advice or assumed any advisory or fiduciary responsibility in favor of the District with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (whether or not the Lender, or any affiliate of the Lender, has provided other services or advised, or is currently providing other services or advising the District on other matters), (v) the Lender and its affiliates have financial and other interests that differ from those of the District, and (vi) the District has consulted with their own financial, legal, accounting, tax and other advisors, as applicable, to the extent it deemed appropriate.

ARTICLE III TERMS OF THE LOAN

SECTION 3.1. *Obligation to Make Loan; Amount of Loan.* The Lender hereby agrees to lend to the District, and the District hereby agrees to borrow from the Lender, the Loan in the amount of \$_____ under the terms and provisions set forth in this Loan Agreement.

SECTION 3.2. *Application of Loan Proceeds.*

(a) Transfers to Prior Trustee and Costs of Issuance. The Lender hereby agrees on the Closing Date to wire:

(i) \$_____ to the Prior Trustee, for the defeasance and optional prepayment of the Prior Obligation in accordance with the terms thereof; and

(ii) \$_____, constituting the remainder of the proceeds of the Loan, to the payees set forth in a written certificate signed by an authorized officer of the District and delivered to the Lender, as costs of issuance of the Loan Agreement.

The fees and disbursements of counsel to the District, the fees and disbursements of the placement agent, fees of the California Debt and Investment Advisory Commission ("CDIAC"), fees of Lender's counsel, and other miscellaneous expenses of the District incurred in connection with this Loan Agreement (if any) shall all be the obligation of the District. The Lender shall have no responsibility for any expenses incurred by the District associated with this Loan Agreement, including, but not limited to, the expenses identified above as the obligation of the District.

SECTION 3.3. *Term.* The Term of this Loan Agreement commences on the Closing Date, and ends on the date on which the Loan is paid in full or provision for such payment is made as provided herein.

SECTION 3.4. *Loan Repayments.*

(a) Obligation to Pay. The District hereby agrees to repay the Loan to the Lender in the aggregate principal amount of \$_____, together with interest on the unpaid principal balance thereof.

(b) Payments. Interest on the unpaid principal balance of the Loan shall be calculated at a rate of interest of _____% on the basis of a 360-day year of twelve 30-day months, and the Loan Repayments shall be payable in semi-annual Loan Repayments on Loan Repayment Dates in the amounts set forth on Appendix A.

(c) Optional Prepayment. Without limiting the provisions of Section 6.1, the Loan Repayments shall be subject to optional prepayment by the District on any date from and after _____ 20_, upon 30 days' prior written notice to the Lender, at a prepayment price equal to the amount of principal to be prepaid, without premium. In the event of an optional

prepayment by the District, the Lender shall supply the District with an updated Appendix A (Schedule of Loan Repayments).

SECTION 3.5. *Nature of District's Obligations.*

(a) Special Obligation. The District's obligation to pay the Loan Repayments is a special obligation of the District limited solely to the Net System Revenues. Under no circumstances is the District required to advance moneys derived from any source of income other than the Net System Revenues for the payment of the Loan Repayments, and no other funds or property of the District are liable for the payment of the Loan Repayments. Notwithstanding the foregoing provisions of this Section, however, nothing herein prohibits the District voluntarily from making any payment hereunder from any source of available funds of the District.

(b) Obligations Absolute. The obligation of the District to pay the Loan Repayments from the Net System Revenues and the obligation of the District to perform and observe the other agreements contained herein, are absolute and unconditional and are not subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach of the District or the Lender of any obligation to the District or otherwise with respect to the System, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the District by the Lender. Until such time as all of the Loan Repayments have been fully paid or prepaid, the District:

- (i) will not suspend or discontinue payment of any Loan Repayments,
- (ii) will perform and observe all other agreements contained in this Loan Agreement, and
- (iii) will not terminate this Loan Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the System, sale of the System, the taking by eminent domain of title to or temporary use of any component of the System, commercial frustration of purpose, any change in the tax or other laws of the United States of America or the State of California or any political subdivision of either thereof or any failure of the Lender to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Loan Agreement.

SECTION 3.6. *Pledge and Application of Net System Revenues.*

(a) Pledge. All of the Net System Revenues are hereby irrevocably pledged to the punctual payment of the Loan Repayments, on a parity with the pledge and lien which secures all Parity Debt. The Net System Revenues may not be used for any other purpose so long as the Loan Repayments remain unpaid; except that out of the Net System Revenues there may be apportioned such sums, for such purposes, as are expressly permitted by this Section 3.6.

Pursuant to Section 5451 of the Government Code of the State of California, the pledge of the Net System Revenues by the District for the repayment of the principal and interest components of the Loan Repayments constitutes a first lien and security interest which immediately attaches to the Net System Revenues, and is effective and binding against the District and its successors and creditors and all others asserting rights therein irrespective of whether those parties have notice of the pledge, irrespective of whether such amounts are or may be deemed to be a fixture and without the need for physical delivery, recordation, filing or further act.

(b) Deposit of System Revenues; Transfers to Make Loan Repayments. The District has heretofore established a special fund designated the "Enterprise Fund," which the District agrees to continue to maintain so long as any Loan Repayments remain unpaid. The District shall continue to deposit all System Revenues in the Enterprise Fund promptly upon the receipt thereof. All System Revenues will be held by the District in the Enterprise Fund in trust for the benefit of the Lender and for the benefit of the holders of Parity Debt, subject to the prior application thereof for Operations and Maintenance Costs. The District shall apply amounts in the Enterprise Fund as set forth in this Loan Agreement, and in the Parity Debt Instruments. The District shall apply amounts on deposit in the Enterprise Fund to pay when due the following amounts in the following order of priority:

- (i) all Operations and Maintenance Costs;
- (ii) the Loan Repayments, and all payments of principal of and interest on any Parity Debt;
- (iii) any other payments required to comply with the provisions of this Loan Agreement, and the Parity Debt Instruments; and
- (iv) any other purposes authorized under subsection (d) of this Section.

(c) No Preference or Priority. Payment of the Loan Repayments and the principal of and interest on any Parity Debt shall be made without preference or priority. If the amount of Net System Revenues on deposit in the Enterprise Fund is any time insufficient to enable the District to pay when due the Loan Repayments and the principal of and/or interest on any Parity Debt, such payments shall be made by the District on a pro rata basis.

(d) Other Uses Permitted. The District shall manage, conserve and apply the System Revenues in such a manner that all deposits required to be made under the preceding provisions of this Section 3.6 will be made at the times and in the amounts so required. Subject to the foregoing sentence and Section 4.7, so long as no Event of Default has occurred and is continuing hereunder, the District may at any time and from time to time use and apply the System Revenues for (i) the acquisition and construction of improvements to the System; (ii) the prepayment of any Parity Debt to the extent permitted by the applicable Parity Debt Instruments, or (iii) any other lawful purpose of the District.

ARTICLE IV COVENANTS OF THE DISTRICT

SECTION 4.1. *Release and Indemnification Covenants.* The District shall indemnify and hold the Lender and its officers, agents, successors and assigns harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of the following:

- (a) the use, maintenance, condition or management of, or from any work or thing done on or about the System by the District,
- (b) any breach or default on the part of the District in the performance of any of its obligations under this Loan Agreement,
- (c) any intentional misconduct or negligence of the District or of any of its agents, contractors, servants, employees or licensees with respect to the System, and
- (d) any intentional misconduct or negligence of any lessee of the District with respect to the System.

No indemnification is made under this Section 4.1 or elsewhere in this Loan Agreement for willful misconduct, gross negligence, or breach of duty under this Loan Agreement by the Lender, its officers, agents, employees, successors or assigns.

SECTION 4.2. *Sale or Eminent Domain of System.* Except as provided herein, the District covenants that the System will not be encumbered, sold, leased, pledged, any charge placed thereon, or otherwise disposed of, as a whole or substantially as a whole if such encumbrance, sale, lease, pledge, charge or other disposition would materially impair the ability of the District to pay the Loan Repayments or would materially adversely affect its ability to comply with the terms of this Loan Agreement and the Parity Debt Instruments. The District shall not enter into any agreement which impairs the operation of the System or any part of it necessary to secure adequate Net System Revenues to pay the Loan Repayments or any Parity Debt, or which otherwise would impair the rights of the Lender with respect to the Net System Revenues. If any substantial part of the System is sold, the payment therefor must either (a) be used for the acquisition or construction of improvements and extensions or replacement facilities or (b) be applied to prepay or fund a security deposit for the Loan Repayments and any Parity Debt.

Any amounts received as awards as a result of the taking of all or any part of the System by the lawful exercise of eminent domain, if and to the extent that such right can be exercised against such property of the District, shall either (a) be used for the acquisition or construction of improvements and extension of the System, or (b) be applied to prepay or fund a security deposit for the Loan Repayments and any Parity Debt.

SECTION 4.3. *Insurance.* The District shall at all times maintain with responsible insurers all such insurance on the System as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to the System. If any useful part of the System is damaged or destroyed, such part shall be restored to usable condition. All amounts collected from insurance against accident to or

destruction of any portion of the System shall be used to repair or rebuild such damaged or destroyed portion of the System, and to the extent not so applied, shall be applied to pay the Loan Repayments or any Parity Debt in the manner provided in this Loan Agreement and the Parity Debt Instruments. The District shall also maintain, with responsible insurers, worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the District and the Lender. Any insurance required to be maintained hereunder may be maintained by the District in the form of self-insurance or in the form of participation by the District in a program of pooled insurance.

SECTION 4.4. *Records and Accounts; Audited Financials; Budget.* The District shall keep proper books of records and accounts of the System, separate from all other records and accounts, in which complete and correct entries are made of all transactions relating to the System. Said books shall, upon prior request, be subject to the reasonable inspection of the Lender. The District shall cause the books and accounts of the System to be audited annually by an independent certified public accountant or firm of certified public accountants, not more than 270 days after the close of each Fiscal Year, and shall furnish a copy of such report to the Lender; provided, that the audit of the accounts of the System may be included as part of a general District-wide audit. In addition, the District shall provide to the Lender (a) a copy of the District's annual budget, as adopted or amended, within 30 days of such adoption or amendment and (b) in a reasonably timely manner, such other financial or operational information of the District as requested by the Lender from time-to-time (for example, long-term capital improvement plans).

SECTION 4.5. *Rates and Charges.* The District shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the System during each Fiscal Year which are sufficient to yield Net System Revenues which are at least equal to 120% of the Loan Repayments and the principal of and interest on all outstanding Parity Debt coming due and payable during such Fiscal Year.

SECTION 4.6. *No Priority for Additional Obligations; Compliance with Parity Debt Instruments.* The District may not issue or incur any bonds or other obligations having any priority in payment of principal or interest out of the Net System Revenues over the Loan Repayments. The District shall observe and perform all of the covenants, agreements and conditions on its part required to be observed and performed under the Parity Debt Instruments. The District shall not take or omit to take any action within its control which would, or which if not corrected with the passage of time would, constitute an event of default under any Parity Debt Instruments.

SECTION 4.7. *Issuance of Additional Parity Debt.* The District may not issue or incur any bonds or other obligations having any priority in payment of principal or interest out of the Net System Revenues over the Loan Repayments. In addition, except for obligations incurred to post a security deposit for the Loan Repayments, the District may not issue or incur any Parity Debt unless:

- (a) The District is not then in default under the terms of this Loan Agreement.
- (b) The amount of Net System Revenues as shown by the books of the District for the latest Fiscal Year for which audited financial statements are available, or as shown by the books of the District for

any more recent 12-month period selected by the District, are at least equal to 120% of Average Annual Debt Service. For purposes of determining the amount of Net System Revenues under this subsection (b), such amount may be increased by any or all of the following amounts as determined by the District:

- (i) an allowance for Net System Revenues from any additions or improvements to or extensions of the System to be made by the District during the 36 month period following the issuance of such Parity Debt, in an amount equal to 90% of the estimated additional average annual Net System Revenues to be derived from all properties which are improved with a structure the construction of which has been completed prior to the date of issuance of such Parity Debt and to which service will be provided by such additions, improvements and extensions, all as shown by the certificate or opinion of a Fiscal Consultant; and
- (ii) an allowance for Net System Revenues arising from any increase in the charges made for service from the System which has become effective prior to the incurring of such Parity Debt but which was not in effect during the Fiscal Year or other 12-month period described above, in an amount equal to the total amount by which the Net System Revenues would have been increased if such increase in charges had been in effect during the whole of such Fiscal Year or other 12-month period, all as shown by the certificate or opinion of a Fiscal Consultant.
- (c) All conditions to the issuance of such Parity Debt as set forth in the Parity Debt Instruments shall be met, and the District shall file with the Lender a written certificate to such effect, signed on behalf of the District by an authorized officer of the District.

SECTION 4.8. *Assignment by the Lender.* The Lender has the right to assign its interests herein, but no such assignment will be effective as against the District unless and until the Lender provides the District written notice thereof. The District shall pay all Loan Repayments hereunder under the written direction of the Lender named in the most recent assignment or notice of assignment provided to the District. During the Term of this Loan Agreement, the District shall keep a complete and accurate record of all such notices of assignment.

SECTION 4.9. *Assignment by the District.* Neither the Loan nor this Loan Agreement may be assigned by the District, other than to a public agency which succeeds to the interests of the District in and to the System and which (by operation of law, by contract or otherwise) becomes legally bound to all of the terms and provisions hereof.

SECTION 4.10. *Amendment of this Loan Agreement.* This Loan Agreement may be amended pursuant to a written amendment by and between the District and the Lender.

SECTION 4.11. *Tax Covenants.*

(a) Generally. The District shall not take any action or permit to be taken any action within its control which would cause or which, with the passage of time if not cured would cause, the interest components of the Loan Repayments to become includable in gross income for federal income tax purposes.

(b) Private Activity Bond Limitation. The District shall assure that the proceeds of the Loan are not so used as to cause the Loan to satisfy the private business tests of section 141(b) of the Tax Code or the private loan financing test of section 141(c) of the Tax Code.

(c) Federal Guarantee Prohibition. The District may not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Loan Repayments to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

(d) No Arbitrage. The District may not take, or permit or suffer to be taken, any action with respect to the proceeds of the Loan Repayments which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date would have caused the Loan Repayments to be “arbitrage bonds” within the meaning of Section 148(a) of the Tax Code.

(e) Small Issuer Exemption from Bank Nondeductibility Restriction. The District hereby designates this Loan Agreement for purposes of paragraph (3) of Section 265(b) of the Tax Code and represents that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Tax Code) from gross income for federal income tax purposes (excluding (i) private activity bonds, as defined in Section 141 of the Tax Code, except qualified 501(c)(3) bonds as defined in Section 145 of the Tax Code and (ii) current refunding obligations to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation), including this Loan Agreement, has been or will be issued by the District, including all subordinate entities of the District, during the calendar year 2018.

(f) Arbitrage Rebate. The District shall take any and all actions necessary to assure compliance with section 148(f) of the Tax Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Loan.

(g) Acquisition, Disposition and Valuation of Investments. Except as otherwise provided in the following sentence, the District covenants that all investments of amounts deposited in any fund or account created by or pursuant to this Loan Agreement, or otherwise containing gross proceeds of the Loan (within the meaning of section 148 of the Tax Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Loan Agreement or the Tax Code) at Fair Market Value. Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code shall be valued at their present value (within the meaning of section 148 of the Tax Code).

For purposes of this subsection (g), the term “Fair Market Value” means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide,

arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Tax Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, (iii) the investment is a United States Treasury Security – State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the District and related parties do not own more than 10% beneficial interest therein if the return paid by the fund is without regard to the source of the investment.

ARTICLE V EVENTS OF DEFAULT AND REMEDIES

SECTION 5.1. *Events of Default Defined.* The following are Events of Default under this Loan Agreement:

- (a) Failure by the District to pay any Loan Repayment or other payment required hereunder within 5 days after the date on which such Loan Repayment or other payment becomes due, and the continuation of such failure for a period of 5 days after written notice specifying such failure and requesting that it be remedied has been given to the District by the Lender.
- (b) Failure by the District to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in the preceding clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the District by the Lender.
- (c) The filing by the District of a voluntary petition in bankruptcy, or failure by the District promptly to lift any execution, garnishment or attachment, or adjudication of the District as a bankrupt, or assignment by the District for the benefit of creditors, or the entry by the District into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the District in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.
- (d) The occurrence of any event of default under and as defined in any of the Parity Debt Instruments.

SECTION 5.2. *Remedies on Default.* Upon the occurrence and during the continuation of an Event of Default, the Lender may, at its option and without any further demand or notice:

- (a) declare all principal components of the unpaid Loan Repayments, together with accrued interest thereon, to be immediately due and payable, whereupon the same will immediately become due and payable; and
- (b) take whatever action at law or in equity may appear necessary or desirable to collect the Loan Repayments then due or thereafter to become due during the Term of this Loan Agreement, or enforce performance and observance of any obligation, agreement or covenant of the District under this Loan Agreement.

The provisions of the preceding clause (a) are subject to the condition that if, at any time after the principal components of the unpaid Loan Repayments have been so declared due and payable under the preceding clause (a), and before any judgment or decree for the payment of the moneys due have been obtained or entered, the District deposits with the Lender a sum sufficient to pay all principal components of the Loan Repayments coming due prior to such declaration and all matured interest components (if any) of the Loan Repayments, with interest on such overdue principal and interest components calculated at the rate set forth in the applicable provisions of Section 3.4, and a sum sufficient to pay all reasonable costs and expenses incurred by the Lender in the exercise of its rights and remedies hereunder, and any and all other defaults known to the Lender (other than in the payment of the principal and interest components of the Loan Repayments due and payable solely by reason of such declaration) have been made good, then, and in every such case, the Lender shall, by written notice to the District, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

SECTION 5.3. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Lender is exclusive, and every such remedy is cumulative and in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default impairs any such right or power or operates as a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lender to exercise any remedy reserved to it in this Article V it is not necessary to give any notice, other than such notice as may be required in this Article V or by law.

SECTION 5.4. *Agreement to Pay Attorneys' Fees and Expenses.* If either party to this Loan Agreement defaults under any of the provisions hereof and the nondefaulting party employs attorneys (including in-house counsel) or incurs other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party will on demand therefor pay to the nondefaulting party the reasonable fees of such attorneys (including those of in-house counsel) and such other expenses so incurred by the nondefaulting party.

SECTION 5.5. *No Additional Waiver Implied by One Waiver.* If any agreement contained in this Loan Agreement is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE VI
SECURITY DEPOSIT;
DISCHARGE OF DISTRICT'S OBLIGATIONS

SECTION 6.1. *Security Deposit; Discharge of District's Obligations.* Notwithstanding any other provision of this Loan Agreement, the District may (but is not required to) on any date secure the payment of Loan Repayments in whole or in part, by irrevocably depositing with a trustee, escrow agent or other fiduciary an amount of cash which, together with other available amounts, is invested in whole or in part in Federal Securities in such amount as will, in the opinion of an independent certified public accountant, together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay all such Loan Repayments when due, as the District instructs at the time of the deposit.

In the event of a security deposit under this Section 6.1 for the payment in full of all remaining Loan Repayments, (i) the District hereby grants a first priority security interest in and lien on the security deposit and all proceeds thereof in favor of the Lender, and (ii) the pledge of Net System Revenues and all other security provided by this Loan Agreement for said obligations will cease and terminate, excepting only the obligation of the District to make, or cause to be made, all of Loan Repayments from such security deposit.

ARTICLE VII
MISCELLANEOUS

SECTION 7.1. *Notices; Address for Loan Repayments.* Any notice, request, complaint, demand or other communication under this Loan Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopier or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by telecopier or other form of telecommunication, (b) 48 hours after deposit in the United States of America first class mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Lender or the District may, by written notice to the other, from time to time modify the address or number to which communications are to be given hereunder.

If to the District:

Coastside County Water District
766 Main Street
Half Moon Bay, California 94019
Attention: General Manager

If to the Lender:

Attention: _____

SECTION 7.2. *Binding Effect.* This Loan Agreement inures to the benefit of and is binding upon the Lender and the District and their respective successors and assigns.

SECTION 7.3. *Severability.* If any provision of this Loan Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

SECTION 7.4. *Further Assurances and Corrective Instruments.* The Lender and the District shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Loan Agreement.

SECTION 7.5. *Execution in Counterparts.* This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 7.6. *Applicable Law.* This Loan Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 7.7. *Captions.* The captions or headings in this Loan Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Loan Agreement.

IN WITNESS WHEREOF, the Lender has caused this Loan Agreement to be executed in its name by its duly authorized officer and the District has caused this Loan Agreement to be executed in its name by its duly authorized officer, as of the date first above written.

_____, *as lender*

By: _____
Authorized Officer

COASTSIDE COUNTY WATER DISTRICT,
as borrower

By: _____
David Dickson
General Manager

Attest:

By: _____
Secretary

**Appendix A
Schedule of Loan Repayments**

<u>Loan Repayment Date</u>	<u>Principal Payable</u>	<u>Interest Payable</u>	<u>Total Loan Repayment</u>
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Total

IRREVOCABLE REFUNDING INSTRUCTIONS

Relating to:

**CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY
Water Revenue Bonds Series 2006B**

and

**COASTSIDE COUNTY WATER DISTRICT
CSCDA Installment Purchase Agreement, dated as of June 1, 2006**

These IRREVOCABLE REFUNDING INSTRUCTIONS (these "Instructions"), dated _____, 2018, are given by the COASTSIDE COUNTY WATER DISTRICT, a county water district duly organized and existing under the laws of the State of California (the "District") and the CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY, a joint exercise of powers authority organized and existing under the Constitution and laws of the State of California (the "Authority"), to MUFG UNION BANK, N.A., a national banking association organized and existing under the laws of the United States of America, as Prior Trustee (defined below).

BACKGROUND:

WHEREAS, the District previously entered into an Installment Purchase Agreement, dated as of June 1, 2006 with the Authority, pursuant to which the District agreed to make certain installment payments in the aggregate principal amount of \$_____ (the "**Prior Installment Payments**") for the purpose of financing certain improvements to the District's water system, and in connection therewith the Authority issued its Water Revenue Bonds, Series 2006B (the "**Prior Bonds**"), pursuant to an Indenture, dated as of June 1, 2006 (the "**Prior Indenture**"), between the Authority and Union Bank of California, N.A. (now known as MUFG Union Bank, N.A.), as trustee (the "**Prior Trustee**"); and

WHEREAS, the Prior Installment Payments and Prior Bonds may be prepaid on any date at a prepayment price equal to 100% of the principal amount of thereof to be prepaid, plus accrued interest to the date of prepayment, without premium; and

WHEREAS, in order to take advantage of prevailing bond market conditions, the District desires to refinance and prepay, in full, the Prior Installment Payments, which will, in turn, result in the partial redemption of a portion of the Prior Bonds; and

WHEREAS, in order to refinance the Prior Installment Payments and other obligations of the District, the District is entering into a Loan Agreement, dated as of _____ 1, 2018 (the "**Refunding Loan Agreement**"); and

WHEREAS, the District and the Authority desire to provide these Instructions to the Prior Trustee for the purpose of establishing an irrevocable Refunding Fund to be funded, invested, held and administered for the purpose of prepaying the Prior Installment Payments and a corresponding amount of the Prior Bonds.

NOW, THEREFORE, the District and the Authority hereby irrevocably instruct the Prior Trustee as follows:

SECTION 1. *Establishment of Refunding Fund.* The Prior Trustee is directed to establish a separate fund under the Prior Indenture, entitled the "Refunding Fund" (the "**Refunding Fund**"), to be held by the Prior Trustee for the purposes set forth in these Instructions. All amounts in the Refunding Fund are hereby irrevocably pledged as a special fund for the payment of the Prior Installment Payments and a corresponding amount of the Prior Bonds.

SECTION 2. *Deposit and Investment of Amounts in Refunding Fund.*

(a) On _____, 2018 (the "**Closing Date**"), the District and/or the Authority will cause to be transferred to the Prior Trustee for deposit into the Refunding Fund the amount of \$_____ in immediately available funds, comprised of the following:

(i) \$_____ received from the District derived from the proceeds of the Refunding Loan Agreement; and

(ii) \$_____ from the other funds and accounts held by the Prior Trustee under the Prior Indenture related to the Prior Installment Payments.

(b) The Prior Trustee shall hold such amount in cash, uninvested.

SECTION 3. *Application of Amounts in Refunding Fund.* The total amount of cash deposited in the Refunding Fund pursuant to Section 2 shall be applied by the Prior Trustee for the sole purpose of prepaying the Prior Installment Payments and a corresponding amount of the Prior Bonds, at the times and in the amounts set forth in the schedules shown in Exhibit A attached hereto and by this reference incorporated herein.

If at any time the Prior Trustee shall receive actual knowledge that the amounts in the Refunding Fund will not be sufficient to make any payment required by this Section 3, the Prior Trustee shall notify the Authority and the District of such fact and the District shall immediately cure such deficiency from any source of legally available funds. The Prior Trustee has no liability for any such insufficiency.

Following the payment and prepayment of the Prior Installment Payments and a corresponding amount of the Prior Bonds as set forth above in this Section 3, the Prior Trustee shall transfer any amounts remaining on deposit in the Refunding Fund to the District, to be applied to pay interest next coming due and payable under the Refunding Loan Agreement.

SECTION 4. *Irrevocable Election to Prepay Prior Installment Payments and a Corresponding Amount of the Prior Bonds.* The District has irrevocably elected to pay and prepay all of the Prior Installment Payments, which will result in a partial redemption of a corresponding amount of the Prior Bonds. The District has previously given notice of the prepayment of the Prior Installment Payments to the Prior Trustee, which notice was acknowledged by the Authority.

The Authority has previously directed the Prior Trustee to notify the holders of the Prior Bonds that the Prior Bonds will be partially redeemed, in the amount set forth on Exhibit A, on _____, 2018, which notice was sent on or before _____, 2018.

SECTION 5. *Amendments.* These Instructions shall be irrevocable by the District and the Authority; provided, that they may be amended or supplemented by the District and the Authority, but only if the District shall file with the Prior Trustee (a) a certification of an independent accountant or independent financial adviser engaged by the District stating that such amendment or supplement will not affect the sufficiency of funds held hereunder to make the payments required by Section 3 and (b) the written consent of Assured Guaranty Ltd. (as successor to Financial Security Assurance Inc.), as insurer of the Prior Bonds.

SECTION 6. *Application of Certain Terms of the Prior Indenture.* All of the terms of the Prior Indenture relating to the payment of principal of and interest and repayment premium, if any, on the Prior Bonds and the redemption thereof, and the protections, immunities and limitations from liability afforded the Prior Trustee, are incorporated in these Instructions for the benefit of the Prior Trustee as if set forth in full herein.

SECTION 7. *Governing Law.* These Instructions shall be construed in accordance with and governed by the laws of the State of California.

COASTSIDE COUNTY WATER DISTRICT

By: _____
David Dickson
General Manager

**CALIFORNIA STATEWIDE
COMMUNITIES DEVELOPMENT
AUTHORITY**

By: _____
Authorized Officer

MUFG UNION BANK, N.A.,
as Prior Trustee

By: _____
Authorized Officer

EXHIBIT A

Identification of Prior Installment Payments to be Prepaid

Payments to be Prepaid (October 1)	Amount Prepaid	Prepayment Date	Prepayment Price (% of Par Amount Prepaid)
2018			100%
2019 - 2021			100
2022 - 2026			100
2027 - 2032			100
<hr/>			
TOTAL			

**Identification of Prior Bonds to be Partially Redeemed
Via Optional Redemption**

Bond Maturity (October 1)	Principal Amount Redeemed	Redemption Date	Redemption Price (% of Par Amount Redeemed)
2018			100%
2021			100
2026			100
2032			100
<hr/>			
TOTAL			