

## Memorandum of Understanding

THIS MEMORANDUM OF UNDERSTANDING (MOU) made and entered this \_\_\_\_ day of \_\_\_\_\_ 2011, by and between the

Casmalia Community Services District, hereinafter referred to as "Casmalia";  
and the  
Santa Barbara County Water Agency, hereinafter referred to as "County";

### Witnesseth:

Whereas, County is administering a Proposition 50 Grant for the State of California ("State") for approved projects located in County's jurisdiction; and

Whereas, on October 17, 2009 an agreement was entered into between the County and Casmalia, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference (including all subsequent amendments); and

Whereas, Casmalia has applied for and expects to receive funding for one of the approved projects ("Project"); and

Whereas, State requires oversight by County of each expenditure made by Casmalia for said Project;

It is therefore agreed as follows:

1. State monies due for Casmalia's Project and received on Casmalia's behalf by County pursuant to Exhibit "A" shall be paid by County directly to the contractor, design/engineering firm or other person or entity to whom payment is due ("Payees").
2. State monies received by County pursuant to Exhibit "A" shall not be paid directly to Casmalia.
3. County and Casmalia agree that the direct payment of state monies to Payees by County is the most appropriate means of meeting the oversight requirements of State with respect to Casmalia's project, and Casmalia expressly agrees to such direct payment.
4. Nothing in this MOU shall modify the rights and obligations of the parties under Exhibit "A."
5. Nothing in this MOU shall affect or modify Casmalia's duty to pay monies due Payees as required by law.

6. Casmalia shall remain solely liable for all sums due Payees in the event expected grant funds are not received from State for any reason. County shall have no obligation to pay Payees from its own funds or other funds under its control, other than funds paid to it by State on Casmalia's behalf for Casmalia's approved Project.

7. The County shall indemnify Casmalia CSD of any liability arising from the performance of this Agreement, in which the County's sole obligation is the distribution of grant funds when received from the State, but only in proportion to and to the extent such liability is caused by the negligent acts of the County.

8. The County agrees to review and approve construction invoices submitted prior to dispersing funds on Casmalia's behalf. Upon the County's receipt of State reimbursement funds, County shall disperse approved payments to the contractor on behalf of Casmalia, pursuant to the provisions of this MOU and the construction contract between Casmalia and the contractor.

9. Casmalia and County agree to execute any documents necessary to effectuate the provisions of this MOU and provide payment to Payees.

10. Casmalia agrees to execute any and all contracts directly with consultants and contractors for the work and provide for direct payment from County as State reimbursement becomes available.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

SANTA BARBARA COUNTY WATER AGENCY

By: \_\_\_\_\_  
Chair, Board of Directors

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

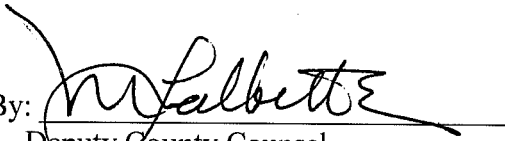
ATTEST:  
CHANDRA L. WALLAR  
CLERK OF THE BOARD

APPROVED AS TO ACCOUNTING FORM:  
ROBERT W. GEIS, CPA  
AUDITOR-CONTROLLER

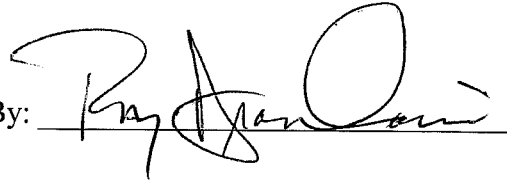
By: \_\_\_\_\_  
Deputy

By:  \_\_\_\_\_  
Deputy

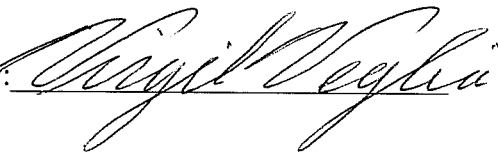
APPROVED AS TO FORM:  
DENNIS A. MARSHALL  
COUNTY COUNSEL

By:   
Deputy County Counsel

APPROVED AS TO FORM:  
RAY AROMATORIO, ARM, AIC  
RISK MANAGER

By: 

CASMALIA COMMUNITY SERVICES DISTRICT  
Virgil Veglia  
Chair, Board of Directors

By: 

**PROPOSITION 50  
INTEGRATED REGIONAL WATER MANAGEMENT  
SUBGRANT AGREEMENT**

**Between the Santa Barbara County Water Agency and  
Casmalia Community Services District**

This Proposition 50 Integrated Regional Water Management Subgrant Agreement (“AGREEMENT”) is made this 17 day of October, 2008, between the Santa Barbara County Water Agency (“AGENCY”) and the Casmalia Community Services District (“SUBGRANTEE”) (collectively “THE PARTIES”), regarding the approved grant funded project component known as Casmalia Community Services District Water System Retrofit.

**RECITALS**

1. The County of Santa Barbara and 28 other public agencies have approved an Integrated Regional Water Management Plan (“IRWMP”) for the Santa Barbara County area and submitted a grant application to the State Water Resources Control Board (SWRCB) for a Proposition 50 IRWMP Implementation Grant for 14 component water enhancement projects throughout Santa Barbara County, as specified in the IRWMP, to be carried out by various public agencies in Santa Barbara County with authority and responsibility for water facilities and programs;
2. The SWRCB has approved the grant application of THE PARTIES, but requires that the grant agreement be entered into with a single eligible grant recipient, that is Santa Barbara County Water Agency;

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3. AGENCY is an eligible grant recipient, and is willing to serve as the single grantee under the grant agreement with the State Water Resources Control Board (SWRCB) and to enter into subgrant agreements with the other public agencies for state-approved project components in the IRWMP and grant application and to act with the assistance of a contractor, as the administrator of the grant;
4. SUBGRANTEE has requested that AGENCY perform the function of grantee under the grant;
5. SUBGRANTEE wishes to carry out the approved grant project component known as Casmalia Community Services Districts Water System Retrofit ("THE PROJECT COMPONENT") and consents to implement THE PROJECT COMPONENT through this AGREEMENT with AGENCY.
6. SUBGRANTEE is willing and committed to meet all SWRCB requirements under the grant agreement for THE PROJECT COMPONENTS, including providing matching funds or in-kind match activities, and will provide funding for administrative costs as may be incurred by AGENCY or its contractors.

#### AGREEMENT

IT IS MUTUALLY AGREED BY THE PARTIES THAT:

1. AGENCY shall act as grantee under the Proposition 50 Integrated Regional Water Management Grant Program and shall, as an eligible grant recipient, enter into the grant agreement with the SWRCB to implement the approved project components in the IRWMP and to administer the grant requirements. AGENCY may contract with third parties for the administrative services called for in the grant agreement.

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2. AGENCY shall pay grant funds to SUBGRANTEE for work on THE PROJECT COMPONENT for activities completed in accordance with the terms of the grant agreement, upon receipt of grant funds for that work from the SWRCB.

3. AGENCY shall timely submit to the SWRCB invoices, reports, and assurances received from SUBGRANTEE prepared to meet the accounting, reporting and other requirements in the grant agreement for THE PROJECT COMPONENT.

4. AGENCY, assisted by the administration consultant, shall maintain files and accounts for THE PROJECT COMPONENT in accordance with grant agreement.

5. a) SUBGRANTEE shall carry out, build and/or perform THE PROJECT COMPONENT in accordance with all requirements for THE PROJECT COMPONENT set forth in the grant agreement, attached hereto as Exhibit 1 and incorporated herein by this reference. SUBGRANTEE shall fulfill all assurances, declarations, representations and commitments made by SUBGRANTEE in support of SUBGRANTEE's request for grant funds. SUBGRANTEE agrees to all requirements and limitations of the grant agreement for THE PROJECT COMPONENT.

b) SUBGRANTEE shall immediately provide notice to AGENCY in the event SUBGRANTEE wishes to substantially alter the schedule, materials, methods or deliverables related to THE PROJECT COMPONENT as set forth in the grant agreement. AGENCY shall timely forward SUBGRANTEE's request for alteration to the SWRCB for its consideration.

c) As AGENCY is acting as grantee under the grant agreement, SUBGRANTEE's questions and other communications related to the grant agreement or performance of work under the grant agreement shall be directed to the AGENCY's

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representatives for resolution with the SWRCB, which AGENCY agrees to promptly seek resolution of. Agency shall promptly relay Sub Grantee's questions and communications to the SWRCB.

6. a) SUBGRANTEE shall pay or cause to be paid and provide all required grant matching funds or in-kind matching services for THE PROJECT COMPONENT, and shall provide all necessary environmental review and obtain all required permits for THE PROJECT COMPONENT.

b) AGENCY and SUBGRANTEE agree that the initial budget for THE PROJECT COMPONENT IS:

<b>Proposition 50</b>	<b>Match</b>	<b>Total</b>
<b>\$631,700</b>	<b>\$428,511</b>	<b>\$1,060,211</b>

This budget may be adjusted in accordance with the grant agreement.

7. To the extent permitted by law, SUBGRANTEE shall fully indemnify, defend, and hold the AGENCY, its officers, employees and agents, free and harmless from any and all claims, costs, damages, investigations, arbitrations, lawsuits, and expenses, including attorney fees, judgments, awards or liabilities arising out of this AGREEMENT or SUBGRANTEE's work on THE PROJECT COMPONENT.

8. There shall be paid by SUBGRANTEE to AGENCY to fund AGENCY's ongoing administrative services as grant administrator an amount as established in the MOU between AGENCY and SUBGRANTEE. AGENCY may utilize these monies to engage a contractor to assist in the performance of administrative services. Payments shall be made in installments. The first year's payment shall be made within 60 days of

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entering into this AGREEMENT. Thereafter, SUBGRANTEE shall on or before December 1 of each fiscal year that it is carrying out THE PROJECT COMPONENT, make payments to AGENCY as set forth in the signed MOU or on such other schedule acceptable to AGENCY to fund AGENCY's services for grant administration.

SUBGRANTEE shall pay AGENCY additional amounts as billed by the AGENCY at applicable hourly rates for any additional costs of administrative services caused by delays of the SUBGRANTEE.

9. In Accordance with the "GRANTEE REPRESENTATIONS" provision of the grant agreement between the SWRCB and AGENCY, THE PARTIES agree that SUBGRANTEE shall comply with all applicable laws, policies and regulations in carrying out this AGREEMENT and THE PROJECT COMPONENT.

10. AGENCY shall use all funds it receives for THE PROJECT COMPONENT from the SWRCB under the grant agreement solely and exclusively for the purposes set out in this AGREEMENT for THE PROJECT COMPONENT; provided, however, that AGENCY shall not be responsible for any funds paid out as a result of fraud, forgery or misrepresentation.

11. AGENCY shall have no responsibility for maintenance of or insurance for THE PROJECT COMPONENT.

12. AGENCY is not acting as a surety. This AGREEMENT is not a performance, payment, completion or labor and materials bond. AGENCY does not guarantee or warrant that construction of THE PROJECT COMPONENT will proceed, be completed, or that the grant funds for THE PROJECT COMPONENT will be sufficient to meet incurred expenses. AGENCY does not guarantee or warrant the plans



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and specifications for THE PROJECT COMPONENT. AGENCY does not guarantee or warrant any estimated construction costs or budget set forth in either the grant application or grant agreement. AGENCY shall have no responsibility for any aspect of bidding and selection of contractors and subcontractors to perform any aspect of the work of THE PROJECT COMPONENT under this AGREEMENT. Instead, AGENCY is only acting as a conduit: 1) for transfer of grant funds to SUBGRANTEE for THE PROJECT COMPONENT in furtherance of the grant agreement and 2) for the transmission of invoices, reports, financial information and state disclosure assurances and other information required by the grant agreement to be transmitted from the SUBGRANTEE to the SWRCB.

13. a) AGENCY does not guarantee or warrant that it will pay any invoice submitted by SUBGRANTEE until funds for approved invoices have actually been transmitted by the SWRCB to AGENCY. AGENCY assumes no liability to any entity, including but not limited to, SUBGRANTEE, and any contractors and subcontractors on THE PROJECT COMPONENT for any delays by the SWRCB in approval or transmittal of grant funds to the AGENCY.

b) SUBGRANTEE agrees that it shall return any audit disallowance related to THE PROJECT COMPONENT, as provided in the grant agreement to the AGENCY for transmission to the SWRCB.

14. THE PARTIES agree that if SUBGRANTEE abandons carrying out THE PROJECT COMPONENT or fails to cure any breach of this AGREEMENT within 30 days of receipt of Notice of Breach from AGENCY, then AGENCY may, in its sole discretion serve written notice to SUBGRANTEE that AGENCY intends to terminate

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this AGREEMENT due to SUBGRANTEE's breach in 30 days and, if the breach is not timely and reasonably cured, terminate this AGREEMENT.

15. It is agreed by THE PARTIES that if any applicable federal or state budget act of the current year and/or any subsequent years does not appropriate sufficient funds for the grant, then this AGREEMENT shall be suspended until such time as funding is appropriated. Agreement shall terminate if the grant agreement is canceled by the SWRCB. In this event, except for those funds already received from SWRCB and approved for payment for work on THE PROJECT COMPONENT, AGENCY shall have no liability to transmit any funds for work on THE PROJECT COMPONENT to SUBGRANTEE. SUBGRANTEE agrees to indemnify and defend and hold AGENCY harmless from any claims asserted against AGENCY by any entity in the event that the applicable federal or state budget act does not appropriate sufficient fund for THE PROJECT COMPONENT.

16. AGENCY shall not be responsible for securing insurance protection against loss or damage to THE PROJECT COMPONENT or any pre-purchased materials for said PROJECT COMPONENT, including but not limited to losses due to the following: fire, earthquake, vandalism and theft. Neither is AGENCY liable for any loss or damage resulting from the failure to secure any such insurance. As a minimum, SUBGRANTEE shall provide all insurance coverages as required for THE PROJECT COMPONENT in the grant agreement.

17. Upon completion of construction or performance of THE PROJECT COMPONENT or termination of this AGREEMENT, AGENCY shall: 1) disburse to SUBGRANTEE any remaining sums of money in the account approved by the SWRCB

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for payment to SUBGRANTEE, which have not already been disbursed by AGENCY to SUBGRANTEE, and 2) distribute pro rata refunds to SUBGRANTEE of unexpended administrative cost contributions.

18. SUBGRANTEE shall proceed with all reasonable diligence in: (i) the commencement and completion of THE PROJECT COMPONENT; (ii) submission of written reports, financial information, insurance, bonds, and assurances required by the grant agreement for THE PROJECT COMPONENT; and (iii) submittal of requests for payment fully compliant with the grant agreement, and accompanied by written verification certified under penalty of perjury that the request for payment is truthful and accurate and the described costs have all been incurred solely for THE PROJECT COMPONENT.

19. AGENCY shall not be obligated to recognize any assignment of this AGREEMENT by SUBGRANTEE to any third party, except as agreed to in writing by the AGENCY and SUBGRANTEE.

20. Should any provision of this AGREEMENT be found invalid, such invalidity shall not, in any way, affect the remaining provisions of this AGREEMENT.

21. This AGREEMENT is only for the benefit of THE PARTIES and not for the benefit of any third party, other than the SWRCB.

22. The signature of SUBGRANTEE's General Manager or Project Manager on the requests for payment to AGENCY submitted by SUBGRANTEE shall conclusively and finally establish the right of AGENCY to draw checks as so requested, subject to AGENCY's performance of its responsibilities as grantee pursuant to the grant agreement, and subject to the SWRCB's transmittal of grant monies to AGENCY for

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THE PROJECT COMPONENT. Changes to authorized signatures shall be accomplished by written notice from SUBGRANTEE to AGENCY.

23. Nothing in this AGREEMENT shall create any contractual relationship between any contractor, subcontractor, or consultants of SUBGRANTEE and AGENCY. SUBGRANTEE agrees to be fully responsible to AGENCY for the acts and omissions of its contractors, subcontractors, consultants and persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by SUBGRANTEE. SUBGRANTEE's obligation to pay its contractors, subcontractors, and consultants is independent of the obligation of the SWRCB to transmit monies to AGENCY. AGENCY has no obligation to transmit monies to any contractor, subcontractor, or consultant of SUBGRANTEE.

24. SUBGRANTEE agrees that, at SUBGRANTEE's sole expense, SUBGRANTEE shall ensure that the AGENCY, including its board, officers, consultants, employees, agents and volunteers, shall be named as additional insured, and insured in the same amount as SUBGRANTEE, on all insurance policies which SUBGRANTEE is required to obtain pursuant to the grant agreement. SUBGRANTEE agrees to provide AGENCY with written documentation that it has been so named as an additional insured on all insurance policies which SUBGRANTEE is required to obtain pursuant to the grant agreement.

25. The term of the AGREEMENT shall be the same as, and coincide with, the term of the grant agreement.

26. This AGREEMENT shall terminate upon the earlier of: (i) written notice from the SWRCB to AGENCY and SUBGRANTEE of insufficient appropriations and

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cancellation of the grant agreements; (ii) AGENCY's disbursement of all funds for THE PROJECT COMPONENT pursuant to this AGREEMENT by June 30, 2012, plus 35 years; or (iii) termination of the AGREEMENT by AGENCY due to breach as set forth in Paragraph 14.

27. For five years after completion of THE PROJECT COMPONENT or as otherwise required by the grant agreement, AGENCY shall retain a copy of records of: (i) AGENCY deposits into, and disbursements from, accounts for THE PROJECT COMPONENT; (ii) requests for payment received from SUBGRANTEE; and (iii) AGENCY inspection of SUBGRANTEE requests for payment on THE PROJECT COMPONENT. Upon prior written request from the SWRCB or SUBGRANTEE, AGENCY shall provide the SWRCB or SUBGRANTEE reasonable access to inspect such records on AGENCY premises during normal business hours.

28. Each of THE PARTIES represents and warrants that each person signing this AGREEMENT on behalf of any of THE PARTIES, has legal authority to sign this AGREEMENT, and bind that party.

29. Notice pursuant to this AGREEMENT shall be sent by United States mail and by facsimile transmission to the following representatives for THE PARTIES.

SUBGRANTEE:

Casmalia Community Services District

PO Box 207

Casmalia, CA 93429

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THE PARTIES may change representatives upon written notice to the other party.

30. This AGREEMENT is entered into, and shall be construed and interpreted in accordance with the laws of the State of California.

31. This AGREEMENT has been negotiated between THE PARTIES and shall not be construed against any party as the drafting party.

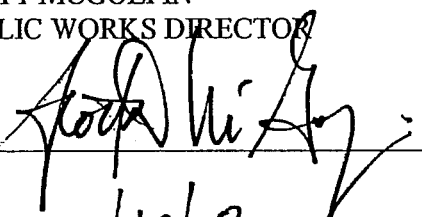
32. This AGREEMENT will be considered binding and effective when it has been fully executed by THE PARTIES. This AGREEMENT may be executed in counterpart originals, with all counterparts taken as a whole constituting the complete AGREEMENT.

Wherefore, having read the foregoing and having understood and agreed to the terms of this AGREEMENT, THE PARTIES voluntarily affix their signatures below.

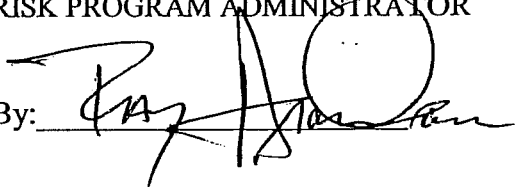
ACCEPTED and AGREED:

Signatures of AGENCY

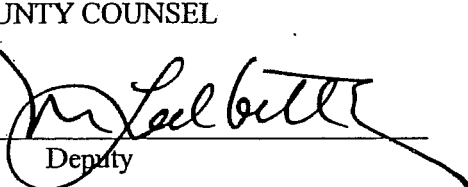
SANTA BARBARA COUNTY WATER AGENCY  
SCOTT MCGOLPIN  
PUBLIC WORKS DIRECTOR

By:   
Date: 11/19/08


APPROVE AS TO INSURANCE  
RAY AROMATORIO, ARM, AIC  
RISK PROGRAM ADMINISTRATOR

By: 

APPROVED AS TO FORM:  
DENNIS MARSHALL  
COUNTY COUNSEL

BY:   
Deputy

APPROVE AS TO ACCOUNTING:  
ROBERT W. GEIS, CPA  
AUDITOR CONTROLLER

BY:   
Deputy

10/30/08

AGENCY:

Santa Barbara County Water Agency  
123 East Anapamu Street  
Santa Barbara, CA 93101  
Attn: Thomas Fayram

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Wherefore, having read the foregoing and having understood and agreed to the terms of this AGREEMENT, THE PARTIES voluntarily affix their signatures below.

ACCEPTED and AGREED:

Signatures of AGENCY

Signatures of SUBGRANTEE

By: \_\_\_\_\_

Scott McGolpin, Public Works Director

As authorized by the Board of Directors,  
Santa Barbara County Water Agency

Date: \_\_\_\_\_, 2008

Approved As To Form:

By: \_\_\_\_\_

By: Robin Gray

Name: Robin Gray

Title: Director

Organization: CCSD

Date: 11/14/08

10/30/08

\_\_\_\_\_, County Counsel  
Santa Barbara County

Date: \_\_\_\_\_, 2008

Approved As To Insurance:

By: \_\_\_\_\_

Ray Aromatorio ARM, AIC

Risk Program Administrator

Date \_\_\_\_\_

Approved As To Accounting:

By: \_\_\_\_\_

Robert W. Geis

CPA

Date \_\_\_\_\_



EXHIBIT 1

Insert Project Description in Section 3 of the SWRCB Agreement

**3.1 Casmalia CSD Water System Retrofit (\$631,700) (Component 5)**

Component 5 (C5) project would replace portions of the water system that are in poor condition and/or that have exhibited poor reliability. This includes providing a replacement storage tank with capacity to meet current requirements; repair of the tank access road and adjacent piping; replacement of plastic service laterals and other system modifications as may be deemed necessary as a result of the engineering evaluation performed for this project.. The tank size increase is to meet fire code requirements.

- 3.1.1 Submit one hundred percent (100%) Design Plans and Specifications electronically to the Grant Manager prior to implementation.
- 3.1.2 Submit all required permits and, if acquisition is necessary, proof of Right of Way and/or Land Acquisition to the Grant Manager prior to implementation. Submit these documents electronically.
- 3.1.3 Submit Report of Operations annually for term of agreement.
- 3.1.4 Submit the awarded bid documents electronically to the Grant Manager. Notify the Grant Manager in writing of the awarded prime construction contractor and Initiation of Construction date.
- 3.1.5 Complete construction in accordance with Plans and Specifications.
- 3.1.6 Conduct construction inspections as needed until completion.
- 3.1.7 Document key steps with photographs and submit with Progress Reports.
- 3.1.8 Verify that all work completed was in accordance with Plans and Specifications.
- 3.1.9 Prepare and submit As-Built drawings electronically.
- 3.1.10 Conduct periodic and final site inspections with the Grant Manager.