STAFF REPORT:
Template System Extension Agreement

Recommendation:

Approve the Template System Extension Agreement.

Background:

The AWA Water Code now requires developers to enter into system extension agreements with the Agency. These SEAs replace previous main line extension (MLX) agreements, described in the prior version of the Water Code. The principle difference from prior MLXs is that SEAs will also address the payment of capacity fees. In the past, AWA entered into participation fee agreements with some developers. There were also several provisions in the Water Code that set out a variety of ways developers could pay participation fees at different times and sometimes in multiple parts.

The Water Code was simplified to instead require developers to enter into an SEA that addresses fees. This creates an opportunity to craft special arrangements for developers to address a wide range of circumstances related to timeline, phasing, and uncertainty, in the same agreement that addresses necessary infrastructure improvements that address the same circumstances.

The Water Code requires that all SEAs be approved by the Board, but that the Board can approve a standard or template agreement, and then specifically consider variances from the standard agreement. The draft that is recommended for adoption addresses the infrastructure issues necessary to serve new developments and includes fee provisions that track the Water Code. The Board would be asked to review and approve agreements that deviate from the Water Code.

This draft is proposed to the Board without having had committee review, as the Agency expects this summer to be a busy season for developers and we would benefit from having the template approved and available for use.

This staff report and the recommended template agreement were posted as a packet supplement after completion of staff and legal counsel review of the draft.

Prepared by: Larry McKenney, General Manager

Recording requested by
and when recorded mailed to:

Amador Water Agency
12800 Ridge Road
Sutter Creek, CA 95685

Official Document, Exempt from Recording
Fees Pursuant to Gov't Code §§ 6103 & 27383

No Document Transfer Tax
Per R&T Code § 11922 -- This Space for Recorder's Use Only --

AMADOR WATER AGENCY - SYSTEM EXTENSION AGREEMENT CONCERNING DEVELOPMENT AGENCY JOB COST # _____

THIS AGREEMENT is entered into this ____ day of _____, 20___, between Amador Water Agency (Agency), a public entity created by special act of the Legislature of the State of California, and PROPERTY OWNER, (Developer), respecting extension of Agency's water/wastewater system and payment of capacity fees.

RECITALS:

A. Developer owns certain property in Amador County, California, referred to herein as DEVELOPMENT (Development), which is legally described in **Exhibit A**, attached hereto and incorporated herein, also known as APN: ###-###-###, which is further delineated in **Exhibit B**, attached hereto and incorporated herein, (Property). Property is situated within the Agency's Amador Water System Tanner/Ione / CAWP System / La Mel Improvement District #3 / Camanche Improvement District #7 wholesale/retail service area, for which the Agency has established rules and regulations governing water/wastewater service.

B. On Date, Developer received Final/Tentative approval from Amador County (County) / the City of ##### (City) for the Development, and expects that the County/City will finally approve the Development for #### (##) lots, being #### (##) connections for a total of ### (##) Equivalent Dwelling Units (EDUs); being approved Tentative/Final Parcel/Subdivision Map #### filed for record with the Amador County Recorder at Book ## of Maps page ##.

C. Developer is proposing to design and construct a water/wastewater system, composed of a main line extension/relocation of existing utilities/installation of new services/expansion of treatment capacity, etc. (System) to serve Development, and desires to transfer System to the Agency upon satisfactory completion of construction. Agency may be willing to accept the transfer, operation and maintenance of System and to provide service to the Development based on the terms and conditions provided in this Agreement.

D. Agency rules and regulations require that, prior to commencement of work, commitment of service, transfer of facilities, final approval or recordation of a final map for a subdivision or other

development, Developer and Agency must execute a recordable agreement providing for extension of the water/wastewater system and the payment of capacity fees related to such subdivision or other development.

E. The parties now desire to provide the terms and conditions for extension of the water/wastewater system and the payment of capacity fees for Property, consistent with the rules and regulations of the Agency.

AGREEMENT:

NOW, THEREFORE, the parties hereto agree as follows:

1. Construction Plans and Specifications

Developer shall design and prepare plans and specifications for the construction of the System, clearly delineating the portion being transferred to the Agency. The design, plans and specifications shall meet all Agency standards, including but not limited to standard drawings and specifications, and Agency rules and regulations, as well as all other local and State standards and requirements, whichever are most stringent. Any additional costs associated with compliance with the higher standards shall be borne by Developer. The plans and specifications shall be approved in writing by the Agency prior to construction and shall become a part of this Agreement. Developer also shall submit at the time of design submittal, an engineer's cost estimate for the proposed improvements in a format acceptable to the Agency. Neither this agreement nor approval of plans shall be considered a commitment to provide service.

2. Deposit for Services

Developer shall bear all costs of the System. Developer shall advance to the Agency the sum of five thousand dollars, $5,000, for anticipated engineering, legal and administrative services in connection with plan review, project management, inspection of construction, and other costs and services incurred by the Agency in the performance of its duties under this Agreement. The Agency will bill, and Developer shall pay, for actual costs incurred on a monthly basis, which shall be paid by Developer within thirty days of invoice. The deposit shall be held in reserve and not used against actual costs incurred by the Agency, unless the Developer is in arrears on billings in excess of sixty days. If the Developer is in arrears on billings in excess of sixty days, interest shall accrue on any late payment at the legal rate then prevailing, and the deposit shall be used to pay outstanding invoices. If the deposit is used to pay the outstanding bills, all work shall cease on the Project and shall not resume until the initial deposit amount is replenished and all Developer invoices are paid in full.

Upon completion of construction, acceptance of the System by the Agency, and completion of the warranty period, any funds so advanced by the Developer in excess of the Agency's actual costs shall be refunded to Developer without interest. Conversely, any costs incurred by the Agency over and above the amount advanced by Developer shall be paid by Developer upon demand and before the Agency will issue a notice of acceptance of the System or provide connections.

3. Construction of System

Developer, at its expense, shall construct the System described in the plans and specifications as approved by the Agency. Such construction shall be in accordance with the provisions of this Agreement, the Agency's rules, regulations, and standard construction drawings and specifications. During construction, a complete set of approved plans and specifications, as outlined in Paragraph 1 of this Agreement, shall remain at the job-site at all times. If Developer proposes to change the approved plans and specifications for the System, it shall first obtain the written approval of the Agency for any such change, which approval may be on such terms and conditions as required by the Agency.

The Agency, at its sole option, may require that it will install the System, or certain portions of it, in which event Developer shall advance to the Agency funds sufficient to cover the cost of construction, connection and inspection, and to cover related engineering, legal and administrative costs. Upon completion of construction, any funds advanced in excess of the actual costs to be borne by the Developer will be refunded without interest. Any cost over and above the amount advanced shall be promptly paid to the Agency by Developer upon demand. Developer's failure to promptly pay additional funds owed to the Agency shall result in the Agency not providing the requested connections until all sums owed are paid in full. All construction not done by the Agency shall be performed by a licensed, responsible, and experienced contractor (Contractor) acceptable to the Agency in strict conformance with the Agency's standards and requirements, and such construction shall be guaranteed against any failure for a period of one year from the date of written acceptance by the Agency of the constructed facilities. The Agency may require a performance bond or cash deposit in an amount adequate to cover such guarantee. The Agency may, at its option, inspect all or part of the work or material and shall be given all possible assistance in performing such inspection. The Developer shall advance sufficient funds to the Agency to cover the costs for such inspection. Upon completion of construction, the Contractor shall apply to the Agency for final inspection before any notice of acceptance is issued or connections provided.

4. Licensed Contractor

The Contractor constructing the System shall be licensed under the provisions of the Business and Professions Code of the State of California to do the type of work called for in the approved plans and specifications and shall at a minimum possess the following classification or type of contractor's license issued by the Contractors State License Board: Class A, California. To the extent required by applicable law, Developer and the Contractor shall comply with the California Labor Code provisions concerning payment of prevailing wages, wage rates, employment of apprentices, hours of work and overtime, keeping and retention of payroll records, and other requirements applicable to public works projects within the meaning of the Labor Code. (See California Labor Code Division 2, Part 7, Chapter 1 (Sections 1720-1861).) Copies of the prevailing rate of per diem wages as established and published by the California Department of Industrial Relations are available for inspection on the California Department of Industrial Relations website. No construction may be performed except by a qualified responsible Contractor approved by the Agency. Each such Contractor shall indemnify, protect, defend and

hold the Agency harmless as required by Paragraph 22 hereof. The Agency may request evidence that the Contractor has satisfactorily installed other projects of like magnitude or comparable difficulty. Contractors deemed unqualified or non-responsible by the Agency may not work on Agency or Developer projects. It is the intent of the Agency that the work be performed by a Contractor who furnishes satisfactory evidence of qualification acceptable to the Agency in its sole discretion.

5. Faithful Performance Guarantee

Prior to commencement of construction of the System, Developer shall provide the Agency with a faithful performance guarantee, bond, letter of credit, or other financial security satisfactory to the Agency (Performance Guarantee) in a sum equal to 150 percent of the estimated engineering, installation, inspection, construction management, administration, legal, environmental, and permitting costs of the System facilities to be constructed on Agency property or easements, public utility easements, in public rights-of-way or on public property for the purpose of insuring the proper completion of such facilities. In the event of the failure of Developer to timely complete the work covered by the guarantee and the Agency completes construction of any such facilities, Developer and its surety under the Performance Guarantee shall be jointly and severally liable to the Agency for such costs of completion, including, but not limited to, management and administrative costs, and engineering, legal, and other costs incurred relating to the completion. The Agency shall bill Developer and the surety for such costs, which bill shall be paid within 30 days after its date. Interest shall accrue on any late payment at the legal rate then prevailing. If this Agreement is terminated, the Performance Guarantee requirements of this section shall remain in effect.

6. Notice of Commencement of Construction

Developer shall give the Agency seven full business days' advance notice of the commencement of construction and installation of the System. The Agency shall be invited to a pre-construction meeting with the Contractor to be held at a mutually agreeable time. Seven full business days' advance notice of the meeting shall be provided. The pre-construction meeting shall be held at least seven business days prior to commencement of construction.

7. Inspections

Two full business days' advance notice of any and all work on, related to or near the System shall be provided by Developer. Any work performed without proper notice to and inspection by Agency shall be subject to rejection. The Agency may, at its option, inspect all or part of the construction or material being used in construction of the System and shall be given all possible assistance in performing such inspection. Any work done in the absence of the Agency inspector shall be subject to rejection. The inspection of the work shall not relieve Developer of its obligation to construct the System in accordance with the approved plans and specifications, conduct comprehensive inspections of the work, to furnish proper materials, labor, equipment and tools, and perform acceptable work, and to provide adequate safety precautions. Proper facilities for safe access for inspection of all parts of the work shall be installed by the Developer or the Contractor, and at all times maintained for the necessary use of the Agency and other agents of the Agency, and agents of the Federal, State, or local governments at all reasonable hours for

inspection by such agencies to ascertain compliance with laws and regulations. Defective work shall be made good and substandard materials may be rejected, notwithstanding that such work and materials have been previously overlooked or inspected by the Agency. All inspection costs, as determined by the Agency, shall be paid by Developer.

8. Construction Manager

Developer shall designate and provide a Construction Manager for the construction of the System. Before work has commenced, Developer shall provide a written designation of the Construction Manager to the Agency. The Construction Manager shall:

a) Conduct a pre-construction conference with the Agency, Developer, the Contractor, and other interested parties;
b) Perform a shop drawing review, provide submittals of all materials and equipment for the System and receive approval from the Agency of such prior to installation;
c) Review and approve all progress payments to the Contractor by Developer;
d) Be responsible for coordinating correction of rejected work;
e) Maintain and complete the as-built plans for the System;
f) Coordinate conflicts with other utilities;
g) Obtain Agency approval prior to the release of any revised drawings, specifications or submittals;
h) Act as a contact for Agency engineering and inspection staff; and
i) Certify compliance with the approved plans and specifications prior to the Agency's notice of acceptance.

9. Permits, Licenses and Easements

Developer, at its cost, shall obtain all necessary local, County, and State permits and approvals, including, but not limited to, environmental review and building and encroachment permits, and shall conform to the requirements thereof. Developer, at its cost, shall obtain all real property, and permanent and temporary easements of 20 feet in width necessary for the System, and for ingress and egress to and from the facilities, for the purpose of construction, installation, operation, maintenance, repair, removal, replacement, and improvement of the facilities, and the grant deeds and easements acquired shall be in a form approved by the Agency prior to final acquisition and recording. Developer shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the construction of the System.

10. Final Inspection

Developer shall notify the Agency when construction of the System is deemed by Developer to be complete and request a final inspection of the System. All facilities in the System shall be tested to meet Agency requirements, as required by the Agency. No System or portion thereof shall be accepted without meeting Agency test requirements. The costs of such tests shall be borne by Developer. In addition, Developer shall be responsible for all costs incurred in the testing of the System as needed or required by other public entities having jurisdiction, such as the State Department of Health Services. The Agency reserves the right to reject the System or any portion of it and require Developer, at its sole cost, to complete any repairs, punch list items, or other

work to bring the System into conformance with Agency requirements as a condition precedent to the Agency's acceptance of the System.

11. Record Drawings and Specifications

Developer shall, as a condition precedent to the Agency's acceptance of the System, provide to the Agency:

j) Reproducible survey-quality record drawings of the completed System on size 'D' paper and in PDF format, together with an electronic file in a properly georeferenced "DWG" format, satisfactory to the Agency, and a copy of the specifications and any contract documents used for the construction of the System;

k) A signed, detailed accounting, satisfactory to the Agency, of the amounts expended for the construction and installation of the System, with values applicable to the various components thereof, together with a list of any other materials and equipment, and their expensed values, being transferred to Agency. Separate accounting of pipe by type and size (including excavation, bedding and backfill), appurtenances, fire hydrants, pump stations, etc. shall be provided;

l) Operating manuals, manufacturer information, safety sheets and warranties for all facilities made a part of the System, as deemed necessary by the Agency; and

m) Upon recordation of the Final Map, Developer shall provide to the Agency, a reproducible electronic PDF of the recorded Final Map.

12. Maintenance Guarantee

Prior to the notice of acceptance of the System, Developer shall provide the Agency with a maintenance bond, certificate of deposit, letter of credit or other financial security satisfactory to the Agency (Maintenance Guarantee) in a sum equal to 50 percent of the cost of the System or $500, whichever is greater, for the purpose of warranting all materials and workmanship furnished pursuant to this Agreement for one year from the date of the Agency's issuance of the notice of acceptance of the System. The Developer shall provide the Maintenance Guarantee prior to acceptance of the System. This guarantee does not excuse the Developer from breaches of contract causing defects that occur or are discovered more than one year after the notice of acceptance.

The Developer and/or its surety under the Maintenance Guarantee shall repair or replace to the satisfaction of the Agency any or all such work that may prove defective in workmanship or materials, ordinary wear and tear excepted, together with any other work which may be damaged or displaced in so doing. In the event of failure to comply with the above-stated conditions within a reasonable time, the Agency is authorized to have the defect repaired and made good. Developer and its surety under the Maintenance Guarantee shall be jointly and severally liable to the Agency for such costs of repair, including, but not limited to, management and administrative costs, and engineering, legal and other costs incurred relating to the repair. The Agency shall bill Developer and the surety for such costs, which bill shall be paid within 30 days after its date. Interest shall accrue on any late payment at the legal rate then prevailing.

13. Transfer of Property and Easements

After the Agency has finally inspected and approved the System, it shall send written notice to Developer requesting transfer of the System. Upon receipt of the notice from the Agency, Developer, at its sole cost and without charge to the Agency, shall deliver conveyance documents satisfactory in form and content to the Agency, transferring absolute and unencumbered ownership of the completed System to the Agency, together with all real property, interests in real property, and easements and rights-of-way that are necessary or appropriate in the opinion of Agency for the ownership and operation of the System. Title to the System and the interests in real property transferred shall be good, clear, and marketable, free and clear of all encumbrances, liens or charges. Developer shall obtain and pay any costs of title insurance deemed necessary by the Agency. The transfer shall not be completed until the conveyance documents transferring the System have been formally accepted by the Agency.

14. Conditions Precedent to Notice of Acceptance

The Agency shall not provide a written notice of acceptance of the System until the following have occurred:

a) Developer shall have applied for, received and timely complied with the terms of a Conditional Will Serve issued by the Agency;
b) The System has been finally inspected and approved by the Agency;
c) All funds to be advanced and paid to the Agency by Developer have been advanced and paid;
d) The Maintenance Guarantee required by Paragraph 12 hereof is delivered;
e) All real property, easements, rights-of-way, permits, licenses, and other approvals to be obtained and delivered to the Agency pursuant to this Agreement have been obtained by Developer and delivered to the Agency;
f) The record drawings, specifications, accounting, operating manuals and instructions, and warranties required pursuant to Paragraph 11 hereof have been provided to the Agency;
g) Developer has paid the Agency all applicable fees and charges; and
h) Developer has complied with all applicable sections of this Agreement.

Upon the Agency's determination that these conditions have been met, it shall give timely written notice of final inspection and approval to Developer.

15. Ownership

After satisfaction of all conditions provided in Paragraph 14 hereof, the System shall become the property of the Agency on the date that a notice of acceptance executed by the Agency is sent to Developer. The Agency shall then own and be free in every respect to operate, manage, expand, improve and remove the System as it deems appropriate.

16. Developer Assistance

Developer shall both before and after the notice of acceptance secure and provide any information or data reasonably needed by the Agency to accept the ownership, operation and maintenance of the System, and obtain, execute and provide any and all documents needed to expeditiously complete or implement the transfer of the System.

17. Initiation of Service

The Agency shall not provide utility service to the Development until the notice of acceptance of the System is fully executed. All such service shall be supplied only upon, and approval of, application for utility service in accordance with the Agency's rates, rules and regulations governing utility service, as may be amended from time to time, including but not limited to the payment of applicable capacity fees and connection charges. Developer shall not allow any person to use or commence operation of any part of the System prior to full execution of the notice of acceptance by the Agency, excepting for construction purposes with the express written consent of the Agency.

18. Payment of Capacity Fees

a) Except as provided in subparagraph (c) below, subsequent to the County's or City's final approvals of the Development, and at the time of the conveyance of any or all of the lots which are part of the Property, Developer shall pay to the Agency through escrow and on or before the close of escrow for such lot(s), the capacity fees for such lot(s) consistent with Agency rules and regulations in place at that time, as such may be amended from time to time, and consistent with the proposed use(s) of the lot(s) in accordance with the County's or City's final approval. The capacity fees to be paid shall be determined in accordance with the Agency Water Code, as amended from time to time, and shall be those in effect on the date of payment. The Developer shall notify the Agency in writing of any pending conveyance of a lot. The notice shall be given at least 15 days before the date for the close of escrow and shall state the name, address and telephone number of the escrow office. The Agency shall notify the escrow office of the total capacity and proportionate fees owing for the lot(s) at least 5 days before the close of escrow.

b) Notwithstanding subparagraph (a) above, if Developer seeks a building permit for any lot of the Property or applies for water service for any such lot, then the capacity fees shall be paid before issuance of the building permit or at the time of the application for water service, whichever occurs first.

c) In the event that Developer sells to a purchaser in one conveyance all of the Property covered by a final map approved by the County or City respecting the Development, capacity fees for the lots covered by the final map shall not be due through the escrow for that sale so long as prior to the close of said escrow the purchaser of the land executes an agreement substantially the same as this Agreement with the Agency.

d) Developer shall pay any remaining capacity fees, on any lots for which capacity fees have not been previously paid, within five years from the date of this Agreement or be subject to all applicable penalties, fees, interest and refusal of service.

19. Maintenance of Facilities

Agency assumes no obligation as to maintenance, operation or expenses of the System until such time as the notice of acceptance is given.

20. Recording of Agreement

Within 15 days of the date of execution of this Agreement, the Agency shall submit it for recording in the office of the Recorder of Amador County.

21. Term of Agreement and Termination

a) Developer agrees to promptly design and construct the System and to transfer the same to Agency in accordance with the terms of this Agreement no later than two years of the effective date of this Agreement as stated in the preamble on page 1 hereof. This Agreement shall become effective on the date first above written and except as provided in subparagraph (b) below, shall remain in effect until Developer has completed all of its obligations hereunder.

b) Agency shall have the right to terminate this Agreement, unless such time for completion is extended by mutual agreement of the parties, in the event and any time after the date that:

   i) The County or City denies approval of the Development;

   ii) Developer withdraws or otherwise abandons its application with the County or City for the Development;

   iii) County or City tentative approval for the Development expires prior to the County's or City's final approval of the Development;

   iv) If construction of the System has not been completed and accepted by Agency in accordance with the terms of this Agreement within two years of its effective date; or

   v) If Developer does not obtain from the Agency a valid Conditional Will Serve Commitment or Will Serve Commitment for the Development, or such commitments expire.

Developer shall provide Agency with written notice of any of such events provided in subparagraph (b) above within thirty (30) days of their occurrence.

c) Any requests for extensions of Conditional Will Serve Commitments, Will Serve Commitments, or this Agreement must be requested in writing by Developer prior to the expiration of said commitments or termination of this Agreement. Except as provided herein, Agency and Developer shall have no further obligation under this Agreement if the Agreement is terminated. Upon termination, Agency shall provide written notice and refund any advances made by Developer which have not been used by Agency prior to the date of termination. Conversely, any costs incurred by Agency over and above the amount advanced by Developer shall be paid by Developer upon termination.

22. Indemnification and Hold Harmless

a) Developer shall protect, defend, indemnify, and hold harmless Agency and its officers, directors, employees, and agents from and against all penalties and fines imposed by law and all loss, claim, cause of action, demand, suit, judgment, cost, damage, expense, and liability (including but not limited to court or arbitration costs and reasonable attorney's and expert witness fees) resulting from injury to or death of persons, including without limitation employees of Agency, Developer and its Contractor, or damage to or loss of property, arising out of or in any way connected with the performance, operations or activities under this Agreement, including but not limited to construction of the System by Developer, its officers, directors, employees, Contractor, any other independent contractors or agents, except to the extent that the sole negligence or willful misconduct of an indemnified party proximately causes the loss, claim, demand, cost, suit, judgment, penalty, fine, cause of action, damage, expense, or liability. Upon the request of an indemnified party hereunder,

Developer shall defend any suit asserting a claim covered by this indemnity and shall pay any cost that may be incurred by an indemnified party in enforcing this indemnity. In all cases, the indemnified party shall have the right to approve counsel selected by Developer in the defense of any legal actions or with respect to any claim, which approval shall not be unreasonably withheld. In addition, the indemnified party shall have the right to participate in and be represented by counsel of its own choice and at its own expense in any legal action or with respect to any claim.

b) The parties expressly agree and acknowledge that Developer's duty to indemnify, protect, defend and hold harmless under this paragraph shall extend to claims, lawsuits and liability of or against the Agency resulting from alleged failure to comply with any provision of the California Labor Code, Division 2, Part 7, Chapter 1 (Sections 1720-1861) in connection with the construction of the System.

c) This paragraph and the parties' obligations under it shall survive any termination of this Agreement; and the provisions of this paragraph shall be included in any agreement between Developer and any of its Contractors so that the above-referenced indemnified parties are indemnified, protected, defended and held harmless by the Contractor from any and all acts or omissions of such contractor. Any failure by Developer to ensure that the provisions of this paragraph are included in any agreement between Developer and any of its Contractors shall be the sole responsibility and liability of Developer.

d) Neither termination of this Agreement nor completion of the acts to be performed under this Agreement shall release the parties from their respective obligations under this paragraph, so long as the event upon which the claim is predicated shall have occurred prior to the effective date of any such termination or completion and arose out of or was in any way connected with the parties' performance or operations under this Agreement by their officers, employees, independent contractors or agents, or the employee, agent or independent contractor of any one of them.

e) Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in this Agreement does not relieve Developer from liability under this indemnification and hold harmless provision. The obligations of this indemnity provision shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

f) In any and all claims against the Agency, or its officers, directors, employees, volunteers or agents, by any employee of Developer, any independent contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Developer or any of its independent contractors under Worker's Compensation acts, disability benefit acts or other employee benefit acts.

23. Insurance

a) Developer or its Contractor shall procure and maintain for the duration of the construction of the System and the maintenance guarantee period insurance coverage against claims for injuries to persons or damages to property which may arise from or in connection with

the performance of the work by Developer or its Contractor, and their officers, employees, agents, or subcontractors.

b) Minimum Scope of Insurance. Coverage shall be at least as broad as:
   i) Commercial General Liability coverage (Insurance Services Office), including coverage for premises-operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, independent contractors, and broad form property damage with completed operations.
   ii) Automobile Liability coverage (Insurance Services Office form number CA 0001, code 1, any auto, including owned, non-owned and hired).
   iii) Workers' compensation insurance as required by the State of California and employer's liability insurance. The insurer shall agree to waive all rights of subrogation against Agency, its officers, directors, employees and agents.
   iv) (***Include only if applicable.***)Builder's Risk – (Course of Construction) - insurance utilizing an "All Risk" (Special Perils) coverage form with limits equal to the completed value of the project and no coinsurance penalty provision. This requirement can be met through provision of umbrella or excess policy insurance coverage consistent with the provisions of this paragraph.

c) Minimum Limits of Insurance. The limits of insurance shall not be less than:
   i) General Liability: $5,000,000 per occurrence for bodily injury, personal injury and property damage. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
   ii) Automobile Liability: $2,000,000 per accident for bodily injury and property damage.
   iii) Employer's Liability: $2,000,000 per accident for bodily injury or disease.

d) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Agency. At the option of the Agency, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Agency, it officers, officials, employees and volunteers; or Developer or its Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. All policies that include a self-insured retention shall include a provision that payments of defense costs and damages (for bodily injury, property damage, personal injury or any other coverages included in the policy) by any party, including additional insureds and insurers, shall satisfy the self-insured retention limits.

e) The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
   i) The Agency, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of Developer or its Contractor; products and completed operations of Developer or Contractor; premises owned, occupied or used by Developer or its Contractor; or automobiles owned, leased, hired or borrowed by Developer or its Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the

Agency, its officers, officials, employees, agents or volunteers. The additional insured coverage or endorsement shall comply with California Insurance Code section 11580.04.

ii) Waiver of Subrogation (also known as Transfer of Rights of Recovery Against Others to Us): Developer and its Contractor agree to waive rights of subrogation to obtain endorsement necessary to affect this waiver of subrogation in favor of the Agency, its directors, officers, employees, and authorized volunteers, for losses paid under the terms of this coverage which arise from work performed by the Named Insured for the Agency; this provision applies regardless of whether or not the Agency has received a waiver of subrogation from the insurer.

iii) For any claims related to or arising under this Agreement or concerning the System, Developer's or its Contractor's insurance coverage shall be primary insurance as respects the Agency, its officers, officials, employees, agents or volunteers. Any insurance or self-insurance maintained by the Agency, its officers, officials, employees, agents or volunteers shall be excess of Developer's or its Contractors' insurance and shall not contribute with it.

iv) Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Agency, its officers, officials, employees, agents or volunteers.

v) Developer's or its Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

vi) Each insurance policy required by this paragraph shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, or reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the Agency.

f) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII or equivalent and authorized to do business in the State of California, unless otherwise approved by the Agency in writing.

g) Verification of Coverage. Developer or its Contractor shall furnish the Agency with original endorsements or certificates of insurance evidencing the insurance coverage required by this paragraph. The endorsements or certificates are to be signed by a person authorized by the insurer to bind coverage on its behalf. The endorsements or certificates are to be in a form acceptable to the Agency. All endorsements or certificates are to be received and approved by the Agency before commencement of the construction of the System.

h) Subcontractors. Developer or its Contractor shall include all subcontractors as insureds under its policies, or shall require each subcontractor to provide insurance coverage consistent with the foregoing and to furnish separate endorsements or certificates to the Agency. All coverages for subcontractors shall be subject to all of the requirements stated in this paragraph.

i) Any insurance bearing on adequacy of performance shall be maintained after completion of the System for the full guarantee period.

j) The requirements as to the types, limits, and the Agency's approval of insurance coverage to be maintained by Developer or its Contractor are not intended to and shall not in any

manner limit or qualify the liabilities and obligations assumed by Developer under this Agreement.

k) In addition to any other remedy that the Agency may have, if Developer or its Contractor fails to maintain the insurance coverage as required in this paragraph, the Agency may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as required herein, and the Agency may bill Developer for such cost, which bill shall be paid within 30 days after its date. Interest shall accrue on any late payment at the legal rate.

24. Reimbursement Policy

(***Include only if applicable.***)

If the Agency determines that portions of the System being constructed by Developer, shall be constructed larger than necessary to adequately serve the Development, Developer shall provide for such upsizing as directed by the Agency. No reimbursement shall be made for the improvement costs necessary to adequately serve the Development, as determined by the Agency.

An equitable reimbursement value shall be determined by the Agency. The equitable reimbursement shall be determined by taking the difference between the improvement costs necessary to adequately serve the Development without the required upsizing and the total improvement costs being required, and dividing it by the number potential future connections to the upsized improvements to determine an equitable reimbursement per future connection not a part of the Development.

Upon determination of the equitable reimbursement per future connection and the Agency's and Developer's execution of an amendment to this Agreement memorializing the determination of the equitable reimbursement amount, the equitable reimbursement shall be collected by the Agency from future connections to the System and will be reimbursed to Developer after Agency receipt of any such reimbursements. The Agency shall pay any reimbursements due Developer at least once each year. Any such reimbursement shall be provided only for non-Development connections that occur during the ten-year period following the Agency notice of acceptance of the System, at which time, the Agency's obligation to provide reimbursement shall terminate.

25. Assignment

This Agreement shall be binding on the heirs, successors, executors, administrators, and assigns of the parties; however, Developer agrees that it will not assign, transfer, convey, or otherwise dispose of this Agreement or any part thereof, or its rights, title or interest therein, or its power to execute the same without prior written consent of the Agency.

In the event that Developer sells to a purchaser in one conveyance all of the Property covered by a tentative or final map approved by the County or City respecting the Development, no assignment or transfer of this Agreement, or any part hereof, or interest herein by Developer shall

be valid until and unless approved by Agency in writing and signed by Developer's assignee or successor.

By executing this Agreement, it is the Agency's and Developer's intent that Developer or Developer's successor or assignee shall pay District's then-current capacity fees in full prior as a condition precedent to the initiation of water service to any portion of the Development. For this reason, the parties have agreed to record this agreement against the Property comprising the Development so that all persons, including Developer's successors and assigns, including homebuyers of any individual lots, are on record notice of the obligation to pay capacity fees for each lot within the Development as a condition precedent to receiving Agency water service. If Developer sells the Project, any portion of the Project or lots to individual purchasers before all fees are paid, Developer is required to disclose the facts of any unpaid capacity fees or other outstanding fees and charges due to the Agency to each subsequent purchaser of the Development or any individual parcels in it. In addition to any liability to subsequent purchasers under the California Civil Code and other laws and regulations, Developer shall be liable to the Agency for payment of any fees and charges that Developer fails to disclose to subsequent purchasers and shall indemnify the Agency and be obligated to pay any such undisclosed fees and charges and any costs and expenses incurred by District to recover such fees and charges or negotiate their payment with subsequent purchasers. Developer's obligations under this Paragraph 25 shall survive the completion or termination of this Agreement.

26. Severability

If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

27. Risk of Loss

Until the date of the notice of acceptance of the System, all risk of loss or injury or destruction to such facilities shall be upon Developer. On or after the date of the notice of acceptance, all risk of loss or injury or destruction to those facilities shall be upon the Agency.

28. Attorney's Fees

In the event that any arbitration, litigation or other proceeding of any nature between the Agency and Developer becomes necessary to enforce or interpret all or any portion of this Agreement, it is mutually agreed that the prevailing party therein shall receive from the other, in addition to such sums as may be awarded by judgment, an amount sufficient to reimburse such prevailing party for reasonable attorney's fees, expert witness' and consultant's fees and expenses, and litigation or arbitration costs paid or owing as a result of such litigation, arbitration or other proceeding.

29. 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 Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

30. Remedies Not Exclusive

The use by either party of any remedies specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

31. Entire Agreement

This Agreement is freely and voluntarily entered into by the parties after having the opportunity to consult with their respective attorneys. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. The parties, in entering into this Agreement, do not rely on any inducements, promises, or representations made by each other, their representatives, or any other person, other than those inducements, promises, and representations contained in this Agreement. This writing constitutes the entire agreement between the parties relative to the matters specified herein; and no modifications hereof shall be effective unless and until such modification is evidenced by a writing signed by both parties to this Agreement. There are no understandings, agreements, conditions, representations, warranties, or promises with respect to the subject matter of this Agreement except those contained in or referred to in this writing.

32. Headings

The paragraph headings used in this Agreement are for reference only, and shall not in any way limit or amplify the terms and provisions hereof, nor shall they enter into the interpretation of this Agreement.

33. Cooperation

Each party to this Agreement agrees to do all things that may be necessary, including, without limitation, the execution of all documents which may be required hereunder, in order to implement and effectuate this Agreement.

34. Interpretation of this Agreement

The parties acknowledge that each party and its attorney have reviewed, negotiated and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the transactions contemplated by this Agreement.

35. Recitals

The recitals on pages 1 and 2 of this Agreement are incorporated herein by this reference and made a part hereof.

36. Notices

All notices, statements, reports, approvals, requests, bills or other communications that are required either expressly or by implication to be given by either party to the other under this Agreement shall be in writing and signed for each party by such officers as each may, from time to time, be authorized in writing to so act. All such notices shall be deemed to have been received

on the date of delivery if delivered personally or by nationally-recognized commercial overnight courier service that guarantees next day delivery and provides a receipt, or three days after mailing if enclosed in a properly addressed and stamped envelope and deposited in a United States Post Office for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown below:

DEVELOPER DEVELOPER ADDRESS ADDRESS Phone #: (###) ###-####	Amador Water Agency 12800 Ridge Road Sutter Creek, CA 95685 Phone #: (209) 223-3018

37. Governing Law and Venue.

This Agreement will be governed by and construed in accordance with the laws of the State of California. The county and federal district court where Agency's office is located shall be venue for any state and federal court litigation concerning the enforcement or construction of this Agreement.

38. Signature Authority.

Each party warrants that the person signing this Agreement is authorized to act on behalf of the party for whom that person signs. The parties may execute and deliver this Agreement and documents necessary to perform it, including task orders and amendments, in any number of original or facsimile counterparts. When each party has signed and delivered at least one counterpart to the other party, each counterpart shall be deemed an original and, taken together, the counterparts shall constitute one and the same document, which shall be binding and effective.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

DEVELOPER

By: _____
NAME, TITLE

AMADOR WATER AGENCY

By: _____
NAME, TITLE

Notary certificates attached.