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A G R E E M E N T

THIS AGREEMENT ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2020 ("Effective Date"), by and between the COUNTY OF FRESNO, a political subdivision of the State of California, ("County"), and the FRESNO COUNTY FIRE PROTECTION DISTRICT, ("District").

WITNESSETH

WHEREAS, the County has been designated as the sponsoring agency to administer and implement the program for the Community Development Block Grant ("CDBG") Program activities of the County, and its participating cities, in accordance with the provisions of Title I of the Housing and Community Development Act of 1974, as amended, and the laws of the State of California; and

WHEREAS, CDBG funding has been made available to the County for housing and community development activities; and

WHEREAS, the District has submitted the Station 93 Water Tender Refurbish, Project No. 19731 ("Project"), for CDBG funding; and

WHEREAS, the District has estimated that the total cost of the Project is \$250,000, and the District has committed local funds to the Project in the amount of \$10,000 and has requested the sum of \$240,000 from the County's allocation of CDBG funds to complete the Project; and

WHEREAS, the County Board of Supervisors, at a public hearing conducted on June 4, 2019, approved the Project as a project on the back-up list, should funding become available; and

WHEREAS, there are now sufficient CDBG funds available to fund the next project on the back-up list, which is this Project; and

WHEREAS, the Project is consistent with the objectives of the Fresno County Consolidated Plan, including the annual Action Plan.

NOW THEREFORE, in consideration of their mutual promises as hereinafter set forth, the District and County agree as follows:

I. PROJECT DESCRIPTION, LOCATION AND BUDGET

A. The Project consists of refurbishing an existing water tender located at Fire Station 93 in Huron. The Project will improve fire protection services by providing a mobile water

1 supply, with firefighting capability. The Project will benefit the residents of southwest Fresno  
2 County, primarily the unincorporated areas surrounding the Cities of Coalinga and Huron.

3 B. The Project site is owned by the District.

4 C. The work to be funded with CDBG funds is as follows:

5 1. Obtain all necessary permits.

6 2. Perform all necessary design work, including, but not limited to,  
7 preparation of specifications, and cost estimates; bid documents and a cost or price analysis;  
8 review of bids and recommendation for award.

9 3. Prepare and advertise Project bid notices and award contracts  
10 including, but not limited to, the printing of bid documents; publishing of notices; and preparation  
11 of bid summary.

12 4. Perform all design work including, but not limited to, shop drawing  
13 review and approval; contract change order preparation; preparation of "as-built" drawings; labor  
14 compliance; and contract administration.

15 5. Provide related eligible improvements.

16 D. The Project budget is estimated by the District as follows:

17	Refurbishing of Water Tender	<u>\$250,000</u>
18	Total	\$250,000

19 E. Notwithstanding District's estimates in the above-described Project budget,  
20 payments for the Project from CDBG funds shall be limited to the District's actual costs, and shall  
21 not exceed the total amount of \$240,000.

22 F. The proposed funding for the Project will be provided from the following  
23 sources:

24	CDBG	\$240,000
25	Local Financial Contribution	<u>\$ 10,000</u>
	Total	\$250,000

26 G. Prior to any changes that may occur which would modify the scope of the  
27 Project, the District shall submit a written request to the County. The District shall send its written  
28 request to:

1 Community Development Grants  
2 County of Fresno  
3 Department of Public Works and Planning  
4 Community Development Division  
5 2220 Tulare Street, 6<sup>th</sup> Floor  
6 Fresno, CA 93721

7 If the Director of the County Department of Public Works and Planning (“Director”) determines the  
8 modified Project is still eligible under the Federal CDBG regulations, the Director is authorized to  
9 permit such modifications. The County shall specify in a letter to the District whether such  
10 modifications to the scope of the Project are authorized, and if the District may proceed.

11 II. OBLIGATIONS OF THE COUNTY

12 A. The County shall reimburse the District up to, but not more than, \$240,000  
13 in CDBG funds for the Project for the District’s performance of its obligations under this Agreement.  
14 All funds shall be paid in accordance with Section V of this Agreement.

15 B. The County shall review, within forty-five (45) calendar days of receipt from  
16 the District, the design plans and specifications for the Project, as prepared by the District, for  
17 compliance with Federal regulations, conformance with applicable code requirements sufficient to  
18 allow for construction-related permit issuance, and the total Project cost estimate, to ensure  
19 sufficient funds are available to complete the Project. If such conditions have been met, the County  
20 shall specify in a letter to the District that these conditions have been met, and that the Project can  
21 be advertised.

22 C. The County shall also review, within twenty-one (21) calendar days of  
23 receipt from the District, the name of the low bidder, and cost or price analysis of the low bid  
24 proposal prepared by the District to determine whether the contractor will be reasonably  
25 compensated in accordance with Federal requirements, and to verify that the contractor is bonded,  
26 and has not been disbarred or suspended from participating in Federal projects. The County shall  
27 specify in a letter to the District that the conditions of this Section have been met, and that the  
28 contract can be awarded.

D. The County may, upon request by the District, allow alternate procurement  
procedures permitted under 24 CFR Part 84, provided the District submits satisfactory

1 documentation and justification.

2 E. The County shall conduct periodic inspections of the Project, as may be  
3 required, in the determination of the County, to ensure that the intended use and group of  
4 beneficiaries of the Project have not changed. Upon completion of the Project, but prior to the  
5 District's acceptance of the Project, the County shall conduct a final inspection of the Project. If  
6 such conditions have been met, the County shall specify in a letter to the District that these  
7 conditions have been met.

8 III. OBLIGATIONS OF THE DISTRICT

9 A. The District shall provide any and all sums of money in excess of \$240,000  
10 which may be necessary to complete the Project. For the purposes of awarding the Project within  
11 the Agreement amount, the bid documents shall include any proposed additive or deduct  
12 alternatives.

13 B. The District shall demonstrate in writing, and to the County's satisfaction,  
14 that it has the authority, operational ability, and financial resources for maintaining the  
15 improvements obtained with CDBG funds under this Agreement prior to award of the Project.

16 C. The District shall perform, or cause to be performed, all design work required  
17 for the Project.

18 D. The District shall furnish evidence to County, prior to the County's  
19 authorization to advertise for bids, that it has free and clear title to all parcels of land on which  
20 Project improvements will be located, with any liens or encumbrances noted, and/or that it has  
21 obtained or can obtain all necessary easements, rights-of-way, licenses, permits, and State and  
22 local approvals required for the completion of the Project.

23 E. Upon completion of the design, the District shall submit the specifications to  
24 the County Community Development Division. The County will ensure Federal CDBG  
25 requirements have been adhered to, and review cost estimates to ensure sufficient funds are  
26 available. The District shall obtain a letter from the County specifying these conditions have been  
27 met, and that the District is approved to advertise for bids to construct the Project.

28 F. The District may request to utilize alternate procurement procedures

1 allowed under 24 CFR Part 84, subject to prior approval by the County Community Development  
2 Division.

3 G. The District shall advertise for bids, and shall award the contract to the  
4 lowest responsible bidder. At least ten (10) calendar days prior to the bid opening, the District  
5 shall notify the County of the date, time, and location of the bid opening.

6 H. Within seven (7) calendar days following the bid opening, the District shall  
7 furnish the Community Development Division with the name of the low bidder and cost or price  
8 analysis of the low bid proposal prepared by the District, so that the County can verify with the  
9 Labor Relations and Equal Opportunity Division of the HUD Area Office that the low bidder has not  
10 been debarred or suspended from participating in Federal projects, and that the contractor will be  
11 reasonably compensated in accordance with Federal requirements. The District shall obtain a  
12 letter from the County specifying these conditions have been met and that the District is approved  
13 to award the Project for construction.

14 I. The District shall give written notice thereof, to include a copy of the  
15 executed contract between the District and the vendor, to the County Community Development  
16 Division.

17 J. All proposed contract change orders shall not proceed until prior written  
18 approval has been given by the County. Request for approval of a change order(s) shall include  
19 a narrative description of the work, a cost or price analysis in accordance with HUD requirements,  
20 and a written certification from the District that the approval of the change order is consistent with  
21 the final cost estimate approved by the County. In addition, the District shall certify that the change  
22 order is within the scope of the Project and is necessary to complete the Project.

23 K. The District shall send its written description of the cost or price analyses,  
24 specifications, name of low bidder and low bid proposal, public notices, and all written  
25 correspondence to:

26 Community Development Grants  
27 County of Fresno  
28 Department of Public Works and Planning  
Community Development Division  
2220 Tulare Street, 6th Floor  
Fresno, CA 93721

1 L. The County has determined that the Project is exempt from the provisions  
2 of the California Environmental Quality Act (CEQA) and the National Environmental Protection Act  
3 (NEPA).

4 M. Upon completion of the Project, the District shall notify the County  
5 Community Development Division so a representative of the Division can perform an inspection of  
6 the Project to determine that it was completed in accordance with the scope of work approved and  
7 authorized pursuant to this executed Agreement.

8 N. Upon approval of Project completion by the County, the District shall provide  
9 the County Community Development Division with a resolution of acceptance, or similar  
10 documentation, demonstrating that the Project was completed in accordance with the scope of  
11 work approved and authorized pursuant to this executed Agreement and any approved  
12 subsequent amendments and/or change orders, and that the District has accepted the Project.  
13 Prior to the final request for payment, the District shall also provide the County with a written  
14 summary of all Project work completed with CDBG and other funds.

15 O. During the contract period, the District shall complete and submit annually  
16 on June 1, and upon completion of the Project, a Project Outcome Measurement Report (POM)  
17 form, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference. The  
18 POM shall contain the following information for the County's Federal reporting purposes to the  
19 U.S. Department of Housing and Urban Development (HUD):

- 20 1. Total number of households/persons assisted.
- 21 2. Number of total households/persons assisted that:
  - 22 a. Now have new access to this type of public facility or  
23 infrastructure improvement.
  - 24 b. Now have improved access to this type of public facility or  
25 infrastructure improvement.
  - 26 c. Now are served by public facility or infrastructure that is no  
27 longer substandard.

28 P. The District shall be responsible for maintenance of the improvements after

1 the Project is completed, and shall do so from non-CDBG resources.

2 Q. The District must inform the County in writing of any program income  
3 generated by the expenditure of CDBG funds. Any program income generated as a result of the  
4 Project must be paid to the County. For purposes of this Agreement, program income is defined  
5 as proceeds from the disposition of CDBG-acquired real property, and principal and interest on  
6 CDBG loans. If the District contributed financially to the improvement Project, the District may  
7 retain a share of the program income in proportion to the District's contribution to the Project, after  
8 the District has provided a written accounting acceptable to the County.

9 R. The District must obtain prior written approval from the County before  
10 making any modification or change in the use of any real property improved, in whole or in part,  
11 using CDBG funds in excess of \$25,000. The District shall provide affected citizens with notice of,  
12 and opportunity to comment on, any proposed change to the use of real property improved with  
13 CDBG funds. If any real property improved with CDBG funds is sold and/or is utilized by the District  
14 for a use which does not qualify under the CDBG Program, the District shall reimburse the County  
15 in an amount equal to the current fair market value for the property, less any proportional share  
16 thereof attributable to expenditures of non-CDBG funds. These requirements shall continue in  
17 effect for five years after the Project is completed in HUD's Integrated Disbursement and  
18 Information System (IDIS). In the event the CDBG program is closed out, the requirements of this  
19 Section shall remain in effect for activities or property funded with CDBG funds, unless action is  
20 taken by the Federal government to relieve the District of these obligations.

21 S. The District acknowledges that the County may periodically inspect the  
22 Project to ensure that the property is being used as described in this Agreement. The District  
23 agrees to provide any necessary information to the County to carry out such inspections.  
24 Furthermore, the District agrees to take corrective action if the County determines that  
25 modifications to the use and location of the Project have resulted in a violation of the Federal  
26 CDBG regulations.

27 IV. CONFORMANCE WITH APPLICABLE LAWS AND REGULATIONS

28 A. The District shall, and shall cause its consultants, contractors, and

1 subcontractors to, comply with all applicable State and Federal laws and regulations governing the  
2 Project.

3 B. Whenever the District uses the services of a contractor, the District shall  
4 require that the contractor comply with all Federal, State and local laws, ordinances, regulations  
5 and Fresno County Charter provisions applicable in the performance of their work.

6 C. This Project is subject to the requirements of Section 3 of the Housing and  
7 Urban Development Act of 1968, as amended, 12 U.S.C. 1701(u). Accordingly, the District shall  
8 require the prime contractor to complete and submit documentation prior to award of the  
9 construction contract and upon Project completion that compliance with the Section 3 clause has  
10 been met.

11 D. Because the District is receiving at least \$100,000 for this Project from the  
12 County's CDBG Program under this Agreement, the District shall complete and submit to the  
13 County Community Development Division a "Certification of Payments to Influence Federal  
14 Transactions" form and a "Standard Form LLL - Disclosure of Lobbying Activities" form. Likewise,  
15 before the District awards a contract using at least \$100,000 of such CDBG funds, the District shall  
16 require the consultant and/or contractor and all their sub-consultants and/or subcontractors to  
17 complete and submit these two (2) forms described hereinabove to both the District and the  
18 County.

19 V. PAYMENT FOR THE PROJECT

20 A. At monthly intervals, the District shall submit a written request to the County  
21 for payment of specified costs incurred in the performance of this Agreement. The request for the  
22 County to make such a payment shall be in accordance with the exemplar Project Pay Request  
23 Form attached hereto as Exhibit 2 and incorporated herein by reference. The request shall also  
24 be accompanied by a written certification from the District that the request for payment is consistent  
25 with the amount of work that has been completed, and that said work is in accordance with the  
26 contract documents and this Agreement. The request for payment shall also be accompanied by  
27 documentation acceptable to the County, such as checks, invoices or vouchers for services or  
28 materials purchased, contractor's costs, or other costs chargeable to the Project. After appropriate

1 review and inspection, the County shall make payment from CDBG funds provided in this  
2 Agreement for all eligible costs specified herein up to the maximum amount payable under Section  
3 I.

4 B. Any savings realized in the final cost of the Project, due to Project cost  
5 and/or scope of work reductions, liquidated damages, or any other reason, shall be used to reduce  
6 the amount of this Project paid for with CDBG funds in the same pro-rata share that CDBG funds  
7 were used in payment of the Project. If the District is required to provide any additional funds  
8 toward the Project other than described in this Agreement, any cost savings shall be first used to  
9 reimburse the District for its contribution in excess of the total amount provided by this Agreement.

10 C. Payment for advertising and award shall be based on the actual costs of  
11 printing and noticing.

12 D. The County shall not be bound by any agreement between the District and  
13 its agents.

14 E. The County may withhold payment of the final payment request made by  
15 the District until evidence is submitted to the County that a maintenance plan has been prepared  
16 and adopted for the improvements constructed with CDBG funds.

17 F. Upon the completion of the Project, the District shall submit to the  
18 County Community Development Division a written request for final payment of costs, which  
19 shall provide a detailed description of the Project pay items and costs. The final pay request  
20 shall be in accordance with Exhibit 2. The County shall not be obligated to make any payments  
21 under this Agreement if the request for payment is submitted by the District more than sixty  
22 (60) days after the Notice of Completion has been filed with the County Recorder's Office. An  
23 extension to the sixty (60) day period may be granted by the Director prior to the deadline if the  
24 District can demonstrate just cause for the delay.

25 G. The County may withhold payment of the final payment request made by  
26 the District, until a final POM and written summary of all Project work completed with CDBG and  
27 other funds have been submitted to the County.

28 H. All requests for payment and supporting documentation shall be sent to:

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Business Manager  
County of Fresno  
Department of Public Works and Planning  
Financial Services Division  
2220 Tulare Street, 6<sup>th</sup> Floor  
Fresno, CA 93721

I. The District shall establish accounting and bookkeeping procedures in accordance with standard accounting and bookkeeping practices, including, but not limited to, employee timecards; payrolls; and other records of all transactions to be paid with CDBG funds in accordance with the performance of this Agreement. All records and accounts shall be available for inspection by the County, the State of California, if applicable, the Comptroller General of the United States, and HUD or any of their duly authorized representatives at all reasonable times for a period of at least five (5) years following final payment under this Agreement, or the closure of all other pending matters, whichever is later. The District shall certify accounts when required or requested by the County.

J. The District, as a subrecipient of Federal financial assistance, is required to comply with the provisions of the Single Audit Act of 1984 (31 U.S.C. Sections 7501 et seq.), as amended. Whenever the District receives CDBG funds from the County for the Project, a copy of any audit performed by the District in accordance with said Act shall be forwarded to the County Community Development Grants Program Manager within nine (9) months of the end of any District fiscal year in which funds were expended and/or received for the Project. Failure to perform the requisite audit functions as required by this paragraph may result in the County performing any necessary audit tasks or, at the County's option, the County contracting with a public accountant to perform the audit. All audit costs related to the District's failure to perform the requisite audit are the sole responsibility of the District, and such audit work costs incurred by the County shall be billed to the District, as determined by County's Auditor-Controller/Treasurer-Tax Collector. In the event the District is only required to perform an audit under the provisions of the Act because the District is receiving CDBG funds, the County may perform, or cause to be performed, the required audit to determine whether funds provided through this Agreement have been expended in accordance with applicable laws and regulations. Any audit-related costs incurred by the County

1 under this provision shall be charged to the County CDBG Program. The District agrees to take  
2 prompt and appropriate corrective action on any instance of material non-compliance with  
3 applicable laws and regulations.

4 K. The District shall send a copy of the audit to:

5 Community Development Grants  
6 County of Fresno  
7 Department of Public Works and Planning  
8 Community Development Division  
9 2220 Tulare Street, 6<sup>th</sup> Floor  
10 Fresno, CA 93721

11 VI. INDEMNIFICATION

12 The District shall indemnify, defend, and save harmless the County, its officers,  
13 agents, and employees from and against any and all damages, claims, and losses whatsoever  
14 (including attorney's fees and costs) occurring or resulting to persons, firms, or corporations  
15 furnishing or supplying work, services, materials, or supplies in connection with the performance  
16 of this Agreement, and from any and all damages, claims, and losses (including attorney's fees  
17 and costs) occurring or resulting to any person, firm, or corporation for damage, injury, or death  
18 arising out of or connected with the District's performance of, or failure to perform, its obligations  
19 under this Agreement. The provisions of this Section VI shall survive the termination of this  
20 Agreement.

21 VII. TIME OF PERFORMANCE

22 A. The following schedule shall commence on the date this Agreement is  
23 executed by the County.

- 24 1. Complete Specifications and Submit to the County for Review –  
25 June 1, 2020.
- 26 2. Complete County Review and Approval of Specifications – June 22,  
27 2020.
- 28 3. Begin Advertising for Bids – July 1, 2020.
4. Award Construction Contract – August 1, 2020.

B. Evidence of delivery, inspection, and acceptance by the District shall be

1 submitted to the County Community Development Division no later than February 1, 2021.

2 C. The final POM Report, written summary of all work completed, and request  
3 for final payment shall be submitted to the County no later than April 1, 2021.

4 D. The District shall give immediate written notification to the County  
5 Community Development Division of any events that occur which may affect the above time  
6 schedule and completion date and the time schedule specified in the contract documents, or any  
7 event that may have significant impact upon the Project or affect the attainment of the Project's  
8 objectives. The Director is authorized to make adjustments in the above schedule if, in the  
9 Director's judgment, any delay is beyond the control of the parties involved.

10 E. Time is of the essence in the District's performance of this Agreement.

11 VIII. BREACH OF AGREEMENT

12 In the event the District fails to comply with any of the terms of this Agreement, the  
13 County may, at its option, deem the District's failure a material breach of this Agreement, and utilize  
14 any remedies permitted by law that the County deems appropriate. Should the County deem a  
15 breach of this Agreement material, the County shall immediately be relieved of its obligations to  
16 make further payment as provided herein. Termination of this Agreement due to breach shall not,  
17 in any way whatsoever, limit the rights of the County in seeking any other legal relief in a court of  
18 law or equity, including the recovery of damages. In addition to the Agreement being terminated  
19 by the County in accordance with a material breach of this Agreement by the District, this  
20 Agreement may also be terminated for convenience by the County in accordance with state and  
21 federal law.

22 IX. TERMINATION OF PROJECT

23 A. If the District decides to cancel the Project covered by this Agreement, the  
24 District shall submit a request in writing to the County Department of Public Works and Planning,  
25 Community Development Division explaining just cause for the request. The Director is authorized  
26 to approve such a request if, in the Director's judgment, there is just cause for the Project's  
27 cancellation.

28 B. If the District's request to cancel the Project covered by this Agreement is

1 approved by the Director, the District shall promptly return to the County all CDBG funds paid  
2 pursuant to this Agreement.

3 X. VENUE; GOVERNING LAW

4 Venue for any action arising out of or relating to this Agreement shall be only in  
5 Fresno County, California. The rights and obligations of the parties and all interpretation and  
6 performance of this Agreement shall be governed in all respects by the laws of the State of  
7 California.

8 XI. ENTIRE AGREEMENT

9 This Agreement constitutes the entire agreement between the District and the  
10 County, with respect to the subject matter hereof, and supersedes all previous negotiations,  
11 proposals, commitments, writings, advertisements, publications, and understandings of any nature  
12 whatsoever, unless expressly included in this Agreement.

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1 IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth  
2 on page one of this Agreement.

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FRESNO COUNTY FIRE PROTECTION DISTRICT

COUNTY OF FRESNO

By: \_\_\_\_\_  
President/Superintendent/  
Chairman/Manager

Ernest Buddy Mendes, Chairman of the  
Board of Supervisors of the  
County of Fresno

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

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

ATTEST:  
Bernice E. Seidel  
Clerk of the Board of Supervisors  
County of Fresno, State of California

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

FUND NO: 0001  
SUBCLASS NO: 10000  
ORG NO: 7205  
ACCOUNT NO: 7885  
PROJECT NO: N19731  
ACTIVITY CODE: 7219

REMIT TO:  
Fresno County Fire Protection District  
Attention: Josh Chrisman,  
Administration Officer  
210 S. Academy Avenue  
Sanger, CA 93657  
Telephone: (559) 493-4305

SW:JA:\_\_\_\_\_  
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March 19, 2020

**Exhibit 1**  
**County of Fresno**  
**Project Outcome Measurement Report**

Project #: \_\_\_\_\_ Project Name: \_\_\_\_\_

The County of Fresno is required to submit information annually on each project funded with Community Development Block Grant (CDBG) funds, per U.S. Department of Housing and Urban Development (HUD) guidelines. As a recipient of CDBG funds from the County, the County requests that you provide the following information:

1. Years Reported: \_\_\_\_\_ through \_\_\_\_\_

2. Enter the number of persons assisted that:

a. Now have **new access** to this type of public facility or infrastructure improvement: \_\_\_\_\_ or N/A

(New access to a public facility or infrastructure is when the facility did not previously exist and is provided for the first time.)

b. Now have **improved access** to this type of public facility or infrastructure improvement: \_\_\_\_\_ or N/A

(Improved access to a public facility or infrastructure is when the facility or infrastructure is improved or expanded, enabling the grantee to expand the number of people or type of service the facility provides.)

c. Are served by this public facility or infrastructure improvement that **is no longer substandard**: \_\_\_\_\_ or N/A

(A public facility or infrastructure is no longer substandard when the CDBG funds were used to meet a quality standard, or measurably improve the quality of the facility or infrastructure.)

(Note: The numbers of persons entered in a, b, and c, above, must add up to the total number of persons entered in question 3.)

3. Total number of persons assisted: \_\_\_\_\_

4. Please describe the accomplishments made on this project in the past year (i.e. construction progress). If the project is complete, please describe the overall accomplishments made on the project.

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Form Completed By: \_\_\_\_\_

**Exhibit 2**

**Project Pay Request**

Date

Business Manager  
County of Fresno  
Department of Public Works and Planning  
Financial Services Division  
2220 Tulare Street, 6th Floor  
Fresno, CA 93721

Subject: Request for Payment, CDBG Project No. \_\_\_\_\_  
<District Name>  
<Project Title>

In accordance with the executed Agreement for the above-referenced project, the <District Name> is requesting payment of \$\_\_\_\_\_ for project costs.

The District certifies that this request for payment is consistent with the amount of work that has been completed to date, performed in accordance with the construction contract documents and the executed Agreement, and as evidenced by the enclosed invoices and supporting documents.

<u>Payee</u>	<u>Invoice #</u>	<u>Amount</u>
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Sincerely,

<District Manager>  
<District Name>

Enclosure(s)