



CITY OF ESCONDIDO
CONSULTING AGREEMENT

This Consulting Agreement ("Agreement") is made and entered into as of the last signature date set forth below ("Effective Date"),

Between: CITY OF ESCONDIDO
a California municipal corporation
201 N. Broadway
Escondido, CA 92025
Attn: Randy Manns
(760) 839-6290, ext. 7031
("CITY")

And: GEI Consultants, Inc.
a Massachusetts corporation
5901 Priestly Drive, Suite 301
Carlsbad, CA 92008
Attn: Jerry Reed
760-795-1973
("CONSULTANT").

(The CITY and CONSULTANT each may be referred to herein as a "Party" and collectively as the "Parties.")

WHEREAS, the CITY has determined that it is in the CITY's best interest to retain the professional services of a consultant to provide construction management services for the CITY's Lake Wohlford Dam Replacement Project ("Project");

WHEREAS, CONSULTANT is considered competent to perform the necessary professional services for the CITY; and

WHEREAS, the CITY and CONSULTANT desire to enter into this Agreement for the performance of the Services described herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, and conditions set forth herein, and the mutual benefits derived therefrom, the Parties hereby agree as follows:

1. Description of Services. CONSULTANT shall furnish all of the Services described in the Scope of Work, which is attached to this Agreement as Attachment "A" and incorporated herein by this reference ("Services").
2. Compensation. In exchange for CONSULTANT's completion of the Services, the CITY shall pay,

and CONSULTANT shall accept in full, an amount not to exceed the sum of **\$12,896,890**. CONSULTANT shall be compensated only for performance of the Services described in this Agreement. No compensation shall be provided for any other work or services without the CITY's prior written consent. If this Agreement is amended at any time, additional compensation of CONSULTANT contained in any subsequent amendments shall not exceed a cumulative total of 25% of the maximum payment provided for in this Section 2, unless approved by resolution of the City Council.

3. Performance. CONSULTANT shall faithfully perform the Services in a proficient manner, to the satisfaction of the CITY, and in accord with the terms of this Agreement. CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and other information furnished by CONSULTANT pursuant to this Agreement, except that CONSULTANT shall not be responsible for the accuracy of information supplied by the CITY.
4. Personnel. The performance of the Services by certain professionals is significant to the CITY. As such, CONSULTANT shall only assign the persons listed on Attachment "B", attached to this Agreement and incorporated herein by this reference ("Personnel List"), to perform the Services. CONSULTANT shall not add or remove persons from the Personnel List without the City's prior written consent. If CONSULTANT has not designated a person to perform a component of the Services, CONSULTANT shall not assign such component of the Services to a person without obtaining the City's prior written consent. CONSULTANT shall not subcontract any component of the Services without obtaining the City's prior written consent.
 - a. Each individual listed on Attachment "B" must file (i) a Statement of Economic Interests Form 700 ("Form 700") pursuant to the California Political Reform Act of 1974 within 30 days of commencing work pursuant to this Agreement and (ii) a "leaving office" Form 700 within 30 days of concluding work pursuant to this Agreement. If the term of this Agreement extends beyond one year, each individual listed on Attachment "B" must file a Form 700 on an annual basis for each subsequent term year on or before the first of April. The CITY may require each individual listed on Attachment "B" to assist the CITY in completing a Form 805 to identify consultants that make or participate in making governmental decisions and identify the consultants' disclosure requirements. The Clerk's Office will coordinate Form 700 and 805 completion on the CITY's behalf.
5. Termination. The Parties may mutually terminate this Agreement through a writing signed by both Parties. The CITY may terminate this Agreement for any reason upon providing CONSULTANT with 10 days' advance written notice. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of any notice of termination. If the CITY terminates this Agreement due to no fault or failure of performance by CONSULTANT, then CONSULTANT shall be compensated based on the work satisfactorily performed at the time of such termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the Services.
6. City Property. All original documents, drawings, electronic media, and other materials prepared by CONSULTANT pursuant to this Agreement immediately become the exclusive property of the CITY, and shall not be used by CONSULTANT for any other purpose without the CITY's prior written consent.
7. Insurance Requirements.
 - a. CONSULTANT shall procure and maintain, at its own cost, during the entire term of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services, and the results of such work,

by CONSULTANT, its agents, representatives, employees, or subcontractors. Insurance coverage shall be at least as broad as the following:

- (1) *Commercial General Liability.* Insurance Services Office ("ISO") Form CG 00 01 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 general aggregate.
 - (2) *Automobile Liability.* ISO Form CA 00 01 covering any auto (Code 1), or if CONSULTANT has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage, unless waived by the CITY and approved in writing by the CITY's Risk and Safety Division.
 - (3) *Workers' Compensation.* Worker's Compensation as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.
 - (4) *Professional Liability (Errors and Omissions).* Professional Liability (Errors and Omissions) appropriate to CONSULTANT's profession, with limits no less than \$2,000,000 per occurrence or claim and \$2,000,000 aggregate.
 - (5) If CONSULTANT maintains broader coverage and/or higher limits than the minimums otherwise required by this Agreement, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by CONSULTANT.
- b. Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:
- (1) *Acceptability of Insurers.* Insurance coverage must be provided by an insurer authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A-: FSC VII, or as approved by the CITY.
 - (2) *Additional Insured Status.* Both the Commercial General Liability and the Automobile Liability policies must name the CITY (including its officials, officers, agents, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page. The Commercial General Liability additional insured endorsement shall be at least as broad as ISO Form CG 20 10 11 85, or if not available, through the addition of *both* CG 20 10, CG 20 26, CG 20 33, or CG 20 38, *and* CG 20 37 if a later edition is used. The Automobile Liability endorsement shall be at least as broad as ISO Form CA 20 01.
 - (3) *Primary Coverage.* CONSULTANT's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the CITY, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, officers, agents, employees, or volunteers shall be in excess of CONSULTANT's insurance and shall not contribute with it.
 - (4) *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the CITY.
 - (5) *Subcontractors.* If applicable, CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated within this Agreement, and CONSULTANT shall ensure that the CITY (including its officials, officers, agents, employees, and volunteers) is an additional insured on any insurance required from a subcontractor.
 - (6) *Waiver of Subrogation.* CONSULTANT hereby grants to the CITY a waiver of any right to subrogation that any insurer of CONSULTANT may acquire against the CITY by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any

endorsement that may be necessary to affect this waiver of subrogation, but this subsection shall apply regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer. Any Workers' Compensation policy required by this Agreement shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONSULTANT, its agents, representatives, employees, and subcontractors.

- (7) *Self-Insurance*. CONSULTANT may, with the CITY's prior written consent, fulfill some or all of the insurance requirements contained in this Agreement under a plan of self-insurance. CONSULTANT shall only be permitted to utilize such self-insurance if, in the opinion of the CITY, CONSULTANT's (i) net worth and (ii) reserves for payment of claims of liability against CONSULTANT are sufficient to adequately compensate for the lack of other insurance coverage required by this Agreement. CONSULTANT's utilization of self-insurance shall not in any way limit the liabilities assumed by CONSULTANT pursuant to this Agreement.
 - (8) *Self-Insured Retentions*. Self-insured retentions must be declared to and approved by the CITY.
- c. *Verification of Coverage*. At the time CONSULTANT executes this Agreement, CONSULTANT shall provide the CITY with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting the insurance coverage required by this Agreement), which shall meet all requirements under this Agreement. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Agreement, at any time.
 - d. *Special Risks or Circumstances*. The CITY reserves the right, at any point during the term of this Agreement, to modify the insurance requirements in this Agreement, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
 - e. *No Limitation of Obligations*. The insurance requirements in this Agreement, including the types and limits of insurance coverage CONSULTANT must maintain, and any approval of such insurance by the CITY, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant to this Agreement, including but not limited to any provisions in this Agreement concerning indemnification.
 - f. Failure to comply with any of the insurance requirements in this Agreement, including, but not limited to, a lapse in any required insurance coverage during the term of this Agreement, shall be a material breach of this Agreement. In the event that CONSULTANT fails to comply with any such insurance requirements in this Agreement, in addition to any other remedies the CITY may have, the CITY may, at its sole option, (i) immediately terminate this Agreement; or (ii) order CONSULTANT to stop work under this Agreement and/or withhold any payment that becomes due to CONSULTANT until CONSULTANT demonstrates compliance with the insurance requirements in this Agreement.

8. Indemnification and Hold Harmless.

- a. CONSULTANT (including CONSULTANT's agents, employees, and subcontractors, if any) shall indemnify, and hold harmless the CITY, its officials, officers, and employees from and against any claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "Claims"), of every nature to the proportional extent caused by CONSULTANT's performance of the Services or its failure to comply with any of its

obligations contained in this Agreement, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY.

- b. CONSULTANT (including CONSULTANT's agents, employees, and subcontractors, if any) shall indemnify, and hold harmless the CITY, its officials, officers, and employees from and against any claims caused by, arising under, or resulting from any violation, or claim of violation, of the San Diego Municipal Storm Water Permit (Order No. R9-2013-0001, as amended) of the California Regional Water Quality Control Board, Region 9, San Diego, that the CITY might suffer, incur, or become subject to by reason of, or occurring as a result of, or allegedly caused by, any work performed pursuant to this Agreement.
 - c. All terms and provisions within this Section 8 shall survive the termination of this Agreement.
9. Anti-Assignment Clause. Because the CITY has relied on the particular skills of CONSULTANT in entering into this Agreement, CONSULTANT shall not assign, delegate, subcontract, or otherwise transfer any duty or right under this Agreement, including as to any portion of the Services, without the CITY's prior written consent. Any purported assignment, delegation, subcontract, or other transfer made without the CITY's consent shall be void and ineffective. Unless CONSULTANT assigns this entire Agreement, including all rights and duties herein, to a third party with the CITY's prior written consent, CONSULTANT shall be the sole payee under this Agreement. Any and all payments made pursuant to the terms of this Agreement are otherwise not assignable.
 10. Attorney's Fees and Costs. In any action to enforce the terms and conditions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs.
 11. Independent Contractor. CONSULTANT is an independent contractor, and no agency or employment relationship is created by the execution of this Agreement.
 12. Amendment. This Agreement shall not be amended except in a writing signed by the CITY and CONSULTANT.
 13. Merger Clause. This Agreement, together with its attachments or other documents described or incorporated herein, if any, constitutes the entire agreement and understanding of the CITY and CONSULTANT concerning the subject of this Agreement and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. In the event of any conflict between the provisions of this Agreement and any of its attachments or related documents, if any, the provisions of this Agreement shall prevail.
 14. Anti-Waiver Clause. None of the provisions of this Agreement shall be waived by the CITY because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived by the CITY, in whole or in part.
 15. Severability. This Agreement shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision of this Agreement shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Agreement.
 16. Governing Law. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Venue for any action arising from this Agreement shall be conducted only in the state or federal courts of San Diego County, California.
 17. Counterparts. This Agreement may be executed on separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement by electronic means, including an attachment to

an email, shall be effective as delivery of an executed original. The Agreement on file with the City is the copy of the Agreement that shall take precedence if any differences exist between or among copies or counterparts of the Agreement.

18. Provisions Cumulative. The foregoing provisions are cumulative to, in addition to, and not in limitation of any other rights or remedies available to the CITY.
19. Notice. Any statements, communications, or notices to be provided pursuant to this Agreement shall be sent to the attention of the persons indicated herein, and the CITY and CONSULTANT shall promptly provide the other Party with notice of any changes to such contact information.
20. Business License. CONSULTANT shall obtain a City of Escondido Business License prior to execution of this Agreement and shall maintain such Business License throughout the term of this Agreement.
21. Compliance with Laws, Permits, and Licenses. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements in effect during the term of this Agreement. CONSULTANT shall obtain any and all permits, licenses, and other authorizations necessary to perform the Services. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.
22. Prevailing Wages. If applicable, pursuant to California Labor Code section 1770 et seq., CONSULTANT agrees that a prevailing rate and scale of wages, in accordance with applicable laws, shall be paid in performing this Agreement. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements pertaining to the payment of prevailing wages. The prevailing rate and scale to be paid shall be the same as the applicable "General Prevailing Wage Determination" approved by the Department of Industrial Relations as of the Effective Date of this Agreement, which are available online at <http://www.dir.ca.gov/oprl/dprevagedetermination.htm> and incorporated into this Agreement by this reference. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.
23. Department of Industrial Relations Compliance. This public project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. CONSULTANT shall post all job site notices required by regulation. CONSULTANT, as well as any subcontractors, shall be registered pursuant to California Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal (subject to the requirements of Public Contract Code section 4104), or engage in the performance of any public works contract subject to the requirements of Division 2, Part 7, Chapter 1 of the California Labor Code. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.
24. Immigration Reform and Control Act of 1986. CONSULTANT shall keep itself informed of and shall comply with the Immigration Reform and Control Act of 1986 ("IRCA"). CONSULTANT represents and warrants that all of its employees and the employees of any subcontractor retained by CONSULTANT who perform any of the Services under this Agreement, are and will be authorized to perform the Services in full compliance with the IRCA. CONSULTANT affirms that as a licensed contractor and employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will perform the Services. CONSULTANT

agrees to comply with the IRCA before commencing any Services, and continuously throughout the performance of the Services and the term of this Agreement.

25. Effective Date. Unless a different date is provided in this Agreement, the effective date of this Agreement shall be the latest date of execution set forth by the names of the signatories below.
26. The CITY shall retain 5% of each payment CONSULTANT as part of security for the fulfillment of Services under this Agreement, to be released upon written request of the CONSULTANT on an annual basis contingent upon all Project documentation being up-to-date.

CONSULTANT may request that the CITY make payments of earned retentions directly to an escrow account at the sole expense of the CONSULTANT. If this option is selected, CONSULTANT will provide bank and account information to the CITY for preparation of a retention escrow agreement, on the standard CITY-approved form, before the first payment is made to CONSULTANT.

After Project completion, and once it is determined that all Project records have been properly filed on the CITY's Secure File Transfer Protocol ("SFTP") site, and all other close-out activities have been completed to the satisfaction of CITY staff, and there are no outstanding labor compliance issues or complaints, the CITY will release (or request to be released from the escrow account) the remaining retention funds that have been withheld.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, this Agreement is executed by the Parties or their duly authorized representatives as of the Effective Date:

CITY OF ESCONDIDO

Date: _____

Dane White, Mayor

GEI CONSULTANTS, INC.

Date: _____

Jerry Reed, Vice President

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, CITY ATTORNEY

BY: _____

THE CITY OF ESCONDIDO DOES NOT DISCRIMINATE AGAINST QUALIFIED PERSONS WITH DISABILITIES.

ATTACHMENT "A"

Scope of Work

A. General

GEI Consultants, Inc. a Massachusetts Corporation ("Consultant"), will provide the City of Escondido, a California municipal corporation ("City"), with full-service construction management ("CM") services related to the City's Lake Wohlford Dam Replacement Project ("Project").

B. Location

Consultant to provide services at the Project site located approximately 6.5 miles northeast of the City of Escondido. Access to the area of the site is via Valley Center Road, Lake Wohlford Road, and Oakvale Road. See map Exhibit A, which is attached to this Scope of Work and incorporated herein by this reference, for the Project site map.

C. Services

Consultant shall provide services as described in Consultant's proposal, which is attached hereto as Exhibit B and incorporated by this reference. In the event of a conflict between this Agreement (including this Scope of Work) and Exhibit B, the terms of this Agreement shall prevail.

Project services under this Agreement shall include but not be limited to:

Task 1 – Project Coordination

1. Provide Pre-Bid Phase Services: Constructability Review and Assist the City with developing and rating the Project Contractor Pre-Bid Qualification Process and the Competitive Bidding Phase of the procurement;
2. Provide Bid Phase Services;
3. Develop a Construction Management Plan;
4. Develop a Responsibility Matrix;
5. Develop a Risk Management Plan (which may incorporate the use of Monte Carlo simulation) to compare probabilities relating to cost and schedule curves;
6. Collaborate with City staff and the design engineer on developing a comprehensive layout for the CM Field Offices and Laboratory Facilities;
7. Assist the City with community outreach efforts;
8. Provide a Full-time staff member who is dedicated to performing document control tasks and assisting with labor compliance requirements;
9. Coordinate with the City's Utilities Construction & Engineering staff;
10. Coordinate with the City's Water Treatment staff regarding major shutdowns, tie-ins, facility connections, and any applicable training;
11. Coordinate all special inspections for the Project that are not required of the Project contractor (e.g. geotechnical and any special inspections that are included as part of CM services). All subcontracts for special inspections must include state and federal (Davis-Bacon) prevailing wage and labor compliance requirements – as deemed applicable. Consultant's services relating to special inspections for the Project are further detailed in Task 5 below;
12. Coordinate with the City's independent consultants (e.g. design engineer, third-party labor compliance consultant, SWPPP Program Manager, environmental and cultural monitoring consultants) and all stakeholders to ensure good communications with the Project contractor and good record keeping practices; and
13. Coordinate, review, observe, and document all equipment testing and start up, if applicable.

Task 2 – Construction Phase Services (Project Management)

1. Lead the Pre-construction meeting for the Project;
2. Facilitate weekly Progress Meetings with the Contractor and conduct separate team meetings with the City (e.g. held the day before regular progress meetings); prepare and distribute corresponding meeting minutes for each meeting;
3. Provide Monthly Progress Reports;
4. Develop and implement a Construction Management Plan (i.e. schedule, quality, health and safety);
5. Provide Project Training & Orientation such as job site protocols, visitor sign-in requirements;
6. Provide CM Contract Administration;
7. Ensure adherence to this Agreement, the Project contractor's contract documents, and the Project plans and specifications;
8. Attend a preliminary meeting with the City and labor compliance consultant to review Project documentation requirements;
9. Organize and facilitate a pre-construction partnering session with the Project contractor to discuss any potential design related issues, preliminary RFIs, or other items that might help expedite, ease, or promote a positive construction start;
10. At the City's request, provide professional opinions to the City relating to field construction issues, determining entitlement of compensation to the Project contractor for differing site conditions, change in scope items, negotiating all change order work, mitigating construction claims resolutions, and providing appropriate responses to the Project contractor regarding such issues, on behalf of the City.
11. Facilitate an intermediary Partnering Session, if deemed necessary during construction of the Project;
12. Review the Project contractor's monthly progress payment estimates and confirm that percentages and quantities of work completed align with the amounts requested for payment. Provide a thorough review for accuracy and comparison with actual work completed. Meet with the City's Field Engineering Inspector to discuss the progress pay application and ensure that all check list items are complete, including labor compliance issues, prior to submittal to the City. Make appropriate recommendations to the City on payment issues;
13. Clearly document all details and calculations in written field orders and change orders, ensuring good results for future audits by various funding entities;
14. Track preliminary notices forwarded by City staff, collect and file appropriate releases from contractor, and ensure all appropriate and necessary releases are on file upon Project completion;
15. Conduct and coordinate preliminary and final walk-throughs for the punch lists, start up and testing, and closeout. Ensure all deliverables have been reviewed, approved, and delivered to the appropriate City staff, including Operation and Maintenance manuals and any other training documentation;
16. Provide claim support through final resolution. Mitigate existing issues and resolve all future issues with minimal escalation to avoid claims; and
17. Submit detailed monthly CM services invoices, and include a Burn Rate spreadsheet with each invoice for budget tracking. A sample spreadsheet will be provided.

Task 3 – Quality Assurance

1. Ensure Project contractor compliance;
2. Use the Construction Management Plan ("CMP") to ensure all monitoring, inspections and Quality Assurance guidelines relating to the Project are being executed;
3. Monitor all Project permit conditions (e.g. City encroachment permit) and the respective expiration dates for each Project permit. Inform the City and Project contractor when non-compliance is observed as it relates to the Project permit requirements;
4. Monitor and ensure the Project contractor's compliance for all Project specifications and drawings requirements, the City's Standard Detail drawings, agency encroachment permits, and all other pertinent standards, requirements, and documents associated with the Project;

5. Monitor Project contractor's schedule each week and inform the City of any construction conflicts and issues that could potentially affect the Critical Path Method - CPM or designated Project schedule method; and
6. Provide Storm Water Pollution Prevention Plan Management Services
7. Ensure Environmental Compliance by working closely with the various environmental consultants on the Project.

Task 4 – Document Control and Record Keeping

1. Implement plan for documentation control, record keeping and completion of work;
2. Employ and conform to the City's Secure File Transfer Protocol ("SFTP") system, file management plan, and other City-provided forms to prepare, process, and file (in PDF format) all construction phase documents and records, ensuring complete Project records during the course of the Project and at Project completion;
3. Examples of document control and record keeping include, but are not limited to:
 - a. Preparation of written daily field reports for submittal to the City via the SFTP. Reports must include work performed, labor and equipment utilized, and a discussion of any work not conforming to the plans and specifications. The City will provide Consultant a written daily field report form within 30 days of the Effective Date;
 - b. In accordance with the General Conditions ("GC"), Consultant shall collect the Project contractor's daily reports. After collection, Consultant shall compare the Project contractor's daily reports to Consultant's daily inspection reports so any discrepancies can be addressed in a timely manner. Approved reports will be filed on the SFTP;
 - c. Daily photographic documentation of construction activities in digital, date-stamped format. Photo file sized shall conform to City file requirements. Photos shall be uploaded to the City SFTP on a daily or weekly basis;
 - d. Observe and record all major materials deliveries to the Project site to confirm compliance with the Project specifications and approved shop drawings;
 - e. Review and upload all special inspection reports and geotechnical reports provided by those firms contracted through Consultant pursuant to Task 1 and Task 5;
 - f. Review and upload to the SFTP all Project documents, reports, and correspondence, including shop drawings, submittals, requests for information ("RFI"), Storm Water Pollution Prevention Plan inspections reports, permit documents, environmental monitoring reports and training documentation, labor compliance monitoring reports and correspondence, community complaints and documentation of contact and resolution, geotechnical and materials testing reports, and special inspections;
 - g. During the Project's construction phase, review and update Project red line drawings and Project contractor red line drawings, and provide final reviews and approval of the Project contractor's red line drawings at Project completion. Submit final, Consultant-approved Project contractor red line drawings to the City Field Engineering Inspector;
 - h. Prepare quarterly CM reports, including detailed descriptions of work completed, schedule status, submittals status, RFI status, design revision status, progress payment and overall contract status, and Project photographs representing key construction activities. The quarterly reports will be prepared in a City-approved format including color copies of six or more digital photographs with captions of work performed. Electronic copies of the quarterly reports shall be accessible to the City via the City's SFTP site; and
 - i. Ensure all Project records meet the highest quality assurance/quality control standards. Questionable audit results can negatively impact the City's future funding opportunities. Most project documentation is considered public record and is potentially subject to a high-level of scrutiny.
4. The City will provide Consultant a CM manual, including a detailed file plan and supplementary descriptions corresponding to a select scope of work subtasks. The City does not object to Consultant using their own proprietary file management system; however, all documents

produced in that file management system, as well as documents received from the Project contractor, must be saved as PDFs and filed on the City's SFTP site on a regular (daily or weekly) basis, so that the City's Utilities Construction Management staff has access to all project related documents at all times. Consultant payments will be held, or partially held, if records are not kept up-to-date each month.

5. Prepare for Project Closeout and Final Payment Processing.

Task 5 – Subcontract Management (Special Inspection Services)

1. Consultant to include and manage the following as part of the CM services:
 - a. Scheduling testing for geotechnical support and special inspection and monitoring services, as needed. Geotechnical support and special inspections services shall include, but are not limited to:
 - i. Ability to track quantities of excavated materials via survey mapping or other to help determine the amount of rock encountered and removed, unsuitable soil conditions and to create a defensible position to either support or counter a potential claim;
 - ii. Inspection of Roller Compacted Concrete Dam construction in accordance to the requirements of Project geotechnical specifications and plans;
 - iii. Inspection of trench backfill and compaction testing during pipeline construction and site grading;
 - iv. Materials sampling and testing during installation of cast-in-place concrete for structures and grouting operations;
 - v. Subgrade, aggregate base and asphaltic concrete in cases where the Project construction has caused damage to road surfaces, private driveways or other;
 - vi. Laboratory testing of imported material, compaction testing of trench backfill, concrete cylinder testing, proctor test, and aggregate base conformance to Project specifications for asphalt and concrete;
 - vii. Submitting field reports and lab test reports to the CM; and
 - viii. Retain a Blasting Specialist as needed.
2. As part of the CM fee schedule, a line item allowance of \$3,830,107.00 has been added for geotechnical and special inspection services. This allowance is based on a time and materials basis, not to exceed \$3,830,107.00 without prior written authorization from the City.
3. Consultant is responsible for ensuring compliance with all state and federal (Davis-Bacon) prevailing wage laws and requirements for their firm and any subcontractors or subconsultants, including Skilled and Trained Workforce requirements. State and federal (Davis-Bacon) prevailing wage laws and requirements, including Skilled and Trained Workforce requirements, must be listed in all subcontracts. Consultant and all of their subcontractors and subconsultants are required to submit prevailing wage documentation to the City's labor compliance consultant for compliance monitoring for covered classifications. Consultant payments are subject to withholding for non-compliance.

D. Scheduling

Consultant to schedule specific date for beginning of work in advance by contracting Randy Manns at 760-839-6290 ext. 7031 or rmanns@escondido.org. Further instructions will be provided upon scheduling.

E. Contract Price and Payment Terms

The contract price shall not exceed **\$12,896,890**. Consultant shall submit monthly invoices to the City, and the City shall pay Consultant for invoiced services within 30 days of receipt of an invoice.

The following service rates per task shall remain in effect throughout the term of this Agreement.

Task No.	Task Description	Total Cost
1	Project Coordination	\$1,183,817
2	Construction Phase Services (Project Management)	\$3,572,151
3	Quality Assurance Inspection	\$2,685,636
4	Document Control/Record Keeping	\$1,135,231
5	Subcontract Management – Special Inspection Services	\$3,830,107
Other	Other Direct Costs	\$489,948
	Total	\$12,896,890

Consultant's rates for services are calculated on a "time and materials" basis in accordance with Exhibit C to this Scope of Work, which is attached hereto and incorporated by this reference, shall remain in effect throughout the term of this Agreement.

Consultant acknowledges that the term of this Agreement will extend over multiple fiscal years, and that work and compensation under this Agreement is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Agreement may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. The City is not obligated to pay Consultant for any amounts not duly appropriated and authorized by City Council.

Consultant further acknowledges that although all of the services listed on the Fee Estimate and Schedule are approved under the City Council action that approves this Scope of Work, only the "Pre-construction" phase, in the amount of \$526,458, will be encumbered. The remaining amount will be encumbered after the WIFIA loan is secured.

Pre-construction phase includes the following tasks/deliverables:

1. Construction Management Plan
2. Risk Management Plan and Risk Register
3. Constructability Reviews, Finalize Contract Documents
4. Contractor Pre-Qualification
5. Contractor Bid Process, Award
6. Assist with Community Outreach, Coordinate with City Departments and Consultants

F. Term

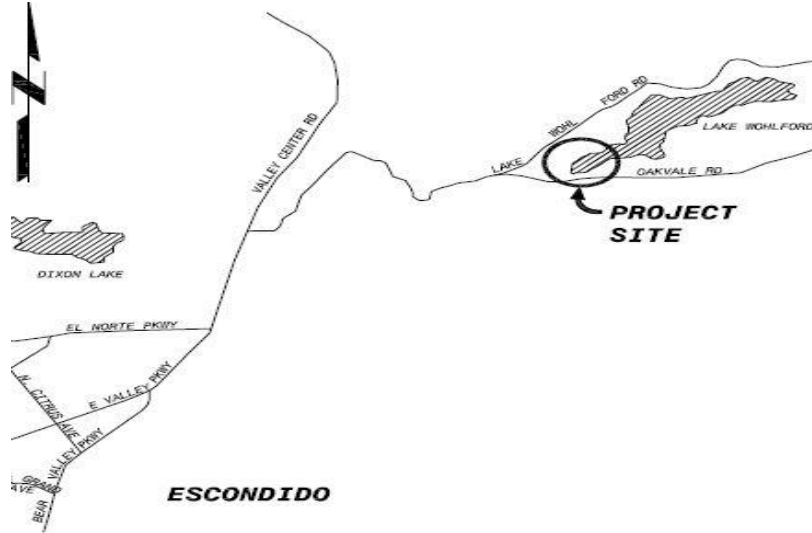
The term of this Agreement shall be from the Effective Date of the Agreement through Project completion, close-out of records, and release of consultant retention.

G. Other

Consultant further acknowledges that services provided under this Agreement shall be subject to all applicable terms and requirements of:

1. The Grant Agreement between the City and State Department of Water Resources (Agreement No. 4600009575), which is attached hereto as Exhibit D and incorporated by this reference; and
2. The WIFIA Loan Agreement between the Escondido Joint Powers Financing Authority, the United States Environmental Protection Agency, and the City, which is attached hereto as Exhibit E and incorporated by this reference.

Exhibit A Project Site Map



LOCATION MAP
NO SCALE



General Vicinity Map



Proposed Modified RCC Improvement

4. SCOPE OF WORK

In this section we:

- ✓ Demonstrate that we understand the scope of work outlined in the RFP.
- ✓ **Commit to performing the entire scope of work presented in the RFP.**
- ✓ Outline our approach to scope activities that we consider to be key to Project success.

Task 1: Project Coordination

CONSTRUCTABILITY REVIEW

GEI's CM staff support our in-house design teams through constructability reviews on hundreds of projects each year. Our main area of focus is ensuring clarity within and continuity between the specifications and other bid documents to avoid ambiguity and conflicts.

We will use our experience with dam construction and RCC to make recommendations that will help reduce the number of RFIs and the risk of potential change orders during construction, where the impacts to project budget and schedule tend to be greater.

CONTRACTOR PREQUALIFICATION

Very specific construction experience is required to construct an RCC dam. Prequalifying contractors is an effective tool in reducing the risk of selecting a poorly qualified contractor, by ensuring that only contractors and subcontractors that have the necessary qualifications are invited to bid on the Project. A well-constructed prequalification process can also help to reduce the potential for protest delays at the time of bid.

Jerry Reed, Wade Griffis, and Rob Fill will assist the City with this process. Together they bring decades of lessons learned from previous RCC dam projects, including the San Vicente Dam raise where Jerry and Wade learned firsthand the pitfalls that need to be avoided when prequalifying RCC contractors.

BID PHASE SERVICES

Once prequalified firms are invited to bid on this Project, the important task of providing adequate and reliable bid documents begins, along with effectively answering contractor questions throughout the bid process. Providing clear and thorough answers reduces the need for bidders to make assumptions and promotes the development of comparable and competitive bids. Jerry Reed, Wade Griffis, and Rob Fill will assist the City with the selection and procurement process, as they have done for many dam projects in the past.

PREPARATION OF THE CM PLAN

Our CM plan will serve as a road map for how we execute our CM services, and how we coordinate with other project team members. The CM plan will include, but not be limited to, the following:

- Safety plan
- Communications plan, with responsibility matrix
- CQA plan
- Risk management plan
- Document control plan
- Change management plan

Steve Lindsay will lead the development of these plans under the supervision of **Jerry Reed**. Steve developed the City of San Diego's current guidance manuals for both construction management and project management, and Jerry has written and revised portions of SDCWA's Construction Management Manual. We will coordinate with the City and the City's other project consultants to identify lines of communication and responsibilities for all parties in accordance with the City's own procedures manuals. The CM plan will be reviewed and updated annually to ensure that it stays relevant and usable.

RISK MANAGEMENT

Risk management on this Project will be aimed at identifying, characterizing, and mitigating risks before they occur, with the overall goal of maximizing safety and minimizing project cost and schedule impacts. **Arun Parsons**, who led the on-site coordination of risk management for the Calaveras Dam replacement project, will lead the CM's risk management scope for this Project. Arun will first develop a risk management plan to specify the roles, responsibilities, and procedures for the formal management of risk through the duration of the project.

After the risk management plan is finalized, Arun will lead the development of the initial risk register, in collaboration with the City, designer, and environmental consultant. The risk register will identify potential risks through the lifetime of the Project, develop actions that can be taken to transfer, mitigate or avoid each risk, and identify action owners. As we continue through pre-construction and construction, Arun will regularly check in with action owners to drive actions forward. We will regularly (perhaps quarterly) meet in-person with the Project team to discuss and update the risk register.

Additional scope, if the City desires, would involve a quantitative analysis (typically a Monte Carlo analysis) of the Project's "risk profile," the primary benefit of which is to provide a probability vs. cost curve that can be compared to the Project contingency budget.

COMMUNITY OUTREACH

We expect that the City will lead community outreach efforts for this Project, and the CM team will support as needed in a leadership and/or administrative capacity.

Jerry Reed and **Steve Lindsay** have extensive experience with community outreach and leading town meetings to address residents' questions and concerns, and they are available to support the City in any way. Additionally, our CM team can provide administrative support for community outreach, such as developing fliers and managing websites.

COORDINATE WITH THE CITY'S WATER TREATMENT STAFF

We expect that the City's person in charge of the CM services contract will be Randy Manns of the Utilities Construction and Engineering Division, and it will be he whom we take formal direction from. Additionally, it will be beneficial to the Project if the CM team establishes direct communication with the City's Water Treatment staff to discuss, plan and execute activities that will affect operations, such as system shutdowns, bypass set-up, outlet works construction and start-up, and any necessary training. We will work with the City to define the points-of-contact and lines of communication and include these details in the communications plan.

Task 2: Construction Phase Services

LEADING AND FACILITATING MEETINGS

The GEI CM team will lead or facilitate the following meetings throughout the life of the Project:

- Preliminary meetings with City and City representatives (designer, environmental consultant, labor compliance consultant)
- Pre-construction meeting
- Pre-construction partnering session
- Weekly progress meetings with City and City representatives
- Weekly progress meetings with contractor
- Preliminary and final walk-throughs

Meetings between different team members will be methodically managed and documented to make effective use of time in reaching decisions and determining necessary actions. Meetings will be led by a senior member of the CM team such as the **Jerry Reed**, **Steve Lindsay**, or **Aaron Trimm**, with the office engineer **Kody Vandervort** taking notes and subsequently circulating those notes and the agenda for the next meetings. Our documentation of meetings, particularly with the contractor, will provide a useful administrative record for future reference.

CM CONTRACT ADMINISTRATION

GEI's CM contract administration activities will support our execution of CM services contract. Major activities include management of CM staffing, subconsultants and resources to execute the CM scope of work, managing the CM services budget, and meeting CM reporting requirements efficiently and effectively. **Lucy Vinnichenko** will be the CM services contract administrator. Lucy will manage our subcontracts with our CM team partners and specialty inspection firms. Lucy will review all incoming subconsultant invoices and, once approved will compile with GEI's fees and create a monthly CM services invoice to transmit to the City. With each invoice we will submit a burn rate spreadsheet based on the City's template, and a CM services monthly report.

ENSURE CONTRACTOR'S ADHERENCE TO THE CONTRACT DOCUMENTS

As the City's construction manager, one of our primary functions is to administer the City's contract with the contractor and hold the contractor accountable for adhering to the contract requirements. Important areas of contract compliance include, but are not limited to:

- Safety management
- Construction quality control
- Schedule updates
- Payment applications
- Permit compliance
- Change management

Our CM plan will contain the CM team's responsibilities, processes, and procedures for enforcing the construction contract, which we will develop in coordination with the City and the City's existing CM procedures.

Key to our enforcement of the construction contract will be formal correspondence in a timely manner. **Steve Lindsay** will hold the contractor to the specified requirements for submitting formal documentation, requests and notices, and he will take direct responsibility for ensuring that the City's correspondence is equally timely. In this way Steve will minimize the chances of owner-caused delays.

PRE-CONSTRUCTION PARTNERING SESSION

The key staff on our team have all taken part in partnering on large capital projects and agree that this is a necessary component to help ensure that communication is effective within the team and that everyone has a goal to resolve issues during construction to eliminate and/or minimize claims. The scope of work provided in the RFP indicates a partnering session facilitated by the CM team to discuss any potential design related issues, preliminary RFIs, or other items that might expedite or promote a constructive start to construction. **Jerry Reed** will facilitate the

partnering session, using his experience leading the owner's teams for the San Vicente Dam raise and Olivenhain Dam projects to structure and manage the meeting in a constructive and collaborative way. Prior to the partnering session, Jerry will meet separately with the City, design team, and contractor to gather initial topics to develop the agenda and brief each party on the purpose of the meeting – to be collaborative and work together for a successful project start.

SUPPORT FOR ISSUE RESOLUTION AND CHANGE MANAGEMENT

Effective dispute resolution and change management are critical to the management of dam construction. **Aaron Trimm** will lead change management, under the supervision of **Steve Lindsay**. A key element of our approach will be an "issue resolution ladder." This will be detailed in our CM plan and is a formalized method of working through issues, whereby disagreements or disputes are to be resolved at the lowest possible level. For example, an issue arising in the field must first be discussed between the on-site contractor's supervisor and the CM's lead inspector. Only if they are not able to resolve the issue will it be elevated to the CM. The goal of the issue resolution ladder is to minimize the number of formal disputes.

If the contractor does transmit a formal request for a change order, our construction contract administrator, **Aaron Trimm**, will immediately review the request for contractual merit and potential impacts, and then brief the CM, **Steve Lindsay**. Steve will inform the City of the request and at the same time provide a summary of the CM team's assessment of merit and impacts. The CM team will then support the City in deciding upon a course of action, developing response documentation, and negotiating with the contractor, if necessary.

REVIEW CONTRACTOR'S MONTHLY PROGRESS PAYMENT

Our contract administrator, **Aaron Trimm** will receive the contractor's monthly payment request and work with the resident engineer and office engineer to verify that the request conforms to the contract requirements and accurately reflects the percentages and quantities of the work performed. Aaron will not accept the payment request until it is accurate and compliant, at which point he will pass to the CM, **Steve Lindsay** to review before submitting to the City with a recommendation for payment.

PUNCH LISTS, START-UP AND CLOSEOUT

As part of our duties with managing and facilitating the preliminary and final walk-throughs, we will assemble a

complete Project punch list, oversee start-up and testing, and guide the Project through close-out. Our QA manager, **Mike Jubran**, will confirm all deliverables have been reviewed, approved, and submitted to appropriate City staff. Mike will work with our start-up and commissioning coordinator, **Jay Losofsky**, to ensure that the contractor provides all necessary O&M Manuals and will facilitate any necessary training for City Water Treatment staff to operate the new facilities. An important element of Project close-out is to track and verify all releases have been obtained from contractors, subcontractors, and vendors for preliminary notices that have been filed against the Project.

Task 3: Quality Assurance Inspection ENSURE THAT QA IS EXECUTED, AND MONITOR CONTRACTOR COMPLIANCE WITH SPECIFICATIONS AND DRAWINGS

GEI will develop and implement a specific and comprehensive construction QA program for the Project, with the goal of assuring that all contract requirements are met. In pre-construction our QA manager and resident engineer, **Mike Jubran**, will develop our CQA plan for the City, designer, and DSOD to review and approve. The CQA plan will be based upon the design drawings, specifications, and relevant City standards, and will be aimed at providing oversight and assurance of the contractor's CQC plan. More details of our QA program and plan are provided in Section 3.

MONITOR PERMIT CONDITIONS

We will monitor and ensure all Project permits, including encroachment permits, are operating with active expiration dates prior to advertising the project for bid. During constructability review, we will ensure that permit requirements are included in the contract documents, and during construction we will work with the City's environmental consultant to enforce requirements.

ENSURE ENVIRONMENTAL COMPLIANCE

The sensitive cultural and environmental resources in the vicinity of Lake Wohlford require diligent cultural and environmental monitoring, which will be performed by another City consultant.

Our CM team will coordinate with the environmental consultant in pre-construction to establish the Project monitoring and oversight requirements, and then coordinate through construction to schedule all necessary monitoring to keep the work on track and in line with the permit requirements. When needed, we will enforce directives and corrective actions required of the contractor to maintain permit compliance.

MONITOR CONTRACTOR'S SCHEDULE

Our contract administrator, **Aaron Trimm**, supported by our scheduler, **Autumn Childers**, will receive and analyze the contractor's monthly schedule update, which will be compared to the approved baseline schedule. If the contractor falls behind schedule, Aaron will request that a recovery schedule be provided detailing how the contractor will bring the project back on schedule.

Aaron and Autumn will hold a pre-construction scheduling conference with the contractor to review the Project schedule requirements. A primary goal of this meeting is to help the contractor more efficiently develop an acceptable baseline schedule.

Task 4: Document Control and Record Keeping

CONFORM TO THE CITY'S SECURE FILE TRANSFER PROTOCOL (SFTP)

We will comply with the City's SFTP by placing all project documentation, in the necessary templates and formats and with necessary timeliness, onto the City's SFTP so that they can be accessed as and when needed by City staff. We will look for the City to provide us the City's CM Manual, which will detail the City's filing plan and document management requirements. Our full-time document controller, **Heather Geren**, will take responsibility for SFTP compliance.

IMPLEMENT A DOCUMENT CONTROL PLAN AND SYSTEM

In addition to fulfilling the City's SFTP, the GEI CM team proposes to use **Procore** as a CM document control system for the project that is accessible and usable by all Project team members. GEI has used Procore on similar projects and found it to be a useful tool. **Heather Geren** will develop our protocols for the use of the Procore system, including the management of:

- CM daily field reports
- Contractor QC reports
- CM QA reports and special inspections reports
- Meeting minutes
- Red line drawings
- Formal correspondence
- RFIs and submittals

QUARTERLY CM REPORTS

As specified in the RFP, GEI will provide quarterly CM reports to the City that provide a summary of the project status and a look-ahead to upcoming activities. We will develop the format and the desired content of the reports in discussion with the City, and we expect to include:

- Project cost and schedule status
- Safety updates

- Construction activities
- QA activities and non-compliance issues
- Submittals and RFIs in process
- Environmental compliance status and issues
- Change management log
- Risk management status

LABOR COMPLIANCE

This project will be governed by state and federal prevailing wage laws. Our labor compliance specialist, **Michalle Beringhaus**, will ensure that that CM team is compliant and coordinate with the City's labor compliance consultant to provide all necessary documentation. Michalle can also support the oversight of the contractor's prevailing wage compliance. Michalle's plan of action begins in pre-construction and extends through closeout:

PRE-CONSTRUCTION

- Clarify scope with the City.
- Determine applicable laws and regulations.
- Meet with City and labor compliance consultant, and separately meet with CM subconsultants and the contractor, to establish responsibilities and workflows.
- Gather required documentation such as DAS forms, Authorization for Deductions, Craft Lists and Fringe Benefit Statements.

CONSTRUCTION

- Skilled and Trained Workforce Program, enforced under Assembly Bill (AB) 3018.
- Certified payroll and spot checking, using the DIR eCPR system.
- Compliance reporting and notifications.

PROJECT CLOSEOUT

- Procedures can vary by subcontractor or subconsultant. We will discuss the City's preference for close out procedures before implementing them.

Task 5: Subcontract Management (Special Inspection Services)

Our CM team includes all necessary subconsultants and resources to provide the special inspections, surveying, laboratory testing and blasting oversight that this Project is expected to require. Our CM services contract administrator, **Lucy Vinnichenko**, will manage our subconsultant contracts for these services, and our QA manager and RE, **Mike Jubran**, will schedule the necessary services as the work progresses. **Michalle Beringhaus**, our labor compliance specialist, will monitor our subconsultants' compliance with prevailing wage laws and provide necessary documentation to the City's labor compliance consultant.



City of Escondido Utilities Construction and Engineering Department
Proposal for Construction Management Services for the Lake Wohlford Dam Replacement Project
Section 7. Updated Fee Estimate and Schedule
GEI Consultants, Inc. January 11, 2024

Construction Schedule Gantt chart showing tasks from Preconstruction to Construction with columns for months from Feb-24 to Feb-28.

Main fee schedule table with columns: Role, Firm, Personnel, Assumptions, % of Hours by Phase, Straight Time, Overtime, Double Time, Preconstruction, Construction Phase, Close Out, 2 Added Months, Total Units, Average Unit Rate, 2024-27 Rate, Fee.



City of Escondido Utilities Construction and Engineering Department
Proposal for Construction Management Services for the Lake Wohlford Dam Replacement Project
Proposed Labor Billing Rates
GEI Consultants, Inc. January 11, 2024

GEI Salary Multiplier (Management):	2.50
GEI Salary Multiplier (Staff Level):	2.60
GEI Salary Multiplier (Prevailing Wage ST):	2.50
GEI Salary Multiplier (Prevailing Wage OT and DT):	2.25
Sub Markup:	10.0%
Vendor Markup:	10.0% (applied to QA Surveying fees which are lump-sum per survey)
Annual Escalation:	4.0%

Role	Name	Firm	2023 Raw Rates (GEI) and No-Markup Rates (Subs)			2023 Billing Rates			2024 Billing Rates			2025 Billing Rates			2026 Billing Rates			2027 Billing Rates			2024-27 (4-yr) Average Rates Used for Fee Estimate		
			Straight Time	Over Time	Double Time	ST	OT	DT	ST	OT	DT	ST	OT	DT	ST	OT	DT	ST	OT	DT	ST	OT	DT
Principal & Preconstruction Manager	Jerry Reed	GEI	116.24			291	-	-	302	-	-	314	-	-	327	-	-	340	-	-	321	-	-
DSOD Advisor	David Gutierrez	GEI	114.20			286	-	-	297	-	-	309	-	-	321	-	-	334	-	-	315	-	-
Construction Manager	Steve Lindsay	GEI	96.16			240	-	-	250	-	-	260	-	-	270	-	-	281	-	-	265	-	-
Risk Manager	Arun Parsons	GEI	100.48			251	-	-	261	-	-	272	-	-	283	-	-	294	-	-	277	-	-
Senior Advisors	Rob Fill	GEI	100.88			252	-	-	262	-	-	273	-	-	284	-	-	295	-	-	278	-	-
Resident Engineer - Foundation & Dam	Michel Jubran	GEI	96.16			250	-	-	260	-	-	270	-	-	281	-	-	292	-	-	276	-	-
Office Engineer	Kody Vandervort	GEI	44.24			115	-	-	120	-	-	124	-	-	129	-	-	135	-	-	127	-	-
CM Services Contract Administrator	Lucy Vinnichenko	GEI	43.28			113	-	-	117	-	-	122	-	-	127	-	-	132	-	-	124	-	-
Lead Inspector Civil - PW GP2	Rodolfo Ruiz Gaekel	GEI	95.25	123.48	151.71	238	278	341	248	289	355	258	301	369	268	313	384	279	325	399	263	307	377
Lead Inspector Geotech - PW GP2	Enrico Rufini	GEI	95.25	123.48	151.71	238	278	341	248	289	355	258	301	369	268	313	384	279	325	399	263	307	377
Senior Advisor	Wade Griffis	Brady	265.00			292	-	-	303	-	-	315	-	-	328	-	-	341	-	-	322	-	-
Document Controller	Heather Gerren	Brady	135.00			149	-	-	154	-	-	161	-	-	167	-	-	174	-	-	164	-	-
Inspector Civil - PW GP2	David Brady	Brady	195.00	195.00	195.00	215	215	215	223	223	223	232	232	232	241	241	241	251	251	251	237	237	237
Inspector Civil - PW GP2	Glenn Petrenko	Brady	215.00	215.00	215.00	237	237	237	246	246	246	256	256	256	266	266	266	277	277	277	261	261	261
Construction Contract Administrator	Aaron Trimm	CAPO	225.00			248	-	-	257	-	-	268	-	-	278	-	-	290	-	-	273	-	-
Scheduler	Autumn Childers	CAPO	194.00			213	-	-	222	-	-	231	-	-	240	-	-	250	-	-	236	-	-
Cost Estimator	Raul Salazar	CAPO	194.00			213	-	-	222	-	-	231	-	-	240	-	-	250	-	-	236	-	-
Blasting Specialist	Eric Bennett	EROCK	250.00			275	-	-	286	-	-	297	-	-	309	-	-	322	-	-	304	-	-
Materials Manager	Chad Davis	Kleinfelder	265.00			292	-	-	303	-	-	315	-	-	328	-	-	341	-	-	322	-	-
Safety Manager	Bryan Reese	Kleinfelder	189.00			208	-	-	216	-	-	225	-	-	234	-	-	243	-	-	230	-	-
Inspector RCC - PW GP2	Derick London	Kleinfelder	198.08	277.83	341.35	218	306	375	227	318	391	236	331	406	245	344	422	255	358	439	241	337	415
Inspector RCC - PW GP2	Bob Frazer	Kleinfelder	198.08	277.83	341.35	218	306	375	227	318	391	236	331	406	245	344	422	255	358	439	241	337	415
Inspector RCC - PW GP2	Edmond Jabbour	Kleinfelder	198.08	277.83	341.35	218	306	375	227	318	391	236	331	406	245	344	422	255	358	439	241	337	415
Inspector RCC - PW GP2	TBD RCC Inspector	Kleinfelder	198.08	277.83	341.35	218	306	375	227	318	391	236	331	406	245	344	422	255	358	439	241	337	415
Inspector Concrete - PW GP2	Randy Lewis	Kleinfelder	198.08	277.83	341.35	218	306	375	227	318	391	236	331	406	245	344	422	255	358	439	241	337	415
Inspector Structural - PW GP2	Randy Lewis	Kleinfelder	198.08	277.83	341.35	218	306	375	227	318	391	236	331	406	245	344	422	255	358	439	241	337	415
Lab Supervisor - PW GP1	Mike Magana	Kleinfelder	193.27	271.82	333.34	213	299	367	221	311	381	230	323	397	239	336	412	249	350	429	235	330	405
Lab Technician - PW GP1	Geoff Swink	Kleinfelder	193.27	271.82	333.34	213	299	367	221	311	381	230	323	397	239	336	412	249	350	429	235	330	405
Lab Technician - PW GP1	Jacob Cruz	Kleinfelder	193.27	271.82	333.34	213	299	367	221	311	381	230	323	397	239	336	412	249	350	429	235	330	405
Lab Technician - PW GP1	Tyler Copeman	Kleinfelder	193.27	271.82	333.34	213	299	367	221	311	381	230	323	397	239	336	412	249	350	429	235	330	405
Lab Technician - PW GP1	TBD Lab Technician	Kleinfelder	193.27	271.82	333.34	213	299	367	221	311	381	230	323	397	239	336	412	249	350	429	235	330	405
Labor Compliance Specialist	Michalle Beringhaus	Kleinfelder	171.15		333.34	188	-	367	196	-	381	204	-	397	212	-	412	220	-	429	208	-	405
Labor Compliance Assistant	Irene Beckes	Kleinfelder	105.77		333.34	116	-	367	121	-	381	126	-	397	131	-	412	136	-	429	128	-	405
Resident Engineer - Outlet Works	Mike Kenny	Kenny CS	263.00			289	-	-	301	-	-	313	-	-	325	-	-	338	-	-	319	-	-
Inspector E/M/I&C - PW GP2	Jay Losovsky	Kenny CS	211.70	257.33	302.95	233	283	333	242	294	347	252	306	360	262	318	375	272	331	390	257	313	368
Inspector Welding & Coatings - PW GP2	Jeff Edwards	Kenny CS	216.34	262.97	309.59	238	289	341	247	301	354	257	313	368	268	325	383	278	338	398	263	319	376
Inspector Shop Inspections	Vance Sanford	Kenny CS	211.70			233	-	-	242	-	-	252	-	-	262	-	-	272	-	-	257	-	-
Inspector Cathodic Protection - PW GP2	Mark Bell	Kenny CS	211.70	257.33	302.95	233	283	333	242	294	347	252	306	360	262	318	375	272	331	390	257	313	368
Project Manager	Scott Berkebile PM	R3X Group	150.00			165	-	-	172	-	-	178	-	-	186	-	-	193	-	-	182	-	-
BMP Inspector	Scott Berkebile Insp	R3X Group	110.00			121	-	-	126	-	-	131	-	-	136	-	-	142	-	-	134	-	-
QSD/ RWQCB Oversight	Sammy Rodriguez	R3X Group	150.00			165	-	-	172	-	-	178	-	-	186	-	-	193	-	-	182	-	-
Senior Advisor	Mike Pauletto	MPauletto	360.00			396	-	-	412	-	-	428	-	-	445	-	-	463	-	-	437	-	-

GRANT AGREEMENT BETWEEN THE STATE OF CALIFORNIA (DEPARTMENT OF WATER RESOURCES) AND**THE CITY OF ESCONDIDO, AGREEMENT NO. 4600009575****PROPOSITION 1E ROUND 1 STORMWATER FLOOD MANAGEMENT GRANTS****CALIFORNIA WATER CODE §83002 and PUBLIC RESOURCES CODE §5096.827 ET SEQ****AMENDMENT 3**

THIS GRANT AGREEMENT is entered into by and between the Department of Water Resources of the State of California, herein referred to as the "State" and the City of Escondido, a public agency, in the County of San Diego, State of California, duly organized, existing, and acting pursuant to the laws thereof, herein referred to as the "Grantee", which parties do hereby agree as follows:

1. PURPOSE. State shall provide a grant from the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Public Resources Code (PRC) §5096.827 et seq.) to Grantee to assist in financing the project associated with the City of Escondido – Lake Wohlford Dam Replacement Project for the Stormwater Flood Management (SWFM) Program, collectively referred to as "SWFM Program."
2. TERM OF GRANT AGREEMENT. The term of this Grant Agreement begins on the date this Grant Agreement is executed by the State, and terminates on June 30, 2026, or when all of the Parties' obligations under this Grant Agreement are fully satisfied, whichever occurs earlier. Execution date is the date the State signs this Grant Agreement indicated on page 7.
3. GRANT AMOUNT. The maximum amount payable by State under this Grant Agreement shall not exceed \$14,900,000.00. Reimbursement of grant funds may be claimed after December 21, 2011.
4. GRANTEE COST SHARE. The reasonable costs for this Grant Agreement are estimated to be \$38,000,000. Grantee shall provide a Cost Share (Funding Match) in the amount of at least 50% of the total project cost. Grantee's Funding Match is estimated to be \$19,380,000. Grantee's Funding Match may include cost share performed after September 30, 2008. Funding Match consists of non-State funds including in-kind services. In-kind services are defined as work performed (i.e., dollar value of non-cash contributions) by the Grantee (and potentially other parties involved) directly related to the execution of the scope of work (examples: volunteer services, equipment use, and facilities). For Funding Match guidance, see Exhibit G.
5. GRANTEE'S RESPONSIBILITY. Grantee shall faithfully and expeditiously perform or cause to be performed all project work as described in Exhibit A (Work Plan) and in accordance with Exhibit B (Schedule) and Exhibit C (Budget). Grantee shall comply with all of the terms and conditions of this Grant Agreement and applicable PRC and CWC requirements.
6. BASIC CONDITIONS. State shall have no obligation to disburse money for a project under this Grant Agreement unless and until Grantee has satisfied the following conditions in accordance with the Disaster Preparedness and Flood Prevention Bond Act of 2006.
 - a) Grantee demonstrates the availability of sufficient funds to complete the project, as stated in the Grant Award/Commitment Letter, by submitting the most recent 3 years of audited financial statements.
 - b) For the term of this Grant Agreement, Grantee submits timely Quarterly Progress Reports as required by Paragraph 16, "Submission of Reports."
 - c) Grantee submits all deliverables as specified in Paragraph 16 of this Grant Agreement and in Exhibit A.
 - d) For each project, prior to the commencement of construction or implementation activities, Grantee shall submit the following to the State:
 - 1) Final plans and specifications certified by a California Registered Civil Engineer as to compliance for each approved project as listed in Exhibit A of this Grant Agreement.
 - 2) Work that is subject to the California Environmental Quality Act (CEQA) and or environmental permitting shall not proceed under this Grant Agreement until the following actions are performed:
 - i. Grantee submits all applicable environmental permits as indicated on the Environmental Information Form to the State,
 - ii. Documents that satisfy the CEQA process are received by the State,
 - iii. State has completed its CEQA compliance review as a Responsible Agency, and
 - iv. Grantee receives written concurrence from the State of Lead Agency's CEQA document(s) and State notice of verification of environmental permit submittal.

State's concurrence of Lead Agency's CEQA documents is fully discretionary and shall constitute a condition precedent to any work (i.e., construction or implementation activities) for which it is required. Once CEQA documentation has been completed, State will consider the environmental documents and decide whether to continue to fund the project or to require changes, alterations or other mitigation. Grantee must also demonstrate that it has complied with all applicable requirements of the National Environmental Policy Act by submitting copies of any environmental documents, including environmental impact statements, Finding of No Significant Impact, mitigation monitoring programs, and environmental permits as may be required prior to beginning construction/implementation.

- 3) A monitoring plan as required by Paragraph 21, "Project Monitoring Plan Requirements."
7. DISBURSEMENT OF GRANT FUNDS. Following the review of each invoice, State will disburse to Grantee the amount approved, subject to the availability of funds through normal State processes. Notwithstanding any other provision of this Grant Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or which may require any rebates to the federal government, or any loss of tax-free status on state bonds, pursuant to any federal statute or regulation. Funds will be disbursed by State in response to each approved invoice in accordance with the Exhibit C. Any and all money disbursed to Grantee under this Grant Agreement and any and all interest earned by Grantee on such money shall be used solely to pay Eligible Costs.
8. ELIGIBLE PROJECT COST. Grantee shall apply State funds received only to eligible Project Costs in accordance with applicable provisions of the law and Exhibit C. Eligible project costs include the reasonable costs of studies, engineering, design, land and easement acquisition, legal fees, preparation of environmental documentation, environmental mitigations, monitoring, and project construction. Work performed after the date of grant award, December 21, 2011, shall be eligible for reimbursement. Reasonable administrative expenses may be included as Project Costs and will depend on the complexity of the project preparation, planning, coordination, construction, acquisitions and implementation. Reimbursable administrative expenses are the necessary costs incidentally but directly related to the project including the portion of overhead and administrative expenses that are directly related to the project included in this Grant Agreement in accordance with the standard accounting practices of the Grantee.

Advanced funds will not be provided. Costs that are not reimbursable with grant funds cannot be counted as cost share. Costs that are not eligible for reimbursement include but are not limited to:
 - a) Costs, other than those noted above, incurred prior to the award date of the Grant.
 - b) Operation and maintenance costs, including post construction performance and monitoring costs.
 - c) Purchase of equipment not an integral part of a project.
 - d) Establishing a reserve fund.
 - e) Purchase of water supply.
 - f) Monitoring and assessment costs for efforts required after project construction is complete.
 - g) Replacement of existing funding sources for ongoing programs.
 - h) Travel and per diem costs.
 - i) Support of existing agency requirements and mandates (e.g. punitive regulatory agency requirements).
 - j) Purchase of land in excess of the minimum required acreage necessary to operate as an integral part of a project, as set forth and detailed by engineering and feasibility studies, or land purchased prior to the effective date of the grant award with the State.
 - k) Payment of principal or interest of existing indebtedness or any interest payments unless the debt is incurred after execution of this Grant Agreement, the State agrees in writing to the eligibility of the costs for reimbursement before the debt is incurred, and the purposes for which the debt is incurred are otherwise eligible costs. However, this will only be allowed as Grantee Cost Share (i.e. Funding Match)
 - l) Overhead not directly related to project costs.
9. METHOD OF PAYMENT. After the disbursement requirements in Paragraph 6 "Basic Conditions" are met, State will disburse the whole or portions of the Grant Amount to Grantee, following receipt from Grantee via US mail or Express mail delivery of a "wet signature" invoice or an electronic invoice certified and

transmitted via DocuSign for costs incurred, including Cost Share, and timely Quarterly Progress Reports as required by Paragraph 16, "Submission of Reports."

Invoices submitted by Grantee shall include the following information:

- a) Costs incurred for work performed in implementing the project during the period identified in the particular invoice.
- b) Costs incurred for any interests in real property (land or easements) that have been necessarily acquired for a project during the period identified in the particular invoice for the implementation of a project.
- c) Appropriate receipts and reports for all costs incurred.
- d) Invoices shall be submitted on forms provided by State and shall meet the following format requirements:
 - 1) Invoices must contain the date of the invoice, the time period covered by the invoice, and the total amount due.
 - 2) Invoices must be itemized based on the categories (i.e., tasks) specified in the Exhibit C. The amount claimed for salaries/wages/consultant fees must include a calculation formula (i.e., hours or days worked times the hourly or daily rate = the total amount claimed).
 - 3) One set of sufficient evidence (i.e., receipts, copies of checks, time sheets) must be provided for all costs included in the invoice.
 - 4) Each invoice shall clearly delineate those costs claimed for reimbursement from the State's grant amount, as depicted in Paragraph 3, "Grant Amount" and those costs that represent Grantee's costs, as applicable, in Paragraph 4, "Grantee Cost Share."
 - 5) Original signature and date (in ink) of Grantee's Project Manager.

Payment will be made no more frequent than monthly, in arrears, upon receipt of an invoice bearing the Grant Agreement number.

10. WITHHOLDING OF GRANT DISBURSEMENT BY STATE. If State determines that a project is not being implemented in accordance with the provisions of this Grant Agreement, or that Grantee has failed in any other respect to comply with the provisions of this Grant Agreement, and if Grantee does not remedy any such failure to State's satisfaction, State may withhold from Grantee all or any portion of the Grant Amount and take any other action that it deems necessary to protect its interests. State may require the Grantee to immediately repay all or any portion of the disbursed grant amount with interest, consistent with its determination. State may consider Grantee's refusal to repay the requested disbursed grant amount a contract breach subject to the default provisions in Paragraph 12, "Default Provisions."
11. CONTINUING ELIGIBILITY. Grantee must meet the following ongoing requirements to remain eligible to receive State grant funds:
 - a) Timely adoption of an IRWM Plan that meets the requirements contained in Part 2.2 of Division 6 of the CWC, commencing with Section 10530.
 - b) An urban water supplier that receives grant funds governed by this Grant Agreement shall maintain compliance with the Urban Water Management Planning Act (CWC§10610 *et. seq.*);
12. DEFAULT PROVISIONS. Grantee will be in default under this Grant Agreement if any of the following occur:
 - a) Breach of this Grant Agreement, or any supplement or amendment to it, or any other agreement between Grantee and State evidencing or securing Grantee's obligations.
 - b) Making any false warranty, representation, or statement with respect to this Grant Agreement.
 - c) Failure to operate or maintain project in accordance with this Grant Agreement.
 - d) Failure to make any remittance required by this Grant Agreement.
 - e) Failure to comply with Labor Compliance Plan (LCP) requirements.
 - f) Failure to meet any of the requirements set forth in Paragraph 11, "Continuing Eligibility."

Should an event of default occur, State may do any or all of the following:

- g) Declare the Grant be immediately repaid, with interest, which shall be equal to State of California general obligation bond interest rate in effect at the time of the default.

- h) Terminate any obligation to make future payments to Grantee.
- i) Terminate the Grant Agreement.
- j) Take any other action that it deems necessary to protect its interests.

13. PERMITS, LICENSES, APPROVALS, AND LEGAL OBLIGATIONS: Grantee shall be responsible for ensuring any and all permits, licenses, and approvals required for performing their obligations under this Grant Agreement are obtained, and shall comply with CEQA (PRC Section 21000 *et seq.*) and other applicable federal, State and local laws, rules, and regulations, guidelines, and requirements for each project described in Exhibit A of this Grant Agreement.
14. RELATIONSHIP OF PARTIES. Grantee is solely responsible for design, construction, and operation and maintenance of project within this Grant Agreement. Review or approval of plans, specifications, bid documents, or other construction documents by State is solely for the purpose of proper administration of grant funds by State and shall not be deemed to relieve or restrict responsibilities of Grantee under this Grant Agreement.
15. GRANTEE REPRESENTATIONS. Grantee accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Grant Agreement, including all incorporated documents, and to fulfill all written assurances, declarations, representations, and statements made by Grantee in the application, documents, amendments, and communications filed in support of its request for The Disaster Preparedness and Flood Prevention Bond Act of 2006 financing.
16. SUBMISSION OF REPORTS. The submittal and approval of all reports is a requirement for the successful completion of this Grant Agreement. Reports shall meet generally accepted professional standards for technical reporting and shall be proof read for content, numerical accuracy, spelling, and grammar prior to submittal to State. All reports shall be submitted to the State's Project Manager, and shall be submitted in both electronic and hard copy forms. If requested, Grantee shall promptly provide any additional information deemed necessary by State for the approval of reports. Reports shall be presented in the formats described in the applicable portion of Exhibit E. The timely submittal of reports is a requirement for initial and continued disbursement of State funds. Submittal and subsequent approval by the State, of a Project Completion Report is a requirement for the release of any funds retained for such project.
- Quarterly Progress Reports: Grantee shall submit Quarterly Progress Reports to meet the State's requirement for disbursement of funds. Quarterly Progress Reports shall be sent via e-mail, to the State's Project Manager. Quarterly Progress Reports shall, in part, provide a brief description of the work performed, Grantees activities, milestones achieved, any accomplishments and any problems encountered in the performance of the work under this Grant Agreement during the reporting period. The first Quarterly Progress Report should be submitted to the State no later than September 30, 2013 with future reports then due on successive three-month increments based on the invoicing schedule and this date.
 - Project Completion Reports: Grantee shall prepare and submit to State a separate Project Completion Report for each project included in Exhibit A. Grantee shall submit a Project Completion Report within ninety (90) calendar days of project completion. Each Project Completion Report shall include, in part, a description of actual work done, any changes or amendments to each project, and a final schedule showing actual progress versus planned progress, copies of any final documents or reports generated or utilized during a project, and how the project will further the goals of the IRWM Plan and identify any changes to the IRWM Plan, as a result of project implementation. The Project Completion Report shall also include, if applicable, certification of final project by a registered civil engineer, consistent with Standard Condition D-15, "Final Inspections and Certification of Registered Civil Engineer." A DWR "Certification of Project Completion" form will be provided by the State.
 - Post-Performance Reports: Grantee shall submit Post-Performance Reports. Post-Performance Reports shall be submitted to State within ninety (90) calendar days after the first operational year of a project has elapsed. This record keeping and reporting process shall be repeated annually for a total of 10 years after the completed project begins operation.

17. PROJECT PERFORMANCE AND ASSURANCES. Grantee agrees to faithfully and expeditiously perform or cause to be performed all project work as described in the final plans and specifications for each project under this Grant Agreement and implement the project in accordance with applicable provisions of the law. In the event State finds it necessary to enforce this provision of this Grant Agreement in the manner provided by law, Grantee agrees to pay all costs incurred by State including, but not limited to, reasonable attorneys' fees, legal expenses, and costs.
18. LABOR COMPLIANCE. Grantee agrees to comply with all applicable California Labor Code requirements, including prevailing wage provisions.
19. OPERATION AND MAINTENANCE OF PROJECT. For the useful life of construction and implementation project and in consideration of the Grant made by State, Grantee agrees to ensure or cause to be performed the commencement and continued operation of the project, and shall ensure or cause the project to be operated in an efficient and economical manner; shall ensure all repairs, renewals, and replacements necessary to the efficient operation of the same are provided; and shall ensure or cause the same to be maintained in as good and efficient condition as upon its construction, ordinary and reasonable wear and depreciation excepted. The State shall not be liable for any cost of such maintenance, management, or operation. Grantee may be excused from operations and maintenance only upon the written approval of the State. For purposes of this Grant Agreement, "useful life" means period during which an asset, property, or activity is expected to be usable for the purpose it was acquired or implemented; "operation costs" include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses, and "maintenance costs" include ordinary repairs and replacements of a recurring nature necessary for capital assets and basic structures and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures. Refusal of Grantee to ensure operation and maintenance of the project in accordance with this provision may, at the option of State, be considered a breach of this Grant Agreement and may be treated as default under Paragraph 12, "Default Provisions."
20. STATEWIDE MONITORING REQUIREMENTS. Grantee shall ensure that all projects that include groundwater monitoring requirements are consistent with the Groundwater Quality Monitoring Act of 2001 (Part 2.76 (commencing with Section 10780) of Division 6 of CWC) and, where applicable, that projects that affect water quality shall include a monitoring component that allows the integration of data into statewide monitoring efforts, including where applicable, the Surface Water Ambient Monitoring Program carried out by the State Water Resources Control Board.
21. PROJECT MONITORING PLAN REQUIREMENTS. Exhibit A of this Grant Agreement shall contain activities to develop and submit to State a Project Monitoring Plan. Along with the Attachment 6 Project Performance Measures Table requirements outlined on page 19 of the Proposition 1E Round 1 SWFM Proposal Solicitation Package, the Project Monitoring Plan should also include:
- a) Baseline conditions.
 - b) Brief discussion of monitoring systems to be utilized.
 - c) Methodology of monitoring.
 - d) Frequency of monitoring.
 - e) Location of monitoring points.

A Project Monitoring Plan shall be submitted to the State prior to disbursement of grant funds for construction or monitoring activities. See Exhibit F ("Requirements for Data Submittal") for web links and information regarding other State monitoring and data reporting requirements.

22. NOTIFICATION OF STATE. For each project, Grantee shall promptly notify State, in writing, of the following items:
- a) Grantee agrees that no substantial change in the scope of a project will be undertaken until written notice of the proposed change has been provided to State and State has given written approval for such change. Substantial changes generally include changes to the wording/scope of work, schedule or term, and budget. See Exhibit G for guidance on Agreement Amendment requirements.

- b) Any public or media event publicizing the accomplishments and/or results of this Grant Agreement and provide the opportunity for attendance and participation by State's representatives. Grantee shall make such notification at least fourteen (14) calendar days prior to the event.
- c) Completion of work shall include final inspection of project by a Registered Civil Engineer, as determined and required by State, and in accordance with Standard Condition D-15 (Final Inspections and Certification of Registered Civil Engineer). Furthermore, the Grantee shall provide the State the opportunity to participate in the inspection. Grantee shall make such notification at least fourteen (14) calendar days prior to the final inspection.

23. NOTICES. Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party under this Grant Agreement shall be in writing. Notices may be transmitted by any of the following means: (i) by delivery in person; (ii) by certified U.S. mail, return receipt requested, postage prepaid; (iii) by "overnight" delivery service; provided that next-business-day delivery is requested by the sender; or (iv) by electronic means. Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery or receipt). Notices sent by certified mail will be deemed effective given ten (10) calendar days after the date deposited with the U. S. Postal Service. Notices sent by overnight delivery service will be deemed effective one business day after the date deposited with the delivery service. Notices sent electronically will be effective on the date of transmission. Notices shall be sent to the below addresses. Either party may, by written notice to the other, designate a different address that shall be substituted for the one below.

24. PERFORMANCE EVALUATION. Upon completion of this Grant Agreement, Grantee's performance will be evaluated by the State and a copy of the evaluation will be placed in the State file and a copy sent to the Grantee.

25. PROJECT REPRESENTATIVES. The Project Representatives during the term of this Grant Agreement are as follows:

Department of Water Resources
Carmel K. Brown
Manager, Division of Regional Assistance
P.O. Box 942836
Sacramento CA 94236-0001
Phone: (916) 651-9226
e-mail: Carmel.Brown@water.ca.gov

City of Escondido
Christopher McKinney
Director of Utilities
201 North Broadway
Escondido, CA 92025
Phone: (760) 839-4090
e-mail: cmckinney@escondido.org

Direct all inquiries to the Project Manager:

Department of Water Resources
Eddie Pech
Division of Regional Assistance
770 Fairmont Avenue, Suite 200
Glendale, CA 91203

Phone: (818) 621-9318
e-mail: Eduardo.Pech@water.ca.gov

City of Escondido
Angela Morrow
Deputy Director of Utilities
Construction and Engineering
1521 S. Hale Ave.
Escondido, CA 92029
Phone: (760) 839-6290 ext.7030
e-mail: amorrow@escondido.org

Either party may change its Project Representative or Project Manager upon written notice to the other party.

26. STANDARD PROVISIONS. The following Exhibits are attached and made a part of this Grant Agreement by this reference:

Exhibit A – Work Plan

- Exhibit B – Schedule
- Exhibit C – Budget
- Exhibit D – Standard Conditions
- Exhibit E – Report Formats and Requirements
- Exhibit F – Requirements for Data Submittal
- Exhibit G – Guidelines for Grantees
- Exhibit H – Grantee Resolution

IN WITNESS WHEREOF, the parties hereto have executed this Grant Agreement.

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

CITY OF ESCONDIDO

Eaffar Eusuff For

Christopher W. McKinney

Carmel K. Brown
Manager, Financial Assistance Branch
Division of Regional Assistance
Date 5/10/2023

Christopher W. McKinney
Director of Utilities
Date 5/5/2023

EXHIBIT A WORK PLAN

Project Description

In 2004, the Federal Energy Regulatory Commission (FERC) directed the City of Escondido to complete an evaluation of the potential for liquefaction-induced failure to occur at Lake Wohlford Dam. The geotechnical study conducted for the City of Escondido found that a liquefaction-induced mudflow slide of the upstream slope of the dam would likely occur as a result of the design earthquake loading. As a result, in 2007, FERC began requiring the City of Escondido to maintain Lake Wohlford at least 20 feet below the spillway crest level for dam safety purposes, which results in 57% reduction of its 6,500 AF capacity (2,800 AF).

Following FERC's determination, the City of Escondido began pursuing alternatives to retrofit Lake Wohlford Dam in order to restore the lake to its full design capacity. An Environmental Opinion prepared in 2008 determined that the least environmentally damaging way to address potential environmental impacts associated with mitigating the liquefaction potential from Lake Wohlford Dam would be to construct a new roller compacted concrete (RCC) dam downstream of the existing dam.

Therefore, the *Lake Wohlford Dam Replacement Project* will assist with construction and implementation of a RCC dam to replace the existing Lake Wohlford Dam structure. The dam proposed to replace the existing Lake Wohlford Dam would contain five major components: dam structure, spillway, outlet works, road realignment, and dam access. Specifically, the proposed project would involve construction of a new dam immediately downstream of the existing dam. The top portion of the existing dam would be removed and the material disposed. A new spillway would be cut through the north abutment of the new dam. A temporary access road may need to be constructed from Oakvale Road east to Guejito Road for use by local residents/businesses and fire trucks.

Tasks

The following sections outline the specific activities that will be performed to implement the *Lake Wohlford Dam Replacement Project*.

Row (a) Direct Project Administration

Task 1 – Project Administration

Project administration will involve coordination meetings with staff, project partners, and consultants as necessary. Deliverables that will be produced from these project administration efforts include updated budgets, schedules, and change orders.

Task 2 – Labor Compliance Program

Details of the LCP will be included within the *Lake Wohlford Dam Replacement Project's* quarterly reports.

The City of Escondido Utilities has established and adopted Labor Compliance Program (LCP) in accordance with CCR §16421-16439, which has been approved by the California Department of Industrial Relations (DIR); therefore, no budget is included here.

Task 3 – Reporting

Reporting will include three components as listed below and be performed by staff members from the City of Escondido under the Project Administration task (see Task 1). The Project Monitoring Plan and quarterly reports will be generated by the Utilities Construction Manager, approved by the Deputy Director of Utilities Construction and Engineering, and sent and filed by the Department Assistant. Quarterly invoices will be generated by Utilities Analyst and the Management Analyst II, and approved by the Construction Manager and Deputy Director. The Project Completion Report will be generated by the Utilities Construction Manager and Deputy Director, and sent and filed by the Department Assistant.

Row (b) Land Purchase Easement

A land purchase easement is not applicable to this project.

Project Administration Deliverables
Project Monitoring Plan
Quarterly Reports and Invoices
Project Completion Report

Row (c) Planning/Design/Engineering/Environmental Documentation

Task 4 – Assessment and Evaluation

All technical documents, data, and studies have been completed for the *Lake Wohlford Dam Replacement Project*. Two main studies used to evaluate the dam replacement alternatives are:

- The *Lake Wohlford Dam Replacement Geotechnical Data* report presents details of a subsurface exploration program that was performed as a part of an evaluation of alternatives to replace the existing Lake Wohlford Dam.
- The *Evaluation of Alternatives for Replacement of Lake Wohlford Dam* report w presents the results of an evaluation to identify a preferred dam type to replace the existing Lake Wohlford Dam. Reviews of the results by the selected consultant of the final design documents for the dam determined that an RCC dam was constructible.

Assessment and Evaluation Deliverables
Evaluation of Alternatives for Replacement of Lake Wohlford Dam
Lake Wohlford Dam Replacement Geotechnical Data Report

Task 5 – Final Design

As discussed below, final design for this project will include 30%, 60%, 90%, and 100% designs.

30% design efforts will include preliminary siting of project components, including the replacement dam, spillway, outlet tunnel, and other factors of major consideration. The 30% design will also include location of suitable onsite or nearby excavated materials for use in construction of the replacement dam. The 30% design will utilize previously performed geological investigations and reports as well as all additional geological investigations, draft reports and recommendations.

60% design will be considered advanced design that will include preliminary details and sections of the proposed project. This design will define actions and activities associated with abutment and foundation tie-ins, spillway and piping, and all required demolition. The 60% design will include all final geological recommendations. The 60% design will include draft technical specifications, bid schedule and preliminary construction cost estimates. A 3-D finite element analysis will also be performed on the proposed dam layout to determine the stress on the dam during the maximum credible earthquake.

90% design will include a complete set of construction plans and technical specifications, bid schedule, and final construction cost estimates. This design will be available for review and quality assurance and quality control (QA/QC).

100% final design will include preparation of a final design package that is ready to advertise. The final design package will be signed and sealed by the design engineer of record.

Design Submittals
100% Design – Bid Package

Task 6 – Environmental Documentation

The project will need to comply with federal (National Environmental Policy Act – NEPA) and state (California Environmental Quality Act – CEQA) environmental laws, regulations, and guidelines because of the potential for significant adverse impacts to wetlands, waters of the United States, and waters of the State. The City will prepare a draft Environmental Impact Report (EIR) and release it for a 45-day public review. Public comments will be addressed and a final EIR will be prepared. The Army Corps of Engineers, as lead agency under NEPA, will rely on the EIR to prepare an Environmental Assessment for NEPA compliance as part of their permitting process.

Environmental Documentation Deliverables
Lake Wohlford Dam Environmental Opinion
Lake Wohlford Dam Replacement Project EIR

Task 7 – Permitting

The City of Escondido would likely need multiple permits to complete the *Lake Wohlford Dam Replacement Project*, therefore the following is a list of all of the regulations and agencies that may require permits for completion of the project.

- Section 404 of the Federal Clean Water Act (CWA) and Section 10 of the Rivers and Harbor Act from the United States Army Corps of Engineers (USACE);
- Section 106 of the National Historic Preservation Act from the State Historic Preservation Office;
- Sections 7 and 10 of the Federal Endangered Species Act from the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service;
- Section 1602 of the California Fish and Game Code and the Endangered Species Act (ESA) from the California Department of Fish and Wildlife (CDFW); and
- Sections 401 and 402 of the CWA from the Regional Water Quality Control Board (RWQCB).

The aforementioned list provides the potential regulatory requirements of the *Lake Wohlford Dam Replacement Project*, however the full scope of required permitting will be determined upon completion of design and preliminary environmental analyses.

Permitting Deliverables
Section 401 Water Quality Certification
Section 404 Authorization Permit
Section 1602 Permit from California Department of Fish and Wildlife

Row (d) Construction / Implementation

Task 8 – Construction / Implementation Contracting

Tasks associated with construction contracting include advertising the project for public bids, evaluating contractor bids, and preparing all documents required to award the project to a contractor. It is anticipated that this work will be completed by City of Escondido staff.

Task 9 – Construction / Implementation

Materials and/or Design Standards

The Evaluation of Alternatives for Replacement of Lake Wohlford Dam Study found that the most viable alternatives were for a replacement dam downstream of the existing dam. The replacement dam will be constructed to meet all current codes and regulations including those of DWR's Division of Safety of Dams (DSOD).

The alternatives evaluation specifically evaluated the potential for a roller compacted concrete dam (RCC dam) or a rock fill dam to replace the existing Lake Wohlford Dam. A geological investigation, which included geological mapping, subsurface explorations, downhole geophysical surveys, in-situ hydraulic conductivity testing, piezometer data, seismic refraction surveys, laboratory testing, and test pits, was performed to support the alternatives analysis (see *Lake Wohlford Dam Replacement Geotechnical Data Report*). Subsequent reviews of the geological data by the consultant doing the dam final design indicates that an RCC dam may be feasible and DSOD views RCC dams the preferred dam type over earth fill providing a better quality long term facility. Based on this information, RCC was selected as the dam type.

An RCC mix design program was also developed for the project. Different mix design components of aggregates, water, cement, admixtures, sand and fly ash were tested to determine the best mix design for the project. This program and final mix design were reviewed and approved by DSOD. The information obtained from the mix design program was used to develop the final RCC design specification that will be used to bid the dam construction.

Construction Tasks

Task 9.1 Road Realignment

A portion of Oakvale Road will need to be relocated as its current alignment interferes with the proposed left dam abutment. The road realignment will require significant grading to push the canyon slope away from the dam abutment. The realigned portion of Oakvale Road shall match the road width to the existing roadway with a minimum drivable pavement width of 24 feet plus shoulders in accordance with the San Diego County Public Road Standards and will include any necessary drainage system. In addition, the County of San Diego has requested that a 10-foot no-motorized lane be provided along the north edge of the roadway. The estimated realignment length is approximately 1,000 feet.

Task 9.2 Mobilization and Site Preparation

The initial phase of construction will include mobilization, staging area setup, clearing, grubbing, grading and foundation excavation. The new dam will be constructed just downstream of the existing dam as such a large area of trees and other vegetation may be cleared for both the ultimate new dam site as well as the required staging area. Where possible, high value vegetation will be protected in place within staging areas. Preparation of the dam foundation is critical to the quality of the facility. Excavation of the foundation will result in significant volumes of removed material in order to reach acceptable foundation level which must be approved by the design geologist and DSOD. It is estimated that the foundation excavation may require depths of up to 40 to 60 feet to reach competent material with a width of approximately 200 feet. Foundation grouting may be required to fill imperfections in the basement rock including cracks to reduce the potential for seepage below the foundation.

Task 9.3 Dam Access

An all-weather drivable access for maintenance vehicles will be constructed from Oakvale Road to reach the toe of the dam, minimum of 12 feet wide and approximately 550 feet in length. Another access drive shall be constructed from Oakvale Road to reach the crest of the dam, minimum of approximately 40 feet wide and approximately 280 feet in length. These approach drives will be constructed of either asphaltic or concrete pavement. A bridging structure will also be included on the dam crest to enable access across the spillway located generally near the center of the dam. These access drives will accommodate the daily inspections performed of the operating dam including seepage monitoring and periodic movement surveys.

A construction access roadway will also be built along the north shoreline from the existing lake marina to the crest of the proposed new dam along the right abutment. This roadway will be approximately 20 feet wide and approximately 2,785 feet in length. It may be constructed of aggregate base material. Storm drains will be provided a ravine crossing so not to impact the existing drainage ways. Once dam construction is completed, this roadway will be blocked to general public. This roadway will be available to the City as needed.

Task 9.4a Foundation Excavation

The foundation excavation is based on the excavation requirements and procedures necessary to achieve a satisfactory foundation for the proposed new roller-compacted concrete (RCC) dam, stilling basin, intake tower, and appurtenances. The foundation grade shown on the drawings was established such that all soil, decomposed rock, and rock that is generally excavatable using large earthwork equipment would be removed. In order to construct a generally level foundation (from upstream to downstream), controlled blasting is also likely required. The foundation will be considered adequate when its too hard to excavate with large excavation equipment as identified by a licensed engineering geologist.

Prior to foundation preparation, a dewatering system will be installed to monitor and remove groundwater during construction. In addition, additional ground and dam monitoring instrumentation will be installed for construction. An erosion control system will be installed prior to any grading disturbance activities.

Task 9.4b Foundation Prep and Grouting Program – Abutments

The foundation surface will be irregular with exposed joints, seams, fractures, and other discontinuities. The entire foundation surface will be cleaned by barring and prying loose all drummy rock, using an air/water jet to remove as much loose material as possible; and removing by hand (and/or vacuum truck) loose material missed by previous steps. In addition, portions of the surface will require treatment to 1) protect the exposed bedrock from deterioration, 2) backfill joints,

and 3) eliminate drastic slope changes. Applicable treat measures include over-excavation, dental excavation, dental concrete, stitch grouting, and slush grout. The treatment measurements will provide a smooth final surface for foundation approval.

Once foundation preparation and approval are complete, the Contractor will begin the Abutment grouting program. The grouting program includes two grouting tasks 1) Grout Curtains and 2) Consolidation Grouting. A double row grout curtain will be installed using the split-spacing method. Both curtains will be installed from the final excavated rock foundation surface along the right and left abutments axis, to depths where the rock permeability is estimated to be 1×10^{-5} cm/sec (~1 Lu) or less. Maximum hole spacing along both curtain rows will be 10 feet. Consolidation grouting will be performed across the entire right and left abutments footprints downstream of the grout curtain using the split-spacing method. Spacing between rows will be 10 feet and maximum spacing between holes along each row will be 10 feet. Hole depths will generally be 20 feet. Stitching grouting of geologic features will be performed as required by the Owner's Representative. Through-grouting stitch features will be treated for their entire length across the dam abutments.

Task 9.4c Foundation Prep and Grouting Program – Valley Floor

The foundation surface will be irregular with exposed joints, seams, fractures, and other discontinuities. The entire foundation surface will be cleaned by barring and prying loose all drummy rock, using an air/water jet to remove as much loose material as possible; and removing by hand (and/or vacuum truck) loose material missed by previous steps. In addition, portions of the surface will require treatment to 1) protect the exposed bedrock from deterioration, 2) backfill joints, and 3) eliminate drastic slope changes. Applicable treat measures include over-excavation, dental excavation, dental concrete, stitch grouting, and slush grout. The treatment measurements will provide a smooth final surface for foundation approval.

Once foundation preparation and approval are complete, the Contractor will begin the Valley Floor grouting program. The grouting program includes two grouting tasks 1) Grout Curtains and 2) Consolidation Grouting. A double row grout curtain will be installed using the split-spacing method. Both curtains will be installed from the final excavated rock foundation surface along the valley floor axis, to depths where the rock permeability is estimated to be 1×10^{-5} cm/sec (~1 Lu) or less. Maximum hole spacing along both curtain rows will be 10 feet. Consolidation grouting will be performed across the entire valley floor footprints downstream of the grout curtain using the split-spacing method. Spacing between rows will be 10 feet and maximum spacing between holes along each row will be 10 feet. Hole depths will generally be 20 feet. Stitching grouting of geologic features will be performed as required by the Owner's Representative. Through-grouting stitch features will be treated for their entire length across the dam abutments.

Implementation Deliverable
Statement of completion for Tasks 9.4a thru 9.4c by a registered engineer

The following Tasks 9.5, 9.6, 9.7, and 9.8 are outside of the scope of the agreement due to current availability of grant funds, however they are needed to complete the construction of the Dam.

Task 9.5 RCC Trial Placement and Dam Construction (Outside of Agreement Scope)

RCC Trial Placement

Prior to start of the RCC dam construction, the contractor will be required to construct a RCC trial placement dam section. This trial placement will be used to confirm the contractor's ability to perform the following: 1) proper foundation surface preparation, and 2) using proposed equipment and methods to place the RCC in accordance with the contract documents. The RCC trial placement will be approximately 125 feet long by 75 feet wide by 7 feet tall.

Dam

Construction of the RCC dam requires near continuous placement of a lean concrete mixture. The concrete will be prepared at an onsite or near site batch plant which will truck or conveyor the material to the dam for placement where it is roller compacted. The RCC dam will have a vertical or near vertical upstream face with a 0.8H:1V downstream face. The crest of the dam will be approximately 660 feet in length at an elevation of 1,490'± and a spillway elevation of 1,480'. The new dam will also include a dam adit and gallery. The gallery will be approximately 8 feet wide by 9 feet high and 323 feet long. The gallery will allow for visual inspection of the dam and foundation drains from inside the dam. The new dam shall be constructed to a height which will provide for a maximum water surface elevation equal to the existing dam. Dam maintenance and security facilities will be constructed and installed including access drive, monitoring equipment for movement and seepage, fencing and surveillance equipment. Foundation piezometers, inclinometers, and an accelerometer will be installed in the dam and along the foundation.

Task 9.6 Spillway (Outside of Agreement Scope)

The spillway of an RCC dam is constructed integral to the dam as it rises. The spillway crest will have an elevation of 1,480'±. The spillway will be designed to pass a flow of approximately 8,265 cfs, with an estimated width of approximately 90 feet and depth of approximately 8 feet. The spillway will terminate in a stilling pond at the base of the dam to dissipate the waters energy before reaching the existing natural stream bed.

Task 9.7 Outlet Works (Outside of Agreement Scope)

New

The new outlet tower will be constructed on the upstream face of the new dam. This type of outlet tower is a concrete shaft structurally integrated into the dam. The tower shall have four (4) automated gates at various elevations that can be operated from the Water treatment Plant depending on need or water quality. The multiple gates provide the ability to draw water from different levels within the contained lake; the gate shall also include fish screens to prevent fish from entering the tower and pipe system. During times of drought or other low water events the upper port(s) may become exposed as the water surface drops. The outlet piping will be placed through the foundation as the concrete reaches the appropriate elevation. The concrete placement continues until the design elevation is achieved. Following the construction of the dam itself the new outlet piping will be connected to the existing 48-inch downstream piping and the new emergency release valve facility.

Existing

Activation of the new outlet works will require removal of the top portion of the existing dam as well as notching through the existing dam to an approximate elevation of 1,420' in order to flood the area between the old and new dams. The notch must be stabilized so there is no future movement of the old structures. The existing outlet tower and piping will be abandoned in place (filled with concrete) or removed in a manner that will provide optimal facility security and public safety. The existing outlet tunnel through the existing dam will be filled with concrete for safety reasons.

Task 9.8 Test Dam Facilities and Regulatory Approval (Outside of Agreement Scope)

The new dam facilities will undergo startup and testing including the tower, penstock, outlet gates, and emergency release valve. Once testing is complete, the reservoir can be filled and regulatory acceptance granted.

Row (e) Construction Administration

Task 10 – Construction Administration for Tasks 9.1 through 9.4c

This task involves administration, coordination, and review of the construction contract and all other related construction tasks. This task will require labor from City of Escondido staff members and consultant construction managers and inspectors to oversee construction, testing, mitigation, and other aspects of the project.

Labor Category
Construction Management

Task 10a – Construction Administration for Tasks 9.5 through 9.8 (Outside of Agreement Scope)

This task involves administration, coordination, and review of the construction contract and all other related construction tasks for Task 9.4d RCC Trial Placement and Dam Construction, Task 9.5 Spillway, and Task 9.6 Outlet Works. This task will require labor from City of Escondido staff members and consultant construction managers and inspectors to oversee construction and other aspects of the project.

Row (f) Other Costs

Other costs associated with the *Lake Wohlford Dam Replacement Project* include establishment of a Board of Consultants, as required by FERC. The Board of Consultants shall oversee the analysis, design, construction, and any potential problems that might arise during the design and construction of the Lake Wohlford Dam replacement structures. The Board of Consultants shall be comprised of at least three members with expertise in the following areas: geotechnical engineering, engineering geologist, and hydraulic structures.

The City of Escondido will solicit and bring under contract the Board of Consultants, invite review and comment on all design submittals, and monitor construction procedures and progress. Formal meetings of the Board of Consultants will be convened at important milestones.

**EXHIBIT B
 SCHEDULE**

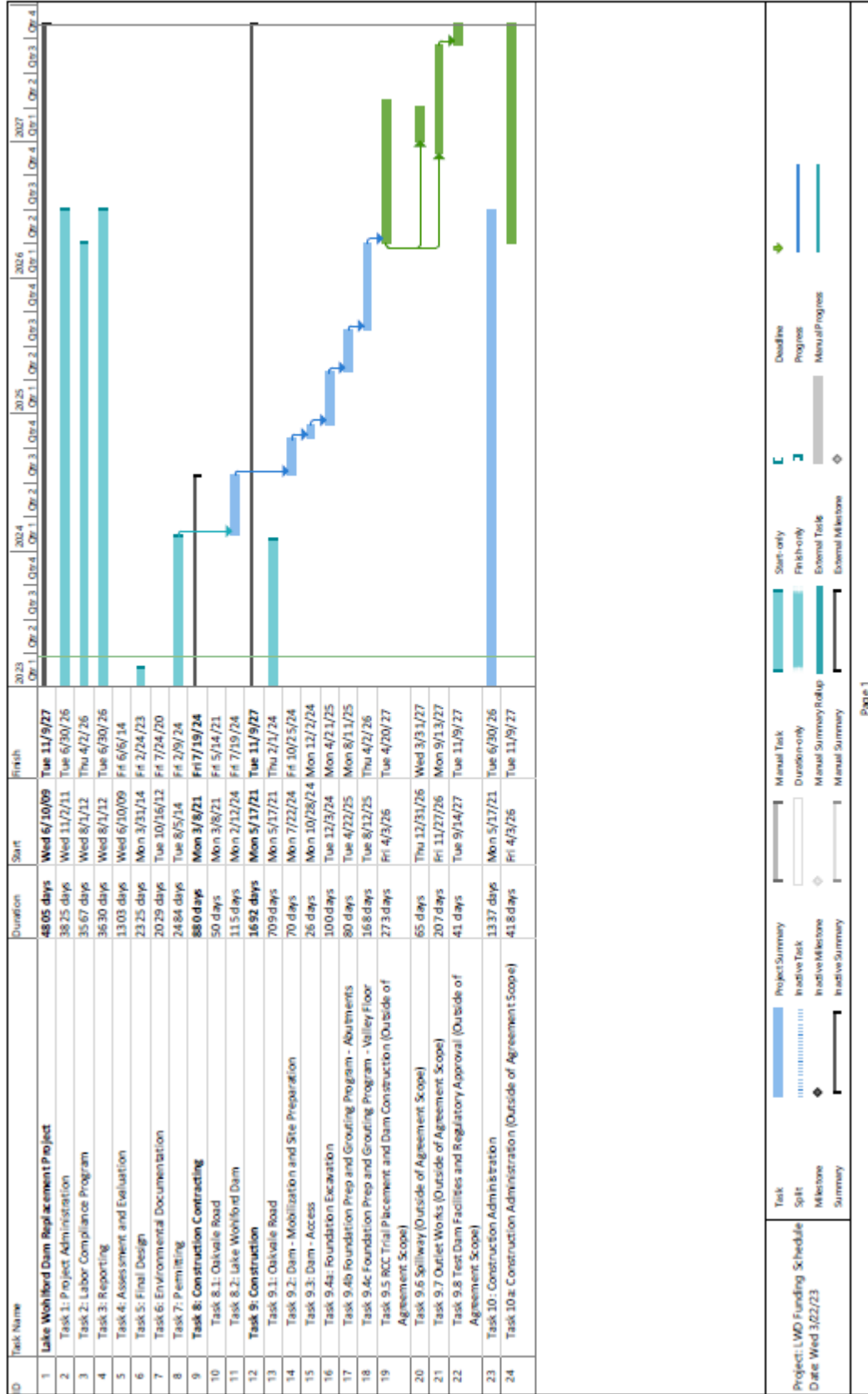


EXHIBIT C
BUDGET

Table 6 – Project Budget						
Budget Category		Non-State Share (Funding Match)	Grant Funding	Other Cost Share	Total	% Funding Match
(a)	Direct Project Administration Costs	\$400,000	\$0	\$0	\$400,000	100%
(b)	Land Purchase/Easement	\$0	\$0	\$0	\$0	N/A
(c)	Planning/ Design/ Engineering/ Environmental Documentation	\$2,749,050	\$2,250,950	\$0	\$5,000,000	55%
(d)	Construction	\$15,596,314.87	\$12,614,414.87	\$3,720,000	\$31,930,729.74	49%
(e)	Construction Administration	\$600,000	\$0	\$0	\$600,000	100%
(f)	Other Costs	\$34,635.13	\$34,635.13	\$0	\$69,270.26	50%
(g)	Grand Total	\$19,380,000	\$14,900,000	\$3,720,000	\$38,000,000	51%
(h)	Calculation of Funding Match %	51%	29%	20%	100%	
<p><i>Sources of Funds for Non-State Share (Funding Match):</i> <i>The non-state share funding match will be provided by the sale of municipal bonds (City of Escondido) and potentially through federal funding sources.</i></p>						

EXHIBIT D
STANDARD CONDITIONS

D.1 ACCOUNTING AND DEPOSIT OF GRANT DISBURSEMENT:

- a) **SEPARATE ACCOUNTING OF GRANT DISBURSEMENT AND INTEREST RECORDS:** Grantee shall account for the money disbursed pursuant to this Grant Agreement separately from all other Grantee funds. Grantee shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. Grantee shall keep complete and accurate records of all receipts, disbursements, and interest earned on expenditures of such funds. Grantee shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by State at any and all reasonable times.
- b) **FISCAL MANAGEMENT SYSTEMS AND ACCOUNTING STANDARDS:** The Grantee agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of state law or this Grant Agreement.
- c) **REMITTANCE OF UNEXPENDED FUNDS:** Grantee, within a period of sixty (60) calendar days from the final disbursement from State to Grantee of grant funds, shall remit to State any unexpended funds that were disbursed to Grantee under this Grant Agreement and were not needed to pay Eligible Project Costs.

D.2 ACKNOWLEDGEMENT OF CREDIT: Grantee shall include appropriate acknowledgement of credit to the State and to all cost-sharing partners for their support when promoting the project or using any data and/or information developed under this Grant Agreement. During construction of the project, Grantee shall install a sign at a prominent location, which shall include a statement that the project is financed under the, Disaster Preparedness and Flood Prevention Bond Act of 2006, administered by State of California, Department of Water Resources. Grantee shall notify State that the sign has been erected by providing them with a site map with the sign location noted and a photograph of the sign.

D.3 AMENDMENT: No amendment or variation of the terms of this Grant Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Grant Agreement is binding on any of the parties. For guidance on the Amendment Requirements, see Exhibit H.

D.4 AMERICANS WITH DISABILITIES ACT: By signing this Grant Agreement, Grantee assures State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C., 12101 *et seq.*), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

D.5 AUDITS: State reserves the right to conduct an audit at any time between the execution of this Grant Agreement and the completion of the project, with the costs of such audit borne by State. After completion of the project, State may require Grantee to conduct a final audit, at Grantee's expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant. Failure or refusal by Grantee to comply with this provision shall be considered a breach of this Grant Agreement, and State may take any action it deems necessary to protect its interests.

Pursuant to Government Code Section 8546.7, the parties shall be subject to the examination and audit of State for a period of three years after final payment under this Grant Agreement with respect of all matters connected with this Grant Agreement, including but not limited to, the cost of administering this Grant Agreement. All records of Grantee or subcontractors shall be preserved for this purpose for at least three (3) years after project completion. See Exhibit H for a listing of documents/records that State Auditors would need to review in the event of a grant being audited.

- D.6 BUDGET CONTINGENCY: LIMIT ON STATE FUNDS.** The Disaster Preparedness and Flood Prevention Bond Act of 2006 is subject to the availability of funds including any mandates from the Department of Finance, the Pooled Money Investment Board or any other state authority. The State will not make payments of any kind, including advances or reimbursements, until funding is made available by the State Treasurer.
- D.7 CHILD SUPPORT COMPLIANCE ACT:** For any Grant Agreement in excess of \$100,000, the Grantee acknowledges in accordance with Public Contract Code 7110, that:
- a) The Grantee recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - b) The Grantee, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- D.8 COMPETITIVE BIDDING AND PROCUREMENTS:** Grantee shall comply with all applicable laws and regulations regarding securing competitive bids and undertaking competitive negotiations in Grantee's contracts with other entities for acquisition of goods and services and construction of public works with funds provided by State under this Grant Agreement.
- D.9 COMPUTER SOFTWARE:** The Grantee certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Grant Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
- D.10 CONFLICT OF INTEREST**
- a) **Current State Employees:** No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
 - b) **Former State Employee:** For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.
- D.11 DELIVERY OF INFORMATION, REPORTS, AND DATA:** The Grantee agrees to expeditiously provide, during work on the project and throughout the term of this Grant Agreement, such reports, data, information, and certifications as may be reasonably required by the State.
- D.12 DISPOSITION OF EQUIPMENT:** Grantee shall provide to State, not less than 30 days prior to submission of the final project invoice, a final inventory list of equipment purchased with grant funds provided by State. Grantee shall consult with State on the scope of the inventory not less than 60 days prior to the submission of the final project invoice. The inventory shall include all items with a current estimated fair market value of more than \$5,000 per item. Within 60 days of receipt of such inventory, State shall provide Grantee with a list of the items on the inventory that State will take title to. All other items shall become the property of Grantee. State shall arrange for delivery from Grantee of items that it takes title to. Cost of transportation, if any, shall be borne by State.
- D.13 DISPUTES:** In the event of an invoice dispute, payment will not be made until the dispute is resolved and a corrected invoice submitted. Failure to use the address exactly as provided may result in return of the invoice to the Grantee. Payment shall be deemed complete upon deposit of the payment, properly

addressed, postage prepaid, in the United States mail. Any claim that Grantee may have regarding the performance of this Grant Agreement including, but not limited to claims for additional compensation or extension of time, shall be submitted to the Director, Department of Water Resources, within thirty (30) calendar days of Grantee's knowledge of the claim. State and Grantee shall then attempt to negotiate a resolution of such claim and process an amendment to the Grant Agreement to implement the terms of any such resolution.

D.14 DRUG-FREE WORKPLACE CERTIFICATION

Certification of Compliance: By signing this Grant Agreement, Grantee, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 *et seq.*) and have or will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code Section 8355(a).
- b) Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(b) to inform employees, contractors, or subcontractors about all of the following:
 1. The dangers of drug abuse in the workplace,
 2. Grantee's policy of maintaining a drug-free workplace,
 3. Any available counseling, rehabilitation, and employee assistance programs, and
 4. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
- c) Provide as required by Government Code Sections 8355(c), that every employee, contractor, and/or subcontractor who works under this Grant Agreement:
 1. Will receive a copy of Grantee's drug-free policy statement, and
 2. Will agree to abide by terms of Grantee's condition of employment, contract or subcontract.

D.15 FINAL INSPECTIONS AND CERTIFICATION OF REGISTERED CIVIL ENGINEER: Upon completion of a construction project and as determined by State, Grantee shall provide for a final inspection and certification by a California Registered Civil Engineer that the project has been completed in accordance with submitted final plans and specifications and any modifications thereto and in accordance with this Grant Agreement and to the State's satisfaction.

D.16 GOVERNING LAW: This Grant Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

D.17 GRANTEE COMMITMENTS: Grantee accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Funding Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by Funding Recipient in the application, documents, amendments, and communications filed in support of its request for California Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006 financing.

D.18 INCOME RESTRICTIONS: The Grantee agrees that any refunds, rebates, credits, or other amounts (including any interest thereon, accruing to or received by the Grantee under this Grant Agreement shall be paid by the Grantee to the State, to the extent that they are properly allocable to costs for which the Grantee has been reimbursed by the State under this Grant Agreement.

D.19 INDEPENDENT CAPACITY: Grantee, and the agents and employees of Grantee, if any, in the performance of the Grant Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.

D.20 INSPECTIONS: State shall have the right to inspect the work being performed at any and all reasonable times, providing a minimum of a 24-hour notice, during the term of the Grant Agreement. This right shall extend to any subagreements, and Grantee shall include provisions ensuring such access in all its contracts

or sub-contractors entered into pursuant to its Grant Agreement with State. Grantee acknowledges that project documents may be subject to the Public Records Act (California Government Code Section 6250 et. seq.). State shall have the right to inspect these documents at any and all reasonable times after completion of the project to ensure compliance with the terms and conditions of this Grant Agreement. During regular office hours, State shall have the right to inspect and to make copies of any books, records, or reports of the Grantee relating to this Grant Agreement. Grantee shall maintain and shall make available at all times for such inspection accurate records of its costs, disbursements, and receipts with respect to its activities under this Grant Agreement. Failure or refusal by Grantee to comply with this provision shall be considered a breach of this Grant Agreement, and State may withhold disbursements to Grantee or take any other action it deems necessary to protect its interests.

D.21 NONDISCRIMINATION: During the performance of this Grant Agreement, Grantee and its contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Grantee and contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Grantee and contractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Grant Agreement by reference and made a part hereof as if set forth in full. Grantee and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Grantee shall include the nondiscrimination and compliance provisions of this clause in all contracts to perform work under the Grant Agreement.

D.22 NO THIRD PARTY RIGHTS: The parties to this Grant Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Grant Agreement, or of any duty, covenant, obligation or undertaking established herein.

D.23 OPINIONS AND DETERMINATIONS: The parties agree that review or approval of any IRWM Program applications, documents, permits, plans and specifications or other program information by the State is for administrative purposes only and does not relieve the Grantee of its responsibility to properly plan, design, construct, operate, maintain, implement, or otherwise carry out the IRWM Program.

D.24 PERMITS, LICENSES, APPROVALS, AND LEGAL OBLIGATIONS. Grantee shall be responsible for obtaining any and all permits, licenses, and approvals required for performing its obligations under this Grant Agreement. Grantee shall comply with the California Environmental Quality Act (PRC Section 21000 et seq.) and other applicable federal, State, and local laws, rules, and regulations, guidelines, and requirements prior to disbursement of funds under this Grant Agreement.

Grantee shall keep informed of and take all measures necessary to ensure compliance with California Labor Code requirements.

D.25 PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION: Grantee shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the IRWM Program without prior permission of State. Grantee shall not take any action concerning the performance of this Grant Agreement, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Grantee to meet its obligations under this Grant Agreement, without prior written permission of State. State may require that the proceeds from the disposition of any real or personal property acquired with funds disbursed under this Grant Agreement be remitted to State.

- D.26 REMEDIES, COSTS, AND ATTORNEY FEES:** The Grantee agrees that any remedy provided in this Grant Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the State as a result of breach of this Grant Agreement by the Grantee, whether such breach occurs before or after completion of the project, and exercise of any remedy provided by this Grant Agreement by the State shall not preclude the State from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this Grant Agreement, it is agreed that the prevailing party shall be entitled to such reasonable costs and/or attorney fees as may be ordered by the court entertaining such litigation.
- D.27 RETENTION:** Notwithstanding any other provision of this Grant Agreement, State shall, for each project, withhold five percent (5.0%) until January 1, 2016 and ten percent (10.0%), thereafter, of the funds requested by Grantee for reimbursement of Eligible Costs. Each project in this Grant Agreement will be eligible to release its respective retention when that project is completed and Grantee has met requirements of Paragraph 16, "Submissions of Reports," excluding the "Post-Performance Reports."
- D.28 RIGHTS IN DATA:** To the extent permitted by law, the Grantee agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Grant Agreement shall be in the public domain. The Grantee may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Grant Agreement, subject to appropriate acknowledgement of credit to the State for financial support. The Grantee shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so.
- D.29 SEVERABILITY OF UNENFORCEABLE PROVISION:** If any provision of this Grant Agreement is held invalid or unenforceable by a court of final jurisdiction, all other provisions of this Grant Agreement shall be construed to remain fully valid, enforceable, and binding on the parties.
- D.30 STATE REVIEWS AND INDEMNIFICATION:** The parties agree that review or approval of project applications, documents, permits, plans and specifications or other project information by the State is for administrative purposes only and does not relieve the Grantee of their responsibility to properly plan, design, construct, operate, maintain, implement, or otherwise carry out the project. To the extent permitted by law, the Grantee agrees to indemnify, defend and hold harmless the State and the State against any loss or liability arising out of any claim or action brought against the State from and against any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from, or in any way connected with:
- a) The project or the conditions, occupancy, use, possession, conduct or management of, work done in or about, or the planning, design, acquisition, installation, or construction, of the project or any part thereof;
 - b) Performing any of the terms contained in this Grant Agreement or any related document;
 - c) Any violation of any applicable law, rule or regulation, any environmental law (including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the California Hazardous Substance Account Act, the Federal Water Pollution Control Act, the Clean Air Act, the California Hazardous Waste Control Law and CWC Section 13304, and any successors to said laws), rule or regulation or the release of any toxic substance on or near the natural water system; or
 - d) Any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements required to be stated therein, in light of the circumstances under which they were made, not misleading with respect to any information provided by the Grantee for use in any disclosure document utilized in connection with any of the transactions contemplated by this Grant Agreement. Grantee agrees to pay and discharge any judgment or award entered or made against the State with respect to any such claim or action, and any settlement, compromise or other voluntary resolution. The provisions of this section shall survive the term of the Grant Agreement.

- D.31 SUCCESSORS AND ASSIGNS:** This Grant Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this Grant Agreement or any part thereof, rights hereunder, or interest herein by the Grantee shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.
- D.32 TIMELINESS:** Time is of the essence in this Grant Agreement.
- D.33 TRAVEL:** Grantee agrees that travel and per diem costs shall NOT be eligible for reimbursement with State funds, and shall NOT be eligible for computing Grantee cost match. Travel includes the costs of transportation, subsistence, and other associated costs incurred by personnel during the term of this Grant Agreement.
- D.34 WAIVER OF RIGHTS:** None of the provisions of this Grant Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this Grant Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the Grant Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.

EXHIBIT E

REPORT FORMAT AND REQUIREMENTS

The following reporting formats should be utilized. Please obtain State approval prior to submitting a report in an alternative format.

QUARTERLY PROGRESS REPORT

Grantee shall submit Quarterly Progress Reports on a consistent basis to meet the State's requirement for disbursement of funds. The Quarterly Progress Report should describe the work performed during the reporting period. For each project, describe the work performed including:

CONTINUING ELIGIBILITY

- For Urban Water Suppliers who have not submitted a complete Urban Water Management Plan, the status of the plan development and submittal.
- A brief summary of the status of adoption of an IRWM Plan that complies with Part 2.2 of Division 6 of the CWC commencing with Section 10530.

PROJECT INFORMATION (INCLUDE ANY OF THE BELOW THAT WERE APPLICABLE DURING THE REPORTING PERIOD)

- Legal matters.
- Engineering matters.
- Environmental matters.
- Status of permits, easements, rights-of-way, and approvals as may be required by other State, federal, and/or local agencies.
- Major accomplishments during the quarter (i.e., tasks completed, milestones met, meetings held or attended, press releases, etc).
- Discussion of data submittal effort(s) for the previous quarter, including a description of the data submitted and date(s) of submittal.
- Issues/concerns that have, will, or could affect the schedule or budget, with a recommendation on how to correct the matter.
- Description of any differences between the work performed and the work outlined in this Grant Agreement's Work Plan.

COST INFORMATION

- Provide a list showing all costs incurred during the quarter by the Grantee and each contractor working on the project. The list should include for all non-construction, or implementation costs, (i.e., design, and admin charges) the hours per task worked on during the quarter for above personnel.
- A discussion on how the actual budget is progressing in comparison to Exhibit C.

SCHEDULE INFORMATION

- A discussion on how the actual schedule is progressing in comparison to the schedule in Exhibit B.
- A revised schedule, by task, if changed from the schedule in Exhibit B. Note: a revised schedule may require an official amendment to the Grant Agreement before it is accepted as final.

ANTICIPATED ACTIVITIES NEXT QUARTER

- Provide a description of anticipated activities for the next quarterly reporting period.

PROJECT COMPLETION REPORT

A Project Completion Report is required for each project identified in Exhibit A. This report will include the following Sections:

EXECUTIVE SUMMARY

The Executive Summary consists of a maximum of ten (10) pages summarizing project information (see report status section below for topics). The Executive Summary should include the following:

- Brief description of work proposed to be done in the original Grant application.
- Description of actual work completed and any deviations from Exhibit A. List any official amendments to this Grant Agreement, with a short description of the amendment.
- Describe how the implemented project will meet the program preferences identified in the original Grant Application.
- Describe the mechanism or process that allows for continued performance monitoring of the project in meeting the objectives of the IRWM Plan.
- Identify any changes to the IRWM Plan as a result of implementation of the project.

REPORTS AND/OR PRODUCTS

- Provide a copy of any final technical report or study, produced for the project as described in the Work Plan, if applicable.
- Provide a map and shapefile(s) showing the location of the completed project. A description of the geographic projection and datum used for the shapefile must be submitted with the shapefile (a NAD '83 datum and either a UTM 10 or UTM 11 projection, dependent on the project's location in the state, should be utilized).
- If any wells were constructed as part of the project, provide the following information: well logs; borehole geophysical logs; state well number; site information to include horizontal (NAD '83) and vertical (NAVD '88) datum to be determined within 0.5 feet.
- Provide an electronic copy of any as-built plans (media: CD-ROM; PDF format).
- Provide copies of any data collected along with location maps.
- If applicable, describe the findings of any study and whether the study determined the engineering, hydrologic, hydrogeologic, environmental, economic and financial feasibility of the project.

COST & DISPOSITION OF FUNDS INFORMATION

- A list of invoices showing:
 - The date each invoice was submitted to State.
 - The amount of the invoice.
 - The date the check was received.
 - The amount of the check (If a check has not been received for the final invoice, then state this in this section).
- A spreadsheet summary of the original budget costs by task versus the final project costs.
- A summary of final funds disbursement including:
 - Labor cost of personnel of agency/ major consultant /sub-consultants (Indicate personnel, hours, rates, type of profession and reason for consultant, i.e., design, CEQA work, etc).
 - Construction cost information, shown by material, equipment, labor costs, and change orders.
 - Any other incurred cost detail.
 - A statement verifying separate accounting of grant disbursements.
- Summary of project cost including:

- Accounting of the cost of project expenditure.
- Include all internal and external costs not previously disclosed.
- A discussion of factors that positively or negatively affected the project cost and any deviation from the original project cost estimate.

ADDITIONAL INFORMATION

- Benefits derived from the project, with quantification of such benefits provided, if applicable.
- A final project schedule showing actual progress versus planned progress as shown in Exhibit B.
- Certification from a California Registered Civil Engineer that the project was conducted in accordance with the approved work plan and any approved modifications thereto.
- Submittal schedule for the Post Performance Report and an outline of the proposed reporting format.

POST-PERFORMANCE REPORT

Post Performance Reports are required annually for each project for a period of 10 years beginning after the first year of operation, and includes the following:

REPORTS AND/OR PRODUCTS

- Time period of the annual report.
- Short project description and benefits.
- An assessment of any explanations for any differences between the expected versus actual project benefits. Where applicable, the reporting should include quantitative metrics, i.e., new acre-feet of water recharged that year, acres of wildlife habitat added, etc.
- Summary of any additional costs and/or benefits deriving from the project since its completion, if applicable.
- Continued reporting on meeting the Output Indicators and Targets discussed in the Project Monitoring Plan discussed in Paragraph 21 of this Grant Agreement.
- Any additional information relevant to or generated by the continued operation of the project.

ELECTRONIC REPORT FORMATTING

Grantee agrees that work funded under this Grant Agreement will be provided in an electronic format to State. Electronic submittal of final reports, plans, studies, data, and other work performed under this grant shall be as follows:

- Text preferably in MS WORD or text PDF format.
- Files generally less than 10 MB in size.
- Files named so that the public can determine their content. For example, file naming of reports must have the title and, if subdivided into smaller sized files, the chapter number/letter and names in the report Table of Content (TOC); files of maps, figures, and tables by number/letter as referenced in the TOC; well logs files with DWR-required naming convention; and Appendix number/letter and named in the TOC.
- For a project involving a modeling component, Grantee shall provide the major input data files, parameters, calibration statistics, output files, and other information requested by State's Project Manager.

Exhibit G
Guidelines for Grantees
Under DWR Financial Assistance Programs

The following provides a list of documents typically required by State Auditors and general guidelines for Grantees. List of documents pertains to both Grant funding and Grantee's Funding Match and details the documents/records that State Auditors would need to review in the event of this Grant Agreement is audited. Grantees should ensure that such records are maintained for each funded project.

List of Documents for State Audit

Internal Controls:

1. Organization chart (e.g., Agency's overall organization chart and organization chart for this Grant Agreement's funded project).
2. Written internal procedures and flowcharts for the following:
 - a. Receipts, deposits and disbursements
 - b. State reimbursement requests
 - c. Grant expenditure tracking
 - d. Guidelines, policy, and procedures on grant funded Programs/Project
3. Audit reports of the Agency internal control structure and/or financial statements within the last two years.
4. Prior audit reports on grant funded Programs/Project.

Agreements and Contracts:

1. Original signed Grant Agreement, any amendment(s) and budget modification documents.
2. A listing of all bond-funded grants received from the State.
3. A listing of all other funding sources for each project.
4. All subcontractor and consultant contracts and related or partners documents, if applicable.
5. Contracts between the Agency and member agencies as related to this Grant Agreement.

Invoices:

1. Invoices from vendors and subcontractors for expenditures submitted to the State for payments under this Grant Agreement.
2. Documentation linking subcontractor invoices to State reimbursement, requests and related budget line items under this Grant Agreement.
3. Reimbursement requests submitted to the State for this Grant Agreement.

Cash Documents:

1. Receipts (copies of warrants) showing payments received from the State.
2. Deposit slips (or bank statements) showing deposit of the payments received from the State.
3. Cancelled checks or disbursement documents showing payments made to vendors, subcontractors, consultants, and/or agents under this Grant Agreement.
4. Bank statements showing the deposit of the receipts.

Accounting Records:

1. Ledgers showing entries for receipts and cash disbursements.
2. Ledgers showing receipts and cash disbursement entries of other funding sources.
3. Bridging documents that tie the general ledger to requests for grant reimbursement.

Administration Costs: Supporting documents showing the calculation of administration costs.

Personnel:

1. List of all contractors and Agency staff that worked on this grant funded Program/Project.
2. Payroll records including timesheets for contractor staff and the Agency personnel who provided services charged to this Grant Agreement.

Project Files:

1. All supporting documentation maintained in the project files.
2. All correspondence related to this Grant Agreement.

General Grant Agreement Guidelines

Amendment Requirements:

Amendments to the Work Plan, Budget, and/or Schedule of this Grant Agreement are triggered when the proposed changes are deemed by the State to be substantial. Substantial changes generally include changes to the wording/scope of work, schedule or term, and budget. For example, a formal budget change to an Agreement is required when the culmination of proposed Grant amount budget change(s) for a Task is greater than 10% of the original Grant amount budget for that particular Task or the Task to be exchanged.

Funding Match Contribution

Funding Match (often referred to as Grantee Cost Share) is the amount defined in Paragraph 4 of this Grant Agreement. Provided below is guidance for claiming funding match with and without in-kind services.

1. Adequate documentation supporting value of in-kind service (or volunteer service) as funding match claimed shall be maintained. Although tracked separately, in-kind services shall be documented and, to the extent feasible, supported by the same methods used by the Grantee for its own employees. Provide formal (on official letterhead) and substantial documentation of in-kind service by including the following:
 - o Describe contributed item(s) or service(s)
 - o Purpose for which contribution was made (tie to scope of work)
 - o Name of contributing organization and date of contribution
 - o Real or approximate value of contribution. Who valued the contribution and how was the value determined? (e.g., actual, appraisal, fair market value, etc.). Justification of rate. (see item #4, below)
 - o Person's name and function of the contributing person
 - o Hours of contribution
 - o If multiple sources exist, summarize these on a table with summed charges
 - o Was contribution provided by, obtained with, or supported by government funds? If so, indicate source.
2. Funding match contribution (including in kind services) shall be for costs and services directly attributed to activities included in this Grant Agreement's Work Plan. These services, furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as in-kind if the activities are an integral and necessary part of this Grant Agreement. Evaluate eligibility with State in advance of submittal.
3. Do not track cash contributions made to a project as an expenditure as you would for an in-kind service. When providing funding match, track cash contributions to the project (i.e. revenues) and expenditures (typically in-kind contribution) separately in an accounting system.
4. Rates for volunteer or in-kind services shall be consistent with those paid for similar work in the Grantee's organization. For example, volunteer service of clearing vegetation performed by an attorney shall be valued at a fair market value for this service, not the rate for professional legal services. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

**EXHIBIT H
GRANTEE RESOLUTION**

RESOLUTION NO. 2011-30

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING THE UTILITIES DIRECTOR
TO SUBMIT A PROPOSITION 1E IRWM
STORMWATER FLOOD MANAGEMENT
GRANT APPLICATION**

WHEREAS, Proposition 1E, the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Public Resources Code Section 5096.800 et seq.), authorized the California Legislature to appropriate \$300 million to encourage integrated regional water management ("IRWM") planning in California; and

WHEREAS, Section 79560 of the California Water Code appropriated to the Department of Water Resources ("DWR") funds for IRWM stormwater flood management grants and other purposes; and

WHEREAS, achieving IRWM grant funding will help to achieve the regional flood management goals established in the 2007 San Diego IRWM Plan; and

WHEREAS, the City of Escondido is an active participant in the San Diego IRWM program as a voting member of the Regional Advisory Committee ("RAC") and ad-hoc Workgroups; and

WHEREAS, grant application procedures established by DWR require applicants to provide a copy of a resolution adopted by the applicant's governing body designating an authorized representative to file an application for an IRWM stormwater flood management grant;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

- 1. That the above recitations are true and correct.**
- 2. That the Utilities Director is authorized to prepare the necessary data, conduct investigations, and file a Proposition 1E Stormwater Flood Management grant application.**
- 3. The Utilities Director is authorized to enter into an agreement to receive a Proposition 1E Stormwater Flood Management grant from the California Department of Water Resources.**

PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 16th day of February, 2011 by the following vote to wit:

AYES : Councilmembers: DIAZ, GALLO, MORASCO, WALDRON, ABED

NOES : Councilmembers: NONE

ABSENT : Councilmembers: NONE

APPROVED:



**SAM ABED, Mayor of the
City of Escondido, California**

ATTEST:



**MARSHA WHALEN, City Clerk of the
City of Escondido, California**

RESOLUTION NO. 2011-30

GEI Consultants, Inc. Consulting Agreement Exhibit E

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

WIFIA LOAN AGREEMENT

For Up to \$65,147,348

With

ESCONDIDO JOINT POWERS FINANCING AUTHORITY and

CITY OF ESCONDIDO

For the

**LAKE WOHLFORD DAM REPLACEMENT PROJECT
(WIFIA – N20149CA)**

Dated as of [●]

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SCHEDULE I – Project Budget

SCHEDULE II – Construction Schedule

SCHEDULE III – Existing Indebtedness

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EXHIBIT B – Anticipated WIFIA Loan Disbursement Schedule

EXHIBIT C – Form of Non-Debarment Certificate

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EXHIBIT E – Form of Non-Lobbying Certificate

EXHIBIT F – WIFIA Debt Service

EXHIBIT G-1 – Form of Opinion of Borrower’s General Counsel

EXHIBIT G-2 – Form of Opinion of Borrower’s Bond Counsel

EXHIBIT G-3 – Form of Opinion of City Attorney

EXHIBIT G-4 – Form of Opinion of City’s Bond Counsel

EXHIBIT H-1 – Form of Closing Certificate of Borrower

EXHIBIT H-2 – Form of Closing Certificate of City

EXHIBIT I – Form of Certificate of Substantial Completion

EXHIBIT J – Form of Quarterly Report

EXHIBIT K – Form of Public Benefits Report

WIFIA LOAN AGREEMENT

THIS WIFIA LOAN AGREEMENT (this “**Agreement**”), dated as of [●], is by and among **ESCONDIDO JOINT POWERS FINANCING AUTHORITY**, a joint exercise of powers agency duly organized and existing under and by virtue of the laws of the State, with an address at 201 North Broadway, Escondido, CA 92025 (the “**Borrower**”), **CITY OF ESCONDIDO**, a municipal corporation and general law city duly organized and existing under and by virtue of the laws of the State of California (the “**State**”), with an address at 201 North Broadway, Escondido, CA 92025 (the “**City**”), and the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “**Administrator**”), with an address at 1200 Pennsylvania Avenue NW, Washington, DC 20460 (the “**WIFIA Lender**”).

RECITALS:

WHEREAS, the Congress of the United States of America enacted the Water Infrastructure Finance and Innovation Act (“**WIFIA**”), § 5021 *et seq.* of Public Law 113-121 (as amended, and as may be further amended from time to time, the “**Act**”), which is codified as 33 U.S.C. §§ 3901-3914;

WHEREAS, the Act authorizes the WIFIA Lender to enter into agreements to provide financial assistance with one or more eligible entities to make secured loans with appropriate security features to finance a portion of the eligible costs of projects eligible for assistance;

WHEREAS, the Borrower was formed for the purpose of providing for the financing of public capital improvements for the members of the Borrower, including the City;

WHEREAS, the City has requested that the WIFIA Lender make the WIFIA Loan (as defined herein) to the Borrower in a principal amount not to exceed \$65,147,348 to be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for WIFIA financial assistance dated June 1, 2021 (the “**Application**”);

WHEREAS, as of the date hereof, the Administrator has approved WIFIA financial assistance for the Project to be provided in the form of the WIFIA Loan, subject to the terms and conditions contained herein;

WHEREAS, based on the Application and the representations, warranties and covenants set forth herein, the WIFIA Lender proposes to make funding available to the Borrower through the purchase of the WIFIA Note (as defined herein), upon the terms and conditions set forth herein;

WHEREAS, as of the date hereof, the Borrower has entered into the WIFIA IPA (as defined herein) with the City, pursuant to which (i) Borrower agrees to purchase the Project from the City in exchange for the provision of funds, in the amount of the WIFIA Loan, and (ii) the City agrees to purchase the Project from the Borrower in exchange for the payment of WIFIA Installment Payments (as defined herein) by the City to the Borrower, such payments being secured by the City Pledged Collateral (as defined herein);

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the WIFIA Note in accordance with the terms and provisions hereof and of the WIFIA Note;

WHEREAS, the Borrower has agreed to pledge and assign to the WIFIA Lender the Borrower Assigned Rights (as defined herein) for the purpose of securing (x) the payment of all sums due and owing by the Borrower to the WIFIA Lender under this Agreement and (y) the observance, performance and discharge of each agreement, condition, covenant and term of the Borrower and the City hereunder and of the City under the WIFIA IPA; and

WHEREAS, the WIFIA Lender has entered into this Agreement in reliance upon, among other things, the information and representations of the City set forth in the Application and the supporting information provided by the Borrower and the City.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and among the Borrower, the City and the WIFIA Lender as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

Section 1. Definitions.

Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 or as otherwise defined in this Agreement. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect.

“**Acquisition Fund**” means the account by that name created and maintained by the City in accordance with Section 3.04 of the WIFIA IPA.

“**Act**” means the Act as defined in the recitals hereto.

“**Additional Construction Contract**” means, with respect to the Project, each Construction Contract entered into after the Effective Date.

“**Additional Obligations**” means Additional Parity Obligations and Additional Subordinate Obligations.

“**Additional Parity Obligations**” means any Parity Obligations permitted under Section 18(a) (*Negative Covenants of the City – Additional Obligations*), which Parity Obligations are issued or incurred on or after the Effective Date.

“**Additional Subordinate Obligations**” means any Subordinate Obligations permitted under Section 18(a) (*Negative Covenants of the City – Additional Obligations*), which Subordinate Obligations are issued or incurred on or after the Effective Date.

“**Administrator**” has the meaning provided in the preamble hereto.

“**Agreement**” has the meaning provided in the preamble hereto.

“**Anticipated WIFIA Loan Disbursement Schedule**” means the schedule set forth in **Exhibit B** (*Anticipated WIFIA Loan Disbursement Schedule*), reflecting the anticipated disbursement of proceeds of the WIFIA Loan, as such schedule may be amended from time to time pursuant to Section 4(d) (*Disbursement Conditions*).

“**Application**” has the meaning provided in the recitals hereto.

“**Authority Revenues**” means (a) the WIFIA Installment Payments received by the Borrower pursuant to or with respect to the WIFIA IPA and (b) all interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder or thereunder.

“**Bankruptcy Related Event**” means, with respect to either the Borrower or the City, (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of either the Borrower or the City or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for either the Borrower or the City or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; (b) either the Borrower or the City (other than with respect to clause (iii) below, which applies to the Borrower only) shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) fail to make a payment of WIFIA Debt Service in accordance with the provisions of Section 8 (*Payment of Principal and Interest*) and such failure is not cured within thirty (30) days following notification by the WIFIA Lender of failure to make such payment, (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief, in each case under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing; (c) (i) any Person shall commence a process pursuant to which all or a substantial part of the Revenues or Authority Revenues may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Obligations, or (ii) any Person shall commence a process pursuant to which all or a substantial part of the Revenues or Authority Revenues may be sold or otherwise disposed of pursuant to a sale or disposition of such Revenues or Authority Revenues in lieu of foreclosure; or (d) any receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official shall transfer, pursuant to directions issued by the holders of Obligations, funds on deposit in any of the System funds or accounts upon the occurrence and during the continuation of an Event of Default under this Agreement or an event of default under any Obligation Document for application to the

prepayment or repayment of any principal amount of the Obligations other than in accordance with the provisions of this Agreement.

“Base Case Financial Model” means a financial model prepared by the City forecasting the capital costs of the System (including the Project) and the rates, revenues, operating expenses and major maintenance requirements of the System for time periods through the Final Maturity Date and based upon assumptions and methodology provided by the City and acceptable to the WIFIA Lender as of the Effective Date, which model shall be provided to the WIFIA Lender as a fully functional Microsoft Excel-based financial model or such other format requested by the WIFIA Lender.

“Borrower” has the meaning provided in the preamble hereto.

“Borrower Assigned Rights” has the meaning provided in Section 7(c) (*Security and Priority; Flow of Funds*).

“Borrower Closing Certificate” has the meaning provided in Section 11(a)(ix) (*Conditions Precedent – Conditions Precedent to Effectiveness*).

“Borrower Event of Default” has the meaning provided in Section 21(a) (*Events of Default*).

“Borrower Financial Statements” means the audited income statement and balance sheet of the Borrower as of the end of the Borrower Fiscal Year and the related audited statements of operations and of cash flow of the Borrower for such Borrower Fiscal Year.

“Borrower Fiscal Year” means (a) as of the Effective Date, a fiscal year of the Borrower commencing on July 1 of any calendar year and ending on June 30 of the immediately succeeding calendar year or (b) such other fiscal year as the Borrower may hereafter adopt after giving thirty (30) days’ prior written notice to the WIFIA Lender in accordance with Section 16(c) (*Negative Covenants of the Borrower – Borrower Fiscal Year*).

“Borrower Material Adverse Effect” means a material adverse effect on (a) the Authority Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the Borrower, (c) the legality, validity or enforceability of any material provision of any WIFIA Loan Document to which the Borrower is a party, (d) the ability of the Borrower to enter into, perform or comply with any of its material obligations under any WIFIA Loan Document to which it is a party, (e) the validity, enforceability or priority of the pledge and assignment of the Borrower Assigned Rights provided under the WIFIA Loan Documents or (f) the WIFIA Lender’s rights or remedies available under any WIFIA Loan Document to which the Borrower is a party.

“Borrower Payment Default” has the meaning provided in Section 21(a)(i) (*Events of Default and Remedies – Borrower Payment Default*).

“Borrower’s Authorized Representative” means any Person who shall be designated as such pursuant to Section 25 (*Borrower’s Authorized Representative*).

“Business Day” means any day other than a Saturday, a Sunday or a day on which offices of the Government or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York or Escondido, California.

“City Closing Certificate” has the meaning provided in Section 11(a)(x) (*Conditions Precedent – Conditions Precedent to Effectiveness*).

“City Event of Default” has the meaning provided in Section 21(b) (*Events of Default and Remedies*).

“City Financial Statements” means the audited income statement and balance sheet of the City as of the end of the City Fiscal Year and the related audited statements of operations and of cash flow of the City for such City Fiscal Year.

“City Fiscal Year” means (a) as of the Effective Date, a fiscal year of the City commencing on July 1 of any calendar year and ending on June 30 of the immediately succeeding calendar year or (b) such other fiscal year as the City may hereafter adopt after giving thirty (30) days’ prior written notice to the WIFIA Lender in accordance with Section 18(f) (*Negative Covenants of the City – City Fiscal Year*).

“City Material Adverse Effect” means a material adverse effect on (a) the System, the Project or the Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the City, (c) the legality, validity or enforceability of any material provision of any WIFIA Loan Document to which the City is a party, (d) the ability of the City to enter into, perform or comply with any of its material obligations under any WIFIA Loan Document to which it is a party, (e) the validity, enforceability or priority of the Liens on the City Pledged Collateral provided under the WIFIA Loan Documents or (f) the WIFIA Lender’s rights or remedies available under any WIFIA Loan Document to which the City is a party.

“City Payment Default” has the meaning provided in Section 21(b)(i) (*Events of Default and Remedies – City Payment Default*).

“City Pledged Collateral” has the meaning provided in Section 7(a) (*Security and Priority; Flow of Funds*).

“City’s Authorized Representative” means any Person who shall be designated as such pursuant to Section 26 (*City’s Authorized Representative*).

“Code” means the Internal Revenue Code of 1986, or any successor tax code, as amended from time to time, and the applicable regulations proposed or promulgated thereunder.

“Congress” means the Congress of the United States of America.

“Construction Contract” means any prime contract entered into by the City with respect to the Project that involves any construction activity (such as demolition, site preparation, civil works construction, installation, remediation, refurbishment, rehabilitation, or removal and replacement services). For the avoidance of doubt **“Construction Contract”** shall include each

Existing Construction Contract and, upon the effectiveness thereof, each Additional Construction Contract.

“**Construction Contractor**” means any Person (other than the Borrower or the City) party to a Construction Contract.

“**Construction Period**” means the period from the Effective Date through the Substantial Completion Date.

“**Construction Period Servicing Fee**” has the meaning provided in Section 10(a)(ii) (*Fees and Expenses – Fees*).

“**Construction Schedule**” means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached as **Schedule II** (*Construction Schedule*), and (b) any updates thereto included in the periodic reports submitted to the WIFIA Lender pursuant to Section 20(c)(i) (*Reporting Requirements of the City – Construction Reporting*) most recently approved by the WIFIA Lender.

“**CPI**” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted) or its successor, published by the Bureau of Labor Statistics and located at <https://www.bls.gov/news.release/cpi.t01.htm>.

“**Debt Management Policy**” means that certain Debt Management Policy of the City, adopted by the Board of Directors of the City on April 5, 2017 pursuant to Resolution No. 2017-47, as may be amended by the City from time to time.

“**Debt Service Payment Commencement Date**” means the Interest Payment Date immediately succeeding the date of the initial disbursement of the WIFIA Loan.

“**Default**” means any event or condition that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“**Default Rate**” means an interest rate equal to the lesser of (a) the sum of (i) the WIFIA Interest Rate plus (ii) two hundred (200) basis points and (b) the maximum interest rate permitted by law.

“**Development Default**” means (a) the City abandons work or fails, in the reasonable judgment of the WIFIA Lender, to diligently prosecute the work related to the Project or (b) the City fails to achieve Substantial Completion of the Project by January 31, 2027.

“**Dollars**” and “**\$**” means the lawful currency of the United States of America.

“**DUNS Number**” has the meaning provided in Section 15(i) (*Affirmative Covenants of the Borrower – DUNS Number*).

“**Effective Date**” means the date of this Agreement.

“**Eligible Project Costs**” means amounts in the Project Budget (as of the Effective Date) approved by the WIFIA Lender, which are paid by or for the account of the City, as agent of the Borrower pursuant to the WIFIA IPA, in connection with the Project (including, as applicable, Project expenditures incurred prior to the receipt of WIFIA credit assistance, or the repayment of amounts borrowed to make such expenditures prior to the receipt of WIFIA credit assistance), which shall arise from the following:

- (a) development-phase activities, including planning, feasibility analysis (including any related analysis necessary to carry out an eligible project), revenue forecasting, environmental review, permitting, preliminary engineering and design work and other preconstruction activities;
- (b) construction, reconstruction, rehabilitation, and replacement activities;
- (c) the acquisition of real property or an interest in real property (including water rights, land relating to the Project and improvements to land), environmental mitigation (including acquisitions pursuant to Section 3905(8) of Title 33 of the United States Code), construction contingencies, and acquisition of equipment; or
- (d) capitalized interest (with respect to Obligations other than the WIFIA Loan) necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction;

provided that Eligible Project Costs must be consistent with all other applicable federal law, including the Act.

“**Eligible Project Costs Documentation**” has the meaning provided in Section 1 of **Exhibit D** (*Requisition Procedures*).

“**EMMA**” means the Electronic Municipal Market Access system as described in 1934 Act Release No. 59062 and maintained by the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)1 of the Securities Exchange Act of 1934, as amended, and its successors.

“**Environmental Laws**” has the meaning provided in Section 13(o) (*Representations and Warranties of the City – Environmental Matters*).

“**EPA**” means the United States Environmental Protection Agency.

“**Event of Default**” means any City Event of Default or any Borrower Event of Default.

“**Existing Construction Contract**” means each Construction Contract of the City existing as of the Effective Date, as set forth in **Schedule 13(m)** (*Existing Construction Contracts*).

“**Existing Indebtedness**” means all (a) Obligations and indebtedness of the City and (b) indebtedness of the Borrower, in each case that has been issued or incurred prior to the Effective Date, as listed and described in **Schedule III** (*Existing Indebtedness*).

“Existing Parity Obligations” means the Parity Obligations listed and described in Part A of **Schedule III** (*Existing Indebtedness*).

“Existing Subordinate Obligations” means the Subordinate Obligations listed and described in Part B of **Schedule III** (*Existing Indebtedness*).

“Federal Fiscal Year” means the fiscal year of the Government, which is the twelve (12) month period that ends on September 30 of the specified calendar year and begins on October 1 of the preceding calendar year.

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

“Final Disbursement Date” means the earliest of (a) the date on which the WIFIA Loan has been disbursed in full; (b) the last anticipated date of disbursement set forth in the then-current Anticipated WIFIA Loan Disbursement Schedule; (c) the date on which the Borrower has certified to the WIFIA Lender that it will not request any further disbursements under the WIFIA Loan; (d) the date on which the WIFIA Lender terminates its obligations relating to disbursements of any undisbursed amounts of the WIFIA Loan in accordance with Section 21 (*Events of Default and Remedies*); and (e) the date that is one (1) year after the Substantial Completion Date.

“Final Maturity Date” means July 1, 2055 (or such earlier date as is set forth in an updated **Exhibit F** (*WIFIA Debt Service*) pursuant to Section 8(f) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*)).

“Fixed Level Payment” has the meaning provided in Section 8(b) (*Payment of Principal and Interest – Fixed Level Payments*).

“Flow of Funds” means the requirements specified in Section 5.02 (*Allocation of Revenues*) of the WIFIA IPA.

“Flow of Funds Following Acceleration” means the requirements specified in Section 8.02 (*Application of Funds Upon Acceleration*) of the WIFIA IPA.

“GAAP” means the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or of any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor.

“Government” means the United States of America and its departments and agencies.

“Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority.

“Governmental Authority” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“Hedging Transaction” means any interest rate protection agreement, interest rate swap transaction, interest rate “cap” transaction, interest rate future, interest rate option or other similar interest rate hedging arrangement commonly used in loan transactions to hedge against interest rate increases; provided that in no event shall any such transaction be for any speculative purpose.

“Indemnitee” has the meaning provided in Section 37 (*Indemnification*).

“Independent Accountant” means any certified public accountant or firm of certified public accountants duly licensed or registered or entitled to practice and practicing as such under the laws of the State, appointed by the City who, or each of whom: (a) is in fact independent and not under the direct or indirect control of the City or the Borrower; (b) does not have any substantial interest, direct or indirect, in the City or the Borrower; and (c) is not connected with the City or the Borrower as an officer or employee of the City or the Borrower, but who may be regularly retained to make reports to the City or the Borrower.

“Independent Consultant” means any consultant or firm of such consultants judged by the City to have experience in matters relating to the collection of Revenues or other experience with respect to the financing of System projects, as appropriate, appointed and paid by the City who, or each of whom: (a) is in fact independent and not under the direct or indirect control of the City or the Borrower; (b) does not have any substantial interest, direct or indirect, in the City or the Borrower; and (c) is not connected with the City or the Borrower as a member, officer or employee of the City or the Borrower, but who may be regularly retained to make reports to the City or the Borrower.

“Insolvency Laws” means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.

“Installment Payment Date” means the fifth (5th) day prior to each Interest Payment Date, or if said date is not a Business Day, then the preceding Business Day.

“Interest Only Period” means the period commencing on the Debt Service Payment Commencement Date and ending on the date that is six (6) months prior to the Level Payment Commencement Date (or on such earlier date as all amounts due or to become due to the WIFIA Lender hereunder have been irrevocably paid in full in cash).

“Interest Payment Date” means each January 1 and July 1.

“Investment Agreement” means an investment agreement by a provider, supported by appropriate opinions of counsel, provided that any such Investment Agreement shall: (i) be from

a provider rated by S&P or Moody's at "A-" or "A3", respectively, or above; (ii) require the Borrower or the City to terminate such agreement and immediately reinvest the proceeds thereof in other Permitted Investments if the rating assigned to the provider by S&P or Moody's falls to "BBB" or "Baa2", respectively, or below; and (iii) expressly permit the withdrawal, without penalty, of any amounts necessary at any time to fund any deficiencies on account of debt service requirements with respect to the Obligations.

"Investment Grade Rating" means a public rating no lower than 'BBB-', 'Baa3', 'bbb-', 'BBB (low)', or higher, from a Nationally Recognized Rating Agency.

"Level Payment Commencement Date" means July 1, 2026.

"Level Payment Period" means the period commencing on the Level Payment Commencement Date and ending on the Final Maturity Date (or on such earlier date as all amounts due or to become due to the WIFIA Lender hereunder have been irrevocably paid in full in cash).

"Lien" means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

"Loan Amortization Schedule" means the loan amortization schedule reflected in the applicable column of **Exhibit F** (*WIFIA Debt Service*), as amended from time to time in accordance with Section 8(f) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*).

"Material Adverse Effect" means a material adverse effect on (a) the System, the Project, the Revenues or the Authority Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects of either the Borrower or the City, (c) the legality, validity or enforceability of any material provision of any WIFIA Loan Document, (d) the ability of either the Borrower or the City to enter into, perform or comply with any of its material obligations under any WIFIA Loan Document to which it is a party, (e) the validity, enforceability or priority of the pledge and assignment of the Borrower Assigned Rights or the Liens on the City Pledged Collateral, in each case provided under the WIFIA Loan Documents, or (f) the WIFIA Lender's rights or remedies available under any WIFIA Loan Document.

"Maximum Annual Debt Service" means as of the date of calculation, the greatest total Parity Debt Service payable in any City Fiscal Year during which this Agreement is in effect.

"Nationally Recognized Rating Agency" means any nationally recognized statistical rating organization identified as such by the Securities and Exchange Commission.

"NEPA" means the National Environmental Policy Act of 1969, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

“**NEPA Determination**”¹ means the [Categorical Exclusion] [Finding of No Significant Impact] [Record of Decision] for the Project issued by EPA on [●] in accordance with NEPA.

“**Net Proceeds**” means, when used with respect to any casualty insurance or condemnation award, the proceeds from such insurance or condemnation award remaining after payment of all expenses (including attorneys’ fees) incurred in the collection of such proceeds.

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

“**Non-Debarment Certificate**” means a certificate, signed by the Borrower’s Authorized Representative or the City’s Authorized Representative, as applicable, as to the absence of debarment, suspension or voluntary exclusion from participation in Government contracts, procurement and non-procurement matters with respect to the Borrower or the City, as applicable, and its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. 1532.995), substantially in the form attached hereto as **Exhibit C** (*Form of Non-Debarment Certificate*).

“**Non-Lobbying Certificate**” means a certificate, signed by the Borrower’s Authorized Representative or the City’s Authorized Representative, as applicable, with respect to the prohibition on the use of appropriated funds for lobbying pursuant to 49 C.F.R. § 20.100(b), substantially in the form attached hereto as **Exhibit E** (*Form of Non-Lobbying Certificate*).

“**Obligation Document**” means any indenture, bond, credit agreement, note, reimbursement agreement, letter of credit, guarantee or any other agreement, instrument or document pursuant to which any Obligation is incurred by the City.

“**Obligations**” means, collectively, the Parity Obligations and the Subordinate Obligations.

“**Operating Period Servicing Fee**” has the meaning provided in Section 10(a)(iii) (*Fees and Expenses – Fees*).

“**Operations and Maintenance Costs**” means (a) costs spent or incurred for maintenance and operation of the System calculated in accordance with GAAP, including the reasonable expenses of management and repair and other expenses necessary to maintain and preserve the System in good repair and working order, and including administrative costs of the City that are charged directly or apportioned to the System, including but not limited to salaries and wages of employees, payments to the Public Employees Retirement System, overhead, insurance, taxes (if any), fees of auditors, accountants, attorneys or engineers and insurance premiums, and including all other reasonable and necessary costs of the City or charges (other than debt service payments) required to be paid by it to comply with the terms of this Agreement or the Obligation Documents with respect to Parity Obligations and (b) all payments under any contract for the purchase of water, but excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature.

“**Organizational Documents**” means, with respect to either the City or the Borrower, (a) the constitutional and statutory provisions that are the basis for the existence and authority of such

¹ **NTD:** Definition to be updated following issuance.

entity, including any enabling statutes, ordinances or public charters and any other organic laws establishing such entity and (b) the resolutions, bylaws, code of regulations, operating procedures or other organizational documents (including any amendments, modifications or supplements thereto) of or adopted by such entity by which such entity, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived.

“Outstanding” means, with respect to Obligations, Obligations that have not been cancelled or legally defeased or discharged.

“Outstanding WIFIA Loan Balance” means (a) the aggregate principal amount of the WIFIA Loan drawn by the Borrower minus (b) the aggregate principal amount of the WIFIA Loan repaid by the Borrower, as determined in accordance with Section 8(f) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*).

“Parity Debt Service”² means, for any period, the sum of:

(a) the interest payable during such period on all outstanding Parity Obligations, assuming that all outstanding serial Parity Obligations are retired as scheduled and that all outstanding term Parity Obligations are prepaid or paid from sinking fund payments as scheduled (except to the extent that such interest is capitalized);

(b) that portion of the principal amount of all outstanding serial Parity Obligations maturing in such period; and

(c) that portion of the principal amount of all outstanding term Parity Obligations required to be prepaid or paid in such period;

provided that, as to any such Parity Obligations bearing or comprising interest at other than a fixed rate, the rate of interest used to calculate Parity Debt Service shall be the greatest of:

(i) the actual interest rate on such Parity Obligations on the date of calculation, or if the indebtedness is not yet outstanding, the initial interest rate (if established and binding); and

(ii) if the Parity Obligations have been outstanding for at least twelve (12) months, the average rate over the period of the same length as the period of calculation of Parity Debt Service immediately preceding the date of calculation; and

(iii) (A) if interest on the indebtedness is excludable from gross income under the applicable provisions of the Code, the most recently published Bond Buyer “Revenue Bond Index” (or comparable index if no longer published) plus fifty (50) basis points; or (B) if interest is not so excludable, the interest rate on direct U.S. Treasury Obligations with comparable maturities plus fifty (50) basis points; provided that for purposes of any portion of Section 18(a) (*Negative Covenants of the City – Additional Obligations*) or Section 17(a) (*Affirmative Covenants of the City – Rate Covenant*), measuring actual debt service

² NTD: EPA prefers to use the definition adapted from the IBank ISAs.

coverage during a test period, variable rate indebtedness shall be deemed to bear interest at the actual rate per annum applicable during the test period; and

provided further that if any series or issue of such Parity Obligations have twenty-five percent (25%) or more of the aggregate principal amount of such series or issue due in any one year, Parity Debt Service shall be determined for the period of calculation of determination as if the principal of and interest on such series or issue of such Parity Obligations were being paid from the date of incurrence thereof in substantially equal annual amounts over a period of twenty-five (25) years from the date of calculation; and

provided further that, as to any such Parity Obligations or portions thereof bearing no interest but which are sold at a discount and which discount accretes with respect to such Parity Obligations or portions thereof, such accreted discount shall be treated as interest in the calculation of Parity Debt Service; and

provided further that the amount on deposit in a debt service reserve fund on any date of calculation of Parity Debt Service shall be deducted from the amount of principal due at the final maturity of the Parity Obligations for which such debt service reserve fund was established and in each preceding year until such amount is exhausted; and

provided further that Parity Debt Service shall not include interest which is paid from investment earnings on amounts on deposit in any reserve fund and transferred to the WIFIA Debt Service Account.

“Parity Obligations” means the WIFIA Installment Payments and all other obligations of the City which are secured by a pledge of and lien on the Revenues and rank *pari passu* in right of payment and right of security with the WIFIA Installment Payments, including the Existing Parity Obligations and any Additional Parity Obligations.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended, and all regulations promulgated thereunder.

“Payment Date” means each Interest Payment Date and each Principal Payment Date.

“Payment Default” means any Borrower Payment Default or any City Payment Default.

“Permitted Investment” means any of the following which at the time of investment are legal investments under the laws of the State for the moneys proposed to be invested therein:

(a) for all purposes, including: (i) as defeasance investments in refunding escrow accounts; and (ii) for the purpose of investing (and receiving premium credit for) accrued and capitalized interest: (1) cash; or (2) Federal Securities; and

(b) for all purposes other than: (i) defeasance investments in refunding escrow accounts; and (ii) investing (and receiving credit for) accrued and capitalized interest: (1) obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America: the Export-Import Bank; Farmers Home Administration; General Services

Administration; U.S. Maritime Administration; Small Business Administration; Government National Mortgage Association (GNMA); U.S. Department of Housing & Urban Development (PHAs); and Federal Housing Administration; (2) bonds, notes or other evidences of indebtedness rated "AAA" and "Aaa" by the applicable Rating Agency issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years; (3) U.S. dollar denominated deposit accounts, demand deposits, including interest bearing money market accounts, trust funds, trust accounts, overnight bank deposits, interest-bearing deposits, other deposit products, certificates of deposit, federal funds and banker's acceptances with domestic commercial banks, which: (I) have a rating on their short term certificates of deposit on the date of purchase of "A-1" or "A-1+" by S&P and "P-1" by Moody's; or (II) deposits insured by the Federal Deposit Insurance Corporation maturing no more than three hundred sixty (360) days after the date of purchase (ratings on holding companies are not considered as the rating of the bank); (4) commercial paper which is rated at the time of purchase in the single highest classification, "A-1+" by S&P and "P-1" by Moody's and which matures not more than two hundred seventy (270) days after the date of purchase; (5) investments in a money market fund rated "AAAm", "AAAm-G", "AAm" or "AAm-G" or better by S&P; (6) pre-refunded municipal obligations defined as follows: any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice and which are rated, based on the escrow, in the highest rating category of S&P and Moody's, or any successor thereto; (7) any Investment Agreement; (8) the Local Agency Investment Fund of the State of California; and (9) any other investment permitted by law.

"Permitted Liens" means:

- (a) Liens imposed pursuant to the WIFIA Loan Documents and the other Obligation Documents;
- (b) Liens imposed by law, including Liens for taxes that are not yet due or are being contested in compliance with Section 15(g) (*Affirmative Covenants of the Borrower – Material Obligations; Payment of Claims*) and Section 17(k) (*Affirmative Covenants of the City – Material Obligations; Payment of Claims*);
- (c) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 15(g) (*Affirmative Covenants of the Borrower – Material Obligations; Payment of Claims*) and Section 17(k) (*Affirmative Covenants of the City – Material Obligations; Payment of Claims*);
- (d) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance, and other social security laws or regulations;

(e) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(f) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 21(a)(iv) (*Events of Default and Remedies – Borrower Material Adverse Judgment*) or Section 21(b)(vi) (*Events of Default and Remedies – City Material Adverse Judgment*); and

(g) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that, in any case, do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of either the Borrower or the City.

“**Person**” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

“**Principal Payment Date**” means each July 1.

“**Project**” means the Lake Wohlford Dam Replacement Project, the purpose of which is to replace the existing Lake Wohlford Dam, restore the reservoir to its former capacity, mitigate the effects of drought in the region, improve water quality and address safety hazards identified by the California Department of Water Resources, Division of Safety of Dams. Project elements include: (a) dam construction downstream of the existing dam; (b) new spillway construction; (c) new outlet tower construction; and (d) demolition of the existing dam.

“**Project Budget**” means the budget for the Project attached to this Agreement as **Schedule I** (*Project Budget*) showing a summary of Total Project Costs with a breakdown of all Eligible Project Costs and the estimated sources and uses of funds for the Project, as amended from time to time with the approval of the WIFIA Lender.

“**Project EPC Documentation**” has the meaning provided in Section 4(e) (*Disbursement Conditions*).

“**Projected Substantial Completion Date**” means January 31, 2025, as such date may be adjusted in accordance with Section 20(c)(i) (*Reporting Requirements of the City – Construction Reporting*).

“**Prop 218 Law**” means, collectively, the California Constitution Article XIII D, the statutes implementing it, and the published California Appellate Court and Supreme Court decisions interpreting it in effect on the Effective Date and as such law may be amended or interpreted from time to time.

“**Public Benefits Report**” has the meaning provided in Section 20(d) (*Reporting Requirements of the City – Public Benefits Report*).

“**Rate Covenant**” means the requirements specified in Section 17(a) (*Affirmative Covenants of the City – Rate Covenant*).

“**Related Documents**” means the WIFIA Loan Documents and each other Obligation Document.

“**Report**” means a written document signed by an Independent Consultant or an Independent Accountant, and including: (a) a statement that the person or firm making or giving such Report has read the pertinent provisions of this Agreement to which such Report relates; (b) a brief statement as to the nature and scope of the examination or investigation upon which the Report is based; and (c) a statement that, in the opinion of such person or firm, sufficient examination or investigation was made as is necessary to enable said consultant to express an informed opinion with respect to the subject matter referred to in the Report.

“**Requisition**” has the meaning provided in Section 4(a) (*Disbursement Conditions*).

“**Revenue Fund**” means the water enterprise fund established by the City into which all Revenues are deposited and maintained by the City. The Revenue Fund is composed of the funds received from water treatment, transmission, distribution, and sales services provided to the City’s customers.

“**Revenues**” means all income, rents, rates, fees, charges and other moneys derived from the ownership of or operation of the System, including, without limiting the generality of the foregoing: (a) all in lieu charges and groundwater augmentation charges (including investment earnings thereon) collected by or on behalf of the City; (b) all income, rents, rates, fees, charges, business interruption insurance proceeds or other moneys derived by the City from the sale, furnishing and supplying of the water, drainage or other services, facilities, and commodities sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the System; and (c) the earnings on and income derived from the investment of such income, rents, rates, fees, charges, proceeds or other moneys, including City reserves, but excluding in all cases: (x) customers’ deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the City; (y) revenues of the City’s recycled water system; and (z) proceeds of taxes or benefit assessments restricted by law to be used by the City to pay amounts due on bonds or other obligations hereafter incurred.

“**Sanctions Laws**” means collectively, any applicable anti-drug trafficking, anti-terrorism, anti-money laundering, anti-bribery, or anti-corruption laws or regulations, as applicable, including those contained in the Bank Secrecy Act of 1970 (as amended) and the U.S. Patriot Act.

“**Servicer**” means such entity or entities as the WIFIA Lender shall designate from time to time to perform, or assist the WIFIA Lender in performing, certain duties hereunder.

“**Servicing Fee**” means the Servicing Set-Up Fee and any Construction Period Servicing Fee or Operating Period Servicing Fee.

“**Servicing Set-Up Fee**” has the meaning provided in Section 10(a)(i) (*Fees and Expenses – Fees*).

“**State**” has the meaning provided in the preamble hereto.

“**Subordinate Obligations**” means all obligations of the City which are secured by a pledge of and lien on the Revenues and are fully subordinated in right of payment and right of security to the Parity Obligations, including the Existing Subordinate Obligations and any Additional Subordinate Obligations.

“**Substantial Completion**” means, with respect to the Project, the stage at which the Project is able to perform the functions for which the Project is designed.

“**Substantial Completion Date**” means the date on which the City certifies to the WIFIA Lender, with evidence satisfactory to the WIFIA Lender, that Substantial Completion has occurred.

“**System**” means the whole and each and every part of the waterworks system serving the City, whether owned or operated by the City or another party, including the portion thereof existing on the date hereof, and including all additions, betterments, extensions and improvements to such water system or any part thereof hereafter acquired or constructed, but excluding the City’s recycled water system.

“**Total Project Costs**” means (a) the costs paid or incurred or to be paid or incurred by the City, as agent of the Borrower pursuant to the WIFIA IPA, in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance and financing (including costs of issuance); (b) amounts, if any, required by the WIFIA Loan Documents to be paid into any fund or account upon the incurrence of the WIFIA Loan or any other Obligation, in each case in respect of the Project; (c) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) during the Construction Period in respect of any obligations of the City in connection with the Project (other than the WIFIA Loan); and (d) costs of equipment and supplies and initial working capital and reserves required by the City for the commencement of operation of the Project, including general administrative expenses and overhead of the City.

“**Uncontrollable Force**” means any cause beyond the control of the Borrower and the City, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage or act of God (provided that neither the Borrower nor the City shall be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower or the City and neither the Borrower nor the City controls the administrative agency or governmental officer or body; provided that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower or the City.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code, as in effect from time to time in the State.

“**Updated Financial Model**” means the Base Case Financial Model, updated in accordance with Section 20(a) (*Reporting Requirements of the City – Updated Financial Model*).

“**Variable Interest Rate**” means a variable interest rate to be borne by any Obligations. The method of computing such variable interest rate shall be specified in the Obligation Document pursuant to which such Obligations are incurred. Such Obligation Document shall also specify either (a) the particular period or periods of time for which each value of such variable interest rate shall remain in effect or (b) the time or times upon which any change in such variable interest rate shall become effective.

“**Variable Interest Rate Obligations**” means Obligations which bear a Variable Interest Rate but does not include any Obligations for which the interest rate has been fixed during the remainder of the term thereof to maturity.

“**WIFIA**” has the meaning provided in the recitals hereto.

“**WIFIA Borrower Resolution**” means Resolution No. EJPFA-2022-[●], adopted by the Borrower on [May 11, 2022], authorizing the execution and delivery of this Agreement and the WIFIA Note and certain related actions by the Borrower in connection with the issuance of the WIFIA Loan.

“**WIFIA City Resolution**” means Resolution No. 2022-[●], adopted by the City on [May 11, 2022], authorizing the execution and delivery of this Agreement and the WIFIA IPA and certain related actions by the City in connection therewith.

“**WIFIA CUSIP Number**” means a CUSIP number for the WIFIA Loan obtained for the purposes of monitoring through EMMA.

“**WIFIA Debt Service**” means with respect to any Payment Date, the principal portion of the Outstanding WIFIA Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), in each case, (a) as set forth on **Exhibit F** (*WIFIA Debt Service*) and (b) due and payable on such Payment Date in accordance with the provisions of Section 8(a) (*Payment of Principal and Interest – Payment of WIFIA Debt Service*).

“**WIFIA Debt Service Account**” means the debt service account established and maintained by the City, as agent of the Borrower pursuant to the WIFIA IPA, pursuant to Section 17(i) (*Affirmative Covenants of the City – WIFIA Debt Service Account*).

“**WIFIA Installment Payments**” means the installment payments of interest and principal scheduled to be paid by the City under and pursuant to the WIFIA IPA.

“**WIFIA Interest Rate**” has the meaning provided in Section 6 (*Interest Rate*).

“**WIFIA IPA**” means that certain Installment Purchase Agreement, dated as of the date hereof, by and between the City and the Borrower with respect to the Project.

“**WIFIA Lender**” has the meaning provided in the preamble hereto.

“**WIFIA Lender’s Authorized Representative**” means the Administrator and any other Person who shall be designated as such pursuant to Section 27 (*WIFIA Lender’s Authorized Representative*).

“**WIFIA Loan**” means the secured loan made by the WIFIA Lender to the Borrower on the terms and conditions set forth herein, pursuant to the Act, in a principal amount not to exceed \$65,147,348, to be used in respect of Eligible Project Costs.

“**WIFIA Loan Documents**” means this Agreement, the WIFIA Note, the WIFIA IPA and the WIFIA Resolutions.

“**WIFIA Note**” means the note delivered by the Borrower in substantially the form of **Exhibit A** (*Form of WIFIA Note*).

“**WIFIA Resolutions**” means, collectively, the WIFIA City Resolution and the WIFIA Borrower Resolution.

Section 2. Interpretation.

(a) Unless the context shall otherwise require, the words “hereto,” “herein,” “hereof” and other words of similar import refer to this Agreement as a whole.

(b) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa.

(c) Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require.

(d) The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”

(e) Whenever the Borrower’s knowledge or the City’s knowledge is implicated in this Agreement or the phrase “to the Borrower’s knowledge” or the phrase “to the City’s knowledge” or a similar phrase is used in this Agreement, the Borrower’s knowledge or the City’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower’s knowledge or the best of the City’s knowledge, as applicable, after reasonable and diligent inquiry. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns.

(f) Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement.

(g) The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement.

(h) The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions.

(i) Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof.

(j) Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 36 (*Notices*) and signed by a duly authorized representative of such party.

(k) References to “disbursements of WIFIA Loan proceeds” or similar phrasing shall be construed as meaning the same thing as “paying a portion of the purchase price of the WIFIA Note”.

(l) Whenever this Agreement requires a change in principal amount, interest rate or amortization schedule of the WIFIA Loan, it is intended that such change be reflected in the WIFIA Note. Whenever there is a mandatory or optional prepayment of the WIFIA Loan, it is intended that such prepayment be implemented through a prepayment of the WIFIA Note.

ARTICLE II THE WIFIA LOAN

Section 3. WIFIA Loan Amount. The principal amount of the WIFIA Loan shall not exceed \$65,147,348. WIFIA Loan proceeds available to be drawn shall be disbursed from time to time in accordance with Section 4 (*Disbursement Conditions*) and Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*).

Section 4. Disbursement Conditions.

(a) Pursuant to the WIFIA IPA, the Borrower has appointed the City as its agent to request funds from time to time under this Agreement and the City has accepted such appointment and assumed all rights, liabilities, duties and responsibilities of the Borrower under this Agreement regarding the requisition of funds from time to time under this Agreement. WIFIA Loan proceeds shall be disbursed solely in respect of Eligible Project Costs. If the Borrower intends to utilize the WIFIA Loan proceeds to make progress payments for Project construction work performed under the Construction Contracts, the City, as agent of the Borrower pursuant to the WIFIA IPA, shall demonstrate to the satisfaction of the WIFIA Lender that such progress payments are commensurate with the cost of the work that has been completed. Each disbursement of the WIFIA Loan shall be made pursuant to a requisition and certification (a “**Requisition**”) in the form set forth in **Appendix One** (*Form of Requisition*) to **Exhibit D** (*Requisition Procedures*),

along with all documentation and other information required thereby, submitted by the City, as agent of the Borrower pursuant to the WIFIA IPA, to, and approved by, the WIFIA Lender, all in accordance with the procedures of **Exhibit D** (*Requisition Procedures*) and subject to the requirements of this Section 4 and the conditions set forth in Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*); provided that no disbursements of WIFIA Loan proceeds shall be made after the Final Disbursement Date.

(b) Each Requisition shall include a certification by the City, as agent of the Borrower pursuant to the WIFIA IPA, certifying as to the following: (i) whether reimbursement or payment is being requested with respect to (A) Eligible Project Costs that have been submitted by it pursuant to Section 4(e) and approved by the WIFIA Lender pursuant to Section 4(f) or (B) other Eligible Project Costs incurred by the City, as agent of the Borrower pursuant to the WIFIA IPA; (ii) the amount for which reimbursement or payment is being requested has not been reimbursed or paid by any previous disbursement of WIFIA Loan proceeds; and (iii) to the extent any Eligible Project Costs described in clause (i)(B) above are included in the Requisition, that such Eligible Project Costs have not and will not be submitted by the City for approval pursuant to Section 4(e) and Section 4(f).

(c) The City shall deliver copies of each Requisition to the WIFIA Lender and the Servicer (if any) on or before the first (1st) Business Day of each month for which a disbursement is requested. If the WIFIA Lender shall expressly approve a Requisition or shall not expressly deny a Requisition, disbursements of funds shall be made on the fifteenth (15th) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such fifteenth (15th) day is not a Business Day. Express WIFIA Lender approval or denial shall be substantially in the form annexed hereto as **Appendix Three** (*[Approval/Disapproval] of the WIFIA Lender*) to **Exhibit D** (*Requisition Procedures*). In no event shall disbursements be made more than once each month.

(d) At the time of any disbursement, the sum of all prior disbursements of WIFIA Loan proceeds and the disbursement then to be made shall not exceed the cumulative disbursements through the end of the then-current Federal Fiscal Year set forth in the Anticipated WIFIA Loan Disbursement Schedule, as the same may be amended from time to time in accordance with the terms of this Agreement. Subject to this Section 4, any scheduled disbursement (as reflected in the Anticipated WIFIA Loan Disbursement Schedule) that remains undrawn at the end of any Federal Fiscal Year shall automatically roll forward to be available in the succeeding Federal Fiscal Year up to the last anticipated date of disbursement set forth in the Anticipated WIFIA Loan Disbursement Schedule, having the effect of automatically updating the Anticipated WIFIA Loan Disbursement Schedule without need for the WIFIA Lender's approval. The City may also amend the Anticipated WIFIA Loan Disbursement Schedule by submitting a revised version thereof to the WIFIA Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions. Such revised Anticipated WIFIA Loan Disbursement Schedule shall become effective upon the WIFIA Lender's approval thereof, which approval shall be granted in the WIFIA Lender's sole discretion.

(e) On a quarterly basis, the City, as agent of the Borrower pursuant to the WIFIA IPA, shall submit to the WIFIA Lender invoices and records, satisfactory to the WIFIA

Lender in form and substance, with respect to any costs incurred by the City, as agent of the Borrower pursuant to the WIFIA IPA, in respect of the Project evidencing that such costs are Eligible Project Costs (the “**Project EPC Documentation**”), or, if the City elects in any quarter not to submit the documentation described above, a written statement indicating such election; provided that no such submission shall be required (x) before the date that is sixty (60) days after the Effective Date or (y) for any costs incurred prior to the Effective Date.

(f) The Project EPC Documentation and the related statement submitted pursuant to Section 4(e) shall contain sufficient detail to enable the WIFIA Lender to verify that any costs submitted by the City for reimbursement are Eligible Project Costs. Within thirty (30) days following the receipt of the Project EPC Documentation and the accompanying statement, the WIFIA Lender shall deliver a notice to the Borrower and the City confirming (i) which Eligible Project Costs incurred by the City, as agent of the Borrower pursuant to the WIFIA IPA, set forth in the statement have been approved or denied (and, if denied, the reasons therefor) and (ii) the cumulative amount of Eligible Project Costs that have been approved with respect to the City, as agent of the Borrower pursuant to the WIFIA IPA. Any approved amounts of Eligible Project Costs shall be disbursed at such time as the City submits a Requisition in respect of such approved amounts in accordance with Section 4(a) and Section 4(b). The City shall not submit a Requisition that seeks reimbursement of Eligible Project Costs for which the related Project EPC Documentation was not delivered to the WIFIA Lender and the Servicer (if any) at least one (1) month prior to the date such Requisition is submitted.

Section 5. Term. The term of the WIFIA Loan shall extend from the Effective Date to the Final Maturity Date or to such earlier date as all amounts due or to become due to the WIFIA Lender hereunder have been irrevocably paid in full in immediately available funds.

Section 6. Interest Rate. The interest rate with respect to the Outstanding WIFIA Loan Balance (the “**WIFIA Interest Rate**”) shall be [●] and [●] hundredths percent ([●]%) per annum. Interest will accrue and be computed on the Outstanding WIFIA Loan Balance (as well as on any past due interest) from time to time on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months; provided that, upon the occurrence of an Event of Default, the Borrower shall pay interest on the Outstanding WIFIA Loan Balance at the Default Rate, (a) in the case of any Payment Default, from (and including) its due date to (but excluding) the date of actual payment and (b) in the case of any other Event of Default, from (and including) the date of such occurrence to (but excluding) the earlier of the date on which (i) such Event of Default has been cured or waived (if applicable) in accordance with the terms of this Agreement and (ii) the Outstanding WIFIA Loan Balance has been irrevocably paid in full by the Borrower in immediately available funds. For the avoidance of doubt, interest on the WIFIA Loan and the WIFIA Note shall accrue and be payable only on those amounts for which a Requisition has been submitted and funds (or such portion of funds as have been approved by the WIFIA Lender) have been disbursed to the Borrower for use on the Project in accordance with Section 4 (*Disbursement Conditions*).

Section 7. Security and Priority; Flow of Funds.

(a) Pursuant to the WIFIA IPA, as security for the WIFIA Installment Payments, and concurrently with the issuance and delivery of this Agreement, the City has

pledged, assigned and granted to the Borrower for its benefit, Liens on (i) the Revenues, (ii) other amounts that are on deposit in the Revenue Fund and the Acquisition Fund and (iii) any other amounts (including proceeds of the WIFIA Loan) which are held in any fund or account that is established pursuant to the WIFIA IPA (collectively, the “**City Pledged Collateral**”). The WIFIA Installment Payments are and shall (i) be secured by the Liens on the Revenues, (ii) not be subordinate in right of payment (other than with respect to Operations and Maintenance Costs) or in right of security to any Lien on the Revenues, (iii) be *pari passu* in right of payment and right of security only to the Lien on the Revenues for the benefit of the Parity Obligations and (iv) be senior in right of payment and right of security to the Lien on the Revenues for the benefit of the Subordinate Obligations. The obligation of the City to make the WIFIA Installment Payments constitutes Parity Obligations.

(b) Except for Permitted Liens, the Revenues shall be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto, that is of equal rank with or senior to the pledge of the Borrower created under the WIFIA Loan Documents for the benefit of the WIFIA Lender, and all organizational, regulatory or other necessary action on the part of the City with respect to the foregoing has been duly and validly taken.

(c) The Borrower hereby unconditionally pledges and assigns to the WIFIA Lender for its benefit (i) all of its right, title and interest to receive the Authority Revenues, (ii) any other amounts (including proceeds of the WIFIA Loan) held in any fund or account that is established pursuant to this Agreement, (iii) all of its rights with respect to the WIFIA Debt Service Account and (iv) all of its rights and remedies to enforce compliance with the provisions of the WIFIA IPA (including enforcement of payment obligations and the Rate Covenant or otherwise to protect the interest of the WIFIA Lender) (collectively, the “**Borrower Assigned Rights**”), in each case for the purpose of securing (x) the payment of all sums due and owing to the WIFIA Lender under this Agreement and (y) the observance, performance and discharge of each agreement, condition, covenant and term of the Borrower and the City hereunder and of the City under the WIFIA IPA. Such pledge and assignment shall constitute a lien on and security interest in such rights and amounts.³ The City hereby consents to such pledge and assignment. Notwithstanding anything in this Agreement or any other WIFIA Loan Document to the contrary, the Borrower does not and shall not assign, and the WIFIA Lender does not and shall not assume, any obligation, duty or liability of the Borrower under the WIFIA IPA. The WIFIA Loan is and shall be secured by the Liens on the Authority Revenues. The Authority Revenues shall be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto other than the Liens with respect to the WIFIA Loan. The WIFIA Debt Service Account shall be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto other than the Liens with respect to the WIFIA Installment Payments.

(d) The City shall not use any Revenues to make any payments or satisfy any obligations other than in accordance with the Flow of Funds, the provisions of this Section 7 and the Related Documents and shall not apply any portion of the Revenues in contravention of this Agreement or the other Related Documents. The City shall not use any amounts on deposit in the

³ **NTD:** Revised language adapted from the 2019 Trust Indenture, including references to lien and security interest.

WIFIA Debt Service Account to make any payments or satisfy any obligations other than the payment of WIFIA Debt Service on the Borrower's behalf.

(e) The Borrower shall not use any Authority Revenues to make any payments or satisfy any obligations other than the payment of WIFIA Debt Service and other amounts payable to the WIFIA Lender hereunder and under the WIFIA Note.

(f) All Revenues shall, immediately upon receipt thereof, be deposited by the City into the Revenue Fund. Amounts deposited in the Revenue Fund shall be applied in the order of priority described in, and in accordance with, the Flow of Funds.

(g) Following the acceleration of amounts payable by the Borrower hereunder or payable by the City under the WIFIA IPA pursuant to Section 21(c) (*Events of Default and Remedies*) or Section 21(d)(vi) (*Events of Default and Remedies*), amounts deposited in the Revenue Fund shall be applied in the order of priority described in, and in accordance with, the Flow of Funds Following Acceleration.

Section 8. Payment of Principal and Interest.

(a) Payment of WIFIA Debt Service.

(i) Pursuant to the WIFIA IPA, not later than each Installment Payment Date occurring on or after the Debt Service Payment Commencement Date, the City shall, from moneys in the Revenue Fund, transfer to the WIFIA Debt Service Account the WIFIA Installment Payment due and payable on the relevant Payment Date. All WIFIA Installment Payments shall be paid directly by the City to the WIFIA Debt Service Account for the benefit of the WIFIA Lender. All WIFIA Installment Payments and any other amounts deposited into the WIFIA Debt Service Account shall be held by the City, as agent of the Borrower pursuant to the WIFIA IPA, in trust for the benefit of the WIFIA Lender until the immediately succeeding Payment Date, whereupon such money shall be applied to the payment of WIFIA Debt Service.

(ii) No WIFIA Debt Service shall be due or payable prior to the Debt Service Payment Commencement Date. The Borrower shall pay, or the City, as agent of the Borrower pursuant to the WIFIA IPA, shall transfer from the WIFIA Debt Service Account on the Borrower's behalf, (A) WIFIA Debt Service in the amounts and manner and on the Payment Dates as set forth in the Loan Amortization Schedule, as the same may be revised pursuant to Section 8(f) (*Payment of Principal and Interest – Adjustments to Loan Amortization Schedule*), and (B) payments of any other amounts on each other date on which payment thereof is required to be made hereunder (including the Final Maturity Date and any date on which payment is due by reason of the mandatory redemption or prepayment or the acceleration of the maturity of the WIFIA Loan or otherwise); provided that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. WIFIA Loan proceeds borrowed and repaid may not be reborrowed.

(iii) Notwithstanding anything herein to the contrary, the Outstanding WIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on

the Final Maturity Date (or on any earlier date on which the WIFIA Loan and WIFIA Note are subject to mandatory redemption or prepayment prior to the maturity thereof).

(iv) Any defeasance of the WIFIA Loan in accordance with applicable law shall not be deemed a repayment or prepayment of the WIFIA Loan in full, and each of the Borrower and the City shall comply with all of its respective obligations hereunder and under the other WIFIA Loan Documents (other than with respect to payments of WIFIA Debt Service, which payments shall continue to be made in accordance with the Loan Amortization Schedule by the succeeding entity assuming the Borrower's payment obligations), unless otherwise agreed by the WIFIA Lender, until the irrevocable payment in full in immediately available funds by the Borrower of the Outstanding WIFIA Loan Balance, together with all accrued interest, fees and expenses with respect thereto.

(b) Interest Payments and Interest Only Period.

(i) Interest shall accrue on the WIFIA Loan commencing on the date of the first disbursement of the WIFIA Loan and shall be payable commencing on the Debt Service Payment Commencement Date.

(ii) During the Interest Only Period, the WIFIA Debt Service payable by the Borrower shall consist of one hundred percent (100%) of the amount of interest then due and payable on the Outstanding WIFIA Loan Balance, and no payment of principal will be due and payable.

(c) Fixed Level Payments. During the Level Payment Period, each amount consisting of (i) the interest payment due on January 1 of any year *plus* (ii) the sum of the principal and interest payments due on July 1 of such year will be approximately equal (each such amount, a "**Fixed Level Payment**"). The amount of the Fixed Level Payment shall be calculated in such manner that the Outstanding WIFIA Loan Balance as of the Level Payment Commencement Date shall be reduced to \$0 on the Final Maturity Date (assuming that interest accrues during such period on the Outstanding WIFIA Loan Balance at the rate per annum set forth in Section 6 (*Interest Rate*) in the absence of an Event of Default, that all Fixed Level Payments are made in a timely manner during such period, and that no additional payments of principal or interest on the WIFIA Loan are made during such period). Within thirty (30) days prior to the beginning of the Level Payment Period, the WIFIA Lender shall give written notice to the Borrower and the City of the amount of the related Fixed Level Payment, which amount shall be deemed conclusive absent manifest error, but no failure to provide or delay in providing the Borrower and the City with such notice shall affect any payment obligation or other obligation of the Borrower hereunder or under any other WIFIA Loan Document to which the Borrower is a party, or any payment obligation of the City under the WIFIA IPA or other obligation of the City hereunder or under any other WIFIA Loan Document to which the City is a party. To the extent that any prepayment of the WIFIA Loan is made during the Level Payment Period in addition to the Fixed Level Payments, such prepayment shall be applied to the remaining Outstanding WIFIA Loan Balance and the resulting Fixed Level Payments shall be recalculated as provided in Section 9(d) (*Prepayment – General Prepayment Instructions*) and reflected in a revised **Exhibit F** (*WIFIA Debt Service*).

(d) WIFIA Note. As evidence of the Borrower's obligation to repay the WIFIA Loan, the Borrower shall issue and deliver to the WIFIA Lender, on or prior to the Effective Date, the WIFIA Note substantially in the form of **Exhibit A** (*Form of WIFIA Note*), having a maximum principal amount of \$65,147,348, bearing interest at the WIFIA Interest Rate and having principal and interest payable on the same dates set forth herein. Any payment in respect of the WIFIA Note shall be treated as a payment in respect of the WIFIA Loan and any prepayment of principal in respect of the WIFIA Loan shall be treated as a redemption in respect of the WIFIA Note.

(e) Manner of Payment. The Borrower hereby assigns all its right and interest in and to the WIFIA Installment Payments to the WIFIA Lender and directs the City to transfer, on the Borrower's behalf, all amounts on deposit in the WIFIA Debt Service Account to the WIFIA Lender by wire transfer on or before each Payment Date in Dollars and in immediately available funds (without counterclaim, offset or deduction) in accordance with the payment instructions provided by the WIFIA Lender prior to the relevant payment, as may be modified in writing from time to time by the WIFIA Lender; provided that neither the assignment of such rights by the Borrower nor such direction by the Borrower to the City with respect to payments hereunder shall affect in any manner any payment obligation or other obligation of the Borrower hereunder or under any other WIFIA Loan Document to which the Borrower is a party, or any payment obligation of the City under the WIFIA IPA or other obligation of the City hereunder or under any WIFIA Loan Document to which the City is a party.

(f) Adjustments to Loan Amortization Schedule.

(i) The Outstanding WIFIA Loan Balance will be (A) increased on each occasion on which the WIFIA Lender disburses loan proceeds hereunder, as applicable, by the amount of such disbursement of loan proceeds; and (B) decreased upon each payment or prepayment of the Outstanding WIFIA Loan Balance, by the amount of principal so paid. The WIFIA Lender may in its discretion at any time and from time to time, or when so requested by the Borrower or the City, advise the Borrower or the City by written notice of the amount of the Outstanding WIFIA Loan Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(ii) The WIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit F** (*WIFIA Debt Service*) from time to time, in accordance with the principles set forth below in this Section 8(f), to reflect (A) any change to the Outstanding WIFIA Loan Balance, (B) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, (C) any mathematical corrections as the WIFIA Lender may determine are necessary and (D) with the consent of the Borrower (not to be unreasonably withheld), such other information as the WIFIA Lender may determine is necessary for administering the WIFIA Loan and this Agreement. Any calculations described above shall be rounded up to the nearest whole cent. Any adjustments or revisions to the Loan Amortization Schedule as a result of changes in the Outstanding WIFIA Loan Balance shall be applied to reduce future payments due with respect to the WIFIA Loan in inverse order of maturity, other than prepayments which shall be applied in accordance with Section 9(d) (*Prepayment – General Prepayment Instructions*). Absent manifest error, the WIFIA

Lender's determination of such matters as set forth on **Exhibit F (WIFIA Debt Service)** shall be conclusive evidence thereof; provided that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner any payment obligation or other obligation of the Borrower hereunder or under any other WIFIA Loan Document to which the Borrower is a party, or any payment obligation of the City under the WIFIA IPA or other obligation of the City hereunder or under any WIFIA Loan Document to which the City is a party. The WIFIA Lender shall provide the Borrower and the City with a copy of **Exhibit F (WIFIA Debt Service)** as revised, but no failure to provide or delay in providing the Borrower or the City with such copy shall affect any of the obligations of the Borrower or the City under this Agreement or the other WIFIA Loan Documents.

(g) WIFIA Loan Not City Indebtedness. The WIFIA Loan and the WIFIA Note are limited obligations of the Borrower, payable solely from the Authority Revenues, and do not constitute a debt of the members of the Borrower, the State or any of its political subdivisions (including the City), except the Borrower. Notwithstanding anything to the contrary set forth in this Agreement, the City is not a borrower with respect to the WIFIA Loan, the WIFIA Note, or this Agreement and the City has no obligation to make any payment or provision for payment of the WIFIA Loan or the WIFIA Note. This Agreement does not constitute a contract between the City and the WIFIA Lender by which the City has incurred an indebtedness.

Section 9. Prepayment.

(a) Mandatory Prepayment from Net Proceeds or Eminent Domain Proceeds. The Borrower, or the City as agent of the Borrower, shall prepay the WIFIA Loan from and in the amount of any prepayments of the WIFIA Installment Payments received from the City pursuant to the WIFIA IPA and Section 17(f)(iii) (*Affirmative Covenants of the City – Insurance; Net Proceeds*) or Section 17(t) (*Affirmative Covenants of the City – Eminent Domain Proceeds*). The amount of any such prepayment shall be equal to the portion of the Outstanding WIFIA Loan Balance required to be prepaid hereunder plus accrued interest thereon to the date of prepayment. All such prepayments shall be paid to the WIFIA Lender by the City as agent of the Borrower substantially concurrently with the receipt of such amount by the Borrower and applied against the Outstanding WIFIA Loan Balance in accordance with Section 9(d) (*Prepayment – General Prepayment Instructions*).

(b) Optional Prepayments. Following the Final Disbursement Date, the Borrower (or the City as agent of the Borrower) may prepay the WIFIA Loan in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided that such prepayments shall be in principal amounts of \$1,000,000 or any integral multiple of \$1.00 in excess thereof), from time to time, but not more than annually, without penalty or premium, by paying to the WIFIA Lender such principal amount of the WIFIA Loan to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment, which shall be a Payment Date unless otherwise agreed by the WIFIA Lender. Each prepayment of the WIFIA Loan pursuant to this Section 9(b) shall be made on such Payment Date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the WIFIA Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the WIFIA Lender. At any time between delivery of such

written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the WIFIA Lender. Anything in this Section 9(b) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(c) Borrower's Certificate. Each prepayment pursuant to this Section 9 shall be accompanied by a certificate signed by the Borrower's Authorized Representative identifying the provision of this Agreement pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

(d) General Prepayment Instructions. Upon the WIFIA Lender's receipt of confirmation that payment in full in immediately available funds of the entire Outstanding WIFIA Loan Balance and any unpaid interest, fees and expenses with respect thereto has occurred as a result of a mandatory or optional prepayment, the WIFIA Lender shall surrender the WIFIA Note to the Borrower or its representative at the principal office of the WIFIA Lender. If the Borrower prepays only part of the unpaid balance of principal of the WIFIA Loan, the WIFIA Lender may make a notation on **Exhibit F** (*WIFIA Debt Service*) indicating the amount of principal of and interest on the WIFIA Loan then being prepaid. Absent manifest error, the WIFIA Lender's determination of such matters as set forth on **Exhibit F** (*WIFIA Debt Service*) shall be conclusive evidence thereof; provided that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner any payment obligation or other obligation of the Borrower hereunder or under any other WIFIA Loan Document to which the Borrower is a party, or any payment obligation of the City under the WIFIA IPA or any other obligation of the City hereunder or under any WIFIA Loan Document to which the City is a party. All partial prepayments of principal shall be applied to reduce future payments due on the WIFIA Loan ratably by an equal amount. If such funds have not been so paid on the prepayment date, such principal amount of the WIFIA Loan shall continue to bear interest until payment thereof at the rate provided for in Section 6 (*Interest Rate*).

Section 10. Fees and Expenses.

(a) Fees. The City shall pay, on behalf of the Borrower, to the WIFIA Lender:

(i) a servicing set-up fee equal to \$10,790 (the "**Servicing Set-Up Fee**"), which shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the first disbursement date of the WIFIA Loan);

(ii) an annual construction period servicing fee equal to \$10,790 (the "**Construction Period Servicing Fee**"), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15 during the Construction Period (including the Federal Fiscal Year during which the Substantial Completion Date occurs); provided that the initial Construction Period Servicing Fee shall be due and payable within thirty (30) days after receipt of an

invoice from the WIFIA Lender with respect thereto (or, if earlier, the first disbursement date of the WIFIA Loan), in a pro-rated amount equal to \$[●]⁴; and

(iii) an annual operating period servicing fee equal to \$8,100 (the **“Operating Period Servicing Fee”**), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15, beginning with the first November 15 following the end of the Federal Fiscal Year during which the Substantial Completion Date occurs, until (and including) the Final Maturity Date; provided that the Operating Period Servicing Fee due and payable with respect to the Federal Fiscal Year during which the Final Maturity Date occurs shall be equal to the pro-rata monthly portion of the then applicable Operating Period Servicing Fee multiplied by the number of partial or whole months remaining between October 1 and the Final Maturity Date.

(b) The amount of each Construction Period Servicing Fee (other than the initial Construction Period Servicing Fee) and each Operating Period Servicing Fee shall be adjusted in proportion to the percentage change in CPI for the calendar year immediately preceding the calendar year during which such fee is due. The WIFIA Lender shall notify the City of the amount of each such fee at least thirty (30) days before payment is due, which determination shall be conclusive absent manifest error.

(c) Expenses. The City agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the WIFIA Lender on demand from time to time, within thirty (30) days after receipt of any invoice from the WIFIA Lender, for any and all fees, costs, charges, and expenses incurred by it (including the fees, costs, and expenses of its legal counsel, financial advisors, auditors and other consultants and advisors) in connection with the negotiation, preparation, execution, delivery, and performance of this Agreement and the other WIFIA Loan Documents and the transactions hereby and thereby contemplated, including attorneys’ and engineers’ fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with: (i) the enforcement of or attempt to enforce, or the protection or preservation of any right or claim under, the Authority Revenues, the Revenues, the WIFIA Debt Service Account, or any provision of this Agreement or any other WIFIA Loan Document or the rights of the WIFIA Lender thereunder; (ii) any amendment, modification, waiver, or consent with respect to this Agreement or any other Related Document; and (iii) any work-out, restructuring, or similar arrangement of the obligations of the Borrower or the City under this Agreement or the other WIFIA Loan Documents, including during the pendency of any Event of Default; provided that nothing in this Section 10(c) shall obligate the City to pay principal or interest on the WIFIA Loan or WIFIA Note.

(d) The obligations of the City under this Section 10 shall survive the payment or prepayment in full in accordance with Section 8 or Section 9, respectively, of the WIFIA Note, the enforcement of any provision of this Agreement or the other WIFIA Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

⁴ **NTD:** Subject to month of closing (May: \$3,590; June: \$2,690; July: \$1,790; August: \$890).

ARTICLE III CONDITIONS PRECEDENT

Section 11. Conditions Precedent.

(a) Conditions Precedent to Effectiveness. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent has been satisfied or waived in writing by the WIFIA Lender in its sole discretion:

(i) The Borrower and the City shall each have duly executed and delivered to the WIFIA Lender this Agreement and the WIFIA IPA and the Borrower shall have duly executed and delivered to the WIFIA Lender the WIFIA Note, each in form and substance satisfactory to the WIFIA Lender.

(ii) The Borrower and the City shall each have delivered to the WIFIA Lender complete and fully executed copies of each Related Document and each Existing Construction Contract to which it is a party, together with any amendments, supplements, waivers or modifications thereto, that has been entered into on or prior to the Effective Date, along with a certification in the Borrower Closing Certificate and the City Closing Certificate, respectively, that each such document is complete, fully executed and in full force and effect, and that all conditions contained in such documents that are necessary to the closing of the WIFIA transactions contemplated hereby have been fulfilled.

(iii) The Borrower and the City shall each have delivered to the WIFIA Lender a copy of its Organizational Documents, as in effect on the Effective Date, along with a certification in the Borrower Closing Certificate or City Closing Certificate, as applicable, that such Organizational Documents are in full force and effect.

(iv) The City shall have delivered to the WIFIA Lender a copy of the WIFIA City Resolution, along with a certification that the WIFIA City Resolution is in full force and effect, and no further instruments or documents (including any resolutions, ordinances, and supplements) are necessary for the City to execute and deliver, and to perform its obligations under, the WIFIA Loan Documents to which it is a party and to consummate and implement the transactions contemplated by the WIFIA Loan Documents to which it is a party.

(v) The Borrower shall have delivered to the WIFIA Lender a copy of the WIFIA Borrower Resolution, along with a certification that the WIFIA Borrower Resolution is in full force and effect, and no further instruments or documents (including any resolutions, ordinances, and supplements) are necessary for the Borrower to execute and deliver, and to perform its obligations under, the WIFIA Loan Documents to which it is a party and to consummate and implement the transactions contemplated by the WIFIA Loan Documents to which it is a party.

(vi) (A) Counsel to the Borrower shall have rendered to the WIFIA Lender legal opinions satisfactory to the WIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit G-1** (*Opinions Required from Counsel to Borrower*)),

(B) bond counsel to the Borrower shall have rendered to the WIFIA Lender legal opinions satisfactory to the WIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit G-2** (*Opinions Required from Borrower Bond Counsel*)), (C) counsel to the City shall have rendered to the WIFIA Lender legal opinions satisfactory to the WIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit G-3** (*Opinions Required from Counsel to City*)), and (D) bond counsel to the City shall have rendered to the WIFIA Lender legal opinions satisfactory to the WIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit G-4** (*Opinions Required from City Bond Counsel*)).

(vii) The Borrower and the City shall each have delivered to the WIFIA Lender the Non-Debarment Certificate.

(viii) The Borrower and the City shall each have delivered to the WIFIA Lender the Non-Lobbying Certificate.

(ix) The Borrower shall have delivered to the WIFIA Lender a certificate, signed by the Borrower's Authorized Representative, substantially in the form attached hereto as **Exhibit H-1** (*Form of Closing Certificate of Borrower*) (the "**Borrower Closing Certificate**"), designating the Borrower's Authorized Representative, confirming such person's position and incumbency, and certifying as to the satisfaction of the following conditions precedent (and, if requested by the WIFIA Lender, shall have provided evidence satisfactory to the WIFIA Lender of such compliance):

(A) the Borrower has obtained all Governmental Approvals necessary to execute and deliver, and perform its obligations under the WIFIA Loan Documents to which it is a party, and all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation);

(B) as of the Effective Date, (x) the maximum principal amount of the WIFIA Loan, together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (y) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs;

(C) the Borrower has (x) obtained a Federal Employer Identification Number, (y) obtained a Data Universal Numbering System number, and (z) registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov);

(D) the Borrower has obtained the WIFIA CUSIP Number, provided that the WIFIA Lender shall not submit or post any document or information on EMMA relating to this Agreement or the Borrower without the Borrower's prior written consent;

(E) the representations and warranties of the Borrower set forth in this Agreement and in each other WIFIA Loan Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date; and

(F) no Borrower Material Adverse Effect, or any event or condition that could reasonably be expected to have a Borrower Material Adverse Effect, has occurred or arisen since June 1, 2021.

(x) The City shall have delivered to the WIFIA Lender a certificate, signed by the City's Authorized Representative, substantially in the form attached hereto as **Exhibit H-2** (*Form of Closing Certificate of City*) (the "**City Closing Certificate**"), designating the City's Authorized Representative, confirming such person's position and incumbency, and certifying as to the satisfaction of the following conditions precedent (and, if requested by the WIFIA Lender, shall have provided evidence satisfactory to the WIFIA Lender of such compliance):

(A) the City has obtained all Governmental Approvals necessary (x) as of the Effective Date in connection with the Project and (y) to execute and deliver, and perform its obligations under the WIFIA Loan Documents to which it is a party, and all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation);

(B) as of the Effective Date, (x) the maximum principal amount of the WIFIA Loan, together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (y) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs;

(C) the City is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project;

(D) the City has (x) obtained a Federal Employer Identification Number, (y) obtained a Data Universal Numbering System number, and (z) registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov);

(E) the representations and warranties of the City set forth in this Agreement and in each other WIFIA Loan Document to which the City is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date; and

(F) no City Material Adverse Effect, or any event or condition that could reasonably be expected to have a City Material Adverse Effect, has occurred or arisen since June 1, 2021.

(xi) The Borrower shall have provided evidence to the WIFIA Lender's satisfaction, prior to the Effective Date, of the assignment by at least one (1) Nationally Recognized Rating Agency of a public Investment Grade Rating to the WIFIA Loan, along with a certification in the Borrower Closing Certificate that no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(xii) The City shall have delivered to the WIFIA Lender a Base Case Financial Model in form and substance acceptable to the WIFIA Lender, along with a certification in the City Closing Certificate that such Base Case Financial Model demonstrates that (A) projected Revenues and Authority Revenues are each sufficient to meet the Loan Amortization Schedule and (B) the City has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project over the useful life of the Project.

(xiii) The City shall have delivered to the WIFIA Lender (A) certificates of insurance, along with a certification in the City Closing Certificate that such insurance certificates are true and correct and demonstrate compliance with the requirements of Section 17(f) (*Affirmative Covenants of the City – Insurance; Net Proceeds*) and (B) at the WIFIA Lender's request, copies of such insurance policies and/or, if applicable, documents pertaining to the City's self-insurance program.

(xiv) Prior to the Effective Date, the City shall have delivered to the WIFIA Lender the Public Benefits Report.

(xv) The City shall have paid in full all invoices delivered by the WIFIA Lender to the City as of the Effective Date for any applicable Servicing Fees and the fees and expenses of the WIFIA Lender's counsel and financial advisors and any auditors or other consultants retained by the WIFIA Lender for the purposes hereof.

(xvi) The City shall have provided evidence to the WIFIA Lender's satisfaction of the (A) establishment by the City of the WIFIA Debt Service Account and (B) the pledge of such account by the City for the sole benefit of the Borrower.

(xvii) The City shall have delivered to the WIFIA Lender a copy of the Debt Management Policy.

(b) Conditions Precedent to Disbursements. Notwithstanding anything in this Agreement to the contrary, the WIFIA Lender shall have no obligation to make any disbursement of WIFIA Loan proceeds to the Borrower (including the initial disbursement hereunder) until each of the following conditions precedent has been satisfied or waived in writing by the WIFIA Lender in its sole discretion:

(i) The City, as agent of the Borrower pursuant to the WIFIA IPA, shall have delivered to the WIFIA Lender a Requisition that complies with the provisions of

Section 4 (*Disbursement Conditions*) (including satisfactory Eligible Project Costs Documentation relating to such Requisition), and the WIFIA Lender shall have approved (or be deemed to have approved in accordance with Section 4(c) (*Disbursement Conditions*)) such Requisition. The City's Authorized Representative shall also certify in such Requisition that:

(A) the aggregate amount of all disbursements of the WIFIA Loan (including the requested disbursement amount) does not exceed (1) the maximum principal amount of the WIFIA Loan or (2) the aggregate amount of Eligible Project Costs paid or incurred by the City, as agent of the Borrower pursuant to the WIFIA IPA;

(B) each of the insurance policies obtained by the City in satisfaction of the requirements of Section 17(f) (*Affirmative Covenants of the City – Insurance; Net Proceeds*) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider;

(C) at the time of, and immediately after giving effect to, any disbursement of WIFIA Loan proceeds then currently requested, (1) no Default or Event of Default hereunder and no event of default under any other Related Document to which the City is a party shall have occurred and be continuing and (2) no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any other Related Document to which the City is a party shall have occurred and be continuing;

(D) no City Material Adverse Effect, or any event or condition that could reasonably be expected to result in a City Material Adverse Effect, shall have occurred since the Effective Date;

(E) (1) the City and each of the contractors and subcontractors at all tiers with respect to the Project have complied with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products); and (2) supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, are being maintained and are available for review upon request by the WIFIA Lender; and

(F) the representations and warranties of the City set forth in this Agreement (including Section 13 (*Representations and Warranties of the City*)) and in each other WIFIA Loan Document to which the City is a party shall be true and correct as of each date on which any disbursement of the WIFIA Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(ii) To the extent necessary to make the corresponding representations and warranties true, correct and complete as of the date of the applicable disbursement, the City shall have delivered a schedule, in form and substance satisfactory to the WIFIA Lender, listing any exceptions with respect to the representations and warranties set forth in Section 13(o) (*Environmental Matters*).

(iii) The Borrower's Authorized Representative shall have delivered to the WIFIA Lender a certificate in the form of **Appendix Two** (*Form of Borrower Disbursement Certificate*) to **Exhibit D** (*Requisition Procedures*) certifying that:

(A) at the time of, and immediately after giving effect to, any disbursement of WIFIA Loan proceeds then currently requested, (1) no Default or Event of Default hereunder and no event of default under any other Related Document to which the Borrower is a party shall have occurred and be continuing and (2) no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any other Related Document to which the Borrower is a party shall have occurred and be continuing;

(B) no Borrower Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Borrower Material Adverse Effect, shall have occurred since the Effective Date; and

(C) the representations and warranties of the Borrower set forth in this Agreement (including Section 12 (*Representations and Warranties of the Borrower*)) and in each other WIFIA Loan Document to which the Borrower is a party shall be true and correct as of each date on which any disbursement of the WIFIA Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(iv) To the extent not previously delivered to the WIFIA Lender, the City shall have delivered to the WIFIA Lender copies of any Related Document (including any amendment, waiver, modification or supplement thereto) entered into after the Effective Date, along with a certification in the Requisition that each such document is complete, fully executed and in full force and effect.

(v) The City shall have paid in full (A) any outstanding Servicing Fees due and payable under Section 10 (*Fees and Expenses*) and (B) all invoices received from the WIFIA Lender as of the date of disbursement of the WIFIA Loan and delivered by the WIFIA Lender to the City, for the fees and expenses of the WIFIA Lender's counsel and financial advisors and any auditors or other consultants retained by the WIFIA Lender for the purposes hereof.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

Section 12. Representations and Warranties of the Borrower. The Borrower hereby represents and warrants that, as of the Effective Date and, as to each of the representations and

warranties other than those (x) contained in Section 12(b) (*Representations and Warranties of the Borrower – Officers’ Authorization*), Section 12(k) (*Representations and Warranties of the Borrower – Credit Ratings*) and the first sentence of Section 12(f) (*Representations and Warranties of the Borrower – Litigation*), or (y) which expressly relate only to the City, as of each date on which any disbursement of the WIFIA Loan is requested or made:

(a) Organization; Power and Authority. The Borrower is a joint exercise of powers agency duly organized and validly existing under its Organizational Documents and the laws of the State, has full legal right, power and authority to do business in the State and to enter into the Related Documents then in existence to which it is a party, to execute and deliver this Agreement and the WIFIA Note, and to carry out and consummate all transactions contemplated hereby and thereby, and has duly authorized the execution, delivery and performance of this Agreement, the WIFIA Note, and the other Related Documents to which it is a party.

(b) Officers’ Authorization. As of the Effective Date, the officers of the Borrower executing (or that previously executed) the Related Documents (and any certifications or instruments related thereto) to which the Borrower is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each of the Related Documents in effect as of any date on which this representation and warranty is made, and to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable against it in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or similar laws affecting the rights of creditors generally and (ii) is subject to general principles of equity, the exercise of judicial discretion and the limitation on legal remedies against governmental entities imposed by the laws of the State (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the Related Documents to which the Borrower is a party, the consummation of the transactions contemplated by the Related Documents to which the Borrower is a party, and the fulfillment of or compliance with the terms and conditions of the Related Documents to which the Borrower is a party, will not (i) conflict with the Borrower’s Organizational Documents, (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the Borrower of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, other than Permitted Liens.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the Borrower, or of any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Borrower of the Related Documents to which it is a party, except as have been obtained or made and as are in full force and

effect, or (ii) (A) the consummation of any transaction contemplated by any of the Related Documents to which the Borrower is a party, or (B) the fulfillment of or compliance by the Borrower with the terms and conditions of any of the Related Documents to which the Borrower is a party, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. There is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against or affecting the System (including the Project) or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents to which the Borrower is a party. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower, threatened against or affecting the System (including the Project), the Borrower or the assets, properties or operations of the Borrower, that in any case could reasonably be expected to result in a Borrower Material Adverse Effect.

(g) Security Interests. (i) This Agreement and Section 5451 of the California Government Code establish, and (ii) the Borrower has taken all necessary action to pledge and assign, in each case in favor of the WIFIA Lender, the Borrower Assigned Rights purported to be created, pledged and assigned pursuant to and in accordance with this Agreement. Such pledge and assignment shall constitute a lien on and security interest in the Borrower Assigned Rights and are valid and binding irrespective of whether any Person has notice of such pledge and assignment and without the need for any physical delivery, recordation, filing, or further act.⁵ Such pledge and assignment are in full force and effect and are the only lien and security interest in respect of the Borrower Assigned Rights. The Borrower is not in breach of any covenant set forth in Section 15(a) (*Affirmative Covenants of the Borrower – Securing Liens*) or in any other WIFIA Loan Document to which the Borrower is a party with respect to the matters described in Section 15(a) (*Affirmative Covenants of the Borrower – Securing Liens*). As of the Effective Date and as of each other date this representation and warranty is made, (1) all documents and instruments have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable lien and security interest in the Borrower Assigned Rights for the benefit of the WIFIA Lender, and (2) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any WIFIA Loan Document or any instruments, certificates or financing statements in connection with the foregoing, have been paid. Neither the attachment, validity, enforceability or priority of the lien and security interest in the Borrower Assigned Rights is governed by Article 9 of the UCC.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 C.F.R. § 180.320 and confirms, based on such verification, that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 C.F.R. § 180.995 and

⁵ **NTD**: Revised language adapted from the 2019 Trust Indenture, including references to lien and security interest.

supplemented by 2 C.F.R. § 1532.995) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered pursuant to Section 11(a)(vii) (*Conditions Precedent – Conditions Precedent to Effectiveness*).

(i) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and the other Related Documents to which the Borrower is a party are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

(j) Compliance with Laws. The Borrower has complied with all applicable laws, rules, regulations and requirements.

(k) Credit Rating. The WIFIA Loan has received a public Investment Grade Rating from at least one (1) Nationally Recognized Rating Agency, written evidence of such rating has been provided to the WIFIA Lender prior to the Effective Date, and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(l) No Defaults. No Default or Event of Default, and no default or event of default by the Borrower under any other Related Document to which the Borrower is a party, has occurred and is continuing.

(m) Information. Neither the WIFIA Loan Documents to which the Borrower is a party, nor any documents, certificates or statements provided to the WIFIA Lender by representatives of the Borrower in connection with the transactions contemplated thereby, which for purposes of this Section 12(m) shall consist of all documents or statements related to the Application or the Project, cash flow schematics, responses to due diligence interrogatories or requests from the WIFIA Lender or its advisors, and documents uploaded to the online WIFIA SharePoint data room made accessible to the Borrower by the WIFIA Lender, to the extent such documents, certificates, statements or other materials relate to the Borrower (including its finances or operations) or the Project, contain any untrue statement of any material fact or omit to state any material fact necessary so as to make such WIFIA Loan Documents, documents, certificates, statements or other materials so provided to the WIFIA Lender, in light of the circumstances under which they were made, not misleading.

(n) Insurance. The Borrower is in compliance with all insurance obligations applicable to the Borrower required under each Related Document to which the Borrower is a party as of the date on which this representation and warranty is made. To the extent the Borrower self-insures, the Borrower's self-insurance program is actuarially sound and the Borrower has received an opinion from an accredited actuary within the last twelve (12) months, which opinion confirms that the Borrower's self-insurance program is actuarially sound.

(o) No Prohibited Liens. The Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Borrower Assigned Rights. The Borrower Assigned Rights are free

and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto other than the pledge and assignment thereon for the benefit of the WIFIA Lender.

(p) Borrower Financial Statements. Each Borrower Financial Statement delivered to the WIFIA Lender by the Borrower pursuant to Section 19(a) (*Reporting Requirements of the Borrower – Annual Financial Statements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the Borrower as of the respective dates of the balance sheets included therein and the results of operations of the Borrower for the respective periods covered by the statements of income included therein. Except as reflected in such Borrower Financial Statements, there are no liabilities or obligations of the Borrower of any nature whatsoever for the periods to which such Borrower Financial Statements relate that are required to be disclosed in accordance with GAAP.

(q) Securities Laws. Under existing law, the WIFIA Note may be issued and sold without registration under the Securities Act of 1933, as amended, and any State blue sky laws.

(r) Sovereign Immunity. The Borrower either has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the Borrower under any of the Related Documents to which the Borrower is a party or the transactions contemplated hereby or thereby, including the obligations of the Borrower hereunder and thereunder, or, to the extent that the Borrower has such immunity, the Borrower has waived such immunity pursuant to Section 15(j) (*Affirmative Covenants of the Borrower – Immunity*).

(s) Taxes; No Federal Debt. The Borrower has paid all applicable taxes and other material taxes and assessments payable by it that have become due (other than those taxes or assessments that it is contesting in good faith and by appropriate proceedings, for which adequate reserves have been established to the extent required by GAAP). The Borrower has no delinquent federal debt (including tax liabilities but excluding any delinquencies that have been resolved with the appropriate federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996).

Section 13. Representations and Warranties of the City. The City hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties other than those (x) contained in Section 13(b) (*Representations and Warranties of the City – Officers’ Authorization*), the first sentence of Section 13(f) (*Representations and Warranties of the City – Litigation*) and the first sentence of Section 13(m) (*Representations and Warranties of the City – Construction Contracts*) or (y) which expressly relate only to the Borrower, as of each date on which any disbursement of the WIFIA Loan is requested or made:

(a) Organization; Power and Authority. The City is a municipal corporation and general law city duly organized and validly existing under the statutes of the State, has full legal right, power and authority to do business in the State and to enter into the Related Documents then in existence to which it is a party, to execute and deliver this Agreement, and to carry out and consummate all transactions contemplated hereby and thereby, and has duly authorized the

execution, delivery and performance of this Agreement and the other Related Documents to which it is a party.

(b) Officers' Authorization. As of the Effective Date, the officers of the City executing (or that previously executed) the Related Documents (and any certifications or instruments related thereto) to which the City is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each of the Related Documents in effect as of any date on which this representation and warranty is made, and to which the City is a party has been duly authorized, executed and delivered by the City and constitutes the legal, valid and binding agreement of the City enforceable against it in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or similar laws affecting the rights of creditors generally and (ii) is subject to general principles of equity, the exercise of judicial discretion and the limitation on legal remedies against governmental entities imposed by the laws of the State (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the Related Documents to which the City is a party, the consummation of the transactions contemplated by the Related Documents to which the City is a party, and the fulfillment of or compliance with the terms and conditions of the Related Documents to which the City is a party, will not (i) conflict with the City's Organizational Documents, (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the City of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, other than Permitted Liens.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the City or of any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the City of the Related Documents to which it is a party, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by any of the Related Documents to which the City is a party, or (B) the fulfillment of or compliance by the City with the terms and conditions of any of the Related Documents to which the City is a party, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. There is no action suit, proceeding or, to the knowledge of the City, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the City, threatened against or affecting the System (including the Project) or the ability of the City to execute, deliver and perform its obligations

under the Related Documents to which the City is a party. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the City, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the City, threatened against or affecting the System (including the Project), the City or the assets, properties or operations of the City, that in any case could reasonably be expected to result in a City Material Adverse Effect.

(g) Security Interests. (i) The WIFIA IPA and Section 5451 of the California Government Code establish, and (ii) the City has taken all necessary action to pledge, assign, and grant, in each case in favor of the Borrower, legal, valid, binding and enforceable Liens on the City Pledged Collateral purported to be created, pledged, assigned, and granted pursuant to and in accordance with the WIFIA IPA, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. The Liens on the City Pledged Collateral in favor of the Borrower are in full force and effect and, other than any amounts (including proceeds of the WIFIA Loan) which are held in any fund or account that is established pursuant to the WIFIA IPA, are (A) not subordinate or junior to any other Liens in respect of the City Pledged Collateral, (B) not *pari passu* with any Liens in respect of the City Pledged Collateral other than the Liens on the City Pledged Collateral for the benefit of the Parity Obligations and (C) senior to the Liens on the City Pledged Collateral for the benefit of the Subordinate Obligations. The Lien on any amounts (including proceeds of the WIFIA Loan) which are held in any fund or account that is established pursuant to the WIFIA IPA in favor of the Borrower is the only Lien with respect to such amounts. The City is not in breach of any covenant set forth in Section 17(b) (*Affirmative Covenants of the City – Securing Liens*) or in any WIFIA Loan Document to which the City is a party with respect to the matters described in Section 17(b) (*Affirmative Covenants of the City – Securing Liens*). As of the Effective Date and as of each other date this representation and warranty is made, (1) all documents and instruments have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the City Pledged Collateral for the benefit of the Borrower, and (2) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any WIFIA Loan Document or any instruments, certificates or financing statements in connection with the foregoing, have been paid. Neither the attachment, validity, enforceability or priority of the security interest in the City Pledged Collateral granted pursuant to the WIFIA IPA is governed by Article 9 of the UCC.

(h) No Debarment. The City has fully complied with its verification obligations under 2 C.F.R. § 180.320 and confirms, based on such verification, that, to its knowledge, neither the City nor any of its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. § 1532.995) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered pursuant to Section 11(a)(vii) (*Conditions Precedent – Conditions Precedent to Effectiveness*).

(i) Accuracy of Representations and Warranties. The representations, warranties and certifications of the City set forth in this Agreement and the other Related Documents to which the City is a party are true, correct, and complete, except to the extent such

representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

(j) Compliance with Laws.

(i) The City has complied, and has required its contractors and subcontractors at all tiers with respect to the Project to comply, with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§ 3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto), 33 U.S.C. § 3914 (relating to American iron and steel products), 20 C.F.R. § 180.320 and 20 C.F.R. § 1532 (relating to non-debarment), 31 U.S.C. § 1352 (relating to non-lobbying), and any applicable Sanctions Laws.

(ii) To ensure such compliance, the City has included in all contracts with respect to the Project (A) the contract clauses relating to the Davis-Bacon Act requirements that are set forth in the Code of Federal Regulations, Title 29 Part 5.5 and (B) requirements that its contractors (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 13(j) and follow applicable federal guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any applicable laws, rules, regulations and requirements set forth in this Section 13(j) (including with respect to the Davis-Bacon Act requirements).

(k) No Defaults. No Default or Event of Default, and no default or event of default by the City under any other Related Document to which the City is a party, has occurred and is continuing.

(l) Governmental Approvals. All Governmental Approvals required as of the Effective Date and required as of any subsequent date on which this representation is made (or deemed made) for the undertaking and completion by the City, as agent of the Borrower pursuant to the WIFIA IPA, of the Project, and for the operation and management thereof, have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of or a default under any such Governmental Approval.

(m) Construction Contracts. Attached as **Schedule 13(m)** (*Existing Construction Contracts*) is a list of the Existing Construction Contracts. With respect to each Construction Contract executed as of any date on which this representation and warranty is made, such Construction Contract is in full force and effect.

(n) Information. Neither the WIFIA Loan Documents to which the City is a party, nor any documents, certificates or statements provided to the WIFIA Lender by representatives of the City in connection with the transactions contemplated thereby, which for purposes of this Section 13(n) shall consist of all financial models, project budgets, documents or statements related to the Application or the Project, cash flow schematics, responses to due diligence interrogatories or requests from the WIFIA Lender or its advisors, and documents uploaded to any data room made accessible to the City by the WIFIA Lender (or its advisors) or

provided to the WIFIA Lender in an electronic written communication, to the extent such documents, certificates, statements or other materials relate to the City (including its finances or operations) or the Project, contain any untrue statement of any material fact or omit to state any material fact necessary so as to make such WIFIA Loan Documents, documents, certificates, statements or other materials so provided to the WIFIA Lender, in light of the circumstances under which they were made, not misleading.

(o) Environmental Matters. The City and, to the City's knowledge, each Construction Contractor, is in compliance with all laws applicable to the System (including the Project) relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the System (including the Project) (collectively, the "**Environmental Laws**"). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. The City has not received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the City is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to the City's knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by the City with any such Environmental Law or Governmental Approval. The City has provided to the WIFIA Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the City regarding the City's or the Project's compliance with (A) Environmental Laws and (B) Governmental Approvals that are required for the Project and relate to Environmental Laws.

(p) Insurance. The City is in compliance with all insurance obligations required under each Related Document to which the City is a party as of the date on which this representation and warranty is made. To the extent the City self-insures, the City's self-insurance program is actuarially sound and the City has received an opinion from an accredited actuary within the last twelve (12) months, which opinion confirms that the City's self-insurance program is actuarially sound.

(q) No Prohibited Liens. Except for Permitted Liens, the City has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the City Pledged Collateral, the System, the Project or the properties or assets in relation to the Project.

(r) City Financial Statements. Each City Financial Statement delivered to the WIFIA Lender by the City pursuant to Section 20(b) (*Reporting Requirements of the City – Annual Financial Statements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the City as of the respective dates of the balance sheets included therein and the results of operations of the City for the respective periods covered by the statements of income included therein. Except as reflected in such City Financial Statements, there are no liabilities or obligations of the City of any nature whatsoever for the periods to which such City Financial Statements relate that are required to be disclosed in accordance with GAAP.

(s) Sufficient Funds. The amount of the WIFIA Loan, when combined with all other funds committed for the development and construction of the Project as set forth under the various sources of funds in the Project Budget, will be sufficient to carry out the Project, pay all Total Project Costs anticipated for the development and construction of the Project and achieve Substantial Completion by the Projected Substantial Completion Date. The total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs. The City has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project over the useful life of the Project.

(t) Sovereign Immunity. The City either has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the City under any of the Related Documents to which the City is a party or the transactions contemplated hereby or thereby, including the obligations of the City hereunder and thereunder, or, to the extent that the City has such immunity, the City has waived such immunity pursuant to Section 17(n) (*Affirmative Covenants of the City – Immunity*).

(u) Taxes; No Federal Debt. The City has paid all applicable taxes and other material taxes and assessments payable by it that have become due (other than those taxes or assessments that it is contesting in good faith and by appropriate proceedings, for which adequate reserves have been established to the extent required by GAAP). The City has no delinquent federal debt (including tax liabilities but excluding any delinquencies that have been resolved with the appropriate federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996).

Section 14. Representations and Warranties of WIFIA Lender. The WIFIA Lender represents and warrants that:

(a) Power and Authority. The WIFIA Lender has all requisite power and authority to make the WIFIA Loan and to perform all transactions contemplated by the Related Documents to which it is a party.

(b) Due Execution; Enforceability. The Related Documents to which it is a party have been duly authorized, executed and delivered by the WIFIA Lender, and are legally valid and binding agreements of the WIFIA Lender, enforceable in accordance with their terms.

(c) Officers' Authorization. The officers of the WIFIA Lender executing each of the Related Documents to which the WIFIA Lender is a party are duly and properly in office and fully authorized to execute the same on behalf of the WIFIA Lender.

ARTICLE V COVENANTS

Section 15. Affirmative Covenants of the Borrower. The Borrower covenants and agrees as follows until the date the WIFIA Note and all of the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full by the Borrower in immediately available funds and the WIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the WIFIA Lender waives compliance in writing:

(a) Securing Liens. The Borrower shall at any and all times, to the extent permitted by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, pledging, assigning, securing and confirming the Borrower Assigned Rights for the benefit of the WIFIA Lender pursuant to the WIFIA Loan Documents to which the Borrower is a party, or intended so to be pledged and assigned pursuant to the WIFIA Loan Documents to which the Borrower is a party, or which the Borrower may become bound to pledge and assign, and the Borrower shall at all times maintain the Borrower Assigned Rights free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto other than the pledge and assignment with respect to the WIFIA Loan, and all organizational, regulatory or other necessary action on the part of the Borrower to that end shall be duly and validly taken at all times. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the pledge and assignment of the Borrower Assigned Rights for the benefit of the WIFIA Lender against all claims and demands of all Persons whomsoever.

(b) Use of Proceeds. The Borrower shall use, and shall cause the City pursuant to the WIFIA IPA to use, the proceeds of the WIFIA Loan solely for purposes permitted by this Agreement.

(c) Verification Requirements. The Borrower shall comply with Subpart C of 2 C.F.R. Part 180, as supplemented by Subpart C of 2 C.F.R. Part 1532 (relating to debarment), including the verification requirements set forth in 2 C.F.R. §§ 180.300 and 180.320, and shall include in its contracts with respect to the Project similar terms or requirements for compliance.

(d) Operation of the Borrower. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(e) Maintain Legal Structure. The Borrower shall maintain its existence as a joint exercise of powers agency organized and existing under its Organizational Documents and the laws of the State.

(f) Compliance with Laws. The Borrower shall comply with all applicable laws, rules, regulations and requirements.

(g) Material Obligations; Payment of Claims.

(i) The Borrower shall pay its material obligations promptly and in accordance with their terms.

(ii) The Borrower shall pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon the Authority Revenues, before the same shall become delinquent or in default; provided that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall

have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(iii) The Borrower will pay and discharge any and all lawful claims for labor, materials or supplies which, if unpaid, might become a Lien on the Authority Revenues.

(h) SAM Registration. The Borrower shall obtain prior to the Effective Date (and provide such registration information to the WIFIA Lender) and maintain through the Final Disbursement Date an active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry).

(i) DUNS Number. The Borrower shall obtain prior to the Effective Date (and provide such number to the WIFIA Lender) and maintain through the Final Maturity Date from Dun & Bradstreet (or a successor entity) a Data Universal Numbering System Number (a “**DUNS Number**”).

(j) Immunity. To the fullest extent permitted by applicable law, the Borrower agrees that it will not assert any immunity (and hereby waives any such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the obligations of the Borrower under this Agreement or any other WIFIA Loan Document to which the Borrower is a party.

(k) Accounting and Audit Procedures.

(i) The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for Authority Revenues, debt issued and outstanding and debt payments. The Borrower shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the WIFIA Loan, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts Outstanding.

(ii) The Borrower shall have a single or program-specific audit conducted in accordance with 2 C.F.R. Part 200 Subpart F and 31 U.S.C. § 7502 from (and including) the first Borrower Fiscal Year in which a disbursement is made under this Agreement and annually thereafter to the extent required by applicable law, except to the extent biennial audits are permitted for the Borrower pursuant to 2 C.F.R. § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the WIFIA Lender, or designees thereof, pursuant to 40 C.F.R. Part 35, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the WIFIA Loan, to the WIFIA Lender, or the designee thereof, for any such project or programmatic audit.

(l) Access; Records.

(i) So long as the WIFIA Loan or any portion thereof shall remain outstanding and until five (5) years after the WIFIA Loan shall have been paid in full, the

WIFIA Lender shall have the right, upon reasonable prior notice, to examine books of account and records of the Borrower relating to the Project or the Authority Revenues, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts relating to the WIFIA Loan with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the WIFIA Lender the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 15(1) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the WIFIA Lender may request.

(ii) The Borrower shall maintain and retain all files relating to the WIFIA Loan until five (5) years after the later of the date on which (A) all rights and duties under this Agreement and under the WIFIA Note (including payments) have been fulfilled and any required audits have been performed and (B) any litigation relating to the Project, the Authority Revenues, the WIFIA Loan or this Agreement is finally resolved or, if the WIFIA Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the WIFIA Lender and the Borrower.

(m) Compliance with Contracts. The Borrower will comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in all contracts affecting or involving the System, to the extent that the Borrower is a party thereto.

(n) Further Assurances. The Borrower will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming unto the WIFIA Lender the rights and benefits provided to it herein.

Section 16. Negative Covenants of the Borrower. The Borrower covenants and agrees as follows until the date the WIFIA Note and all of the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full by the Borrower in immediately available funds and the WIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the WIFIA Lender waives compliance in writing:

(a) No Lien Extinguishment or Adverse Amendments. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the WIFIA Lender, (i) extinguish or impair the pledge and assignment of the Borrower Assigned Rights, (ii) amend, modify, terminate, assign, replace or supplement, or permit a waiver of any provision of, the WIFIA IPA or (iii) amend, modify, terminate, assign, replace or supplement any Related Document to which the Borrower is a party (other than the WIFIA IPA) or permit a waiver of any provision thereof in a manner that could adversely affect the WIFIA Lender or could reasonably be expected to result in a Borrower Material Adverse Effect. The Borrower shall not take or omit to take any action under any contract if the effect of such act or failure to act would in any manner impair or adversely affect the ability of the City to secure adequate Net Revenues to meet the requirements of the WIFIA Loan Documents.

(b) No Prohibited Liens. Except for the pledge and assignment with respect to the WIFIA Loan for the benefit of the WIFIA Lender, the Borrower shall not create, incur, assume or permit to exist any Lien on the Borrower Assigned Rights.

(c) Borrower Fiscal Year. The Borrower shall not at any time adopt any fiscal year other than the Borrower Fiscal Year, except with thirty (30) days' prior written notice to the WIFIA Lender.

(d) Hedging. Other than Hedging Transactions, the Borrower shall not enter into any swap or hedging transaction, including inflation indexed swap transactions, "cap" or "collar" transactions, futures, or any other hedging transaction without the prior written consent of the WIFIA Lender.

Section 17. Affirmative Covenants of the City. The City covenants and agrees as follows until the date the WIFIA Note and all of the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full by the Borrower in immediately available funds and the WIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the WIFIA Lender waives compliance in writing:

(a) Rate Covenant.

(i) To the fullest extent permitted by law, the City shall fix, prescribe, and charge, or cause to be fixed, prescribed, and charged, in each City Fiscal Year, such rates, fees, and charges for the use of and for the service furnished by the System to ensure that all Net Revenues realized, together with any amounts on deposit in a rate stabilization fund held by the City, which amounts shall be available for the payment of Parity Debt Service, are in an amount which the City reasonably expects will be sufficient to be (x) at least equal to one hundred twenty percent (120%) of annual Parity Debt Service, and (y) at least equal to one hundred percent (100%) of the sum of annual Parity Debt Service and annual Subordinate Debt Service, in each case for such City Fiscal Year.

(ii) The City shall also, to the fullest extent permitted by law, fix, prescribe, and charge, or cause to be fixed, prescribed, and charged, in each City Fiscal Year, such rates, fees, and charges for the use of and for the service furnished by the System to ensure that Revenues realized are in an amount which the City reasonably expects will be sufficient to pay the following amounts in the following order or priority: (A) all Operations and Maintenance Costs estimated by the City to become due and payable in such City Fiscal Year; (B) the WIFIA Installment Payments, the Servicing Fee and the principal and interest on any outstanding Parity Obligations as they become due and payable during such City Fiscal Year, without preference or priority; (C) all amounts, if any, required to restore the balance of any reserve fund or account required under any instrument under which Parity Obligations were issued or incurred, for any outstanding Parity Obligations, to the full amount of any such reserve requirement; and (D) all payments required to meet any other obligations of the City which are charges, liens, or encumbrances upon, or which are otherwise payable from, the Revenues or the Net Revenues during such City Fiscal Year.

(iii) If for any reason Net Revenues, or Revenues, as applicable, prove insufficient to meet the numerical thresholds set forth in Section 17(a)(i) and to comply with the requirements of Section 17(a)(ii), the City first will engage an Independent Consultant to recommend revised rents, rates, fees, charges, savings, or assessments, or any combination thereof, and the City will, subject to any applicable requirements and restrictions imposed by law, including, but not limited to, the Prop 218 Law, and subject to the good faith determination of the City that such recommendations, in whole or in part, are in the best interests of the City, take all actions necessary to increase Revenues through any combination of increased rents, rates, fees, charges, savings, or assessments. Such actions shall be taken not later than one hundred eighty (180) days following the date on which Net Revenues or Revenues first fail to meet the requirements of this Section.

(iv) The City may make adjustments from time to time in such rents, rates, fees, and charges and may make such classification thereof as it deems necessary, but shall not reduce the rents, rates, fees, and charges then in effect unless the Net Revenues from such reduced rents, rates, fees, and charges will at all times be sufficient to meet the requirements of this Section 17(a).

(v) Notwithstanding the foregoing, in lieu of taking the preceding actions with respect to the City's failure to comply with Section 17(a)(i), the City may within one hundred eighty (180) days following the date Net Revenues first fail to meet the requirements of Section 17(a)(i) either establish and fund a rate stabilization fund, or increase monies held in an existing rate stabilization fund, in an amount sufficient to satisfy the requirements of Section 17(a)(i). If the City elects to proceed accordingly, it shall provide to the WIFIA Lender within such one hundred eighty (180) day period evidence satisfactory to the WIFIA Lender in its reasonable discretion that the amounts held in such rate stabilization fund are sufficient to satisfy the requirements of Section 17(a)(i).

(b) Securing Liens. The City shall at any and all times, to the extent permitted by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens on the City Pledged Collateral granted to the Borrower for its benefit pursuant to the WIFIA IPA, or intended so to be granted pursuant to the WIFIA IPA, or which the City may become bound to grant, and the City shall at all times maintain the City Pledged Collateral free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by the WIFIA IPA, other than as permitted by this Agreement and the WIFIA IPA, and all organizational, regulatory or other necessary action on the part of the City to that end shall be duly and validly taken at all times. The City shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the City Pledged Collateral granted for the benefit of the Borrower pursuant to the WIFIA IPA against all claims and demands of all Persons whomsoever, subject to Permitted Liens.

(c) Use of Proceeds. The City shall use the proceeds of the WIFIA Loan solely for purposes permitted by applicable law, the WIFIA IPA and the other Related Documents to which the City is a party.

(d) Prosecution of Work; Verification Requirements.

(i) The City, as agent of the Borrower pursuant to the WIFIA IPA, shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, the Governmental Approvals in connection with the Project, and the highest standards of the City's industry.

(ii) The City shall comply with Subpart C of 2 C.F.R. Part 180, as supplemented by Subpart C of 2 C.F.R. Part 1532 (relating to debarment), including the verification requirements set forth in 2 C.F.R. §§ 180.300 and 180.320, and shall include in its contracts with respect to the Project similar terms or requirements for compliance.

(e) Maintenance and Operation of the System. The City will maintain and preserve the System in good repair and working order at all times and will operate the System in an efficient and economical manner and will pay all Operations and Maintenance Costs as they become due and payable. The City shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(f) Insurance; Net Proceeds.

(i) The City will procure and maintain or cause to be procured and maintained insurance on the System, excluding coverage for earthquake damage or destruction, with responsible insurers in such amounts and against such risks (including accident to or destruction of the System) as are usually covered in connection with facilities that are similar to the System, so long as such insurance is available at reasonable rates.

(ii) In the event of any damage to or destruction of the System caused by the perils covered by such insurance, the Net Proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the System. The City shall begin such reconstruction, repair or replacement promptly after such damage or destruction shall occur, and shall continue and properly complete such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such Net Proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the System shall be free and clear of all claims and liens. The City covenants to reconstruct, repair or replace the damaged or destroyed portions of the System promptly if a failure to reconstruct, repair or replace such portions would impair or adversely affect the ability of the City to pay the WIFIA Installment Payments.

(iii) If such Net Proceeds exceed the costs of such reconstruction, repair or replacement portion of the System, and/or the cost of the construction of additions, betterments, extensions or improvements to the System, then the excess Net Proceeds shall be applied in part to the prepayment of the WIFIA Loan as provided in Section 9(a) (*Prepayment – Mandatory Prepayment from Net Proceeds or Eminent Domain Proceeds*) and in part to such other funds or accounts as may be appropriate and used for the retirement of the Parity Obligations (other than the WIFIA Loan) in the same proportion which the Outstanding WIFIA Loan Balance then bears to the aggregate unpaid principal

amount of the Parity Obligations (other than the WIFIA Loan). If such Net Proceeds are sufficient to enable the City to retire the entire Outstanding WIFIA Loan Balance (and all interest accrued thereon) prior to the Final Maturity Date as well as all Parity Obligations then remaining unpaid prior to their final respective due dates, the City may elect not to reconstruct, repair or replace the damaged or destroyed portion of the System, and/or not to construct other additions, betterments, extensions or improvements to the System; and thereupon such Net Proceeds shall be applied to the prepayment in full of the WIFIA Loan as provided in Section 9(a) and to the retirement in full of all Parity Obligations.

(iv) The City will procure and maintain such other insurance which it shall deem advisable or necessary to protect its interests and the interests of the Borrower, which insurance shall afford protection in such amounts and against such risks as are usually covered in connection with municipal water systems similar to the System.

(v) Any insurance that is required to be maintained by Section 17(f)(i) and, if the City determines to procure and maintain insurance pursuant to Section 17(f)(iv), such insurance, may be maintained under a self-insurance program so long as such self-insurance is maintained in the amounts and manner usually maintained in connection with water systems similar to the System, and is, in the opinion of an accredited actuary, actuarially sound.

(vi) All policies of insurance required to be maintained herein shall provide that the Borrower and the WIFIA Lender shall be given thirty (30) days written notice of any intended cancellation thereof or reduction of coverage provided thereby.

(vii) Promptly upon request by the WIFIA Lender, the City shall deliver to the WIFIA Lender copies of any underlying insurance policies obtained by or on behalf of the Borrower or the City in respect of the Project. All such policies shall be available at all reasonable times for inspection by the WIFIA Lender, its agents and representatives.

(g) Maintain Legal Structure. The City shall maintain its existence as a municipal corporation and general law city organized and existing under the laws of the State.

(h) System Accounts; Permitted Investments.

(i) The City shall maintain the Revenue Fund in accordance with the terms hereof and the other WIFIA Loan Documents. All Revenues received shall be deposited in the Revenue Fund when and as received in trust for the benefit of the holders of the Obligations, subject to the application of Revenues to Operations and Maintenance Costs. The City shall maintain and hold separate and apart from other funds the Revenue Fund so long as any Parity Obligations remain unpaid. Moneys in the Revenue Fund shall be used and applied by the City as provided in the Flow of Funds.

(ii) All moneys held by the City in the Revenue Fund shall be invested in Permitted Investments and the investment earnings thereon shall remain on deposit in such fund, except as otherwise provided herein.

(i) WIFIA Debt Service Account. The City, as agent of the Borrower pursuant to the WIFIA IPA, shall (i) establish the WIFIA Debt Service Account on or prior to the Effective Date and (ii) maintain the WIFIA Debt Service Account in accordance with the WIFIA Loan Documents for the benefit of the WIFIA Lender. The WIFIA Debt Service Account shall be subject to a Lien and has been pledged by the Borrower hereunder to the WIFIA Lender as security solely for the benefit of the WIFIA Lender and shall not be subject to any security interest in favor of any Person other than the WIFIA Lender. Amounts on deposit in the WIFIA Debt Service Account shall be applied by the City, as agent of the Borrower pursuant to the WIFIA IPA, solely to pay WIFIA Debt Service and other amounts due with respect to the WIFIA Loan or the WIFIA Note.

(j) Compliance with Laws.

(i) The City shall, and shall require the contractors and subcontractors at all tiers with respect to the Project to, comply with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto), 33 U.S.C. §3914 (relating to American iron and steel products), 20 C.F.R. § 180.320 and 20 C.F.R. §1532 (relating to non-debarment), 31 U.S.C. §1352 (relating to non-lobbying), and any applicable Sanctions Laws.

(ii) To ensure such compliance, the City shall include in all contracts with respect to the Project (A) the contract clauses relating to the Davis-Bacon Act requirements that are set forth in the Code of Federal Regulations, Title 29 Part 5.5 and (B) requirements that its contractors (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 17(j) and follow applicable federal guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any applicable laws, rules, regulations and requirements set forth in this Section 17(j) (including with respect to the Davis-Bacon Act requirements).

(k) Material Obligations; Payment of Claims.

(i) The City shall pay its material obligations promptly and in accordance with their terms.

(ii) The City shall pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon the Revenues or other assets of the System, before the same shall become delinquent or in default; provided that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the City in good faith by appropriate proceedings and so long as the City shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(iii) The City shall pay and discharge any and all lawful claims for labor, materials or supplies which, if unpaid, might become a Lien on the System (or any part

thereof), the WIFIA Debt Service Account, the Project, the Revenues or any fund or account of the City pledged to pay Parity Obligations.

(l) SAM Registration. The City shall obtain prior to the Effective Date (and provide such registration information to the WIFIA Lender) and maintain through the Final Disbursement Date an active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry).

(m) DUNS Number. The City shall obtain prior to the Effective Date (and provide such number to the WIFIA Lender) and maintain from Dun & Bradstreet (or a successor entity) a DUNS Number.

(n) Immunity. To the fullest extent permitted by applicable law, the City agrees that it will not assert any immunity (and hereby waives any such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the obligations of the City under this Agreement or any other WIFIA Loan Document to which the City is a party.

(o) Accounting and Audit Procedures.

(i) The City shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all of the following: (A) Revenues, Authority Revenues, operating expenses, capital expenses, depreciation, reserves, debt issued and outstanding and debt payments; and (B) Project-related costs, WIFIA Loan requisitions submitted, WIFIA Loan proceeds received, payments made by the City, as an agent of the Borrower pursuant to the WIFIA IPA, with regard to the Project, and other sources of funding for the Project (including amounts paid from such sources for Project costs so that audits may be performed to ensure compliance with and enforcement of this Agreement). The City shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the WIFIA Installment Payments, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts Outstanding.

(ii) The City shall have a single or program-specific audit conducted in accordance with 2 C.F.R. Part 200 Subpart F and 31 U.S.C. § 7502 from (and including) the first City Fiscal Year in which a disbursement is made under this Agreement and annually thereafter to the extent required by applicable law, except to the extent biennial audits are permitted for the City pursuant to 2 C.F.R. § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the City shall cooperate fully in the conduct of any periodic or compliance audits conducted by the WIFIA Lender, or designees thereof, pursuant to 40 C.F.R. Part 35, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the WIFIA Loan, to the WIFIA Lender, or the designee thereof, for any such project or programmatic audit.

(p) Access; Records.

(i) So long as the WIFIA Loan or any portion thereof shall remain outstanding and until five (5) years after the WIFIA Loan shall have been paid in full by the Borrower, the WIFIA Lender shall have the right, upon reasonable prior notice, to visit and inspect any portion of the Project, to examine books of account and records of the City relating to the Project, to make copies and extracts therefrom at the City's expense, and to discuss the City's affairs, finances and accounts relating to the Project with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the City irrevocably authorizes its independent public accountants to discuss with the WIFIA Lender the affairs, finances and accounts of the City, whether or not any representative of the City is present, it being understood that nothing contained in this Section 17(p) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the WIFIA Lender may request. The City agrees to pay all out-of-pocket expenses incurred by the WIFIA Lender in connection with the WIFIA Lender's exercise of its rights under this Section 17(p) at any time when an Event of Default shall have occurred and be continuing.

(ii) The City shall maintain and retain all files relating to the Project and the WIFIA Loan until five (5) years after the later of the date on which (A) all rights and duties of the City or the Borrower under this Agreement and of the Borrower under the WIFIA Note (including payments) have been fulfilled and any required audits have been performed and (B) any litigation relating to the Project, the WIFIA Loan or this Agreement is finally resolved or, if the WIFIA Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the WIFIA Lender and the City. The City shall provide to the WIFIA Lender in a timely manner all records and documentation relating to the Project that the WIFIA Lender may reasonably request from time to time.

(q) Compliance with Contracts. The City will comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in all contracts affecting or involving the System, to the extent that the City is a party thereto.

(r) Protection of Security and Rights of the Borrower. The City will preserve and protect the security and the rights of the Borrower to the City Pledged Collateral and will warrant and defend such rights against all claims and demands of all persons.

(s) Collection of Rates and Charges. The City will have in effect at all times by-laws, rules and regulations requiring each customer to pay the rates and charges applicable to the System and providing for the billing thereof and for a due date and a delinquency date for each bill.

(t) Eminent Domain Proceeds. If all or any part of the System shall be taken by eminent domain proceedings, the Net Proceeds thereof shall be applied by the City either to additions, betterments, extensions or improvements to the System or, if the City elects not to apply such Net Proceeds to such capital items or if such Net Proceeds are not fully expended for such

purposes, such Net Proceeds which are not required by the City for such purposes shall be deposited in the Revenue Fund.

(u) Further Assurances. The City will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming unto the WIFIA Lender the rights and benefits provided to it herein.

Section 18. Negative Covenants of the City. The City covenants and agrees as follows until the date the WIFIA Note and all of the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full by the Borrower in immediately available funds and the WIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the WIFIA Lender waives compliance in writing:

(a) Additional Obligations.

(i) The City shall not create, incur or suffer to exist (x) any obligations which are senior or prior in right of payment or right of security with respect to the Revenues to the Parity Obligations; or (y) any obligations, all or a portion of the proceeds of which are or will be applied at any time to fund all or any portion of Total Project Costs, that are secured by a Lien on any assets or property of the City other than the Revenues.

(ii) The City may, after the Effective Date, issue or incur Parity Obligations in such principal amount as shall be determined by the City subject to the requirements for additional obligations as set forth in all existing instruments with respect to Parity Obligations and the following specific conditions, which are hereby made conditions precedent to the City's issuance and delivery of such Parity Obligations:

(A) no Event of Default hereunder or under any other instrument secured by the Revenues shall have occurred and be continuing unless such Event of Default shall be cured by the issuance or incurrence of such proposed Parity Obligations, and the City shall otherwise be in compliance with all covenants set forth in this Agreement; and

(B) the Net Revenues calculated pursuant to GAAP, consistently applied, and excluding the proceeds of any taxes and also excluding any balances in any fund at the beginning of the period of the computation, as shown by the books of the City for the latest City Fiscal Year, or any more recent twelve (12) month period selected by the City ending not more than sixty (60) days prior to the adoption of the resolution pursuant to which instrument such Parity Obligations is issued or incurred, as shown by the books of the City, plus, at the option of the City, any of the allowances referred to in paragraph (iii) below, shall have amounted to at least 1.20 times the Maximum Annual Debt Service taking into consideration the maximum annual debt service payable in any City Fiscal Year on the proposed Parity Obligations, as set forth in the Report of an Independent Accountant or Independent Consultant delivered to the WIFIA Lender.

(iii) Either or both of the following allowances may be added to Net Revenues for the purpose of meeting the condition contained in Section 18(a)(ii)(B):

(A) an allowance for increased Revenues from any additions to or improvements or extensions of the System to be made with the proceeds of such proposed Parity Obligations, and also for Revenues from any such additions, improvements, or extensions which have been made from moneys from any source but which, during all or any part of such City Fiscal Year or any more recent twelve (12) month period, were not in service, all in an amount equal to ninety percent (90%) of the estimated additional average annual Revenues to be derived from such additions, improvements, and extensions for the first thirty-six (36) month period following closing of the proposed Parity Obligations, all as shown in the Report of an Independent Accountant or Independent Consultant delivered to the WIFIA Lender; provided that in those instances where the proposed Parity Obligations are held by the WIFIA Lender, no Report of an Independent Accountant or Independent Consultant shall be required; and/or

(B) an allowance for increased Revenues arising from any increase in the charges made for service from the System which has become effective prior to the incurring of such proposed Parity Obligations but which, during all or any part of such City Fiscal Year or any more recent twelve (12) month period, was not in effect, in an amount equal to one hundred percent (100%) of the amount by which Revenues would have been increased if such increase to charges had been in effect during the whole of such time period and any period prior to the incurring of such proposed Parity Obligations, as shown in the Report of an Independent Accountant or Independent Consultant delivered to the WIFIA Lender.

(iv) Notwithstanding Sections 18(a)(ii) and (iii), (A) proposed Parity Obligations to be issued for the purpose of refunding outstanding Parity Obligations may be issued without compliance with Section 18(a)(ii)(B) so long as such refunding results in lower Parity Debt Service in each City Fiscal Year after such refunding and the final maturity date of the refunding Parity Obligations is no later than the final maturity date of the refunded Parity Obligations and (B) to the extent that any instrument with respect to Outstanding Parity Obligations conflicts with any of the requirements set forth in this Section 18(a), the more restrictive provision shall prevail.

(v) The City may issue or incur Subordinate Obligations following the Effective Date in such principal amount as shall be determined by the City subject to the following conditions precedent to the issuance or incurrence of such Subordinate Obligations:

(A) no Event of Default hereunder or under any other instrument secured by the Revenues shall have occurred and be continuing unless such Event of Default shall be cured by the issuance or incurrence of such proposed Subordinate Obligations, and the City shall otherwise be in compliance with all

covenants set forth in this Agreement and any other instrument securing, evidencing, governing, or relating to other obligations secured by, the Revenues;

(B) Net Revenues calculated pursuant to GAAP, consistently applied, and excluding the proceeds of any taxes and also excluding any balances in any fund (other than any rate stabilization fund held by the City) at the beginning of the period of the computation, as shown by the books of the City for the latest City Fiscal Year, or any more recent twelve (12) month period selected by the City ending not more than sixty (60) days prior to the adoption of the resolution pursuant to which instrument such Subordinate Obligations are issued or incurred, as shown by the books of the City, shall have amounted to at least 1.0 times the aggregate sum of the Maximum Annual Debt Service of all debt secured by Net Revenues and/or legally available amounts in the Revenue Fund and the maximum annual debt service payable in any City Fiscal Year on all Subordinate Obligations, including the proposed Subordinate Obligations, as set forth in the Report of an Independent Accountant or Independent Consultant delivered to the WIFIA Lender.

(vi) The City shall not incur any Additional Obligations that bear interest at a Variable Interest Rate if such incurrence would (A) cause the principal amount of all Outstanding Variable Interest Rate Obligations to exceed twenty-five percent (25%) of the principal amount of all Outstanding Obligations at such time or (B) violate any term set forth in the Debt Management Policy.

(vii) Upon the incurrence of any Additional Obligations, the City shall provide to the WIFIA Lender a certificate signed by the City's Authorized Representative (x) specifying the closing date with respect to such Additional Obligations and (y) confirming that such Additional Obligations are authorized pursuant to, and satisfy the applicable requirements under, this Section 18(a).

(b) No Lien Extinguishment or Adverse Amendments. The City shall not, and shall not permit any Person to, without the prior written consent of the WIFIA Lender, (i) extinguish or impair the Liens on the City Pledged Collateral granted pursuant to the WIFIA IPA, (ii) amend, modify, terminate, assign, replace or supplement, or permit a waiver of any provision of, the WIFIA IPA, (iii) amend, modify, replace or supplement any Related Document to which the City is a party (other than the WIFIA IPA) or permit a waiver of any provision thereof in a manner that could adversely affect the WIFIA Lender or could reasonably be expected to result in a City Material Adverse Effect, or (iv) terminate or assign any Related Document to which the City is a party (other than (A) the WIFIA IPA and (B) Obligation Documents relating to Subordinate Obligations) in a manner that could adversely affect the WIFIA Lender or could reasonably be expected to have a City Material Adverse Effect. The City shall not take or omit to take any action under any contract if the effect of such act or failure to act would in any manner impair or adversely affect the ability of the City to secure adequate Net Revenues to meet the requirements of the WIFIA IPA.

(c) No Prohibited Liens. Except for Permitted Liens, the City shall not create, incur, assume or permit to exist any Lien on the System, the Project, the City Pledged Collateral, or the City's respective rights therein.

(d) Restricted Payments and Transfers. The City shall not permit Revenues or any funds in any other fund or account held by or on behalf of the City with respect to the System to be paid or transferred or otherwise applied for purposes other than ownership, operation or maintenance of the System.

(e) Against Sale or Other Disposition of Property.

(i) The City shall not enter into any agreement or lease which impairs the operation of the System or any part thereof necessary to secure adequate Net Revenues to meet the requirements of the WIFIA IPA, or which would otherwise impair the rights of the Borrower under the WIFIA IPA or the operation of the System. Any real or personal property which has become nonoperative or which is not needed for the efficient and proper operation of the System, or any material or equipment which has become worn out, may be sold if such sale will not impair the ability of the City to pay the WIFIA Installment Payments and if the proceeds of such sale are deposited in the Revenue Fund.

(ii) Nothing herein shall restrict the ability of the City to sell any portion of the System if such portion is immediately repurchased by the City and if such arrangement cannot by its terms result in the purchaser of such portion of the System exercising any remedy which would deprive the City of or otherwise interfere with its right to own and operate such portion of the System.

(f) City Fiscal Year. The City shall not at any time adopt any fiscal year other than the City Fiscal Year, except with thirty (30) days' prior written notice to the WIFIA Lender.

(g) Against Competitive Facilities. The City will not, to the extent permitted by law, acquire, construct, maintain or operate and will not, to the extent permitted by law and within the scope of its powers, permit any other public or private agency, corporation, district or political subdivision or any person whomsoever to acquire, construct, maintain or operate within the City any water system competitive with the System.

(h) Hedging. Other than Hedging Transactions, the City shall not enter into any swap or hedging transaction with respect to the Obligations, including inflation indexed swap transactions, "cap" or "collar" transactions, futures, or any other hedging transaction, without the prior written consent of the WIFIA Lender.

Section 19. Reporting Requirements of the Borrower.

(a) Annual Financial Statements. The Borrower shall deliver to the WIFIA Lender, as soon as available, and within one hundred eighty (180) days after the end of each Borrower Fiscal Year (provided that the failure of the Borrower to furnish the documents required by this Section 19(a) within such one hundred eighty (180)-day period shall not constitute a Default or an Event of Default hereunder so long as the Borrower furnishes to the WIFIA Lender such documents within ninety (90) days after the end of such period, and provided further that the parties

agree that delivering the documents required by this Section 19(a) within such additional ninety (90) day period shall not, in and of itself, constitute a default under this Agreement, an event of acceleration under this Agreement, the WIFIA Loan, or the WIFIA Note, a termination event under this Agreement, the WIFIA Loan, or the WIFIA Note, a modification of terms with respect to this Agreement, the WIFIA Loan, or the WIFIA Note, or other similar event under this Agreement, the WIFIA Loan, or the WIFIA Note reflecting financial difficulties):

(i) a copy of the audited Borrower Financial Statements as of the end of such Borrower Fiscal Year, (A) setting forth in each case in comparative form the figures for the previous fiscal year, (B) certified without qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower and (C) which shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein); and

(ii) together with each delivery of such audited Borrower Financial Statements, a certificate signed by the Borrower's Authorized Representative, stating whether or not, to the Borrower's knowledge, during the annual period covered by such Borrower Financial Statements, there occurred any Default or Event of Default and, if any such Default or Event of Default shall have occurred during such period, the nature of such Default or Event of Default and the actions that the Borrower has taken or intends to take in respect thereof.

(b) Notices.

(i) The Borrower shall, within fifteen (15) days after it learns of the occurrence, give the WIFIA Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event (provided that the Borrower shall not be obligated to provide such notice to the WIFIA Lender if notice of such event has already been provided to the WIFIA Lender by the City):

(A) Defaults; Events of Default: any Default or Event of Default;

(B) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower that, in each case, could reasonably be expected to have a Borrower Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against the Borrower that could reasonably be expected to have a Borrower Material Adverse Effect, either individually or in the aggregate;

(C) Amendments: except as otherwise agreed by the WIFIA Lender in writing, copies of fully executed amendments, modifications,

replacements or supplements to any Related Document to which the Borrower is a party within ten (10) days following execution thereof; provided that such notice can be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number;

(D) Related Document Defaults: any material breach or default or event of default on the part of the Borrower or any other party under any Related Document to which the Borrower is a party; provided that such notice can be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number;

(E) 2 C.F.R. § 180.350 Notices: any notification required pursuant to 2 C.F.R. § 180.350, whether attributable to a failure by the Borrower to disclose information previously required to have been disclosed or due to the Borrower or any of the Borrower's principals meeting any of the criteria set forth in 2 C.F.R. § 180.335;

(F) Issuance of Indebtedness: copies of any final issuing instrument (together with any continuing disclosure documents, ordinances, official statement, certifications or cash flow projections in connection therewith), prepared in connection with the incurrence of any indebtedness; provided that such notice can be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number;

(G) Postings on EMMA: the posting of any document of the Borrower on EMMA in accordance with the requirements of any continuing disclosure agreement or similar document relating to annual financial information and operating data and the reporting of significant events; provided that such notice can be accomplished through the posting of the relevant document on EMMA under the WIFIA CUSIP Number;

(H) SAM/DUNS: any change in the Borrower's SAM registration status (including any exclusions, expiration or inactive registration) or DUNS Number (including any expiration or change in effectiveness); provided that such notice can be accomplished through the posting of the relevant document on EMMA under the WIFIA CUSIP Number; and

(I) Other Adverse Events: the occurrence of any other event or condition that could reasonably be expected to result in a Material Adverse Effect.

(ii) Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in clause (i) above (other than sub-clauses (C) (*Amendments*), (F) (*Issuance of Indebtedness*) or (G) (*Postings on EMMA*)), the Borrower's Authorized Representative shall provide a statement to the WIFIA Lender setting forth the actions the Borrower proposes to take with respect thereto; provided that the Borrower shall not be required to provide such information if and to the extent such information has been provided by the City. The Borrower shall also provide the WIFIA

Lender with any further information reasonably requested by the WIFIA Lender from time to time concerning the matters described in clause (i) above.

(c) Requested Information. The Borrower shall, at any time while the WIFIA Loan remains outstanding, promptly deliver to the WIFIA Lender such additional information regarding the business, financial, legal or organizational affairs of the Borrower or the Authority Revenues as the WIFIA Lender may from time to time reasonably request.

Section 20. Reporting Requirements of the City.

(a) Updated Financial Model.

(i) The City shall provide to the WIFIA Lender not later than one hundred eighty (180) days after the beginning of each City Fiscal Year, an updated Base Case Financial Model reflecting the then-current and projected conditions.

(ii) The Updated Financial Model shall demonstrate to the satisfaction of the WIFIA Lender that the City has developed and identified adequate revenues to implement a plan for operating, maintaining and repairing the Project over its useful life, and shall include: (A) the City's capital improvement plan, major maintenance plan, projected rates and charges, projected debt outstanding and annual debt service, projected Revenues and projected Operations and Maintenance Costs; (B) evidence of compliance with the Rate Covenant for the most recent City Fiscal Year and the projected Rate Covenant coverages through the Final Maturity Date; (C) a written narrative identifying any material changes to the underlying assumptions from the previous Updated Financial Model; and (D) a certificate signed by the City's Authorized Representative, certifying that (1) the Updated Financial Model, including the assumptions and supporting documentation, as of its date, is accurate and reasonable to the best of the City's knowledge and belief, (2) the annual projected Net Revenues will be sufficient to meet the Loan Amortization Schedule and to satisfy the Rate Covenant through the Final Maturity Date, and (3) the City is in compliance with its obligations in respect of the Rate Covenant pursuant to Section 17(a) (*Affirmative Covenants of the City – Rate Covenant*).

(iii) The delivery of the Updated Financial Model to the WIFIA Lender shall constitute a representation and warranty by the City that the Updated Financial Model reflects the City's reasonable expectations, using assumptions that the City believes to be reasonable, of the System's expected operations, including capital costs, capital spending schedule, rates and revenues or charges (if applicable), Revenues, Operations and Maintenance Costs, major maintenance costs, financing structure and other scheduling, cost and financing elements required to be included in the Base Case Financial Model. The Updated Financial Model shall independently model the Project (as well as the System) addressing each of the foregoing as it may apply to the Project.

(b) Annual Financial Statements. The City shall deliver to the WIFIA Lender, as soon as available, and within one hundred eighty (180) days after the end of each City Fiscal Year (provided that the failure of the City to furnish the documents required by this Section 20(b) within such one hundred eighty (180)-day period shall not constitute a Default or an Event of

Default hereunder so long as the City furnishes to the WIFIA Lender such documents within ninety (90) days after the end of such period, and provided further that the parties agree that delivering the documents required by this Section 20(b) within such additional ninety (90) day period shall not, in and of itself, constitute a default under this Agreement, an event of acceleration under this Agreement, the WIFIA Loan, or the WIFIA Note, a termination event under this Agreement, the WIFIA Loan, or the WIFIA Note, a modification of terms with respect to this Agreement, the WIFIA Loan, or the WIFIA Note, or other similar event under this Agreement, the WIFIA Loan, or the WIFIA Note reflecting financial difficulties):

(i) a copy of the audited City Financial Statements as of the end of such City Fiscal Year, (A) setting forth in each case in comparative form the figures for the previous fiscal year, (B) certified without qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the City and (C) which shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein); and

(ii) together with each delivery of such audited City Financial Statements, a certificate signed by the City's Authorized Representative, stating whether or not, to the City's knowledge, during the annual period covered by such City Financial Statements, there occurred any Default or Event of Default and, if any such Default or Event of Default shall have occurred during such period, the nature of such Default or Event of Default and the actions that the City has taken or intends to take in respect thereof.

(c) Construction Reporting.

(i) The WIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development of the Project, including environmental compliance, design, and construction of the Project. The City shall be responsible for administering construction oversight of the Project in accordance with applicable federal, state and local governmental requirements. The City agrees to cooperate in good faith with the WIFIA Lender in the conduct of such monitoring by promptly providing the WIFIA Lender with such Construction Contracts (together with any related contracts, side letters or other understandings) and such reports, documentation or other information as shall be requested by the WIFIA Lender or its agents, including any independent engineer reports, documentation or information. During the period beginning from the first quarter following bid advertisement of the first Construction Contract for the Project, through and until Substantial Completion of the Project, the City shall furnish to the WIFIA Lender, on a quarterly basis, a report on the status of the Project, substantially in the form of **Exhibit J** (*Form of Quarterly Report*). The report shall be executed by the City's Authorized Representative and, for any quarter, shall be delivered to the WIFIA Lender within thirty (30) days of the following quarter (or if such day is not a Business Day, on the next following Business Day). If the then-current projection for the Substantial Completion Date is a date later than the Projected Substantial Completion Date, the City shall provide in such report a description in reasonable detail to the reasonable satisfaction of the WIFIA Lender of the reasons for such projected delay, an

estimate of the impact of such delay on the capital and operating costs of the System (if any), and a certification of the City's Authorized Representative that the new date could not reasonably be expected to result in a Material Adverse Effect.

(ii) The City shall deliver to the WIFIA Lender, prior to bid advertisement for the Project (including each sub-project or component, if applicable), a copy of the final specifications relating to the development and construction of the Project (or such sub-project or component, as the case may be), demonstrating compliance with all applicable federal requirements, and including a summary of the scope of work thereunder.

(d) Public Benefits Report. The City shall deliver to the WIFIA Lender a report, in the form of **Exhibit K** (*Form of Public Benefits Report*) (the "**Public Benefits Report**"), (i) prior to the Effective Date, (ii) within ninety (90) days following the Substantial Completion Date and (iii) within ninety (90) days following the fifth (5th) anniversary of the Substantial Completion Date. The City agrees that information described under this Section 20(d) may be made publicly available by the WIFIA Lender at its discretion.

(e) Operations and Maintenance. The WIFIA Lender shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) the Project's operations and, as the WIFIA Lender may request from time to time, to receive reporting on the operation and management of the Project, and copies of any contracts relating to the operation and maintenance of the Project. The City agrees to cooperate in good faith with the WIFIA Lender in the conduct of such monitoring by promptly providing the WIFIA Lender with such reports, documentation, or other information requested by the WIFIA Lender. The WIFIA Lender has the right, in its sole discretion, to retain such consultants or advisors, to carry out the provisions of this Section 20(e). On or prior to the Substantial Completion Date, the City shall deliver to the WIFIA Lender an operations and maintenance manual with respect to the Project, in form and substance reasonably acceptable to the WIFIA Lender.

(f) Notices.

(i) The City shall, within fifteen (15) days after it learns of the occurrence, give the WIFIA Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event (provided that the City shall not be obligated to provide such notice to the WIFIA Lender if notice of such event has already been provided to the WIFIA Lender by the Borrower):

(A) Substantial Completion: the occurrence of Substantial Completion, such notice to be provided in the form set forth in **Exhibit I** (*Form of Certificate of Substantial Completion*);

(B) Defaults; Events of Default: any Default or Event of Default;

(C) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the City before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the City in writing of any threat of litigation, suit, action, or

proceeding, or of any written claim against the City that, in each case, could reasonably be expected to have a City Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against the City that could reasonably be expected to have a City Material Adverse Effect, either individually or in the aggregate;

(D) Delayed Governmental Approvals: any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including the Projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and the City's plans to remedy or mitigate the effects of such failure or delay;

(E) Environmental Notices: any material notice of violation or material change in finding under any Environmental Law related to the Project or any material changes to the NEPA Determination;

(F) Amendments: except as otherwise agreed by the WIFIA Lender in writing, copies of fully executed amendments, modifications, replacements or supplements to any Related Document to which the City is a party within ten (10) days following execution thereof; provided that such notice can be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number;

(G) Related Document Defaults: any material breach or default or event of default on the part of the City or any other party under any Related Document to which the City is a party; provided that such notice can be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number;

(H) Uncontrollable Force: the occurrence of any Uncontrollable Force that could reasonably be expected to materially and adversely affect the Project;

(I) Ratings Changes: any change in the rating assigned to the WIFIA Loan or any other Obligations by any Nationally Recognized Rating Agency that has provided a public rating on the WIFIA Loan or such Obligations, and any notices, reports or other written materials (other than those that are ministerial in nature) received from any such rating agencies; provided that such notice can be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number;

(J) 2 C.F.R. § 180.350 Notices: any notification required pursuant to 2 C.F.R. § 180.350, whether attributable to a failure by the City to disclose information previously required to have been disclosed or due to the City

or any of the City's principals meeting any of the criteria set forth in 2 C.F.R. § 180.335;

(K) Postings on EMMA: the posting of any document of the City on EMMA in accordance with the requirements of any continuing disclosure agreement or similar document relating to annual financial information and operating data and the reporting of significant events; provided that such notice can be accomplished through the posting of the relevant document on EMMA under the WIFIA CUSIP Number;

(L) SAM/DUNS: any change in the City's SAM registration status (including any exclusions, expiration or inactive registration) or DUNS Number (including any expiration or change in effectiveness); provided that such notice can be accomplished through the posting of the relevant document on EMMA under the WIFIA CUSIP Number;

(M) Issuance of Obligations: copies of any final issuing instrument (together with any continuing disclosure documents, ordinances, official statement, certifications or cash flow projections in connection therewith), prepared in connection with the incurrence of any Additional Obligations (including any Variable Interest Rate Obligations); provided that such notice can be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number;

(N) Amendment to Debt Management Policy: any material amendment or modification to the Debt Management Policy, along with a copy of such amendment or modification; and

(O) Other Adverse Events: the occurrence of any other event or condition, including any notice of breach from a contract counterparty or any holder of any Obligations, that could reasonably be expected to result in a Material Adverse Effect or have a material and adverse effect on the Project.

(ii) Within thirty (30) calendar days after the City learns of the occurrence of an event specified in clause (i) above (other than sub-clauses (A) (*Substantial Completion*), (F) (*Amendments*), (I) (*Ratings Changes*) (in the case of a ratings upgrade), (K) (*Postings on EMMA*), (M) (*Issuance of Obligations*) or (N) (*Amendment to Debt Management Policy*)), the City's Authorized Representative shall provide a statement to the WIFIA Lender setting forth the actions the City proposes to take with respect thereto. The City shall also provide the WIFIA Lender with any further information reasonably requested by the WIFIA Lender from time to time concerning the matters described in clause (i) above.

(g) Requested Information. The City shall, at any time while the WIFIA Loan remains outstanding, promptly deliver to the WIFIA Lender such additional information regarding the business, financial, legal or organizational affairs of the City or regarding the System

(including the Project), the WIFIA Debt Service Account or the Revenues as the WIFIA Lender may from time to time reasonably request.

ARTICLE VI EVENTS OF DEFAULT

Section 21. Events of Default and Remedies.

(a) A “**Borrower Event of Default**” shall exist under this Agreement if any of the following occurs:

(i) Borrower Payment Default. The Borrower shall fail to (A) pay when due any part of the principal amount of or interest on the WIFIA Loan (including WIFIA Debt Service required to have been paid pursuant to the provisions of Section 8 (*Payment of Principal and Interest*)) or (B) make any mandatory prepayment required pursuant to the provisions of Section 9 (*Prepayment*), in each case when and as the payment thereof shall be required under this Agreement or the WIFIA Note or on the Final Maturity Date (each such failure, a “**Borrower Payment Default**”).

(ii) Borrower Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement, the WIFIA Note or any other WIFIA Loan Document to which the Borrower is a party (other than in the case of any Borrower Payment Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the WIFIA Lender of written notice thereof or (B) the Borrower’s knowledge of such failure; provided that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Borrower Event of Default shall be deemed to have occurred or be continuing under this Section 21(a)(ii), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable.

(iii) Borrower Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to any WIFIA Loan Document to which the Borrower is a party (or in any certificates delivered by the Borrower in connection with any WIFIA Loan Document to which the Borrower is a party) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty or certification that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided that no Borrower Event of Default shall be deemed to have occurred under this Section 21(a)(iii) if and so long as (A) such misrepresentation is not intentional, (B) such misrepresentation is not a misrepresentation in respect of Section 12(h) (*Representations and Warranties of the Borrower – No Debarment*), or Section 12(j) (*Representations and Warranties of the Borrower – Compliance with Laws*), (C) in the reasonable determination of the WIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result

in, a Borrower Material Adverse Effect, (D) in the reasonable determination of the WIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured and (E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days after the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation.

(iv) Borrower Material Adverse Judgment. Any final, non-appealable judgment related to the Authority Revenues shall be entered against the Borrower which has a Material Adverse Effect.

(v) Occurrence of Borrower Bankruptcy Related Event. A Bankruptcy Related Event shall occur with respect to the Borrower.

(vi) Invalidity of WIFIA Loan Documents. (A) Any WIFIA Loan Document to which the Borrower is a party ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or the Borrower contests in any manner the validity or enforceability of any WIFIA Loan Document to which it is a party or denies it has any further liability under any WIFIA Loan Document to which it is a party, or purports to revoke, terminate or rescind any WIFIA Loan Document to which it is a party; (B) this Agreement ceases to grant a valid and binding security interest on any material portion of the Authority Revenues, other than as a result of actions or a failure to act by, and within the control of, the WIFIA Lender; or (C) any event occurs that results in the material impairment in the priority of (1) the Borrower's security interest in the City Pledged Collateral or in the value of the City Pledged Collateral or (2) the WIFIA Lender's security interest in the Borrower Assigned Rights or in the value of the Borrower Assigned Rights or the pledge and assignment to the WIFIA Lender of the Borrower's rights thereto.

(b) An "**City Event of Default**" shall exist under this Agreement if any of the following occurs:

(i) City Payment Default. (A) The City shall fail to pay when due any part of any WIFIA Installment Payment required to have been paid pursuant to the provisions of the WIFIA IPA or (B) the City, as agent of the Borrower pursuant to the WIFIA IPA, shall fail to make any mandatory prepayment required pursuant to the provisions of Section 9 (*Prepayment*) (each such failure, an "**City Payment Default**").

(ii) City Covenant Default. The City shall fail to observe or perform any covenant, agreement or obligation of the City under this Agreement, the WIFIA IPA or any other WIFIA Loan Document to which the City is a party (other than in the case of any City Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the City from the WIFIA Lender of written notice thereof or (B) the City's knowledge of such failure; provided that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 21(b)(ii), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day

cure period the City shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable.

(iii) City Misrepresentation Default. Any of the representations, warranties or certifications of the City made in or delivered pursuant to any WIFIA Loan Document to which the City is a party (or in any certificates delivered by the City in connection with any WIFIA Loan Document to which the City is a party) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty or certification that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided that no City Event of Default shall be deemed to have occurred under this Section 21(b)(iii) if and so long as (A) such misrepresentation is not intentional, (B) such misrepresentation is not a misrepresentation in respect of Section 13(h) (*Representations and Warranties of the City – No Debarment*), or Section 13(j) (*Representations and Warranties of the City – Compliance with Laws*), (C) in the reasonable determination of the WIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a City Material Adverse Effect, (D) in the reasonable determination of the WIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured and (E) the underlying issue giving rise to the misrepresentation is cured by the City within thirty (30) days after the date on which the City first became aware (or reasonably should have become aware) of such misrepresentation.

(iv) Acceleration of Obligations. Any acceleration shall occur of the maturity of any Obligation, or any such Obligation shall not be paid by the City in full upon the final maturity thereof.

(v) Cross Default with Obligation Documents. Any default shall occur in respect of the performance of any covenant, agreement or obligation of the City under any Obligation Document relating to any Parity Obligation (other than the WIFIA Loan Documents), and such default shall be continuing after the giving of any applicable notice and the expiration of any applicable grace period specified in such Obligation Document relating to any Parity Obligation with respect to such default, and the City shall have failed to cure such default or to obtain an effective written waiver thereof in accordance with the terms thereof.

(vi) City Material Adverse Judgment. Any final, non-appealable judgment related to the Revenues, the System or the Project shall be entered against the City which has a Material Adverse Effect.

(vii) Occurrence of City Bankruptcy Related Event. A Bankruptcy Related Event shall occur with respect to the City.

(viii) Invalidity of WIFIA Loan Documents. (A) Any WIFIA Loan Document to which the City is a party ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable,

illegal or unenforceable, or the City contests in any manner the validity or enforceability of any WIFIA Loan Document to which it is a party or denies it has any further liability under any WIFIA Loan Document to which it is a party, or purports to revoke, terminate or rescind any WIFIA Loan Document to which it is a party; or (B) the WIFIA IPA ceases (other than as expressly permitted thereunder) to be effective or to grant a valid and binding security interest on any material portion of the City Pledged Collateral, and with the priority purported to be created thereby.

(ix) Development Default. A Development Default shall occur.

(c) Upon (i) the occurrence of any Bankruptcy Related Event (other than any Bankruptcy Related Event under clause (b)(iii) of the definition thereof) or (ii) the acceleration of any amounts under the WIFIA IPA, all obligations of the WIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the WIFIA Loan shall automatically be deemed terminated, and the Outstanding WIFIA Loan Balance, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the WIFIA Note or the other WIFIA Loan Documents, shall automatically become immediately due and payable, without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

(d) Upon the occurrence of any Event of Default, the WIFIA Lender, by written notice to the Borrower and the City, may exercise any or all of the following remedies:

(i) the WIFIA Lender may suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the WIFIA Loan;

(ii) the WIFIA Lender may apply the Default Rate provisions of Section 6 (*Interest Rate*);

(iii) the WIFIA Lender may suspend or debar the Borrower or the City (or both) from further participation in any Government program administered by the WIFIA Lender and notify other departments and agencies of such default;

(iv) the WIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity against the Borrower for the collection of any sums due from the Borrower and unpaid hereunder or under the WIFIA Note or the other WIFIA Loan Documents, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law out of the property of the Borrower the moneys adjudged or decreed to be payable, and the WIFIA Lender shall have all of the rights and remedies of a creditor and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by the Borrower under this Agreement, the WIFIA Note or the other WIFIA Loan Documents then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement, the WIFIA Note or the other WIFIA Loan Documents, including directing the Borrower to exercise any rights or remedies under the

WIFIA IPA pursuant to Article VIII (*Events of Default and Remedies of the Authority*) thereto;

(v) the WIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity against the City for the collection of any sums due from the City and unpaid hereunder or under the WIFIA IPA, and may prosecute any such judgment or final decree against the City and collect in the manner provided by law out of the property of the City the moneys adjudged or decreed to be payable, and the WIFIA Lender shall have all of the rights and remedies of a creditor and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by the City under this Agreement or the WIFIA IPA then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the City under this Agreement or the WIFIA IPA; and

(vi) the WIFIA Lender may declare the unpaid principal amount of the WIFIA Note to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the WIFIA Note and the other WIFIA Loan Documents, all without presentment, demand, notice, protest or other requirements of any kind, all of which are hereby expressly waived.

(e) Notwithstanding anything to the contrary set forth in any WIFIA Loan Document, the Borrower shall not have the right to (i) accelerate the WIFIA Installment Payments or (ii) exercise any other rights or remedies under the WIFIA IPA following the occurrence of an "Event of Default" under and as defined in the WIFIA IPA without the prior written direction of the WIFIA Lender.

(f) No action taken pursuant to this Section 21 shall relieve either the Borrower or the City from its obligations pursuant to this Agreement, the WIFIA Note or the other WIFIA Loan Documents, all of which shall survive any such action.

ARTICLE VII MISCELLANEOUS

Section 22. Disclaimer of Warranty. The WIFIA Lender makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for a particular purpose or fitness for use of the Project or any portion thereof or any other warranty with respect thereto. In no event shall the WIFIA Lender be liable for any incidental, indirect, special or consequential damages incidental to or arising out of this Agreement or the System (including the Project) or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Agreement.

Section 23. No Personal Recourse. No official, employee or agent of the WIFIA Lender or either the Borrower or the City or any Person executing this Agreement or any of the other WIFIA Loan Documents shall be personally liable on this Agreement or such other WIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 24. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the City, the Government, or the WIFIA Lender, solely by virtue of the WIFIA Loan, and the Borrower and the City each agree to indemnify on a joint and several basis and hold the WIFIA Lender, the Servicer (if any), the Administrator, and the Government harmless, to the extent permitted by law and in accordance with Section 37 (*Indemnification*), from any lawsuit or claim arising in law or equity solely by reason of the WIFIA Loan, and that no third party creditor of either the Borrower or the City shall have any right against the WIFIA Lender with respect to the WIFIA Loan made pursuant to this Agreement.

Section 25. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the WIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

Section 26. City's Authorized Representative. The City shall at all times have appointed a City's Authorized Representative by designating such Person or Persons from time to time to act on the City's behalf pursuant to a written certificate furnished to the WIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the City.

Section 27. WIFIA Lender's Authorized Representative. The WIFIA Lender hereby appoints the Director of the WIFIA Program, whose notice details are set forth below in Section 36 (*Notices*), to serve as the WIFIA Lender's Authorized Representative under this Agreement until such time as a successor or successors shall have been appointed. Thereafter, the successor in office shall serve as the WIFIA Lender's Authorized Representative. The WIFIA Lender shall provide notice to the Borrower and the City within a reasonable time period following the succession.

Section 28. Servicer. The WIFIA Lender may from time to time designate another entity or entities to perform, or assist the WIFIA Lender in performing, the duties of the Servicer or specified duties of the WIFIA Lender under this Agreement and the WIFIA Note. The WIFIA Lender shall give the Borrower and the City written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the WIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the WIFIA Lender shall have delegated to such Servicer. The WIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the WIFIA Note. The Borrower and the City shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 29. Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement or the WIFIA Note shall in any event be effective without the prior written consent of each of the parties hereto.

Section 30. Governing Law. This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

Section 31. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 32. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the rights nor obligations of the Borrower hereunder or under the WIFIA Note nor any interest herein or therein may be assigned or delegated by the Borrower without the prior written consent of the WIFIA Lender. Neither the rights nor obligations of the City hereunder nor any interest herein may be assigned or delegated by the City without the prior written consent of the WIFIA Lender.

Section 33. Remedies Not Exclusive. No remedy conferred herein or in the WIFIA Note or reserved to the WIFIA Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the WIFIA Note or now or hereafter existing at law or in equity or by statute.

Section 34. Delay or Omission Not Waiver. No delay or omission of the WIFIA Lender to exercise any right or remedy provided hereunder or under the WIFIA Note upon a default of either the Borrower or the City (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or the WIFIA Note or by law to the WIFIA Lender may be exercised from time to time, and as often as may be deemed expedient by the WIFIA Lender.

Section 35. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 36 (*Notices*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

Section 36. Notices. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to WIFIA Lender: Environmental Protection Agency

WJC-W 6201A
1200 Pennsylvania Avenue NW
Washington, D.C. 20460
Attention: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

If to Borrower:⁶

Escondido Joint Powers Financing Authority
201 North Broadway
Escondido, California 92025
Attention: [●]
Email: [●]

If to City:

City of Escondido
201 North Broadway
Escondido, California 92025
Attention: [●]
Email: [●]

Unless otherwise instructed by the WIFIA Lender's Authorized Representative, all notices to the WIFIA Lender should be made by email to the email address noted above for the WIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by the Borrower's Authorized Representative, with respect to notices to the Borrower, or by the City's Authorized Representative, with respect to notices to the City, or by the WIFIA Lender's Authorized Representative, with respect to notices to the WIFIA Lender or the Servicer. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 36 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 36 (or in accordance with the latest unrevoked written direction from the receiving party); provided that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day. Notwithstanding the foregoing, nothing in this Section 36 obligates the City to pay principal of or interest on the WIFIA Loan or the WIFIA Note.

Section 37. Indemnification. The Borrower and the City shall, to the extent permitted by law, indemnify on a joint and several basis the WIFIA Lender and any official, employee, agent, advisor or representative of the WIFIA Lender (each such Person being herein referred to as an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the WIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural

⁶ **Note to City:** Please provide remaining notice information for the Borrower and the City.

resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower and the City shall each be entitled, at its expense, to participate in the defense thereof; provided that such Indemnitee has the right to retain its own counsel, at the expense of the Borrower or the City, as applicable, and such participation by the Borrower and/or the City in the defense thereof shall not release the Borrower or the City of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 37 is made shall be entitled, after consultation with the Borrower and the City and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower and the City for purposes of this Section 37. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, none of the Borrower, the City, or the WIFIA Lender shall assert, and the Borrower, the City, and the WIFIA Lender each hereby waives, any claim against any Indemnitee, the Borrower, or the City, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the WIFIA Loan or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Borrower's or the City's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 37 shall be payable promptly upon demand therefor. The obligations of the Borrower and the City under this Section 37 shall survive the payment or prepayment in full of the WIFIA Note pursuant to Section 8 (*Payment of Principal and Interest*) or Section 9 (*Prepayment*), the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 37) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower or the City hereunder or thereunder.

Section 38. Sale of WIFIA Loan. The WIFIA Lender shall not sell the WIFIA Loan at any time prior to the Substantial Completion Date. After such date, the WIFIA Lender may sell the WIFIA Loan to another entity or reoffer the WIFIA Loan into the capital markets only in accordance with the provisions of this Section 38. Such sale or reoffering shall be on such terms as the WIFIA Lender shall deem advisable. However, in making such sale or reoffering the WIFIA Lender shall not change the terms and conditions of the WIFIA Loan without the prior written consent of the Borrower and the City in accordance with Section 29 (*Amendments and Waivers*). The WIFIA Lender shall provide, at least sixty (60) days prior to any sale or reoffering of the WIFIA Loan, written notice to the Borrower and the City of the WIFIA Lender's intention to consummate such a sale or reoffering; provided that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 38 shall neither (x) obligate the WIFIA Lender to sell nor (y) provide either of the Borrower or the City

with any rights or remedies in the event the WIFIA Lender, for any reason, does not sell the WIFIA Loan. Neither the Borrower nor the City shall have any obligation to provide any disclosure, representation, warranty, estoppel, certificate, consent, agreement, approval, or other assistance to the WIFIA Lender or any proposed purchaser or assignee of the WIFIA Loan in connection with any proposed sale or assignment of the WIFIA Loan.

Section 39. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 40. Termination. This Agreement shall terminate upon the irrevocable payment in full in immediately available funds by the Borrower of the Outstanding WIFIA Loan Balance, together with all accrued interest, fees and expenses with respect thereto; provided that the indemnification requirements of Section 37 (*Indemnification*), the reporting and record keeping requirements of Section 15(l) (*Affirmative Covenants of the Borrower – Access; Records*) and Section 17(p) (*Affirmative Covenants of the City – Access; Records*), and the payment requirements of Section 10 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such sections.

Section 41. Integration. This Agreement, together with the other WIFIA Loan Documents, constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

[The remainder of this page intentionally left blank; signature pages immediately follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**ESCONDIDO JOINT POWERS FINANCING
AUTHORITY**, by its authorized representative

By: _____
Name:
Title:

CITY OF ESCONDIDO,
by its authorized representative

By: _____
Name:
Title:

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**, acting by and through
the Administrator of the Environmental Protection
Agency

By: _____
Name: Michael S. Regan
Title: Administrator

SCHEDULE I
PROJECT BUDGET⁷

SOURCES OF FUNDS	AMOUNT (\$ USD)	PERCENTAGE (%)
WIFIA Loan	\$65,147,348	[49.00]%
Cash	\$30,759,161	31.27%
Previously Incurred Costs	\$4,512,400	4.59%
CA Prop 1E Grant	\$14,900,000	15.15%
Total Sources of Funds	[\$115,318,909]	100.0%

USES OF FUNDS	AMOUNT (\$ USD)	PERCENTAGE (%)
Construction	\$78,525,881	79.82%
Design	\$6,165,903	6.27%
Contingency	\$13,383,825	13.60%
Financing Costs	\$300,000	0.30%
Total Uses of Funds	\$98,375,609	100.0%
Total Eligible Project Costs	\$98,375,609	100.0%
Total Project Costs	\$98,375,609	100.0%

⁷ Note to Draft: Sources of Funds table to be updated.

SCHEDULE II
CONSTRUCTION SCHEDULE

Planning	Design	Construction	Projected Substantial Completion
9/10/2012 – 6/8/2014	3/31/2014 – 5/10/2021	2/8/2022 – 9/25/2024	1/31/2025

SCHEDULE III
EXISTING INDEBTEDNESS

A. Parity Obligations

	Agreement/Series	Outstanding Principal
1.	Funding Agreement (Project No. 3710006-004; Contract No. SRF00CX112), dated November 18, 2002, between the City and the State of California Department of Water Resources, as amended	\$315,311.69
2.	Funding Agreement (Alexander Area Phase II) (Project No. 3710006-004; Agreement No. AR09FP27), dated October 15, 2009, between the City and the State of California Department of Public Health	\$1,519,087.98
3.	Installment Sale Agreement, dated June 1, 2019, between the City and the California Infrastructure and Economic Development Bank	\$14,326,608.26
4.	Installment Purchase Agreement, dated November 1, 2019, between the City and the Borrower	\$47,615,000
5.	Installment Sale Agreement, dated September 1, 2021, between the City and the California Infrastructure and Economic Development Bank	\$25,000,000

B. Subordinate Obligations

	Agreement/Series	Outstanding Principal
1.	N/A	

C. Other Obligations of the City

	Agreement/Series	Outstanding Principal
1.	N/A	

D. Indebtedness of the Borrower

	Agreement/Series	Outstanding Principal
1.	Water System Revenue Refunding Bonds, Series 2019A	\$19,195,000
2.	Water System Revenue Refunding, Bonds, Series 2019B (Taxable)	\$28,420,000

SCHEDULE 13(m)

EXISTING CONSTRUCTION CONTRACTS⁸

Contract Name	Effective Date	Construction Contractor	Amount	Description

⁸ **Note to City:** Please provide this schedule.

EXHIBIT A
FORM OF WIFIA NOTE
ESCONDIDO JOINT POWERS FINANCING AUTHORITY
LAKE WOHLFORD DAM REPLACEMENT PROJECT
(WIFIA – N20149CA)
WIFIA NOTE

Maximum Principal Amount: \$65,147,348 (Sixty Five Million, One Hundred Forty-Seven Thousand, Three Hundred Forty-Eight Dollars)

Effective Date: [●]

Interest Rate Per Annum: [●]%

Due: July 1, 2055

ESCONDIDO JOINT POWERS FINANCING AUTHORITY, a joint exercise of powers agency duly organized and existing under and by virtue of the laws of the State of California (the “**Borrower**”), for value received, hereby promises to pay to the order of the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, acting by and through the Administrator of the United States Environmental Protection Agency, or its assigns (the “**WIFIA Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the WIFIA Lender (such lesser amount being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the WIFIA Loan Agreement (as defined below)) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the WIFIA Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the WIFIA Loan Agreement in accordance with **Exhibit F** (*WIFIA Debt Service*) to the WIFIA Loan Agreement, as revised from time to time in accordance with the WIFIA Loan Agreement, until paid in full (which **Exhibit F**, as modified from time to time in accordance with the terms of the WIFIA Loan Agreement, is incorporated in and is a part of this WIFIA Note). The WIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit F** to the WIFIA Loan Agreement from time to time in accordance with the terms of the WIFIA Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the WIFIA Lender’s determination of such matters as set forth on **Exhibit F** to the WIFIA Loan Agreement shall be conclusive evidence thereof; provided that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower’s obligations hereunder or under any other WIFIA Loan Document.

Payments hereon are to be made in accordance with Section 8(e) (*Payment of Principal and Interest – Manner of Payment*) and Section 36 (*Notices*) of the WIFIA Loan Agreement as the

same become due. Principal of and interest on this WIFIA Note shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts.

This WIFIA Note has been executed under and pursuant to that certain WIFIA Loan Agreement, dated as of the date hereof, among the WIFIA Lender, the Borrower and the City (the “**WIFIA Loan Agreement**”) and is issued to evidence the obligation of the Borrower under the WIFIA Loan Agreement to repay the loan made by the WIFIA Lender and any other payments of any kind required to be paid by the Borrower under the WIFIA Loan Agreement or the other WIFIA Loan Documents referred to therein. Reference is made to the WIFIA Loan Agreement for all details relating to the Borrower’s obligations hereunder. All capitalized terms used in this WIFIA Note and not defined herein shall have the meanings set forth in the WIFIA Loan Agreement.

This WIFIA Note may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the WIFIA Loan Agreement; provided such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1 in excess thereof), from time to time, but not more than annually, without penalty or premium, by paying to the WIFIA Lender all or part of the principal amount of the WIFIA Note in accordance with the WIFIA Loan Agreement.

This WIFIA Note shall be subject to mandatory prepayment on the terms and conditions set forth in the WIFIA Loan Agreement.

Payment of the obligations of the Borrower under this WIFIA Note is secured pursuant to the WIFIA Loan Agreement.

This WIFIA Note is a limited obligation of the Borrower, payable solely from the Authority Revenues, and does not constitute a debt of the members of the Borrower, the State or any of its political subdivisions (including the City), except the Borrower. Notwithstanding anything to the contrary set forth in this WIFIA Note, the City is not a borrower with respect to this WIFIA Note and the City has no obligation to make any payment or provision for payment of this WIFIA Note. This WIFIA Note does not constitute a contract between the City and the WIFIA Lender by which the City has incurred an indebtedness.

Any delay on the part of the WIFIA Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

All acts, conditions and things required by the Constitution and laws of the State to happen, exist, and be performed precedent to and in the issuance of this WIFIA Note have happened, exist and have been performed as so required. This WIFIA Note is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State shall govern its construction to the extent such federal laws are not applicable.

IN WITNESS WHEREOF, ESCONDIDO JOINT POWERS FINANCING AUTHORITY has caused this WIFIA Note to be executed in its name and its seal to be affixed hereto and attested by its duly authorized officer, all as of the Effective Date set forth above.

**ESCONDIDO JOINT POWERS
FINANCING AUTHORITY,**
by its authorized representative

(SEAL)

By _____

Name: _____

Title: _____

ATTEST:

Secretary

EXHIBIT B

ANTICIPATED WIFIA LOAN DISBURSEMENT SCHEDULE⁹

<u>Federal Fiscal Year</u>	<u>Amount</u>
2022	[\$1,723,800]
2023	[\$18,390,467]
2024	[\$18,390,467]
2025	[\$9,699,314]
Total	\$65,147,348

⁹ Note to Draft: To be updated.

EXHIBIT C

FORM OF NON-DEBARMENT CERTIFICATE

The undersigned, on behalf of [ESCONDIDO JOINT POWERS FINANCING AUTHORITY (the "Borrower") [CITY OF ESCONDIDO (the "City")], hereby certifies that the [Borrower] [City] has fully complied with its verification obligations under 2 C.F.R. § 180.320 and hereby further confirms, based on such verification, that, to its knowledge, the [Borrower] [City] and each of the [Borrower's] [City's] principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. 1532.995):

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

(b) Have not within a three (3) year period preceding the Effective Date been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement, dated as of [●] (the "WIFIA Loan Agreement"), by and among the [Borrower] [City], [City of Escondido] [Escondido Joint Powers Financing Authority] and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency.

Dated: [●]

**[ESCONDIDO JOINT POWERS FINANCING
AUTHORITY] [CITY OF ESCONDIDO]**, by its
authorized representative

By: _____
Name:
Title:

EXHIBIT D

REQUISITION PROCEDURES

This **Exhibit D** sets out the procedures which the Borrower and the City agree to follow in submitting Requisitions for the disbursement of WIFIA Loan proceeds in respect of the Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Sections 2 through 4 set out the circumstances in which the WIFIA Lender may reject or correct Requisitions submitted by the City, as agent of the Borrower pursuant to the WIFIA IPA, or withhold a disbursement. The Borrower and the City expressly agree to the terms hereof, and further agree that (i) the rights of the WIFIA Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the WIFIA Lender under the WIFIA Loan Agreement, and (ii) nothing contained herein shall be construed to limit the rights of the WIFIA Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrower or the City if it fails to carry out its obligations under the WIFIA Loan Agreement during the term thereof.

Section 1 General Requirements. All requests by the City, as agent of the Borrower pursuant to the WIFIA IPA, for the disbursement of WIFIA Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the WIFIA Lender, in accordance with Section 36 (*Notices*) of the WIFIA Loan Agreement, of a Requisition, in form and substance satisfactory to the WIFIA Lender and completed and executed by the City's Authorized Representative. The form of Requisition is attached as **Appendix One** (*Form of Requisition*) to this **Exhibit D**. Any disbursement request shall be accompanied by a certificate completed and executed by the Borrower's Authorized Representative in the form of **Appendix Two** (*Form of Borrower Disbursement Certificate*) to this **Exhibit D**.

Supporting documentation should be submitted with the Requisition. If the City, as agent of the Borrower pursuant to the WIFIA IPA, anticipates that it will draw down all or a portion of the proceeds of the WIFIA Loan to reimburse the Borrower or the City for Eligible Project Costs paid by or on behalf of the Borrower or the City prior to such disbursement of WIFIA Loan proceeds, whether paid from funds of the Borrower or the City or from proceeds of Obligations issued by the City, including for the purpose of paying or redeeming such Obligations, the City, as agent of the Borrower pursuant to the WIFIA IPA, shall deliver appropriate documentation, including invoices and records, evidencing such incurred or paid Eligible Project Costs (the "**Eligible Project Costs Documentation**"). The Eligible Project Costs Documentation must provide sufficient detail to enable the WIFIA Lender to verify that such costs are Eligible Project Costs paid by the Borrower or the City, as agent of the Borrower pursuant to the WIFIA IPA, in connection with the reimbursement of such Eligible Project Costs. The WIFIA Lender shall review the Eligible Project Costs Documentation for compliance with WIFIA disbursement requirements, and any amounts approved by the WIFIA Lender as Eligible Project Costs will be disbursed at such time as the City, as agent of the Borrower pursuant to the WIFIA IPA, submits a Requisition in respect of such approved amounts.

The WIFIA Lender agrees to promptly send to the Borrower and the City in accordance with Section 36 (*Notices*) of the WIFIA Loan Agreement, an acknowledgement of receipt of each Requisition in the form attached as **Appendix Three** (*[Approval/Disapproval] of the WIFIA*

Lender) to this **Exhibit D** setting forth the date of receipt by the WIFIA Lender of such Requisition and setting forth the Business Day on which disbursement will be made absent denial by the WIFIA Lender. All disbursement requests must be received by the WIFIA Lender at or before 5:00 P.M. (EST) on the first (1st) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15th) day of such calendar month or, if either such day is not a Business Day, the next succeeding Business Day. If a Requisition is approved by the WIFIA Lender, the WIFIA Lender will notify the Borrower of such approval and of the amount so approved.

Section 2. Rejection. A Requisition may be rejected in whole or in part by the WIFIA Lender if it is: (a) submitted without signature; (b) submitted under signature of a Person other than the City's Authorized Representative; (c) submitted after prior disbursement of all proceeds of the WIFIA Loan; (d) submitted without adequate Eligible Project Costs Documentation, including (i) copies of invoices and records evidencing the Eligible Project Costs, (ii) a summary of the progress of construction of the Project and a general description of the work done for which the funds being requisitioned are being applied (or a certification that no change has occurred since the date of the latest quarterly report provided pursuant to Section 20(c)(i) (*Reporting Requirements of the City – Construction Reporting*), and (iii) a copy of the most recent update to the City's risk register, if requested by the WIFIA Lender.

The WIFIA Lender will notify the Borrower and the City of any Requisition so rejected, and the reasons therefor. Any Requisition rejected for the reasons specified above (other than Section 2(c)) must be resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the WIFIA Loan proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the WIFIA Lender will so notify the Borrower and the City.

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the WIFIA Lender, after telephonic or email notification to the Borrower or the City, and will thereafter be treated as if submitted in the corrected amount.

Section 4. Withholding. The WIFIA Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of WIFIA Loan proceeds if: (a) a Default or an Event of Default shall have occurred and be continuing; (b) either the Borrower or the City (i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable law, in connection with the transactions contemplated hereby; (ii) prevents or materially impairs the ability of the WIFIA Lender to monitor compliance by either the Borrower or the City with applicable law pertaining to the Project or with the terms and conditions of the WIFIA Loan Agreement; (iii) fails to observe or comply with any applicable law, or any term or condition of the WIFIA Loan Agreement; (iv) fails to satisfy the conditions set forth in Section 4 (*Disbursement Conditions*) and Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*) of the WIFIA Loan Agreement; or (v) fails to deliver Eligible Project Costs Documentation satisfactory to the WIFIA Lender at the times and in the manner specified by the WIFIA Loan Agreement; provided that in such case of Section 4, clause (v) above, the WIFIA Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

APPENDIX ONE TO EXHIBIT D
FORM OF REQUISITION

United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
WJC-W 6201A
Washington, D.C. 20460
Attention: WIFIA Director

Re: LAKE WOHLFORD DAM REPLACEMENT PROJECT (WIFIA Ref N20149CA)

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the WIFIA Loan Agreement, dated as of [●] (the “**WIFIA Loan Agreement**”), by and among ESCONDIDO JOINT POWERS FINANCING AUTHORITY (the “**Borrower**”), CITY OF ESCONDIDO (the “**City**”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “**WIFIA Lender**”), the City, as agent of the Borrower pursuant to the WIFIA IPA, hereby requests disbursement in the amount set forth below in respect of Eligible Project Costs paid or incurred by the City, as agent of the Borrower pursuant to the WIFIA IPA. Capitalized terms used but not defined herein have the meaning set forth in the WIFIA Loan Agreement.

In connection with this Requisition the undersigned, as the City’s Authorized Representative, hereby represents and certifies the following:

1.	Project name	Lake Wohlford Dam Replacement Project
2.	Borrower name	Escondido Joint Powers Financing Authority
3.	WIFIA reference number	N20149CA
4.	Requisition number	[__]
5.	Requested disbursement amount	\$[__]
6.	Requested disbursement date (the “Disbursement Date”)	[__]
7.	Total amounts previously disbursed under the WIFIA Loan Agreement	\$[__]
8.	Wire instructions	[__]

9. The amounts hereby requisitioned are being requested with respect to [Eligible Project Costs previously submitted to and approved by the WIFIA Lender in accordance with the WIFIA Loan Agreement] [Eligible Project Costs which have not and will not be otherwise submitted to the WIFIA Lender for approval].

10. The amounts hereby requisitioned have been paid or incurred and approved for payment by or on behalf of the City, as agent of the Borrower pursuant to the WIFIA IPA, for

- Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from WIFIA Loan proceeds. No portion of the amounts requisitioned will be applied to pay for Eligible Project Costs that have been previously paid, or are expected to be paid, with proceeds of debt that is not the WIFIA Loan.
11. The aggregate amount of all disbursements of the WIFIA Loan (including the amount requested under this Requisition) does not exceed (a) the maximum principal amount of the WIFIA Loan or (b) the aggregate amount of Eligible Project Costs paid or incurred by the City, as agent of the Borrower pursuant to the WIFIA IPA.
 12. Each of the insurance policies maintained by the City pursuant to Section 17(f) (*Affirmative Covenants of the City – Insurance; Net Proceeds*) of the WIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
 13. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Loan proceeds), (a) no Default or Event of Default, and no event of default under any other Related Document to which the City is a party and (b) no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any Related Document to which the City is a party, in each case, has occurred and is continuing. No City Material Adverse Effect, or any event or condition that could reasonably be expected to have a City Material Adverse Effect, has occurred or arisen since the Effective Date.
 14. The City and each of the contractors and subcontractors at all tiers with respect to the Project have complied with all applicable laws, rules, regulations and requirements, including 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products). Supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, are being maintained and are available for review upon request by the WIFIA Lender.
 15. The representations and warranties of the City set forth in the WIFIA Loan Agreement and in each other WIFIA Loan Document to which the City is a party are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties are true and correct as of such earlier date).
 16. Each Related Document that has been delivered by the City to the WIFIA Lender pursuant to Section 11(b)(iv) (*Conditions Precedent – Conditions Precedent to Disbursements*) is complete, fully executed and in full force and effect.
 17. The current estimated percentage of physical completion of the Project is [___]%. The City, as agent of the Borrower pursuant to the WIFIA IPA, is in compliance with Section 20(c) (*Reporting Requirements of the City – Construction Reporting*) and no change has occurred since the date of the most recently delivered semi-annual construction progress report that could reasonably be expected to cause a Material Adverse Effect.

18. All documentation evidencing the Eligible Project Costs to be reimbursed to the City, as agent of the Borrower pursuant to the WIFIA IPA, by the above-requested disbursement has been delivered by the City, as agent of the Borrower pursuant to the WIFIA IPA, to the WIFIA Lender at the times and in the manner specified by the WIFIA Loan Agreement, including the details set forth [in the attachment hereto, which is in form satisfactory to the WIFIA Lender][below:

								WIFIA USE ONLY	
Vendor or Contractor Name ¹⁰	Invoice Number ¹¹	Invoice Date	Payment Date	Invoice Amount	WIFIA Requested Amount ¹²	Activity Type ¹³	Description of Activity ¹⁴	Approved Amount	Notes

The undersigned acknowledges that if the City makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Government in connection with the Project, the Government reserves the right to impose on the City the penalties of 18 U.S.C. § 1001, to the extent the Government deems appropriate.

Date: _____ CITY OF ESCONDIDO,
By its authorized representative
By: _____
Name: _____
Title: _____

¹⁰ If seeking reimbursement for internal costs, enter “Internally financed activities.”

¹¹ Vendor’s number indicated on the invoice sent to the Borrower.

¹² If the amount requested for reimbursement by the WIFIA Lender is less than the total amount of the invoice, include an explanation for the difference.

¹³ Specify whether activity is: (a) **Development phase activity**, which includes planning, preliminary engineering, design, environmental review, revenue forecasting and other pre-construction activities; (b) **Construction**, which includes construction, reconstruction, rehabilitation and replacement activities; (c) **Acquisition of real property**, which includes acquiring an interest in real property, environmental mitigation, construction contingencies and acquisition of equipment; (d) **Carrying costs**, including capitalized interest, as necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction; (e) **WIFIA fees**, including for application and credit processing; or (f) **Other**, with an explanation in the “Description of Activity” column.

¹⁴ Provide a brief description of the activities included in the invoice for which WIFIA funds are being requested and any other notes that will aid in the review of the disbursement request.

APPENDIX TWO TO EXHIBIT D

FORM OF BORROWER'S DISBURSEMENT CERTIFICATE

United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
WJC-W 6201A
Washington, D.C. 20460
Attention: WIFIA Director

Re: LAKE WOHLFORD DAM REPLACEMENT PROJECT (WIFIA Ref N20149CA)

Ladies and Gentlemen:

Reference is made to that certain WIFIA Loan Agreement, dated as of [●] (the "**WIFIA Loan Agreement**"), by and among ESCONDIDO JOINT POWERS FINANCING AUTHORITY (the "**Borrower**"), CITY OF ESCONDIDO (the "**City**") and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the "**WIFIA Lender**"). Capitalized terms used but not defined herein have the meaning set forth in the WIFIA Loan Agreement.

Pursuant to Section 11(b)(iii) (*Conditions Precedent – Conditions Precedent to Disbursements*) of the WIFIA Loan Agreement, the undersigned, as the Borrower's Authorized Representative, hereby represents and certifies the following:

1. As of the date hereof and on the requested disbursement date (immediately after giving effect to the requested disbursement of WIFIA Loan proceeds), (a) no Default or Event of Default, and no event of default under any other Related Document to which the Borrower is a party and (b) no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any Related Document to which the Borrower is a party, in each case, has occurred and is continuing.
2. No Borrower Material Adverse Effect, or any event or condition that could reasonably be expected to have a Borrower Material Adverse Effect, has occurred or arisen since the Effective Date.
3. The Borrower has complied with all applicable laws, rules, regulations and requirements.
4. The representations and warranties of the Borrower set forth in the WIFIA Loan Agreement (including Section 12 (*Representations and Warranties of the Borrower*)) and in each other WIFIA Loan Document to which the Borrower is a party are true and correct as of the date hereof and as of the requested disbursement date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Government in connection with the Project, the

Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001, to the extent the Government deems appropriate.

Date: _____ ESCONDIDO JOINT POWERS FINANCING
AUTHORITY,
By its authorized representative
By: _____
Name:
Title: _____

APPENDIX THREE TO EXHIBIT D

**[APPROVAL/DISAPPROVAL] OF THE WIFIA LENDER
(To be delivered to the Borrower and the City)**

Requisition Number [_____] is [approved in the amount of \$[_____] [approved in part in the amount of \$[_____] [not approved, for the reasons set forth in Annex A attached hereto,]¹⁵ by the WIFIA Lender (as defined herein) pursuant to Section 4 (*Disbursement Conditions*) of the WIFIA Loan Agreement, dated as of [●], by and among Escondido Joint Powers Financing Authority (the “**Borrower**”), City of Escondido (the “**City**”) and the United States Environmental Protection Agency, acting by and through the Administrator (the “**WIFIA Lender**”).

Any determination, action or failure to act by the WIFIA Lender with respect to the Requisition set forth above, including any withholding of a disbursement, shall be at the WIFIA Lender’s sole discretion, and in no event shall the WIFIA Lender be responsible for or liable to the Borrower or the City for any and/or all consequence(s) which are the result thereof.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**, acting by and through
the Administrator

By: _____
WIFIA Lender’s Authorized Representative
Name:
Title:
Dated:

¹⁵ If there is any partial or full denial of approval, the WIFIA Lender should provide a separate attachment setting forth the reasons for such partial or full denial of approval.

EXHIBIT E

FORM OF NON-LOBBYING CERTIFICATE

The undersigned, on behalf of [ESCONDIDO JOINT POWERS FINANCING AUTHORITY (the “**Borrower**”)] [CITY OF ESCONDIDO (the “**City**”)], hereby certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the [Borrower] [City], to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of the WIFIA Loan.

(b) If any funds other than proceeds of the WIFIA Loan have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the WIFIA Loan, the [Borrower] [City] shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(c) The [Borrower] [City] shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement, dated as of [●] (the “**WIFIA Loan Agreement**”), by and among the [Borrower] [City], [City of Escondido] [Escondido Joint Powers Financing Authority] and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency.

This certification is a material representation of fact upon which reliance was placed when the WIFIA Lender entered into the WIFIA Loan Agreement. Submission of this certification is a prerequisite to the effectiveness of the WIFIA Loan Agreement imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Dated: [●]

[ESCONDIDO JOINT POWERS FINANCING AUTHORITY] [CITY OF ESCONDIDO], by its authorized representative

By: _____

Name:

Title:

EXHIBIT F
WIFIA DEBT SERVICE¹⁶

¹⁶ **NTD:** To be provided by the WIFIA Lender on the Effective Date.

EXHIBIT G-1

FORM OF OPINION OF BORROWER'S GENERAL COUNSEL

[●]

United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

*Re: Lake Wohlford Dam Replacement Project – City of Escondido and Escondido
Joint Powers Financing Authority (WIFIA – N20149CA)*

Ladies and Gentlemen:

We have acted as general counsel to the Escondido Joint Powers Financing Authority (the “Borrower”) in connection with the execution and delivery by the Borrower of (a) the WIFIA Installment Purchase Agreement, dated as of [●] (the “WIFIA IPA”), by and between the Borrower and the City of Escondido (the “City”), (b) the WIFIA Loan Agreement, dated as of [●] (the “WIFIA Loan Agreement”), by and among the Borrower, the City and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “WIFIA Lender”), (c) the WIFIA Note, dated as of [●] (the “WIFIA Note”), delivered to the WIFIA Lender by the Borrower, and (d) Resolution No. EJPFA-2022-[●], adopted by the Board of Directors of the Borrower on [May 11, 2022] (the “WIFIA Borrower Resolution” and, collectively with the WIFIA IPA, the WIFIA Loan Agreement and the WIFIA Note, the “WIFIA Borrower Documents”). In arriving at the opinions expressed below, we have reviewed and are familiar with (i) the [Joint Exercise of Powers Agreement], dated [●] (the “Joint Powers Agreement”), by and between [●], (ii) the WIFIA Borrower Documents and (iii) such other information and documents as we deem necessary to render this opinion on behalf of the Borrower. Our opinions, statements and representations herein made are on behalf of the Borrower and not on behalf of the individual member agencies of the Borrower. All capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to such terms in the WIFIA Loan Agreement.

Based upon the foregoing and our review of such other matters of law as we considered necessary, we are of the opinion that:

1. The Borrower has been duly created and validly exists as a joint exercise of powers agency under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California.
2. The Borrower has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under, the Related Documents to which it is a party.

3. The execution and delivery by the Borrower of, and the performance of its respective obligations under, the Related Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action, and the WIFIA Borrower Resolution was duly adopted at a regular meeting of the governing board of the Borrower which was duly called and held and at which a quorum was present and acting throughout.

4. The Borrower has duly executed and delivered each Related Document to which it is a party and each such Related Document constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms.

5. No authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the Borrower for the execution and delivery by the Borrower of, and the performance of the Borrower under, any Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower.

6. The execution and delivery by the Borrower of, and compliance by the Borrower with the provisions of, the Related Documents to which it is a party in each case do not (i) violate the Joint Powers Agreement, (ii) violate the law of the United States of America or of the State, or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to us to which the Borrower is a party, or to the best of our knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject.

7. To our knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the Borrower by or before any court, arbitrator or any other Governmental Authority in connection with the Related Documents or the System (including the Project) that are pending.

8. The Borrower is not entitled to claim governmental immunity in any breach of contract action under the WIFIA Borrower Documents.

With respect to the opinions expressed herein, the rights and obligations under the Related Documents to which the Borrower is a party are subject to bankruptcy, insolvency, reorganization, moratorium, arrangement, fraudulent conveyance or transfer and other similar laws affecting creditors' rights, to the application of equitable principles if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against public agencies in the State. We express no opinion on the requirements of or compliance with securities or tax laws.

This opinion is rendered only with respect to the laws of the State and the laws of the United States of America and is addressed only to the WIFIA Lender. No other person is entitled to rely on this opinion, nor may you rely on it in connection with any transaction other than those described herein. No attorney-client relationship has existed or exists between this office and you in connection with the WIFIA Borrower Documents or any other Related Document or by virtue of this letter.

Respectfully,

EXHIBIT G-2

FORM OF OPINION OF BORROWER'S BOND COUNSEL

[●]

United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: *Lake Wohlford Dam Replacement Project – City of Escondido and Escondido Joint Powers Financing Authority (WIFIA – N20149CA)*

Ladies and Gentlemen:

We have acted as Special Counsel to the Escondido Joint Powers Financing Authority (the “Borrower”) in connection with the execution and delivery, or adoption, by the Borrower of (i) that certain WIFIA Installment Purchase Agreement, dated as of [●] (the “WIFIA IPA”), by and between the Borrower and the City of Escondido (the “City”), (ii) the WIFIA Loan Agreement, dated as of [●] (the “WIFIA Loan Agreement”), by and among the Borrower, the City and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “WIFIA Lender”), (iii) that certain WIFIA Note, dated as of [●] (the “WIFIA Note” and, collectively with the WIFIA IPA and the WIFIA Loan Agreement, the “WIFIA Borrower Documents”), delivered to the WIFIA Lender by the Borrower, and (iv) Resolution No. EJPFA-2022-[●], adopted by the Board of Directors of the Borrower on [May 11, 2022] (the “WIFIA Borrower Resolution”). All capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to such terms in the WIFIA Loan Agreement.

Based upon the foregoing and our review of such other information, documents and matters of law as we considered necessary and in reliance on the foregoing, as appropriate, we are of the opinion that:

1. The Borrower has all requisite power and authority under the laws of the State, including but not limited to Article 4 of the Joint Exercise of Powers Act of the State, to adopt the WIFIA Borrower Resolution, to execute and deliver the WIFIA Borrower Documents and to issue the WIFIA Note, and each WIFIA Borrower Document and the WIFIA Resolution has been duly authorized, executed and delivered by the Borrower, and each WIFIA Borrower Document and the WIFIA Borrower Resolution is in full force and effect, and constitutes a legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its respective terms and conditions.

2. (a) The WIFIA Loan (as evidenced by the WIFIA Note) is secured by the pledge and assignment of the Borrower Assigned Rights, and (b) the WIFIA Loan (as evidenced by the WIFIA Note) is enforceable under the laws of the State without any further action by the Borrower or any other Person.

3. The WIFIA Loan Agreement creates a valid and binding pledge and assignment of and lien on the Borrower Assigned Rights to secure the payment of the principal of, interest on, and other amounts payable in respect of, the WIFIA Loan in accordance with the WIFIA Loan Agreement, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act.

4. All actions by the Borrower that are required for the application of the Authority Revenues as required under the WIFIA Loan Agreement have been duly and lawfully authorized.

5. The Borrower has complied with the requirements of State law to lawfully pledge and assign the Borrower Assigned Rights and to authorize the use of the Authority Revenues as required by the terms of the WIFIA Loan Agreement.

6. The Borrower is not an investment company required to register under the Investment Company Act of 1940, as amended.

The opinions expressed herein are based upon our analysis and interpretation of existing laws, regulations, rulings and judicial decisions and cover certain matters not directly addressed by such authorities. Such conclusions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform you or any other person, whether any such actions are taken or omitted after the date hereof or whether such events do occur or any other matters come to our attention after the date hereof. We have assumed, but not independently verified, that the signatures on all documents, letters, opinions and certificates which we have examined are genuine and that all documents submitted to us are authentic and were duly and properly executed by the parties thereto. As to any facts relevant to the opinions stated herein that we did not independently establish or verify, we have relied upon, without independent verification, the accuracy of the factual matters represented, warranted or certified in such documents.

This opinion is limited to matters governed by the laws of California and the United States of America, and we assume no responsibility with respect to the applicability or the effect of the laws of any other jurisdiction. We call attention to the fact that the rights and obligations under the WIFIA Loan Agreement, the WIFIA Borrower Documents and the WIFIA Borrower Resolution are subject to bankruptcy, insolvency, reorganization, moratorium, arrangement, fraudulent conveyance or transfer and other similar laws affecting creditors' rights, to the application of equitable principles if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against public agencies in the State.

By delivering this letter, we are not expressing any opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute a penalty), right of set-off, arbitration, judicial reference, choice of law, choice of forum, choice of venue, non-exclusivity of remedies, waiver or severability provisions contained in the WIFIA Borrower Documents, nor are we expressing any opinion with respect to the state or quality of title to or interest in any assets, other than the Borrower Assigned Rights, and the WIFIA Borrower Documents or the accuracy or sufficiency of the description of such assets, other than

the Borrower Assigned Rights, and the WIFIA Borrower Documents, or the remedies available to enforce liens on any such assets, other than the Borrower Assigned Rights under the WIFIA Loan Agreement and the WIFIA Note. Our services as Special Counsel to the Borrower did not involve the rendering of financial or other non-legal advice to you, the Borrower, the City or any other party to the transaction.

This letter is furnished by us to you solely for your benefit and we are not assuming any professional responsibility to any other person whomsoever. This letter is not to be used, circulated, quoted or otherwise referred to for any other purpose, except (a) to the extent disclosure of this opinion is required pursuant to applicable law, and (b) that this opinion may be included in applicable closing transcript. No attorney-client relationship has existed or exists between our firm and you in connection with the WIFIA Borrower Documents or the WIFIA Borrower Resolution or by virtue of this letter.

Respectfully submitted,

EXHIBIT G-3

FORM OF OPINION OF CITY ATTORNEY

[●]

United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

*Re: Lake Wohlford Dam Replacement Project – City of Escondido and Escondido
Joint Powers Financing Authority (WIFIA – N20149CA)*

Ladies and Gentlemen:

We have acted as general counsel to the City of Escondido (the “City”) in connection with the execution and delivery by the City of (a) the WIFIA Installment Purchase Agreement, dated as of [●] (the “WIFIA IPA”), by and between the City and the Escondido Joint Powers Financing Authority (the “Borrower”), (b) the WIFIA Loan Agreement, dated as of [●] (the “WIFIA Loan Agreement”), by and among the City, the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “WIFIA Lender”), and (c) Resolution No. 2022-[●] of the City Council of the City, adopted on [May 11, 2022] (the “WIFIA City Resolution” and, collectively with the WIFIA IPA and the WIFIA Loan Agreement, the “WIFIA City Documents”). In arriving at the opinions expressed below, we have examined and are familiar with the following documents: (i) documents relating to the existence, organization and operation of the City provided to us by the City, (ii) the City Closing Certificate, dated the date hereof and executed by the City Manager or other duly authorized officer, (iii) the WIFIA City Documents, (iv) all necessary documentation of the City relating to the authorization, execution and delivery of the WIFIA City Documents, and (v) certain consents to the adoption of the WIFIA City Resolution and execution and delivery of the WIFIA City Documents. All capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to such terms in the WIFIA Loan Agreement.

In rendering our opinions herein we have relied only on our examination of the foregoing documents and we have made no independent verification of the factual matters set forth in such documents. In addition, we have relied on discussions with the City Manager, Finance Director, Director of Utilities and other officers of the City and information made available in the ordinary course of business in our role as general counsel to the City. In rendering the opinions expressed below, we have assumed, but not independently verified, that the signatures on all documents which we have examined are genuine.

Based upon the foregoing and such other matters of law as we deemed necessary for purposes of rendering this opinion, and subject to the qualifications set forth below, we are of the opinion that:

1. The City is a municipal corporation and general law city duly organized and validly existing under the Constitution and the laws of the State of California.

2. The City has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under, the WIFIA City Documents.

3. The execution and delivery by the City of, and the performance of its obligations under, the WIFIA City Documents have been duly authorized by all necessary organizational or regulatory action.

4. The City has duly executed and delivered each WIFIA City Document, and each such WIFIA City Document constitutes the legal, valid and binding obligation of the City, enforceable against the City in accordance with its respective terms.

5. No authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the City for the execution and delivery by the City of, and the performance of the City under, the WIFIA City Documents other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the City.

6. The execution and delivery by the City of, and compliance by the City with the provisions of, the WIFIA City Documents do not (i) violate the law of the United States of America or of the State, (ii) violate any ordinance, regulation or other legislative action of the City or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to us to which the City is a party, or to the best of our knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the City is subject.

7. To our knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the City by or before any court, arbitrator or any other Governmental Authority in connection with the WIFIA City Documents or the System (including the Project) that are pending.

8. The City is not entitled to claim governmental immunity under the California Government Claims Act or any other law of the State, or under any ordinance, regulation or other legislative action of the City in any breach of contract action under the WIFIA City Documents.

With respect to the opinions expressed herein, the rights and obligations under the WIFIA City Documents are subject to bankruptcy, insolvency, reorganization, moratorium, arrangement, fraudulent conveyance or transfer and other similar laws affecting creditors' rights, to the application of equitable principles if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against public agencies in the State. We express no opinion on the requirements of or compliance with securities or tax laws.

This opinion is rendered only with respect to the laws of the State and the laws of the United States of America and is addressed only to the WIFIA Lender. No other person is entitled to rely on this opinion, nor may you rely on it in connection with any transaction other than those described herein. No attorney-client relationship has existed or exists between this office and you in connection with the WIFIA City Documents or by virtue of this letter.

Respectfully,

EXHIBIT G-4

FORM OF OPINION OF CITY'S BOND COUNSEL

[●]

United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Ladies and Gentlemen:

We have acted as Special Counsel to the City of Escondido (the "City") in connection with the execution and delivery, or adoption, by the City of (i) that certain WIFIA Installment Purchase Agreement, dated as of [●] (the "WIFIA IPA"), by and between the City and the Escondido Joint Powers Financing Authority (the "Borrower"), (ii) that certain WIFIA Loan Agreement, dated as of [●] (the "WIFIA Loan Agreement" and collectively with the WIFIA IPA, the "WIFIA City Documents"), by and among the City, the Borrower and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency, and (iii) Resolution No. 2022-[●] of the Board of Directors of the City, adopted on [May 11, 2022] (the "WIFIA City Resolution"), in each case relating to the Lake Wohlford Dam Replacement Project. All capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to such terms in the WIFIA Loan Agreement.

Based upon the foregoing and our review of such other information, documents and matters of law as we considered necessary and in reliance on the foregoing, as appropriate, we are of the opinion that:

1. The City has all requisite power and authority under the laws of the State, including Section 37350, 37351, 38730 and 38742 of the California Government Code, as amended and supplemented from time to time, to adopt the WIFIA City Resolution and to execute and deliver the WIFIA City Documents. Each WIFIA City Document has been duly authorized, executed and delivered by the City, and each WIFIA City Document and the WIFIA City Resolution is in full force and effect and constitutes a legal, valid and binding obligation of the City enforceable against the City in accordance with its respective terms and conditions.

2. The WIFIA Installment Payments (a) are secured by liens on the City Pledged Collateral, (b) are payable from Net Revenues, (c) are Parity Obligations, (d) are enforceable under the laws of the State without any further action by the City or any other Person, and (e) rank *pari passu* in right of payment and right of security with all other Parity Obligations and senior in right of payment and right of security to all Subordinate Obligations.

3. The WIFIA IPA creates a valid and binding assignment of the City Pledged Collateral to secure the payment of the principal of, interest on, and other amounts payable in respect of, the WIFIA Installment Payments, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act.

4. All actions by the City that are required for the application of the Revenues as required under the WIFIA IPA have been duly and lawfully authorized.

5. The City has complied with the requirements of State law to lawfully pledge the City Pledged Collateral and to authorize the use of the Net Revenues as required by the terms of the WIFIA IPA.

6. The City is not an investment company required to register under the Investment Company Act of 1940, as amended.

The opinions expressed herein are based upon our analysis and interpretation of existing laws, regulations, rulings and judicial decisions and cover certain matters not directly addressed by such authorities. Such conclusions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform you or any other person, whether any such actions are taken or omitted after the date hereof or whether such events do occur or any other matters come to our attention after the date hereof. We have assumed, but not independently verified, that the signatures on all documents, letters, opinions and certificates which we have examined are genuine, that all documents submitted to us are authentic and were duly and properly executed by the parties thereto. As to any facts relevant to the opinions stated herein that we did not independently establish or verify, we have relied upon, without independent verification, the accuracy of the factual matters represented, warranted or certified in such documents.

This opinion is limited to matters governed by the laws of the State and the laws of the United States of America, and we assume no responsibility with respect to the applicability or the effect of the laws of any other jurisdiction. We call attention to the fact that the rights and obligations under the WIFIA City Documents and the WIFIA City Resolution are subject to bankruptcy, insolvency, reorganization, moratorium, arrangement, fraudulent conveyance or transfer and other similar laws affecting creditors' rights, to the application of equitable principles if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against public agencies in the State.

By delivering this letter, we are not expressing any opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute a penalty), right of set-off, arbitration, judicial reference, choice of law, choice of forum, choice of venue, non-exclusivity of remedies, waiver or severability provisions contained in the WIFIA City Documents, nor are we expressing any opinion with respect to the state or quality of title to or interest in any assets, other than the City Pledged Collateral and the WIFIA IPA, described in or as subject to the lien of the WIFIA City Documents, or the accuracy or sufficiency of the description of such assets, other than the City Pledged Collateral and the WIFIA City Documents, or the remedies available to enforce liens on any such assets, other than the City Pledged Collateral, under the WIFIA IPA. Our services as Special Counsel to the City did not involve the rendering of financial or other non-legal advice to you, the City, the Borrower or any other party to the transaction.

This letter is furnished by us to you solely for your benefit and we are not assuming any professional responsibility to any other person whomsoever. This letter is not to be used,

circulated, quoted or otherwise referred to for any other purpose, except (a) to the extent disclosure of this opinion is required pursuant to applicable law, and (b) that this opinion may be included in applicable closing transcript. No attorney-client relationship has existed or exists between our firm and you in connection with the WIFIA City Documents or the WIFIA City Resolution or by virtue of this letter.

Respectfully submitted,

EXHIBIT H-1

FORM OF CLOSING CERTIFICATE OF BORROWER

[●]

Reference is made to that certain WIFIA Loan Agreement, dated as of [●] (the "WIFIA Loan Agreement"), by and among the Escondido Joint Powers Financing Authority, as Borrower (the "Borrower"), the City of Escondido, and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the "WIFIA Lender"). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement and section references shall refer to the WIFIA Loan Agreement.

In connection with Section 11(a) (Conditions Precedent – Conditions Precedent to Effectiveness) of the WIFIA Loan Agreement, the undersigned, [●], as Borrower's Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

(a) pursuant to Section 11(a)(ix), attached hereto as Annex A is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the WIFIA Loan Documents to which the Borrower is a party and make the certifications of the Borrower delivered in connection therewith, and who have been appointed as a Borrower's Authorized Representative in accordance with Section 25 (Borrower's Authorized Representative) of the WIFIA Loan Agreement;

(b) pursuant to Section 11(a)(ii), the Borrower has delivered to the WIFIA Lender copies of each Related Document and each Existing Construction Contract to which the Borrower is a party, together with any amendments, waivers or modifications thereto, that has been entered into on or prior to the Effective Date, and each such document is complete, fully executed, and in full force and effect, and all conditions contained in such documents that are necessary to the closing of the WIFIA transactions contemplated by the WIFIA Loan Agreement have been fulfilled;

(c) pursuant to Section 11(a)(iii), the Borrower has delivered to the WIFIA Lender a copy of the Borrower's Organizational Documents, as in effect on the Effective Date, each of which Organizational Documents is in full force and effect;

(d) pursuant to Section 11(a)(v), the Borrower has delivered to the WIFIA Lender a copy of the WIFIA Borrower Resolution, the WIFIA Borrower Resolution is in full force and effect, and no further instruments or documents (including any resolutions, ordinances, and supplements) are necessary for the Borrower to execute and deliver, and to perform its obligations under, the WIFIA Loan Documents to which it is a party and to consummate and implement the transactions contemplated by the WIFIA Loan Documents to which it is a party;

(e) pursuant to Section 11(a)(ix)(A), the Borrower has obtained all Governmental Approvals necessary to execute and deliver, and perform its obligations under, the WIFIA Loan

Documents to which it is a party, and all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach or revocation);

(f) pursuant to Section 11(a)(ix)(B), as of the Effective Date, (i) the maximum principal amount of the WIFIA Loan, together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (ii) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs;

(g) pursuant to Section 11(a)(ix)(C), (i) the Borrower's Federal Employer Identification Number is [●], as evidenced by the Borrower's W-9 which is attached hereto as Annex B-1, (ii) the Borrower's Data Universal Numbering System number is [●], and (iii) the Borrower has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), which confirmation is attached hereto as Annex B-2;

(h) pursuant to Section 11(a)(ix)(D), the WIFIA CUSIP Number is [●];

(i) pursuant to Section 11(a)(ix)(E), the representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other WIFIA Loan Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date;

(j) pursuant to Section 11(a)(ix)(F), no Borrower Material Adverse Effect, or any event or condition that could reasonably be expected to have a Borrower Material Adverse Effect, has occurred or arisen since June 1, 2021;

(k) pursuant to Section 11(a)(xi), none of the rating letters delivered to the WIFIA Lender pursuant to such Section 11(a)(xi) has been reduced, withdrawn or suspended as of the Effective Date;

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

**ESCONDIDO JOINT POWERS FINANCING
AUTHORITY**

By: _____
Name: Jasmin A. Hall
Title: President

ANNEX A

INCUMBENCY CERTIFICATE

The undersigned certifies that he/she is the [Secretary] of the Escondido Joint Powers Financing Authority, a joint exercise of powers agency duly organized and existing under the Constitution and laws of the State of California (the "Borrower"), and as such he/she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Borrower in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He/She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the WIFIA Loan Documents to which the Borrower is a party on behalf of the Borrower as the Borrower's Authorized Representative:

<u>Name</u>	<u>Title</u>	<u>Signature</u>

Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement, dated as of the date hereof, by and among the Borrower, the City of Escondido, and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this [●] day of [●].

**ESCONDIDO JOINT POWERS FINANCING
AUTHORITY**

By: _____
Name:
Title:

EXHIBIT H-2

FORM OF CLOSING CERTIFICATE OF CITY

[●]

Reference is made to that certain WIFIA Loan Agreement, dated as of [●] (the "WIFIA Loan Agreement"), by and among Escondido Joint Powers Financing Authority, as Borrower (the "Borrower"), the City of Escondido (the "City"), and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the "WIFIA Lender"). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement and section references shall refer to the WIFIA Loan Agreement. Notwithstanding anything to the contrary set forth in the WIFIA Loan Agreement, the City is not a borrower with respect to the WIFIA Loan, the WIFIA Note, or the WIFIA Loan Agreement and the City has no obligation to make any payment or provision for payment of the WIFIA Loan or the WIFIA Note. The WIFIA Loan Agreement does not constitute a contract between the City and the WIFIA Lender by which the City has incurred an indebtedness.

In connection with Section 11(a) (Conditions Precedent – Conditions Precedent to Effectiveness) of the WIFIA Loan Agreement, the undersigned, [●], as City's Authorized Representative, does hereby certify on behalf of the City and not in his/her personal capacity, as of the date hereof:

(a) pursuant to Section 11(a)(x), attached hereto as Annex A is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the City to execute the WIFIA Loan Documents to which the City is a party and make the certifications of the City delivered in connection therewith, and who have been appointed as a City's Authorized Representative in accordance with Section 26 (City's Authorized Representative) of the WIFIA Loan Agreement;

(b) pursuant to Section 11(a)(ii), the City has delivered to the WIFIA Lender copies of each Related Document and each Existing Construction Contract to which the City is a party, together with any amendments, waivers or modifications thereto, that has been entered into on or prior to the Effective Date, and each such document is complete, fully executed, and in full force and effect, and all conditions contained in such documents that are necessary to the closing of the WIFIA transactions contemplated by the WIFIA Loan Agreement have been fulfilled;

(c) pursuant to Section 11(a)(iii), the City has delivered to the WIFIA Lender a copy of the City's Organizational Documents, as in effect on the Effective Date, each of which Organizational Documents is in full force and effect;

(d) pursuant to Section 11(a)(iv), the City has delivered to the WIFIA Lender a copy of the WIFIA City Resolution, the WIFIA City Resolution is in full force and effect, and no further instruments or documents (including any resolutions, ordinances, and supplements) are necessary for the City to execute and deliver, and to perform its obligations under, the WIFIA Loan

Documents to which it is a party and to consummate and implement the transactions contemplated by the WIFIA Loan Documents to which it is a party.

(e) pursuant to Section 11(a)(x)(A), the City has obtained all Governmental Approvals necessary (i) as of the Effective Date in connection with the Project and (ii) to execute and deliver, and perform its obligations under, the WIFIA Loan Documents to which it is a party, and all such Governmental Approvals are final, non-appealable and in full force and effect (and are not subject to any notice of violation, breach or revocation);

(f) pursuant to Section 11(a)(x)(B), as of the Effective Date, (i) the maximum principal amount of the WIFIA Loan, together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (ii) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs;

(g) pursuant to Section 11(a)(x)(C), the City is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project;

(h) pursuant to Section 11(a)(x)(D), (i) the City's Federal Employer Identification Number is [●], as evidenced by the City's W-9 which is attached hereto as Annex B-1, (ii) the City's Data Universal Numbering System number is [●], and (iii) the City has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), which confirmation is attached hereto as Annex B-2;

(i) pursuant to Section 11(a)(x)(E), the representations and warranties of the City set forth in the WIFIA Loan Agreement and in each other WIFIA Loan Document to which the City is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date;

(j) pursuant to Section 11(a)(x)(F), no City Material Adverse Effect, or any event or condition that could reasonably be expected to have a City Material Adverse Effect, has occurred or arisen since June 1, 2021;

(k) pursuant to Section 11(a)(xii), the City has delivered to the WIFIA Lender the Base Case Financial Model, which demonstrates that (i) projected Revenues and Authority Revenues are each sufficient to meet the Loan Amortization Schedule and (ii) the City has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project over the useful life of the Project; and

(l) pursuant to Section 11(a)(xiii), the City has delivered to the WIFIA Lender certificates of insurance, and each such insurance certificate is true and correct and demonstrates compliance with the requirements of Section 17(f) (Affirmative Covenants of the City – Insurance; Net Proceeds) of the WIFIA Loan Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

CITY OF ESCONDIDO

By: _____
Name:
Title:

ANNEX A

INCUMBENCY CERTIFICATE

The undersigned certifies that he/she is the [●] of the City of Escondido, a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State of California (the "City"), and as such he/she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the City in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He/She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the WIFIA Loan Documents to which the City is a party on behalf of the City as the City's Authorized Representative:

Name

Title

Signature

Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement, dated as of the date hereof, by and among the City, the Escondido Joint Powers Financing Authority, and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this [●] day of [●].

CITY OF ESCONDIDO

By: _____
Name:
Title:

EXHIBIT I

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of Borrower]

[Date]

Environmental Protection Agency
WIFIA Director
WJC-W 6201A
1200 Pennsylvania Avenue NW
Washington, DC 20460

Project: Lake Wohlford Dam Replacement Project (WIFIA – N20149CA)

Dear Director:

This certificate is provided pursuant to Section 20(g)(i)(A) (*Reporting Requirements of the City – Notices – Substantial Completion*) of that certain WIFIA Loan Agreement (the “**WIFIA Loan Agreement**”), dated as of [●] by and among Escondido Joint Powers Financing Authority (the “**Borrower**”), City of Escondido (the “**City**”) and the United States Environmental Protection Agency, acting by and through its Administrator (the “**WIFIA Lender**”).

Unless otherwise defined herein, all capitalized terms in this certificate have the meanings assigned to those terms in the WIFIA Loan Agreement.

I, the undersigned, in my capacity as the City’s Authorized Representative and not in my individual capacity, do hereby certify to the WIFIA Lender that:

- (a) on *[insert date Substantial Completion requirements were satisfied]*, the Project satisfied each of the requirements for Substantial Completion set forth in the *[insert reference to the design-build or similar agreements for the Project]*;
- (b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and
- (c) Substantial Completion, as defined in the WIFIA Loan Agreement, has been achieved.

CITY OF ESCONDIDO,
by its authorized representative

By: _____
Name:
Title:

EXHIBIT J
FORM OF QUARTERLY REPORT

United States Environmental Protection Agency
WIFIA Director
WJC-W 6201A
1200 Pennsylvania Avenue NW
Washington, DC 20460
WIFIA_Portfolio@epa.gov

Re: Lake Wohlford Dam Replacement Project (WIFIA – N20149CA)

This Quarterly Report for the period of [insert relevant period] (the “**Quarterly Period**”) is provided pursuant to Section 20(c)(i) (*Reporting Requirements of the City – Construction Reporting*) of the WIFIA Loan Agreement, dated as of [●] (the “**WIFIA Loan Agreement**”), by and among Escondido Joint Powers Financing Authority (the “**Borrower**”), City of Escondido (the “**City**”) and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “**WIFIA Lender**”). Unless otherwise defined herein, all capitalized terms in this Quarterly Report have the meanings assigned to those terms in the WIFIA Loan Agreement.

1. **Project Status.** Provide a narrative summary of the Project’s construction progress during the Quarterly Period, including with respect to the Project components or sub-projects where appropriate. Complete the table in Appendix A to update the Project scope, schedule, and costs with the latest information.

--

2. **Current Projected Substantial Completion Date:**

--

If the current Projected Substantial Completion Date differs than the date set forth in the Quarterly Report most recently delivered to the WIFIA Lender (or, if no such report has yet been provided, the date of the Projected Substantial Completion Date set forth in the WIFIA Loan Agreement as of the Effective Date), provide a description in reasonable detail for such projected delay or difference:

--

3. **Material Problems (if any)**

Note any problems encountered or anticipated during the construction of the Project during the Quarterly Period that (1) impedes Project completion within the scope, costs, and schedule outlined in the WIFIA Loan Agreement or (2) relates to unforeseen complications

in connection with the construction of the Project. This may include commissioning/start-up issues, constructability issues for the Project as planned, adverse impacts to Project surroundings, changes in or issues with meeting environmental or federal compliance requirements, and unanticipated or abnormal permit approval timelines. Include an assessment of the impact and any current plans to address the problems.

4. Other Matters Related to the Project (if applicable)

Date: _____

CITY OF ESCONDIDO,

By: _____

Name: _____

Title: _____

APPENDIX A

Project Scope		Project Schedule						Project Costs		
Project Component	Completed (Y/N)	Contract/Vendor	Bid Advertisement Date	Contract Award Date	NTP Effective Date	Original Substantial Completion Date	Estimated Substantial Completion Date	Original Contract Amount	Estimated Costs to Complete	Costs Earned or Paid to Date
Total										

Table Definitions:

Project Component – project name or ID as tracked by the borrower

Complete (Y/N) – indication that project is complete, and no additional updates will be provided

Description (program of projects only) – brief overview of scope of work for the project component.

Location (program of projects only) – physical project boundaries

Covered by existing NEPA? (program of projects only) – refer to the environmental review documents that is the basis for the NEPA finding. Is the project within the geographic scope and scope of activities described in the documents?

Contract/Vendor – the contract identifier and contractor that is/will be completing the project construction.

Bid Advertisement Date – the date the bid was advertised

Contract Award date – the date the contract was awarded

NTP Effective date – the effective date to proceed with the construction in the Notice to Proceed

Original Substantial Completion Date – the substantial completion date for the given project as noted in the original contract award

Estimated Substantial Completion Date – the latest date estimate for substantial completion for the given project component

Original Contract Amount – the original contract award amount

Estimated Costs to Complete – the latest cost estimates to complete the given project component

Costs Earned or Paid to Date – the latest incurred contract costs for the given project component

Total – Total the cost amounts across all project components and contracts

EXHIBIT K

FORM OF PUBLIC BENEFITS REPORT

Pursuant to Section 11(a)(xiv) and Section 20(d) of the WIFIA Loan Agreement, dated as of the date hereof, by and among Escondido Joint Powers Financing Authority, the City of Escondido (the “City”), and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the “WIFIA Loan Agreement”), the City is providing this Public Benefits Report in connection with the Lake Wohlford Dam Replacement Project (WIFIA – N20149CA). Capitalized terms used in this Public Benefits Report and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement.

Reporting Period: [Prior to the Effective Date][within ninety (90) days following the Substantial Completion Date][within ninety (90) days following the fifth (5th) anniversary of the Substantial Completion Date]

- (i) **The number of total jobs and direct jobs projected to be created by the Project during the period between the Effective Date and the Substantial Completion Date:**

WIFIA projects that the Project will create [___] total jobs, of which the City projects [___] will be direct jobs.

- (ii) **Indicate (yes or no) whether the Project will assist the City in complying with applicable regulatory requirements, and if yes, describe how the project assists with regulatory compliance:**

Yes

If yes, additional description: [____]

No

- (iii) **The Project will assist the City with the following environmental measure:¹⁷**

[Amount by which Project will provide new, expanded, improved, more reliable, more resilient, or more efficient treatment capacity for wastewater treatment (measured in MGD capacity at Substantial Completion)]

[Amount by which Project will provide higher level of treatment at wastewater treatment plants (measured in MGD capacity at Substantial Completion)]

[Frequency and volume of CSOs events per year eliminated by the Project (measured in gallons and events per year at Substantial Completion)]

¹⁷ **NTD:** Appropriate environmental measure to be selected by WIFIA engineering.

[Reduce levels of Nitrogen, Phosphorus, biochemical oxygen demand (BOD) and total suspended solids (TSS) (measured by percentage annually)]

[Increase the volume of potable water produced (measured by MGD annually)]

[Increase the volume of water recycled, recharged or redirected (measured by MGD annually)]

[Increase Class [A][B] biosolids (measured by tons annually)]

[Prevent/eliminate collection sewer failures (measured by number per 100 miles)]

[Increase amount of grit removed (measured by tons annually)]

[Reduce frequency and volume of SSO discharges to local watersheds [provide standby power] (measured by [____])

[Provide increased stormwater and flood protection (measured by total number of acreage)]

[Prevent water main breaks (measured by number annually)]

ATTACHMENT "B"
Personnel List

Pursuant to Section 4 of the Agreement, CONSULTANT shall only assign performance of Services to persons listed in **Exhibit 1** to this Personnel List, which is attached hereto and incorporated by this reference.

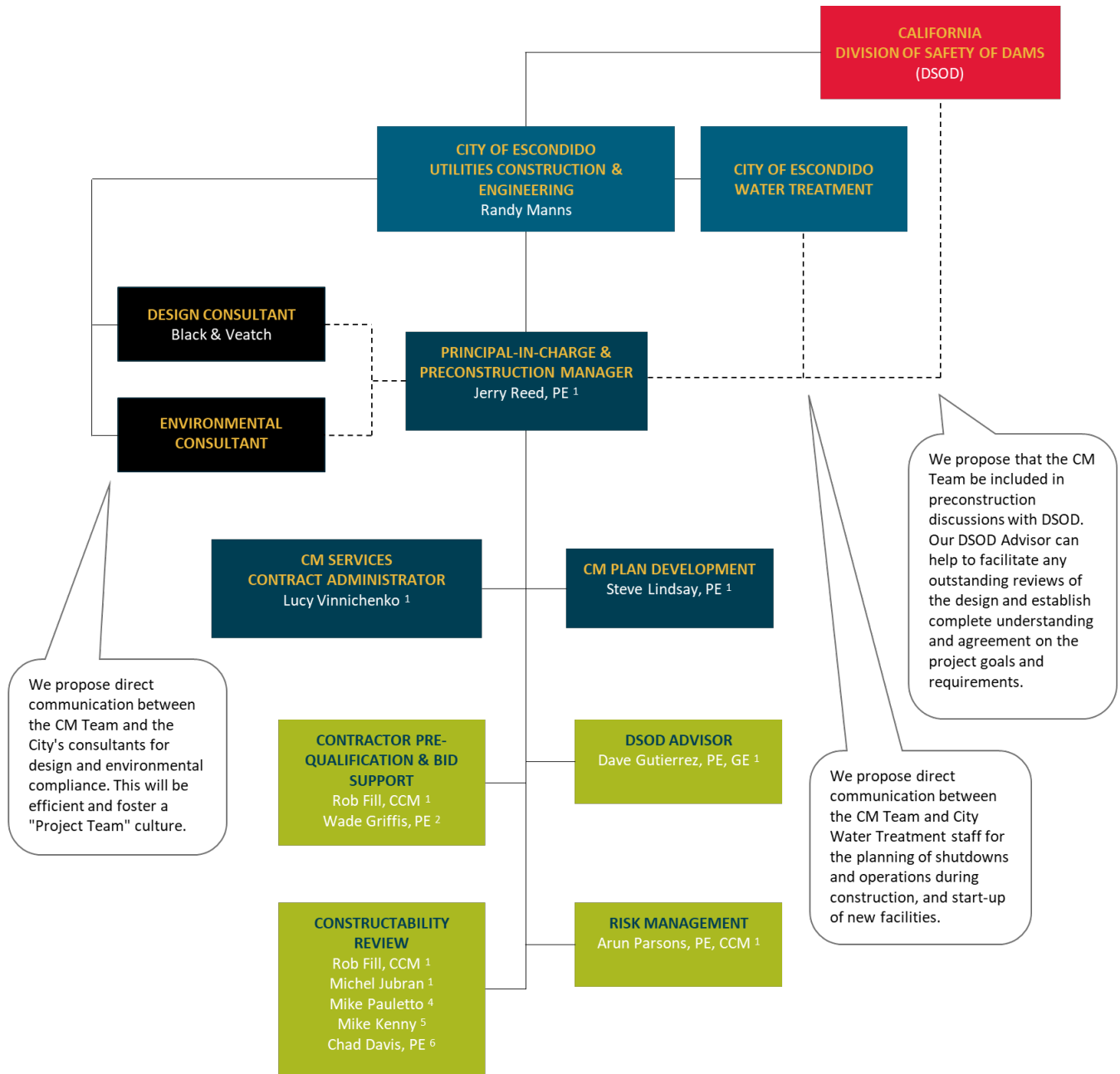
CONSULTANT shall not add or remove persons from this Personnel List without the City's prior written consent. If CONSULTANT has not designated a person to perform a component of the Services, CONSULTANT shall not assign such component of the Services to a person without obtaining the City's prior written consent. CONSULTANT shall not subcontract any component of the Services without obtaining the City's prior written consent.

Acknowledged by:

Date: _____

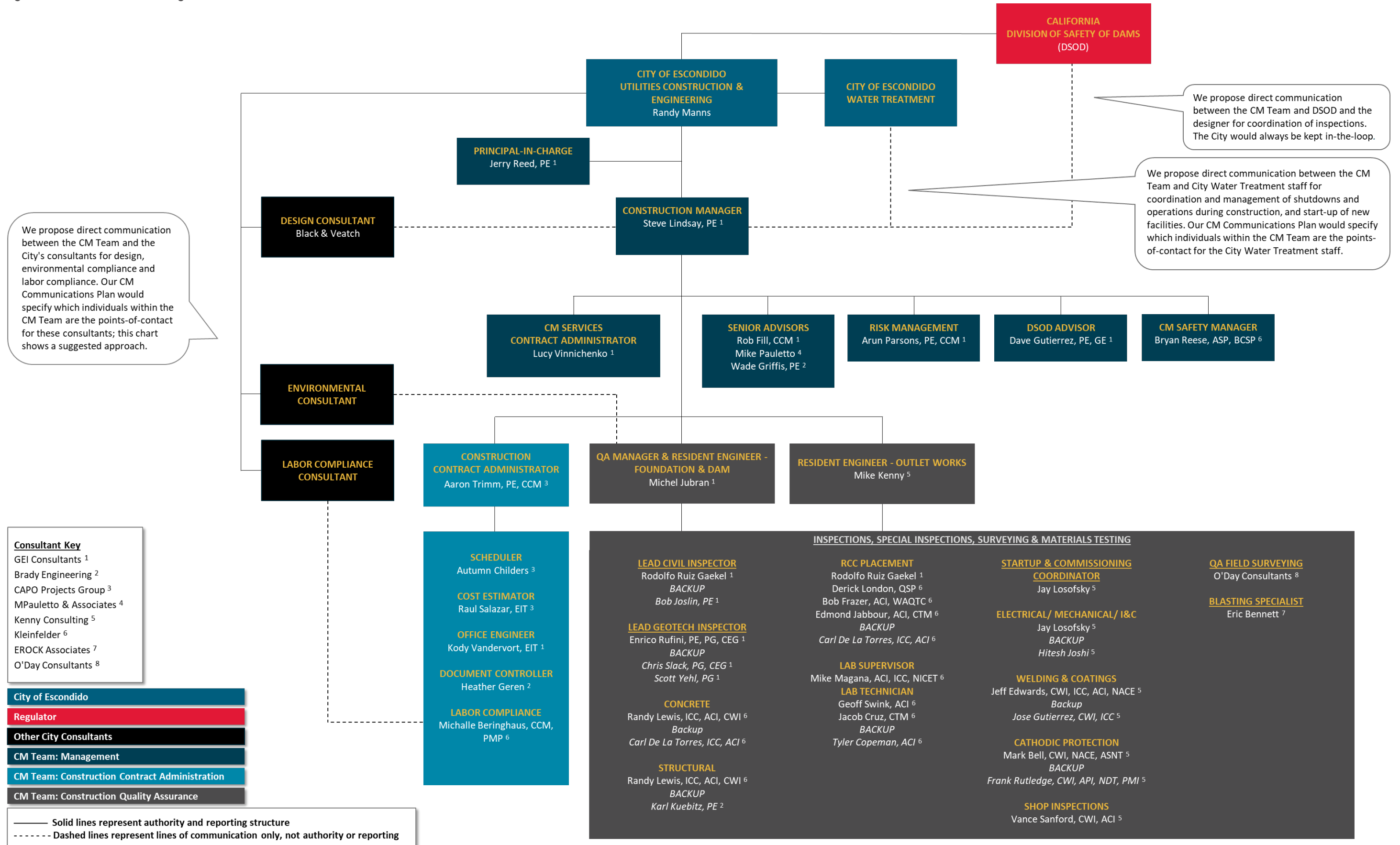
Jerry Reed, Vice President

Figure 4. Pre-Construction Phase Organizational Chart



Consultant Key GEI Consultants ¹ Brady Engineering ² MPauletto & Associates ⁴ Kenny Consulting ⁵ Kleinfelder ⁶	City of Escondido
	Regulator
	Other City Consultants
	CM Team: Management
	CM Team: Preconstruction Services
	——— Solid lines represent authority and reporting structure - - - - - Dashed lines represent lines of communication only, not authority or reporting

Figure 5. Construction Phase Organizational Chart



STAFF RESUMES

Resume #	Name	Proposed Role
APPENDIX A: KEY STAFF INTRODUCED IN SECTION 2		
1	Jerry Reed, PE	Principal-In-Charge & Pre-Construction Manager
2	Steve Lindsay, PE	Construction Manager
3	Dave Gutierrez, PE, GE	DSOD Advisor
4	Wade Griffis, PE	Contractor Prequalification & Bid Support; Senior Advisor
5	Aaron Trimm, PE, CCM	Construction Contract Administrator
6	Michel (Mike) Jubran	QA Manager; Resident Engineer – Foundation and Dam
7	Mike Kenny	Resident Engineer – Outlet Works
8	Rodolfo Ruiz Gaekel	Lead QA Inspector – Civil and RCC
9	Enrico Rufini, PE, GE, CEG	Lead QA Inspector – Geotechnical, Geology and Grouting
10	Jay Losofsky	Start-Up & Commissioning Coordinator; M/ E / I&C Inspector
11	Heather Geren	Document Controller
12	Michalle Beringhaus, CCM, PMP	Labor Compliance Specialist
APPENDIX B: OTHER STAFF DETAILED IN ORGANIZATIONAL CHARTS IN SECTION 5		
13	Arun Parsons, PE, CCM	Risk Manager
14	Autumn Childers	Scheduler
15	Bob Frazer, ACI, WAQTC	QA Inspector - RCC
16	Bryan Reese, ASP, BCSP	CM Safety Manager
17	Chad Davis, PE	Constructability Reviewer – Materials & QC
18	Derick London, QSP	QA Inspector - RCC
19	Edmond Jabbour, ACI, CTM	QA Inspector - RCC
20	Eric Bennet	Blasting Specialist
21	Geoff Swink, ACI	Lab Technician
22	Jacob Cruz, CTM	Lab Technician
23	Jeff Edwards, CWI, ICC, ACI, NACE	QA Inspector – Welding and Coatings
24	Kody Vandervort	Office Engineer
25	Lucy Vinnichenko	CM Contract Administrator
26	Mark Bell CWI, NACE, ASNT	Inspector – Cathodic Protection
27	Mike Magana ACI, ICC, NICET	Lab Supervisor
28	Mike Pauletto	Constructability Reviewer; Senior Advisor
29	Randy Lewis, ICC, ACI, CWI	QA Inspector –Concrete & Structural
30	Raul Salazar, EIT	Cost Estimator
31	Rob Fill, CCM	Contractor Prequalification & Bid Support; Senior Advisor
32	Vance Sanford, CWI, ACI	QA Inspector – Shop Inspections