

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

[●], 2022

Escondido Joint Powers Financing Authority
201 North Broadway
Escondido, California 92025

City of Escondido
201 North Broadway
Escondido, California 92025

RE: WIFIA Loan Term Sheet for the Lake Wohlford Dam Replacement Project with the Escondido Joint Powers Financing Authority and the City of Escondido (WIFIA Project No. 20149CA)

Ladies and Gentlemen:

This WIFIA Loan Term Sheet (this “**Term Sheet**”) constitutes (a) the approval of the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (hereinafter, the “**USEPA**”), of the application for credit assistance of the Borrower (as defined below) dated June 1, 2021 (the “**Application**”) and (b) the agreement of USEPA to provide financing for the above-referenced project (as further described below, the “**Project**”) in the form of a secured loan (the “**WIFIA Loan**”), pursuant to the Water Infrastructure Finance and Innovation Act (“**WIFIA**”), § 5021 *et seq.* of Public Law 113-121 (as amended by Public Law 114-94, Public Law 114-322 and Public Law 115-270) (the “**Act**”), codified as 33 U.S.C. §§ 3901-3914, subject in all respects to (i) the terms and conditions contained herein and (ii) the execution and delivery of the WIFIA loan agreement to be entered into on or after the date hereof (the “**WIFIA Loan Agreement**”) on terms and conditions acceptable to USEPA contained therein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the WIFIA Loan Agreement.

USEPA’s agreement to provide WIFIA credit assistance to the Project is based upon the Application and the supplemental information and documents, including the base case financial model, provided to USEPA. This Term Sheet is an agreement of USEPA only to the terms specified herein, which may be modified or supplemented by USEPA in its discretion at any time and from time to time during the course of its due diligence and credit approval process.

By executing this Term Sheet, the City (as defined below) confirms its agreement to reimburse USEPA for any and all fees and expenses that USEPA incurs for legal counsel, financial advice, and other consultants in connection with the evaluation of the Project and the negotiation and preparation of the WIFIA Loan Agreement and related documents, whether or not such agreement is ultimately executed.

This Term Sheet 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 of California, if and to the extent such federal laws are not applicable.

INDICATIVE TERMS OF THE WIFIA LOAN

WIFIA LENDER	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 " WIFIA Lender ").
BORROWER	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 ").
CITY	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 " City ").
PROJECT	The " Project " is the Lake Wohlford Dam Replacement Project, the purpose of which is the replacement of the existing Lake Wohlford Dam and the restoration of the reservoir to its former capacity, in order to 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) partial demolition of the existing dam.
WIFIA LOAN AMOUNT	A maximum principal amount (sum of disbursements) not to exceed \$65,147,348; <u>provided</u> that (a) the maximum principal amount of the WIFIA Loan, together with the amount of any other credit assistance provided under the Act, shall not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (b) the total federal assistance for the Project, including but not limited to the maximum principal amount of the WIFIA Loan and all federal grants, shall not exceed eighty percent (80%) of Total Project Costs.
INTEREST RATE	<p>The WIFIA Loan shall bear interest at a fixed rate, calculated by adding one basis point (0.01%) to the rate of securities of a similar maturity (based on the weighted-average life of the WIFIA Loan) as published, on the execution date of the WIFIA Loan Agreement, in the United States Treasury Bureau of Public Debt's daily rate table for State and Local Government Series (SLGS) securities, currently located on the Internet at https://www.treasurydirect.gov/GA-SL/SLGS/selectSLGSDate.htm.</p> <p>Interest shall accrue on the Outstanding WIFIA Loan Balance and any past due interest and be computed on the basis of a 360-day year of twelve (12) thirty (30) day months.</p>

	The WIFIA Loan shall also bear default interest at a rate of two hundred (200) basis points above the otherwise applicable interest rate, at such times and upon such terms as provided in the WIFIA Loan Agreement.
PAYMENT DATES	<p>Pursuant to the WIFIA Loan Documents, not later than the fifth (5th) day prior to each interest payment date occurring on or after the debt service payment commencement date (each such date, an “Installment Payment Date”), the City shall make installment payments of interest and principal scheduled to be paid by the City to the Borrower (“WIFIA Installment Payments”), which shall be assigned by the Borrower to the WIFIA Lender.</p> <p>Principal of the WIFIA Loan shall be repaid in annual installments on July 1 of each year, beginning on July 1, 2028.</p> <p>Interest on the WIFIA Loan shall be paid in arrears on January 1 and July 1 of each year, beginning on the January 1 or July 1 immediately succeeding the initial disbursement date.</p> <p>The debt service payment commencement date shall in no event be later than five (5) years after the Substantial Completion Date of the Project.</p>
FINAL MATURITY DATE	July 1, 2062.
PROJECTED SUBSTANTIAL COMPLETION DATE	July 30, 2027.
DEDICATED SOURCE OF REPAYMENT	<p>The dedicated source of repayment for the WIFIA Installment Payments shall be all income, rents, rates, fees, charges and other moneys derived from the ownership of or operation of the System (as defined below) (the “Revenues”), including, without limiting the generality of the foregoing:</p> <p>(1) all in lieu charges and groundwater augmentation charges (including investment earnings thereon) collected by or on behalf of the City; (2) 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 (3) 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; and (y) proceeds of taxes or benefit assessments restricted by law to be used by the</p>

	<p>City to pay amounts due on bonds or other obligations hereafter incurred. The “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.</p>
<p>SECURITY OF WIFIA LOAN</p>	<p>The WIFIA Loan shall be secured by a pledge and assignment by the Borrower for the benefit of the WIFIA Lender of all of the Borrower’s (a) right, title and interest to the WIFIA Installment Payments received by the Borrower or the Trustee pursuant to or with respect to the Installment Purchase Agreement, dated as of the date hereof, by and between the City and the Borrower with respect to the Project (“WIFIA IPA”) and all interest or gain derived from the investment of amounts in any of the funds or accounts established under the WIFIA Loan Agreement or the WIFIA IPA, (b) any other amounts (including proceeds of the WIFIA Loan) held in any fund or account that is established pursuant to the WIFIA Loan Agreement, (c) rights with respect to the WIFIA Debt Service Account and (d) 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). The debt obligation of the Borrower under the WIFIA Loan shall be evidenced through the issuance by the Borrower of the WIFIA Note.</p>
<p>SECURITY AND LIEN PRIORITY OF WIFIA INSTALLMENT PAYMENTS</p>	<p>The WIFIA Installment Payments shall be secured by a pledge by the City of (a) the Revenues, (b) other amounts that are on deposit in the Revenue Fund and (c) 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. The obligation of the City to make the WIFIA Installment Payments constitutes Parity Obligations.</p> <p>The Revenues shall be deposited into the Revenue Fund and applied in the order of priority described in Section 5.02 (<i>Application of Revenues</i>) of the WIFIA IPA (the “Flow of Funds”).</p> <p>The Flow of Funds provides that the City shall, from the moneys in the Revenue Fund, pay all Operations and Maintenance Costs (including amounts which are reasonably required to be set aside in contingency reserves for Operations and Maintenance Costs, the payment of which is not then immediately required) as they become due and payable. All remaining moneys in the Revenue Fund shall be set aside by the City at the following times for the</p>

	<p>transfer to the following respective special funds in the following order of priority; and all moneys in each of such funds shall be held in trust and shall be applied, used and withdrawn only for the purposes set forth below.</p> <p>(a) <u>Bonds and Contracts</u>. On or before each Installment Payment Date, the City shall, from the remaining moneys in the Revenue Fund, thereafter, deposit into the WIFIA Debt Service Account an amount that is equal to the interest and principal payable and coming due under the WIFIA Loan Agreement on the next succeeding Interest Payment Date. The City shall also, from the moneys in the Revenue Fund, transfer to the applicable trustee or payee for deposit in the applicable payment fund, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, any other Parity Debt Service in accordance with the provisions of the applicable Bond or Contract (each as defined in the WIFIA IPA). On each Payment Date occurring on or after the Debt Service Payment Commencement Date, the City, as agent of the Borrower, shall transfer on the Borrower's behalf WIFIA Debt Service by transferring funds from the WIFIA Debt Service Account to the WIFIA Lender in accordance with the terms of the WIFIA Loan Agreement.</p> <p>(b) <u>Reserve Funds</u>. On or before each Installment Payment Date, the City shall, from remaining moneys in the Revenue Fund, thereafter, without preference or priority and in the event of any insufficiency of such moneys ratably without any discrimination or preference, transfer to the applicable trustee for deposit to reserve funds or accounts, if any, as may have been established in connection with Bonds or Contracts that sum, if any, necessary to restore such reserve funds or accounts to an amount that is equal to the required balances thereof.</p> <p>(c) <u>Surplus</u>. Moneys on deposit in the Revenue Fund which are not necessary to make any of the payments which are required above may be expended by the City at any time for any purpose permitted by law.</p>
<p>PREPAYMENT</p>	<p>The WIFIA Loan shall be subject to mandatory prepayment, without prepayment premium, 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) (<i>Affirmative Covenants of the City – Insurance; Net Proceeds</i>) or Section 17(t) (<i>Affirmative Covenants of the City – Eminent Domain Proceeds</i>) of the WIFIA Loan Agreement.</p> <p>The Borrower may prepay the WIFIA Loan in whole or in part on any interest payment date, but not more than once annually,</p>

	<p>without penalty or premium; <u>provided</u> that any such prepayment shall be in a minimum principal amount of \$1,000,000 or any integral multiple of \$1.00 in excess thereof, and otherwise in accordance with the WIFIA Loan Agreement.</p>
<p>RATE COVENANT OF THE CITY</p>	<p>(a) 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 Revenues received by the City for such City Fiscal Year less the Operations and Maintenance Costs for such City Fiscal Year (the “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 at least equal to one hundred twenty percent (120%) of annual Parity Debt Service, and at least equal to one hundred percent (100%) of the sum of annual Parity Debt Service and annual Subordinate Debt Service for such City Fiscal Year.</p> <p>(b) 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: (1) all Operations and Maintenance Costs estimated by the City to become due and payable in such City Fiscal Year; (2) 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; (3) 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 (4) all payments required to meet any other obligations of the City which are charges, liens, or encumbrances upon, or with are otherwise payable from, the Revenues or the Net Revenues during such City Fiscal Year.</p> <p>(c) If for any reason Net Revenues, or Revenues, as applicable, prove insufficient to meet the numerical thresholds set forth in the paragraph (a) and to comply with the requirements of paragraph (b), 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</p>

	<p>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 first fail to meet the requirements of this Section.</p> <p>(d) 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.</p> <p>(e) Notwithstanding the foregoing, in lieu of taking the preceding actions with respect to the City's failure to comply with paragraph (a), the City may within one hundred eighty (180) days following the date Net Revenues first fail to meet the requirements of paragraph (a) 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 paragraph (a). 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 paragraph (a).</p>
<p>ADDITIONAL OBLIGATIONS OF THE CITY</p>	<p>(a) 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.</p> <p>(b) 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:</p> <p>(i) no Event of Default under the WIFIA Loan Agreement 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</p>

Obligations, and the City shall otherwise be in compliance with all covenants set forth in the WIFIA Loan Agreement;

(ii) 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 (c) 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; and

(iii) certain allowances set forth in the WIFIA Loan Agreement may be added to Net Revenues for the purpose of meeting the condition contained in paragraph (b)(ii) above.

Notwithstanding the above, (x) proposed Parity Obligations to be issued for the purpose of refunding outstanding Parity Obligations may be issued without compliance with paragraph (b)(ii) above 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 (y) to the extent that an existing instrument with respect to Parity Obligations conflicts with any of the requirements set forth in this Section, the more restrictive provision shall prevail.

(c) 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:

(i) no Event of Default under the WIFIA Loan Agreement 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 the WIFIA Loan Agreement and any other instrument securing, evidencing, governing, or relating to other obligations secured by, the Revenues; and

(ii) Net Revenues calculated pursuant to GAAP, consistently applied, and excluding the proceeds of any taxes and also

	<p>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.</p> <p>(d) The City shall not incur any Additional Obligations or other obligations in each case that bear interest at a Variable Interest Rate if such incurrence would (i) 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 and other obligations of the City at such time or (ii) violate any term set forth in the Debt Management Policy.</p> <p>(e) 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 the WIFIA Loan Agreement.</p>
<p>RESTRICTED PAYMENTS AND TRANSFERS</p>	<p>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.</p>
<p>WIFIA LOAN DOCUMENTATION</p>	<p>The WIFIA Loan shall be subject to the preparation, execution and delivery of the WIFIA Loan Agreement, the WIFIA IPA, the WIFIA Note and any other loan documentation required by the WIFIA Lender in connection therewith, in each case acceptable to the WIFIA Lender, the Borrower and the City (as applicable), which will contain certain conditions precedent, representations and warranties, affirmative and negative covenants, events of default, in each case, with respect to the Borrower and the City, and other provisions as agreed among the WIFIA Lender, the Borrower and the City (as applicable).</p>

GOVERNING LAW	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 of California, if and to the extent such federal laws are not applicable.
COUNTERPARTS	This Term Sheet, and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by the 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 but 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 shall be effective as delivery of an original executed counterpart.

[Signature pages follow]

If the foregoing terms are acceptable, please countersign this letter in the space indicated below.

Sincerely,

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**, acting by and
through the Administrator of the United States
Environmental Protection Agency

By: _____
Name: Michael S. Regan
Title: Administrator

ACKNOWLEDGED AND AGREED:

ESCONDIDO JOINT POWERS FINANCING AUTHORITY,
by its authorized representative

By: _____

Name:

Title:

ACKNOWLEDGED AND AGREED:

CITY OF ESCONDIDO,
by its authorized representative

By: _____
Name:
Title: