

**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 [●]

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS AND INTERPRETATION	2
Section 1. Definitions.....	2
Section 2. Interpretation.....	19
ARTICLE II THE WIFIA LOAN.....	20
Section 3. WIFIA Loan Amount.....	20
Section 4. Disbursement Conditions.....	20
Section 5. Term.....	22
Section 6. Interest Rate	22
Section 7. Security and Priority; Flow of Funds.....	22
Section 8. Payment of Principal and Interest	24
Section 9. Prepayment	27
Section 10. Fees and Expenses	28
ARTICLE III CONDITIONS PRECEDENT	30
Section 11. Conditions Precedent	30
ARTICLE IV REPRESENTATIONS AND WARRANTIES	35
Section 12. Representations and Warranties of the Borrower	35
Section 13. Representations and Warranties of the City.....	39
Section 14. Representations and Warranties of WIFIA Lender	44
ARTICLE V COVENANTS	44
Section 15. Affirmative Covenants of the Borrower	44
Section 16. Negative Covenants of the Borrower.....	47
Section 17. Affirmative Covenants of the City.....	48
Section 18. Negative Covenants of the City	55
Section 19. Reporting Requirements of the Borrower.....	58
Section 20. Reporting Requirements of the City	61
ARTICLE VI EVENTS OF DEFAULT	66
Section 21. Events of Default and Remedies.....	66
ARTICLE VII MISCELLANEOUS	70
Section 22. Disclaimer of Warranty.....	70
Section 23. No Personal Recourse	70
Section 24. No Third Party Rights.....	71
Section 25. Borrower's Authorized Representative.....	71
Section 26. City's Authorized Representative	71
Section 27. WIFIA Lender's Authorized Representative	71
Section 28. Servicer	71
Section 29. Amendments and Waivers	71

Section 30.	Governing Law	72
Section 31.	Severability	72
Section 32.	Successors and Assigns.....	72
Section 33.	Remedies Not Exclusive.....	72
Section 34.	Delay or Omission Not Waiver.....	72
Section 35.	Counterparts.....	72
Section 36.	Notices	72
Section 37.	Indemnification	73
Section 38.	Sale of WIFIA Loan.....	74
Section 39.	Effectiveness	75
Section 40.	Termination.....	75
Section 41.	Integration	75

SCHEDULE I – Project Budget

SCHEDULE II – Construction Schedule

SCHEDULE III – Existing Indebtedness

SCHEDULE 13(m) – Existing Construction Contracts

EXHIBIT A – Form of WIFIA Note

EXHIBIT B – Anticipated WIFIA Loan Disbursement Schedule

EXHIBIT C – Form of Non-Debarment Certificate

EXHIBIT D – Requisition Procedures

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:

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 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)]