

Written materials relating to an item on this agenda that are distributed to the legislative bodies within 72 hours before the item is to be considered at its regularly scheduled meeting will be made available for public inspection at the City Clerk's Office, 300 West Third Street 4th Floor during customary business hours. Agenda reports are also on the City of Oxnard web site at www.oxnard.org.



AGENDA
OXNARD CITY COUNCIL
FINANCE AND GOVERNANCE COMMITTEE
Council Chambers, 305 West Third Street
April 12, 2022

Regular Meeting - 5:00 to 6:30 PM

Zoom details to call-in for public comment during a meeting:

- 1. Dial Phone Number: (888) 475-4499**
- 2. Enter Meeting ID: 829 7446 2475**
- 3. Passcode: 179166**

If you wish to speak during public comments or a particular item on the agenda, please sign-on by following the zoom calling in steps listed above. Once the Mayor calls for public speakers, press *9 to raise your hand to inform the City Clerk you would like to speak during the public speaking section for that particular item on the agenda, while in the zoom waiting room.

The public may view the meeting from home on Spectrum channel 10, Frontier channel 35, or YouTube at [Youtube.com/oxnardnews](https://www.youtube.com/oxnardnews). Video recordings of the meeting are typically available online following the meeting at the City's website at www.oxnard.org/city-meetings.

*Please see the link for the Measure M pre-recorded presentation video for each item listed on this agenda.

YOU MAY PARTICIPATE IN THE MEETING IN THE FOLLOWING WAYS:

1. ATTEND THE MEETING AT THE LOCATION LISTED ABOVE: Submit a speaker card to the City Clerk.
2. EMAIL COMMENTS OR SIGN UP TO SPEAK REMOTELY BEFORE THE MEETING
 - a. Submit a request to speak by no later than 3 p.m. on the day of the meeting by using the form available at www.oxnard.org/citymeetings.
 - b. Submit an email to cityclerk@oxnard.org no later than 3 p.m. on the day of the meeting (indicate the agenda item number in the subject line). All email correspondence will be forwarded to the City Council prior to the start of the meeting and made part of the legislative record.
 - c. Contact the City Clerk's Office at (805) 385-7803 to submit your request.
3. PROVIDING PUBLIC COMMENTS REMOTELY DURING THE MEETING
 - a. To provide public comment during the meeting dial (888) 475-4499 and enter the Meeting ID and Passcode listed above as the Zoom details for this meeting. When the Mayor announces the particular item on the agenda you want to speak on, press *9 to raise your hand while in the zoom waiting room. Once called on, press *6 to unmute your phone.
 - b. Public comments on agenda items will be taken following the announcement of the item. After the item is announced, members of the public shall have three minutes to register or otherwise be recognized for the purpose of providing public comment. During this three-minute time period, public comments may be taken and the City Council or staff may discuss the item being considered or briefly respond to public comments.

Detailed participation instructions can be found at www.oxnard.org/city-meetings.

In compliance with the Americans with Disabilities Act, if you require special assistance to participate in a meeting, please contact the City Clerk's Office at 385-7803. Notice at least 72 hours prior to the meeting will enable the City to reasonably arrange for your accessibility to the meeting.

Agenda Item time estimates: (Presentation / Committee Discussion / Public Comment)

* The City has filed pre-election and post-election lawsuits regarding the validity of Measure M.

A. ROLL CALL, POSTING OF AGENDA, FLAG SALUTE

B. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

A person may address the legislative body only on matters not appearing on the agenda and within the subject matter jurisdiction of the legislative body. Speaker requests shall be submitted as set forth on the first page of this agenda. Speakers are limited to three minutes. After 30 minutes, if all speakers have not had the opportunity to speak, the remaining speakers will be given an opportunity to speak prior to adjournment of the meeting. The legislative body cannot enter into a detailed discussion or take action on any items presented during public comments at this time. Such items may only be referred to the City Manager/Executive Director/Secretary for administrative action or scheduled on a subsequent agenda for discussion. Persons wishing to speak on public hearing items should do so at the time of the hearing.

C. CONSENT AGENDA

1. City Clerk Department

SUBJECT: Approval of Minutes.

RECOMMENDATION: That the Finance & Governance Committee approve the minutes of the March 8, 2022 regular meeting as presented.

Legislative Body: Finance & Governance Committee

Contact: Rose Chaparro, (805) 385-7805

D. REPORTS

1. Finance Department

SUBJECT: Revisions to Procurement Ordinance Reflecting Preparation of the new Tyler Munis Enterprise Resource Planning (ERP) Financial System. (0/10/10)

RECOMMENDATION: That the Finance and Governance Committee recommend that City Council introduce an amendment to the City's Procurement Ordinance in preparation for the launch of the Core Financials phase of Tyler Munis.

Please click the following link to view the required Measure M pre-recorded presentation video: <https://youtu.be/1W43tp-rtAQ>

Contact: Betsy George, (805) 200-5400

2. Finance Department

SUBJECT: Adopt a resolution approving Water Infrastructure Finance and Innovation Act ("WIFIA") Loan from the U.S. Environmental Protection Agency ("EPA"). (10/5/5)

RECOMMENDATION: That the Finance and Governance Committee recommend:

1. City Council adopt a resolution approving an Installment Purchase Agreement, Indenture of Trust, a WIFIA Loan Agreement, and a WIFIA Loan Term Sheet with respect to the issuance by the City of Oxnard Financing Authority of bonds in an aggregate principal amount not to exceed \$55,000,000 and other matters pertaining thereto.

2. That the Board of Directors of the City of Oxnard Financing Authority adopt a resolution approving an Installment Purchase Agreement, Indenture of Trust, a WIFIA Loan Agreement, and a WIFIA Loan Term Sheet with respect to the issuance by the City of Oxnard Financing Authority

of bonds in an aggregate principal amount not to exceed \$55,000,000 and other matters pertaining thereto.

(Presentation will be live upon Consultant's request.)

Contact: Betsy George, (805) 200-5400

E. ITEMS FOR FUTURE AGENDAS

F. ADJOURNMENT



**FINANCE AND GOVERNANCE COMMITTEE
AGENDA REPORT**

**CONSENT AGENDA
AGENDA ITEM NO. C.1**

DATE: April 12, 2022

TO: Finance & Governance Committee

FROM: Rose Chaparro, City Clerk, (805) 385-7805, rose.chaparro@oxnard.org

SUBJECT: Approval of Minutes.

RECOMMENDATION

That the Finance & Governance Committee approve the minutes of the March 8, 2022 regular meeting as presented.

BACKGROUND

Approval of Minutes.

STRATEGIC PRIORITIES

This agenda item is a routine operational item.

FINANCIAL IMPACT

There is no financial impact.

Prepared by: Rose Chaparro, City Clerk

ATTACHMENTS

1. MINUTES 03 08 2022 Finance & Governance

MINUTES
OXNARD CITY COUNCIL
FINANCE AND GOVERNANCE COMMITTEE
Regular Meeting
MARCH 8, 2022

A. ROLL CALL, POSTING OF AGENDA, FLAG SALUTE

At 5:01 p.m., Chair John C. Zaragoza called to order the regular meeting of the Oxnard City Council Finance and Governance Committee in the City Hall Council Chambers at 305 W. Third Street, Oxnard, California. The City Clerk called the roll and announced the posting of the agenda. Chair Zaragoza was present in person. Member Gabriela Basua and Member Gabriel (Gabe) Teran participated via videoconference.

Staff members present in person were Stephen M. Fischer, City Attorney and Rose Chaparro, City Clerk.

Staff members that participated via videoconference were Alexander Nguyen, City Manager; Shiri Klima, Deputy City Manager; Betsy George, Chief Financial Officer; and Eden Alomeri, Revenue & Licensing Director & Assistant City Treasurer.

Christian Sprunger with NHA Advisors also participated via videoconference.

B. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA (None received.)

C. CONSENT AGENDA

1. City Clerk Department

SUBJECT: Approval of Minutes.

RECOMMENDATION: That the Finance & Governance Committee approve the minutes of the February 22, 2022 regular meeting as presented.

It was moved by Member Teran, seconded by Member Basua, to approve the Information/Consent item as presented. VOTE: Teran, Basua, and Zaragoza voted in favor; the motion carried 3-0.

D. REPORTS

1. Finance Department

SUBJECT: Authorize Execution and Delivery of Schedule of Property to the Banc of America Master Equipment Lease/Purchase Agreement A-7667 for the Financing, and Leasing of Certain Equipment. (10/5/5)

RECOMMENDATION: That the Finance and Governance Committee recommend City Council adopt a resolution authorizing the execution and delivery of Schedules of Property to the Master Equipment Lease/Purchase Agreement not to exceed \$3.3 million for the acquisition, financing and leasing of certain equipment for the public benefit within the terms provided herein; authorizing the execution and delivery of other documents required in connection therewith; and authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by this resolution.

Betsy George, Chief Financial Officer, introduced Christian Sprunger with NHA Advisors, who answered the Committee's questions. No public comments were received. Discussion ensued among the Committee and

staff.

It was moved by Member Teran, seconded by Member Basua, to approve the recommended action as presented.
VOTE: Basua, Zaragoza, and Teran voted in favor; the motion carried 3-0.

E. ITEMS FOR FUTURE AGENDAS (No requests were made.)

F. ADJOURNMENT

There being no further business on the agenda, and without objection, Chair Zaragoza adjourned the meeting at 5:20 p.m.

ROSE CHAPARRO
City Clerk

JOHN C. ZARAGOZA
Chair



FINANCE AND GOVERNANCE COMMITTEE AGENDA REPORT

REPORTS AGENDA ITEM NO. D.1

DATE: April 12, 2022

TO: Finance & Governance Committee

FROM: Betsy George, Chief Financial Officer, (805) 200-5400, betsy.george@oxnard.org

SUBJECT: Revisions to Procurement Ordinance Reflecting Preparation of the new Tyler Munis Enterprise Resource Planning (ERP) Financial System. (0/10/10)

RECOMMENDATION

That the Finance and Governance Committee recommend that City Council introduce an amendment to the City's Procurement Ordinance in preparation for the launch of the Core Financials phase of Tyler Munis.

Please click the following link to view the required Measure M pre-recorded presentation video: <https://youtu.be/1W43tp-rtAQ>

BACKGROUND

At its October 1, 2019, meeting, City Council approved the purchase of a new enterprise resource planning (ERP) system from Tyler Technologies, Tyler Munis, following many years of work to identify, evaluate, and select the best system that will enable the City to modernize and take advantage of current technologies that will provide the functionality for staff to streamline processes, create better access to information, increase productivity, and improve interactions for residents and business. The first phase of the Tyler Munis ERP implementation is the Core Financial phase. Munis Core Financials includes budget, general ledger, grant management, accounts payable, project accounting, general revenue, cash management, capital assets, financial reporting and procurement modules.

Throughout the implementation phase of the Core Financials, staff has been reviewing the functionality of Munis and the opportunities it provides to improve internal controls and operational efficiency. Staff have identified improvements that require modifications to the City's current Procurement Ordinance.

DISCUSSION

Staff recommends that the City amend its Procurement Ordinance and adjust its approval processes and authority levels (who can approve what dollar amount for all City purchases) to better align with municipal best practices and functionality available in Tyler Munis. The proposed modifications to the Procurement Ordinance do not impact or amend the City's budget appropriation and budget approval processes.

The current procurement process requires departments to initiate a requisition in the City's current ERP system, followed by paper documents that are reviewed and approved outside the current ERP system (HTE Naviline). The paper process is prone to being slow, and it is difficult to track where the documents are within the approval routing queue. Tyler Munis ERP allows requisitions and supporting documents to be located

within one system and to proceed through hierarchical electronic approvals without the need for paper. This electronic workflow of approvals is based upon configured approval authority and cannot be circumvented. Procurement transactions in an official City Contract or Purchase Order can only be accomplished once all electronic approvals are completed in the system. Each approval is logged and held in system audit files, with no ability to be amended. Reviewing and tracking of transactions is available at any time.

Electronic approval will not replace the need for signatures on the legally binding executed agreements that the City makes but may be viewed as a replacement of paper routing for internal City approval processes. Staff recommend no changes to purchase orders and agreements that require City Manager or Council approval. The recommended changes are designed to delegate approval authority from the Purchasing Agent to department directors whose budget areas are allocated to pay for the cost of the procured item.

Here are the recommended changes to the Purchasing Ordinance:

1. Amend the Purchasing Agent's signature authority for annual dollar limit per vendor from \$100,000 to \$0.
2. Amend City Department Manager signature authority for annual dollar limit per vendor from \$0 to \$50,000.
3. Amend the City Department Head signature authority from annual dollar limit from \$5,000 to \$100,000.

City Buyers and the Purchasing Agent must approve all procurement activities as part of the electronic workflow process, and in doing so will review and ensure compliance with all relevant laws and policies.

The major driver to this improved process is to transfer approval of the use of City funds to the operating departments that are responsible for service delivery to the community, rather than the approval resting solely with the Purchasing Division. Upon commencement of a transaction via requisition entry, the ERP system automatically performs a budget check against the general ledger codes selected by the departmental user. Departmental approval is required based upon the amount of the transaction, with additional approvals required to ensure the City has appropriate insurance and legal protection depending on the type of goods/services being procured.

The City recently hired a new Purchasing Manager. She will return to the Finance and Governance Committee this fall or winter with further changes to the Purchasing Ordinance; however, due to the timing of Munis Core Financials, this amendment is pressing.

STRATEGIC PRIORITIES

This agenda item supports the Organizational Effectiveness strategy. The purpose of the Organizational Effectiveness strategy is to reinforce, stabilize, improve, and strengthen the organizational foundation of the City in order to build a modern, high-functioning City government that effectively and efficiently supports the operating departments in providing high-quality services and programs for our residents and businesses.

FINANCIAL IMPACT

There is no financial impact.

Prepared by: Mark Sewell, Assistant Chief Financial Officer, Betsy George, Chief Financial Officer

ATTACHMENTS

1. Purchasing Ordinance Amendment

2. Revised Oxnard Ordinance- Redline
3. Revisions to Procurement Ordinance - PowerPoint

CITY COUNCIL OF THE CITY OF OXNARD
ORDINANCE NO.

ORDINANCE OF THE CITY OF OXNARD, CALIFORNIA, AMENDING AND
REPLACING PORTIONS OF ARTICLE V, OF CHAPTER 4 OF THE OXNARD CITY
CODE, RELATING TO PURCHASING AND CONTRACTING

WHEREAS, the City is implementing a new financial management system with improved internal controls and efficiencies, effective October 1, 2022; and,

WHEREAS, in order to align the City's procurement process with the new financial management system, minor changes are necessary to the City's Procurement Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OXNARD DOES ORDAIN AS FOLLOWS:

Part 1. Section 4-1, of Article I, of Chapter 4 of the Oxnard City Code, is hereby amended in its entirety in the following way:

“For the purposes of Chapter 4, the following definitions and rules shall be observed, unless such would be inconsistent with the manifest intent of the city council:

(A) ANNUAL AUTHORIZATION - The maximum annual value that the city council delegates to an individual to award a purchase order or contract per vendor or consultant.

(B) ANNUAL VALUE - The value of the contract per year, or if the contract does not list an annual amount, the total value of the contract divided by the number of years in the term of that contract.

(C) BEST VALUE - The expected outcome of a solicitation that in the city's estimation will provide the greatest overall benefit in response to the requirement, where price, quality, durability, servicing, delivery time, standardization, and/or other factors outlined in the purchasing manual are considered in the evaluation and selection process to minimize negative impacts and enhance the long-term performance and value of a solicitation submission.

(D) DEPARTMENT DIRECTOR - The most senior individual responsible for a City department.

(E) DEPARTMENT MANAGER - An employee entrusted with budgetary responsibility for a City Division, such as a Division Manager, City Engineer, or Assistant Director.

(F) EMERGENCY - Either of the following:

(1) Regarding public projects, as defined in this chapter, the meaning provided in Cal. Pub. Con. Code, Section 22050.

(2) Regarding all procurement unrelated to public projects, a condition or possible safety situation which makes bidding procedures, either formal or informal, impractical or not in the best interests of the city.

(G) FORCE ACCOUNT - Work performed on public projects using internal city resources, including, but not limited to, labor, equipment, materials, supplies and

subcontracts of the city.

(H) FORMAL SOLICITATION - A bid or proposal that must be submitted in a sealed envelope by mail, hand delivery or email or other electronic means, and in conformance with a prescribed format to be opened in public at a specified date and time or evaluated as delineated in the solicitation released, as established in the purchasing manual.

(I) INFORMAL SOLICITATION - A competitive bid, price quotation, or proposal for any procurement other than a public project that is conveyed by mail, fax, email or other electronic means, or other written manner that does not require a sealed bid or proposal, public opening or other formalities.

(J) MAINTENANCE or MAINTENANCE WORK - The meaning provided in Cal. Pub. Con. Code, Section 22002(d) and 8 CCR 16000.

(K) NEGOTIATED CONTRACT - A contract in an amount up to \$100,000 that is awarded on the basis of a direct contract with a contractor, vendor or consultant without going through the competitive bidding process.

(L) PRINCIPAL BUSINESS OFFICE - The place where the principal officers or owners generally transact business, where reports are prepared, from which orders and payments are made, and that the business represents to government authorities as its principal office or principal place of business.

(M) PROFESSIONAL SERVICES - All services performed by persons or firms in a professional occupation, including, but not limited to, consulting and performance services for accounting, financial, economic, auditing, redevelopment, computer hardware and software support, engineering, architectural, landscape architectural, planning, environmental, land surveying, construction project management, personnel, social services, animal control, lobbying, grant-writing, legal, management, communication and other similar professional functions.

(N) PURCHASING AGENT - An employee whose responsibility it is to procure all supplies, equipment, public projects and services for the city, or that employee's designee(s).

(O) PURCHASING MANUAL - The purchasing policies and procedures manual for the purpose of implementation of this chapter, as drafted, amended and adopted by the purchasing agent.

(P) PUBLIC PROJECT - The meaning provided in Cal. Pub. Con. Code. Section 22002(c).

(Q) SMALL LOCAL BUSINESS - A business entity that has for at least 36 months immediately preceding submittal of its bid held a current business license issued by the city, and maintained its principal business office within the city's geographic boundaries, has average annual gross receipts of \$20,000,000 or less over the 36 months immediately preceding submittal of its bid, and employs fewer than 100 employees, at least 50% of whom are Oxnard residents and have been Oxnard residents for at least 90 days prior to submission of the bid.

(R) TRADE SERVICE - A service that is not affiliated with a public project and either:

(1) Does not require specialized skill or certification, including, but not limited to, janitorial or maintenance work; or

(2) Requires manual skills and special training, but not particular education or degrees, including, but not limited to, mechanical or plumbing services."

Part 3. Section 4-3(B), of Article I, of Chapter 4 of the Oxnard City Code, is hereby amended in its entirety to read as follows:

“Issue a purchase order or execute a contract for procurement required by any city department, in accordance with procedures prescribed by this chapter up to the purchasing agent’s annual authorization.”

Part 4. Section 4-3(M), of Article I, of Chapter 4 of the Oxnard City Code, is hereby amended in its entirety to read as follows:

“Recommend award of and execute a negotiated contract, subject to a department director or city manager’s approval, when the purchasing agent determines that obtaining bids, quotations and proposals is not in the city’s best interest.”

Part 5. Section 4-11(B), of Article II, of Chapter 4 of the Oxnard City Code, is hereby amended in its entirety to read as follows:

“The public works director and city manager each may procure, without public bidding, public projects that cost up to \$5,000.”

Part 6. Section 4-12(B), of Article II, of Chapter 4 of the Oxnard City Code, is hereby amended in its entirety to read as follows:

“The public works director and city manager each may each award, and the purchasing agent may execute, such a contract.”

Part 7. Section 4-13(A), of Article II, of Chapter 4 of the Oxnard City Code, is hereby amended in its entirety to read as follows:

“A public project in the amount listed in Cal. Pub. Con. Code, Section 22032(b), as may be changed from time to time, shall be bid out using the informal bidding procedures contained in Cal. Pub. Con. Code, Section 22034. Notice shall be provided in accordance with Cal. Pub. Con. Code, Section 22034(a)(2). The public works director may award Tier 2 public project contracts up to \$100,000; the city manager may award, and the purchasing agent may execute, any Tier 2 public project contracts.”

Part 8. Section 4-18, of Article II, of Chapter 4 of the Oxnard City Code, is hereby amended in its entirety to read as follows:

“The public works director and city manager each may approve, and the purchasing agent may execute, any task order thereto that, collectively with all other task orders on the project, does not exceed the total contract value previously approved for the project.”

Part 9. Section 4-19, of Article II, of Chapter 4 of the Oxnard City Code, is hereby amended in its entirety to read as follows:

“The public works director and city manager each may award, and the purchasing agent may execute, any change order to a contract that, collectively with all other change orders on the project, does not exceed the contract plus contingency amount, if any, previously approved for the project.”

Part 10. Section 4-31(B), of Article III, of Chapter 4 of the Oxnard City Code, is hereby amended in its entirety to read as follows:

“The director of each department and city manager may procure, without public bidding, purchases or leases of supplies or equipment that collectively cost up to \$5,000 per vendor or consultant, per fiscal year.”

Part 11. Section 4-36, of Article III, of Chapter 4 of the Oxnard City Code, is hereby amended in its entirety to read as follows:

“When no responsive bids are received, subject to the department director or city manager’s award, the purchasing agent is authorized to negotiate for a written bid, and if the bid is for an amount over the city manager’s annual authorization, this contract shall be presented to the city council for award, and to the most senior available member of the city council for execution.”

Part 12. Section 4-39, of Article III, of Chapter 4 of the Oxnard City Code, is hereby amended in its entirety to read as follows:

“Where a contract has been awarded, the department director and city manager each may award, and the purchasing agent may execute, any purchase order thereto that, collectively with all other purchase orders, does not exceed the total contract value.”

Part 13. Section 4-40, of Article III, of Chapter 4 of the Oxnard City Code, is hereby amended in its entirety to read as follows:

“The department director and city manager each may approve, and the purchasing agent may execute, any change order to a purchase order or contract that, collectively with all other change orders on the project, does not exceed the contract plus contingency amount, if any, previously approved for the purchase or lease of supplies or equipment.”

Part 14. Section 4-52(B), of Article IV, of Chapter 4 of the Oxnard City Code, is hereby amended in its entirety to read as follows:

“The director of each department and city manager each may procure, without public bidding, trade or professional services that collectively cost up to \$5,000 per vendor or

consultant, per fiscal year.”

Part 15. Section 4-59, of Article IV, of Chapter 4 of the Oxnard City Code, is hereby amended in its entirety to read as follows:

“The department director and city manager each may approve, and the purchasing agent may execute, any task order that, collectively with all other task orders, does not exceed the total contract value previously approved for the trade or professional service.”

Part 16. Section 4-60, of Article IV, of Chapter 4 of the Oxnard City Code, is hereby amended in its entirety to read as follows:

“The department director and city manager each may approve, and the purchasing agent may execute, any change order to a contract that, collectively with all other change orders related to that contract, does not exceed the contract plus contingency amount, if any, previously approved for this procurement. Once the contract plus contingency amount is met, any further change orders shall be submitted for approval by the city council”.

Part 17. Section 4-70, of Article V, of Chapter 4 of the Oxnard City Code, is hereby amended in its entirety to read as follows:

“Each department shall provide the purchasing agent with an annual report, listing all procurements awarded by that department within that reporting period.”

Part 18. Section 4-72, of Article V, of Chapter 4 of the Oxnard City Code, is hereby amended in its entirety to read as follows:

“(A) Other than for the rental, lease or license of real property, a contract related to an exemption listed in section 4-5, or public projects listed in sections 4-12 and 4-13, a department manager may award any procurement contract or purchase order up to an annual authorization in the amount of \$50,000.

(B) Other than for the rental, lease or license of real property, a contract related to an exemption listed in section 4-5, or public projects listed in sections 4-12 and 4-13, a department director may award any procurement contract or purchase order up to an annual authorization in the amount of \$100,000.

(C) Other than for the rental, lease or license of real property or a contract related to an exemption listed in section 4-5, the city manager may award any procurement contract or purchase order up to an annual authorization in the amount listed in Cal. Pub. Con. Code, Section 22032(b), as may be changed from time to time.

(D) Other than for the rental, lease or license of real property or a contract related to an exemption listed in section 4-5, the purchasing agent may execute any procurement contract, purchase order or amendment awarded by a department manager, department director or the city manager.

(E) Any amendment that, collectively with the original purchase order or contract and all

amendments thereto, does not exceed an individual's annual authorization may be approved by him or her.

(F) If an individual has authority to award a purchase order or contract, he/she has the authority to amend such purchase order or contract, provided the total amount of that purchase order or contract, and all amendments thereto, does not exceed his/her annual authorization.

(G) The purchasing agent may terminate any purchase order or contract for procurement.

(H) It shall be unlawful to split or separate into smaller purchase orders or contracts any procurement for the purpose of evading the provisions of this chapter."

Part 19. Section 4-75, of Article V, of Chapter 4 of the Oxnard City Code, is hereby amended in its entirety to read as follows:

"Other than for public projects, if the city council is not in session, or if there exists in the view of the purchasing agent an immediate need to do so, a purchase order, contract (including, but not limited to, a lease or license), change order or task order that otherwise would be submitted to the city council may be approved jointly by the city manager and the most senior available member of the city council, as executed by the purchasing agent. The city manager shall place the jointly executed document on the agenda for ratification at one of the next three regular city council meetings. Any document that is jointly approved in this way shall contain a provision that the authority to perform work under that document will automatically terminate on the date that ratification is denied, if it is."

Part 20. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

Part 21. Pursuant to Cal. Gov. Code Section 36933(c)(1), the City Attorney was designated to prepare, and the City Clerk published, a summary of this ordinance, and a certified copy of the ordinance was posted in the Office of the City Clerk a minimum of five days before the City Council's adoption of the ordinance.

Part 22. The City Clerk shall certify as to the adoption of this ordinance and shall cause the summary thereof to be published within fifteen (15) days of the adoption and shall post a certified copy of this ordinance, including the vote for and against the same, in the office of the City Clerk, in accordance with Government Code Section 36933. Ordinance No. ---_ was first read on _____, 2022, and finally adopted on _____, 2022.

Part 23. This ordinance shall become effective on October 1, 2022.

Part 24. The City Council determines and finds that this ordinance is exempt from the California Environmental Quality Act under section 15061(b)(3) because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

AYES:

NOES:

ABSENT:

ABSTAIN:

John C. Zaragoza, Mayor

ATTEST:

Rose Chaparro, City Clerk

APPROVED AS TO FORM:

Stephen M. Fischer, City Attorney

CHAPTER 4: PUBLIC PROJECTS; PURCHASING AND CONTRACTING

ARTICLE I. GENERAL PROVISIONS

- 4-1. Definitions
- 4-2. Purpose
- 4-3. Purchasing agent
- 4-4. Conflict
- 4-5. Exemptions
- 4-6. No obligation to contract

ARTICLE II. PUBLIC PROJECTS

- 4-10. Uniform Public Construction Cost Accounting Act
- 4-11. Bids required
- 4-12. Tier 1 public projects
- 4-13. Tier 2 public projects
- 4-14. Tier 3 public projects
- 4-15. Rejecting all bids
- 4-16. Bonds
- 4-17. Contracts
- 4-18. Task orders
- 4-19. Change orders
- 4-20. Emergencies

ARTICLE III. SUPPLIES AND EQUIPMENT

- 4-30. Applicability
- 4-31. Bids required
- 4-32. Brand and trade names
- 4-33. Informal solicitation
- 4-34. Formal solicitation
- 4-35. Publication
- 4-36. No responsive bids
- 4-37. Receipt or rejection of bids
- 4-38. Purchase orders and contracts
- 4-39. Purchase orders pursuant to contract
- 4-40. Change orders
- 4-41. Urgency

ARTICLE IV. TRADE AND PROFESSIONAL SERVICES

- 4-50. Applicability
- 4-51. [Reserved for living wage policy]
- 4-52. Bids or proposals required
- 4-53. Brand and trade names
- 4-54. Informal solicitation
- 4-55. Formal solicitation

- 4-56. Publication
- 4-57. Receipt or rejection of bids or proposals
- 4-58. Contracts
- 4-59. Task orders
- 4-60. Change orders
- 4-61. Urgency

ARTICLE V. ADDITIONAL PROCEDURES

- 4-70. Regular reporting
- 4-71. Small local business purchasing preference program
- 4-72. Annual authorization
- 4-73. Approval as to form
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- 4-75. Immediate need
- 4-76. Real property
- 4-77. Credit cards

ARTICLE VI. SALE OF SUPPLIES, EQUIPMENT AND SERVICES

- 4-80. Sale of supplies, equipment and services

ARTICLE I. GENERAL PROVISIONS

SEC. 4-1. DEFINITIONS.

For the purposes of Chapter 4, the following definitions and rules shall be observed, unless such would be inconsistent with the manifest intent of the city council:

(A) ANNUAL AUTHORIZATION - The maximum annual value that the city council delegates to an individual to award ~~and execute~~ a purchase order or contract per vendor or consultant.

(B) ANNUAL VALUE - The value of the contract per year, or if the contract does not list an annual amount, the total value of the contract divided by the number of years in the term of that contract.

(C) BEST VALUE - The expected outcome of a solicitation that in the city's estimation will provide the greatest overall benefit in response to the requirement, where price, quality, durability, servicing, delivery time, standardization, and/or other factors outlined in the purchasing manual are considered in the evaluation and selection process to minimize negative impacts and enhance the long-term performance and value of a solicitation submission.

(D) DEPARTMENT DIRECTOR - The most senior individual responsible for a City department.

(E) DEPARTMENT MANAGER - An employee entrusted with budgetary responsibility for a City Division, such as a Division Manager, City Engineer, or Assistant Director.

~~(D)~~ EMERGENCY - Either of the following:

(1) Regarding public projects, as defined in this chapter, the meaning provided in Cal. Pub. Con. Code, Section 22050.

(2) Regarding all procurement unrelated to public projects, a condition or possible safety situation which makes bidding procedures, either formal or informal, impractical or not in the best interests of the city.

(~~EG~~) FORCE ACCOUNT - Work performed on public projects using internal city resources, including, but not limited to, labor, equipment, materials, supplies and subcontracts of the city.

(~~FH~~) FORMAL SOLICITATION - A bid or proposal that must be submitted in a sealed envelope by mail, hand delivery or email or other electronic means, and in conformance with a prescribed format to be opened in public at a specified date and time or evaluated as delineated in the solicitation released, as established in the purchasing manual.

(~~GI~~) INFORMAL SOLICITATION - A competitive bid, price quotation, or proposal for any procurement other than a public project that is conveyed by mail, fax, email or other electronic means, or other written manner that does not require a sealed bid or proposal, public opening or other formalities.

(~~HJ~~) MAINTENANCE or MAINTENANCE WORK - The meaning provided in Cal. Pub. Con. Code, Section 22002(d) and 8 CCR 16000.

(~~IK~~) NEGOTIATED CONTRACT - A contract in an amount up to \$100,000 that is awarded on the basis of a direct contract with a contractor, vendor or consultant without going through the competitive bidding process.

(~~JL~~) PRINCIPAL BUSINESS OFFICE - The place where the principal officers or owners generally transact business, where reports are prepared, from which orders and payments are made, and that the business represents to government authorities as its principal office or principal place of business.

(~~KM~~) PROFESSIONAL SERVICES - All services performed by persons or firms in a professional occupation, including, but not limited to, consulting and performance services for accounting, financial, economic, auditing, redevelopment, computer hardware and software support, engineering, architectural, landscape architectural, planning, environmental, land surveying, construction project management, personnel, social services, animal control, lobbying, grant-writing, legal, management, communication and other similar professional functions.

(~~LN~~) PURCHASING AGENT - An employee whose responsibility it is to procure all supplies, equipment, public projects and services for the city, or that employee's designee(s).

(~~MO~~) PURCHASING MANUAL - The purchasing policies and procedures manual for the purpose of implementation of this chapter, as drafted, amended and adopted by the purchasing agent.

(~~NP~~) PUBLIC PROJECT - The meaning provided in Cal. Pub. Con. Code. Section 22002(c).

(~~OQ~~) SMALL LOCAL BUSINESS - A business entity that has for at least 36 months immediately preceding submittal of its bid held a current business license issued by the city, and maintained its principal business office within the city's geographic boundaries, has average annual gross receipts of \$20,000,000 or less over the 36 months immediately preceding submittal of its bid, and employs fewer than 100 employees, at least 50% of whom are Oxnard residents and have been Oxnard residents for at least 90 days prior to submission of the bid.

(PR) TRADE SERVICE - A service that is not affiliated with a public project and either:

- (1) Does not require specialized skill or certification, including, but not limited to, janitorial or maintenance work; or
- (2) Requires manual skills and special training, but not particular education or degrees, including, but not limited to, mechanical or plumbing services.

SEC. 4-2. PURPOSE.

- (A) The purpose of this chapter is to ensure that the city establishes an efficient centralized procurement system, and that goods, materials, public projects and services are procured at fair and competitive prices.
- (B) This chapter provides procedures for the performance of public projects, the purchase of supplies and equipment, and contracting for services.
- (C) This chapter shall be interpreted and construed to be consistent with State law.

SEC. 4-3. PURCHASING AGENT.

Except as otherwise ordered by city council, the purchasing agent shall provide the services stated in this chapter on behalf of all city departments. In the performance of his/her duties, the purchasing agent shall comply with applicable law and city council orders, including limitations on purchasing procedures. The purchasing agent may:

- (A) Prepare and issue all solicitations.
- (B) Issue a purchase order or ~~award and~~ execute a contract for procurement required by any city department, in accordance with procedures prescribed by this chapter up to the purchasing agent's annual authorization.
- (C) Amend any contract for supplies, equipment and services in any way that does not change the annual value, including, but not limited to, amendments extending the contract term, changing a vendor, contractor or consultant's legal name, or authorizing higher costs and rates.
- (D) Negotiate and recommend award of contracts for the purchase of supplies, equipment and services.
- (E) Act to procure for the city the needed quality in supplies, equipment, and services at the best value to the city.
- (F) Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases.
- (G) Prepare and maintain for the city manager the purchasing manual, procurement card manual, and recommend revisions to both of these documents.
- (H) Keep informed of current developments in the field of purchasing, prices, market conditions and new products.
- (I) Maintain such forms as reasonably necessary to the operation of this chapter and other rules and regulations.

(J) Recommend to the city manager the transfer of surplus or unused supplies and equipment between departments as needed, and the sale of all supplies and equipment that cannot be used by any department or that have become unsuitable for city use.

(K) Use cooperative purchasing, whereby multiple government agencies, cooperative entities, or jurisdictions enter into a contract to procure from each other or to collectively procure a vendor, contractor or consultant.

(L) "Piggyback," whereby the city utilizes another agency or jurisdiction's solicitation results, but enters into a separate contract or issues a separate purchase order with the vendor.

(M) Recommend aAward of and execute a negotiated contract, subject to a department director or city manager's approval, when the purchasing agent determines that obtaining bids, quotations and proposals is not in the city's best interest.

(N) Develop and maintain a list of contractors, vendors and professionals identified according to categories of work.

(O) Prequalify or prescreen contractors, vendors and consultants.

(P) Maintain a list of the construction trade journals, as determined for the county by the California Uniform Construction Cost Accounting Commission, to which the city must deliver notice of all informal and formal construction contracts being bid for work within the county.

SEC. 4-4. CONFLICT.

(A) The provisions of this chapter shall not apply to the extent that they conflict, and shall be interpreted and construed to be consistent, with any applicable State or federal laws or regulations, or the terms and conditions of any grant, contract, gift or bequest otherwise consistent with law.

(B) Any evaluation or selection practice under this chapter that would result in unlawful activity, including, but not limited to, any rebate, kickback or unlawful consideration is expressly prohibited. Any award of a contract where a public official has used his/her official position to influence a governmental decision in which he/she knows or has reason to know that he/she has a financial interest in any person or entity who seeks such a contract, or in the outcome of the selection process in any way, is expressly prohibited.

(C) Prior to participating in any procurement, a staff member will have to state the nature and length of his/her relationship, if any, to all bidders or proposers as well as any other personal interest in the outcome of the solicitation. A staff member must immediately notify the purchasing agent and not review any materials or attend any meetings regarding the procurement until further instruction from the purchasing agent if that staff member has, or reasonably should know that he/she has, a prior relationship or personal interest in the outcome of the solicitation.

SEC. 4-5. EXEMPTIONS.

(A) The city manager may authorize, in writing, any department to procure specified supplies, equipment, public projects and services independently of the purchasing agent.

(B) The following are exempted from obtaining competitive bids and proposals:

- (1) Contracts unrelated to the procurement of goods, materials, public projects or services.
- (2) Advertising (e.g., air time and newspaper and magazine advertising space, but not including advertising agencies or design services).
- (3) Bank service fees.
- (4) Government printed publications.
- (5) Common carrier transportation.
- (6) Travel payments directly to a hotel, motel, airline or other transportation (but not a conference or meeting room rental).
- (7) Insurance.
- (8) Memberships in professional organizations.
- (9) Credit card payments to a bank.
- (10) Contracts with other governmental entities.
- (11) Permit fees, including, but not limited to, those to another governmental agency for operation of a city utility.
- (12) Postage and United States Postal Service post office box fees (not private mail companies).
- (13) Real property purchases, escrow fees and lease payments.
- (14) Subscriptions to publications.
- (15) Any utilities the city uses, including, but not limited to, payments for electricity or gas.
- (16) Voting materials.
- (17) Any other procurement exempted from bids or proposals in State or federal law.
- (18) Legal brief printing and transcription.
- (19) Legal services and services relating to legal matters.
- (20) Anything relating to a confidential, ongoing police investigation and to other confidential police business.

(C) A purchase order, contract, or task order for legal services or services relating to legal matters may be awarded and executed by the city attorney, up to an annual authorization in the amount listed in Cal. Pub. Con. Code, Section 22032(b), as may be changed from time to time, or may be awarded and executed jointly by the city attorney and the most senior available member of the city council if over that amount.

(D) A purchase order, contract, or task order relating to a confidential, ongoing police investigation or other confidential police business may be awarded and executed jointly by the police chief and city manager up to an annual authorization in the amount listed in Cal. Pub. Con. Code, Section 22032(b), as may be changed from time to time, or may be awarded and executed jointly by the city manager and the most senior available member of the city council if over that amount.

SEC. 4-6. NO OBLIGATION TO CONTRACT.

Nothing in this chapter shall require the city to authorize any purchase order or enter into any contract with any person or firm.

ARTICLE II. PUBLIC PROJECTS

SEC. 4-10. UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT.

The city council has elected to subject the city to the Uniform Public Construction Cost Accounting Act (Cal. Pub. Con. Code, Sections 22000 et seq.) in the performance of public projects. The procedures contained in this chapter are intended to implement and be consistent with such Act.

SEC. 4-11. BIDS REQUIRED.

(A) Other than for public projects in the amount listed in Cal. Pub. Con. Code, Section 22032(a), as may be changed from time to time, that are performed by force account, price quotations or bids shall be obtained for all public projects that cost over \$5,000.

(B) The ~~purchasing agent~~, public works director and city manager each may procure, without public bidding, public projects that cost up to \$5,000.

SEC. 4-12. TIER 1 PUBLIC PROJECTS.

(A) A public project in the amount listed in Cal. Pub. Con. Code, Section 22032(a), as may be changed from time to time, and costing over \$5,000 that is not performed by force account requires at least three written bids. The purchasing agent shall use his/her discretion if three written bids cannot be obtained.

(B) The ~~purchasing agent~~, public works director and city manager each may each award, and the purchasing agent may execute, such a contract.

SEC. 4-13. TIER 2 PUBLIC PROJECTS.

(A) A public project in the amount listed in Cal. Pub. Con. Code, Section 22032(b), as may be changed from time to time, shall be bid out using the informal bidding procedures contained in Cal. Pub. Con. Code, Section 22034. Notice shall be provided in accordance with Cal. Pub. Con. Code, Section 22034(a)(2). The ~~purchasing agent and~~ public works director may award ~~and execute~~ Tier 2 public project contracts up to \$100,000; the city manager may award, and the purchasing agent may execute, any Tier 2 public project contracts.

(B) If all bids received are in excess of the amount listed in Cal. Pub. Con. Code, Section 22032(b), as may be changed from time to time, the city council may, by adoption of a resolution by a four-fifths vote, award the contract up to the higher amount listed in Cal. Pub. Con. Code, Section 22034(d) to the lowest responsible bidder if the council determines the city's cost estimate was reasonable.

SEC. 4-14. TIER 3 PUBLIC PROJECTS.

(A) A public project in the amount listed in Cal. Pub. Con. Code, Section 22032(c), as may be changed from time to time, shall be bid out using the formal bidding procedures contained in Cal. Pub. Con. Code, Section 22037.

(B) The city engineer shall adopt plans, specifications and working details for all Tier 3 public projects.

SEC. 4-15. REJECTING ALL BIDS.

The purchasing agent may at any time reject all bids.

SEC. 4-16. BONDS.

In awarding a contract involving an expenditure in excess of the amount listed in Cal. Civil Code, Section 9550, the city shall require both faithful performance and payment bonds, each in the amount required by Cal. Civil Code, Section 9554. Such bonds shall be issued by an admitted surety insurer.

SEC. 4-17. CONTRACTS.

Any public project over the amount listed in Cal. Labor Code, Section 1771, as may be amended from time to time, per contractor, shall be made by contract.

SEC. 4-18. TASK ORDERS.

The ~~purchasing agent~~, public works director and city manager each may approve, and the purchasing agent may execute, any task order thereto that, collectively with all other task orders on the project, does not exceed the total contract value previously approved for the project.

SEC. 4-19. CHANGE ORDERS.

The ~~purchasing agent~~, public works director and city manager each may award, and the purchasing agent may execute, any change order to a contract that, collectively with all other change orders on the project, does not exceed the contract plus contingency amount, if any, previously approved for the project.

SEC. 4-20. EMERGENCIES.

(A) In cases of emergency, including, but not limited to, states of emergency defined in Cal. Gov't Code, Section 8558, when repair or replacements are necessary, the city council may proceed at once to replace or repair any public facility without adopting plans,

specifications or working details, or giving notice for bids to let contracts. The work may be done by day labor under the direction of the city council, by contractor, or by a combination of the two. Cal. Pub. Con. Code, Section 22050 shall apply when a notice for bids to let contracts is not given.

(B) The city manager and purchasing agent each may order any action pursuant to Cal. Pub. Con. Code, Section 22050.

ARTICLE III. SUPPLIES AND EQUIPMENT

SEC. 4-30. APPLICABILITY.

This article shall not apply to supplies or equipment associated with a public project.

SEC. 4-31. BIDS REQUIRED.

(A) Except when the supplies or equipment can be obtained from only one source, or when the purchasing agent determines that obtaining bids and price quotations is not in the city's best interest, at least three written price quotations or bids shall be obtained for all purchases or leases of supplies or equipment that collectively cost over \$5,000 per vendor or consultant, per fiscal year. The purchasing agent shall use his/her discretion if quotes and bids should not or cannot be obtained.

(B) The ~~purchasing agent and the~~ director of each department ~~and city manager~~ may procure, without public bidding, purchases or leases of supplies or equipment that collectively cost up to \$5,000 per vendor or consultant, per fiscal year.

SEC. 4-32. BRAND AND TRADE NAMES.

(A) A request for quotations or bids shall not be drafted calling for designated supplies and equipment by specific brand or trade names, unless immediately followed by the words "or equal" so that bidders may furnish any equal supplies or equipment. A request to substitute equivalent supplies or equipment must be in writing and submitted by the time listed in the request for quotations or bids, or if no such time is written therein, with the quotation or bid submission. A request to substitute equivalent supplies or equipment must include all data necessary to demonstrate acceptability. The burden of proof as to the comparative quality and suitability of the alternative supplies or equipment shall be upon the bidder, and the bidder shall furnish, at his/her/its own expense, all information necessary or related thereto as required by the purchasing agent.

(B) Subsection (A) is not applicable if:

(1) The purchasing agent makes a written finding in the request for quotations or bids that particular supplies or equipment are designated by specific brand or trade names for any of the following purposes:

(a) In order that a field test or experiment may be made to determine the supplies' or equipment's suitability for future use.

(b) In order to match other supplies or equipment in use on a particular project, either completed or in the course of completion, or on a service already provided or being provided.

(c) In order to obtain necessary supplies or equipment that are only available from one source.

(d) In order to respond to an emergency declared by the city, the State, a State agency, a political subdivision of the State or the federal government.

(2) The individual or entity with the authority to award a purchase order or contract determines that the purchase of supplies or equipment of a particular brand or trade name are for a valid purpose.

SEC. 4-33. INFORMAL SOLICITATION.

The purchasing agent shall perform informal solicitations for the purchases of supplies and equipment (unrelated to a public project) up to \$100,000.

SEC. 4-34. FORMAL SOLICITATION.

The purchasing agent shall perform formal solicitations for the purchases of supplies and equipment (unrelated to a public project) over \$100,000.

SEC. 4-35. PUBLICATION.

Notice inviting bids shall be published either in a newspaper of general circulation, an e-procurement website, and/or by any other method of advertising that is recognized and accepted for public agency purchasing and is consistent with applicable State law. It shall be the responsibility of the purchasing agent to encourage as wide a response as possible from prospective vendors.

SEC. 4-36. NO RESPONSIVE BIDS.

When no responsive bids are received, subject to the department director or city manager's award, the purchasing agent ~~may elect to award and execute a negotiated contract. The purchasing agent~~ is authorized to negotiate for a written bid, and if the bid is for an amount over the city manager's annual authorization, this contract shall be presented to the city council for award, and to the most senior available member of the city council for execution.

SEC. 4-37. RECEIPT OR REJECTION OF BIDS.

(A) The city may accept a bid or proposal on the basis of the lowest bid or the best value.

(B) If two or more bids received are for the same total amount or unit price, the city may accept the one it chooses on the basis of the lowest bid made by negotiation or the best value.

(C) The purchasing agent may at any time reject all bids.

SEC. 4-38. PURCHASE ORDERS AND CONTRACTS.

(A) Any supplies and equipment over \$5,000 per vendor per fiscal year shall be made only by a purchase order or contract.

(B) Every purchase order or contract shall be awarded either to the most responsive, responsible bidder, or to the bidder offering the best value.

SEC. 4-39. PURCHASE ORDERS PURSUANT TO CONTRACT.

Where a contract has been awarded, the ~~purchasing agent~~department director and city manager each may award, and the purchasing agent may execute, any purchase order thereto that, collectively with all other purchase orders, does not exceed the total contract value.

SEC. 4-40. CHANGE ORDERS.

The ~~purchasing agent~~department director and city manager each may approve, and the purchasing agent may execute, any change order to a purchase order or contract that, collectively with all other change orders on the project, does not exceed the contract plus contingency amount, if any, previously approved for the purchase or lease of supplies or equipment.

SEC. 4-41. URGENCY.

Sections 4-31 through 4-37 shall not apply to a situation that, at the city manager's discretion:

(A) Does not permit obtaining price quotations or bids; and

(B) Public interest and necessity demand the immediate expenditure of public money to avoid harm to or to safeguard life, health or property, or to mitigate severe economic expenses.

ARTICLE IV. TRADE AND PROFESSIONAL SERVICES

SEC. 4-50. APPLICABILITY.

This article shall not apply to trade or professional services associated with a public project.

SEC. 4-51. [RESERVED FOR LIVING WAGE POLICY]

SEC. 4-52. BIDS OR PROPOSALS REQUIRED.

(A) Except when the service can be obtained from only one source, or when the purchasing agent determines that obtaining price quotations, bids and proposals is not in the city's best interest, at least three written price quotations, bids or proposals shall be obtained for all trade or professional services that collectively cost over \$5,000 per vendor or consultant, per fiscal year. The purchasing agent shall use his/her discretion if price quotations, bids and proposals should not or cannot be obtained.

(B) The ~~purchasing agent and the~~ director of each department and city manager each may procure, without public bidding, trade or professional services that collectively cost up to \$5,000 per vendor or consultant, per fiscal year.

SEC. 4-53. BRAND AND TRADE NAMES.

(A) A request for quotations, bids or proposals regarding a service shall not be drafted calling for designated supplies and equipment by specific brand or trade names to be used in providing that service, unless immediately followed by the words "or equal" so that bidders or proposers may furnish any equal supplies or equipment in providing that service. A request to substitute equivalent supplies or equipment must follow the process outlined in section 4-22, and the burden of proof is likewise on the bidder or proposer as explained in that section.

(B) Subsection (A) is not applicable if any exemption listed in section 4-22 applies.

SEC. 4-54. INFORMAL SOLICITATION.

The purchasing agent shall perform informal solicitations for the purchase of trade and professional services (unrelated to a public project) up to \$100,000.

SEC. 4-55. FORMAL SOLICITATION.

The purchasing agent shall perform formal solicitations for the purchase of supplies and equipment (unrelated to a public project) over \$100,000.

SEC. 4-56. PUBLICATION.

Notice inviting bids or proposals shall be published either in a newspaper of general circulation, an e-procurement website, and/or by any other method of advertising that is recognized and accepted for public agency purchasing and is consistent with applicable State law. It shall be the responsibility of the purchasing agent to encourage as wide a response as possible from prospective vendors or consultants.

SEC. 4-57. RECEIPT OR REJECTION OF BIDS OR PROPOSALS.

- (A) The city may accept a bid or proposal on the basis of the lowest bid or the best value.
- (B) In the case of bids for price only, if two or more bids received are for the same total amount or unit price, the city may accept the one it chooses on the basis of the lowest bid made by negotiation or the best value.
- (C) The purchasing agent may reject all bids or proposals.

SEC. 4-58. CONTRACTS.

- (A) Any trade services over the amount listed in Cal. Labor Code, Section 1771, as may be amended from time to time, per vendor, per fiscal year, shall be made only by contract. Every contract shall be awarded either to the most responsive, responsible bidder, or on the basis of demonstrated competence and on the qualifications necessary for the satisfactory performance of the services.
- (B) Any professional services over \$5,000 per consultant, per fiscal year, shall be made only by contract. Every contract shall be awarded on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services.

SEC. 4-59. TASK ORDERS.

The ~~purchasing agent~~department director and city manager each may approve, and ~~the purchasing agent may~~ execute, any task order that, collectively with all other task orders, does not exceed the total contract value previously approved for the trade or professional service.

SEC. 4-60. CHANGE ORDERS.

The ~~purchasing agent~~department director and city manager each may approve, and ~~the purchasing agent may~~ execute, any change order to a contract that, collectively with all other change orders related to that contract, does not exceed the contract plus contingency amount, if any, previously approved for this procurement. Once the contract plus contingency amount is met, any further change orders shall be submitted for approval by the city council.

SEC. 4-61. URGENCY.

Unless otherwise required by law, sections 4-52 through 4-57 shall not apply in a situation in which, at the city manager's discretion:

- (A) Does not permit obtaining price quotations, bids or proposals; and

(B) Public interest and necessity demand the immediate expenditure of public money to avoid harm to or to safeguard life, health or property, or to mitigate severe economic expenses.

ARTICLE V. ADDITIONAL PROCEDURES

SEC. 4-70. REGULAR REPORTING.

Each department shall provide the purchasing agent with an annual report, listing all procurements awarded ~~and/or executed~~ by that department within that reporting period.

SEC. 4-71. SMALL LOCAL BUSINESS PURCHASING PREFERENCE PROGRAM.

(A) In cases where the city code requires a written competitive bid for the purchase of goods or services, in determining the lowest responsible bidder, when responsibility and quality are equal, a credit in a percentage of the bid submitted by the lowest responsible bidder meeting specifications shall be given to a bidder that meets the definition of a “small local business” in this chapter as follows: 5% of the amount up to \$500,000; 4% of the amount between \$500,001 and \$750,000; 3% of the amount between \$750,001 and \$1,000,000; 2% of the amount between \$1,000,001 and \$1,250,000 and 1% of the amount between \$1,250,001 and \$1,500,000. For example, if the lowest responsible bid is \$1,000,000, the preference would be \$42,500 ($\$500,000 \times .05 + \$250,000 \times .04 + \$250,000 \times .03$). The preference applies to all contracts, including contracts over \$1,500,000, but the amount of the preference is limited, as provided herein, so that the maximum preference is \$50,000.

(B) As an alternative to the employment requirements described in the definition of a “small local business,” and only with respect to trade services or construction contracts to perform for which the contractor intends to hire employees or to subcontract, a contractor submitting a bid shall satisfy the resident employment requirements for obtaining preference as follows. With the submission of its bid, the contractor shall submit a certification, under penalty of perjury, that it has verified its own proposed employee base for performance of the contract and confirmed with all subcontractors providing bids used to formulate the contractor's bid, all of whom have subcontracted with or will subcontract with the contractor, that at least 50% of the labor hours devoted to performance of the contract will be provided by residents of the city. During or within one year after performance of the contract, the city manager shall have the right to audit all the contractor's records to confirm the accuracy of the contractor's certification. The contractor shall provide to the city all documents (including subcontractors' records) appropriate to perform such an audit. Should it be determined, after such audit by the city manager, that the requirements of this subsection have not been met, or should the contractor not upon request provide documents sufficient for the audit required by this subsection to be performed, the contractor shall be required to pay upon demand to the city the entire amount of any preference granted, which amount may be withheld from any payment otherwise due the contractor. The foregoing is in addition to any other

consequences that may be imposed upon the contractor for violation of the provisions of a city ordinance. The city manager's determination under this subsection may be reviewed pursuant to sections 1-55 et seq. of the city code.

(C) Subject to review by the city manager, the requirements to obtain a small local business preference may be established by submission with the bid of certification, under penalty of perjury, that the business meets such requirement, including a list showing all employee addresses, and affirming that the employees have granted permission for the use of their addresses.

(D) The city manager shall determine whether a business is a small local business under this section, including whether the principal office of the business is in the city, and whether employees are residents of the city. The city manager's determination shall be final and not appealable under any provision of the city code, except for the determination described in subsection (B) of this section.

(E) The city manager may adopt, or instruct the purchasing agent to adopt, such regulations, applications and forms as the city manager determines are appropriate to implement the provisions of this section.

(F) The provisions of this section shall not apply when the small local business preference described herein is contrary to or precluded by requirements of State or federal law, or contrary to or precluded by requirements of a State or federal funding source or program providing assistance to the city for the particular project.

(G) In addition to any other consequence that may be imposed for violation of a city ordinance, the city manager may prohibit a business entity that he/she determines has falsely claimed to be a small local business from bidding on city contracts for a period of up to five years. The city manager's determination may be reviewed pursuant to sections 1-55 et seq. of the city code.

SEC. 4-72. ANNUAL AUTHORIZATION.

(A) Other than for the rental, lease or license of real property, a contract related to an exemption listed in section 4-5, or public projects listed in sections 4-12 and 4-13, department managers may award any procurement contract or purchase order up to an annual authorization in the amount of \$50,000.

(A)(B) Other than for the rental, lease or license of real property, a contract related to an exemption listed in section 4-5, or public projects listed in sections 4-12 and 4-13, department directors may award any procurement contract or purchase order up to an annual authorization in the amount of \$100,000.

~~(B) Other than for the rental, lease or license of real property or a contract related to an exemption listed in section 4-5, the purchasing agent may award and execute any procurement contract or purchase order up to an annual authorization in the amount of \$100,000.~~

~~(B—C)~~ Other than for the rental, lease or license of real property or a contract related to an exemption listed in section 4-5, the city manager may award ~~and execute~~ any procurement contract or purchase order up to an annual authorization in the amount listed in Cal. Pub. Con. Code, Section 22032(b), as may be changed from time to time.

(A) ~~(D)~~ Other than for the rental, lease or license of real property or a contract related to an exemption listed in section 4-5, the purchasing agent may execute any procurement contract, purchase order or amendment awarded by a department manager, department director or the city manager.

~~(C)~~(E) Any amendment that, collectively with the original purchase order or contract and all amendments thereto, does not exceed an individual's annual authorization may be approved ~~and executed~~ by him or her.

~~(D)~~(F) If an individual has authority to award a purchase order or contract, he/she has the authority to amend such purchase order or contract, provided the total amount of that purchase order or contract, and all amendments thereto, does not exceed his/her annual authorization.

~~(E)~~(G) The purchasing agent may terminate any purchase order or contract for procurement.

~~(F)~~(H) It shall be unlawful to split or separate into smaller purchase orders or contracts any procurement for the purpose of evading the provisions of this chapter.

SEC. 4-73. APPROVAL AS TO FORM.

All purchase orders, contracts, amendments, task orders, change orders and terminations shall be approved as to form by the city attorney.

SEC. 4-74. CONTRACT TERM.

The city may enter into a contract for a term consistent with the industry standard term for that particular supply, equipment or service.

SEC. 4-75. IMMEDIATE NEED.

Other than for public projects, if the city council is not in session, or if there exists in the view of the purchasing agent an immediate need to do so, a purchase order, contract (including, but not limited to, a lease or license), change order or task order that otherwise would be submitted to the city council may be approved jointly by the city manager and the most senior available member of the city council, as executed by the purchasing agent. The city manager shall place the jointly executed document on the agenda for ratification at one of the next three regular city council meetings. Any document that is jointly approved in this way shall contain a provision that the authority to perform work under that document will automatically terminate on the date that ratification is denied, if it is.

SEC. 4-76. REAL PROPERTY.

The purchasing agent may award and execute up to an annual authorization of \$50,000, and the city manager may award and execute up to an annual authorization of \$100,000, any contract for the rental, lease or license of real property for periods of time not to exceed three years.

SEC. 4-77. CREDIT CARDS.

City staff may use city-issued credit cards to pay for supplies and equipment purchased for the city and for city-related training and travel. The purchasing agent shall develop and maintain a procurement card manual for the issuance, oversight, and use of such credit cards.

ARTICLE VI. SALE OF SUPPLIES, EQUIPMENT AND SERVICES

SEC. 4-80. SALE OF SUPPLIES, EQUIPMENT AND SERVICES.

(A) The purchasing agent may sell, trade or otherwise dispose of supplies and equipment that are no longer used or have become obsolete or worn out, including awarding and executing contracts to sell, trade in or otherwise dispose of such supplies and equipment.

(B) The city manager may award and execute contracts to provide city staff's trade or professional services to another entity.

REVISIONS TO THE CITY'S PROCUREMENT ORDINANCE

Presentation to Finance & Governance Committee

Mark Sewell, Assistant Chief Financial Officer

April 12, 2022

That the Finance and Governance Committee recommends that City Council introduce an amendment to the City's Procurement Ordinance in preparation for launch of the Core Financials phase of Tyler Munis.

- Defines Rules for all City Procurement.
 - Adopted June 19, 2018.
 - Recommendation to Amend Signature Authority
 - To Align with Municipal Best Practices
 - To Align with New, Modern System Functionality
1. Amend the Purchasing Agent's signature authority for annual dollar limit per vendor from \$100,000 to \$0.
 2. Amend City Department Manager signature authority for annual dollar limit per vendor from \$0 to \$50,000.
 3. Amend the City Department Director signature authority from annual dollar limit from \$5,000 to \$100,000.

Signature Authority for Contracts/Purchase Orders/Change Orders/ Task Orders Other Than for Real Property

Annual Limit Per Vendor Per Fiscal Year / Citywide		
<u>Position</u>	<u>Current</u>	<u>Recommended</u>
Department Director	\$5,000	\$100,000*
Department Manager	\$0	\$50,000
Purchasing Agent**	\$100,000	\$0
Public Works Director (Public Projects)	\$100,000	\$100,000
City Manager	\$200,000	\$200,000
City Council	>\$200,000	>\$200,000

* Except public projects (construction); that is only for the Public Works Director

** Purchasing Agent will execute all procurement contracts and POs, ensuring compliance with policies

- Opportunity to Update existing Ordinance to Leverage ERP.
 - Centralized Purchasing
 - Electronic Cross Functional Approval Processes
 - System Audit Logs Track all Actions
 - Electronic Document Storage and Retrieval
 - Automated Budget Checking
 - Enhanced Consolidated Vendor / Transaction Reporting
- Transfer approval of the use of City funds to the operating departments that are responsible for service delivery to the community.
- Increased Operational Efficiency
 - Automated Budget Checking, Electronic Approval Routing

That the Finance and Governance Committee recommends that City Council introduce an amendment to the City's Procurement Ordinance in preparation for launch of the Core Financials phase of Tyler Munis.



QUESTIONS?



FINANCE AND GOVERNANCE COMMITTEE AGENDA REPORT

REPORTS AGENDA ITEM NO. D.2

DATE: April 12, 2022

TO: Finance & Governance Committee

FROM: Betsy George, Chief Financial Officer, (805) 200-5400, betsy.george@oxnard.org

SUBJECT: Adopt a resolution approving Water Infrastructure Finance and Innovation Act ("WIFIA") Loan from the U.S. Environmental Protection Agency ("EPA"). (10/5/5)

RECOMMENDATION

That the Finance and Governance Committee recommend:

1. City Council adopt a resolution approving an Installment Purchase Agreement, Indenture of Trust, a WIFIA Loan Agreement, and a WIFIA Loan Term Sheet with respect to the issuance by the City of Oxnard Financing Authority of bonds in an aggregate principal amount not to exceed \$55,000,000 and other matters pertaining thereto.
2. That the Board of Directors of the City of Oxnard Financing Authority adopt a resolution approving an Installment Purchase Agreement, Indenture of Trust, a WIFIA Loan Agreement, and a WIFIA Loan Term Sheet with respect to the issuance by the City of Oxnard Financing Authority of bonds in an aggregate principal amount not to exceed \$55,000,000 and other matters pertaining thereto.

(Presentation will be live upon Consultant's request.)

BACKGROUND

The Water Infrastructure Finance and Innovation Act ("WIFIA") program was authorized by U.S. Congress in the Water Resources Reform and Development Act of 2014. The purpose of the WIFIA program is to help finance water and wastewater infrastructure projects around the country, and the financing program provides assistance to local agencies for water infrastructure projects that would otherwise have difficulty obtaining financing. The WIFIA program is administered by the U.S. Environmental Protection Agency ("EPA").

The City submitted a letter of interest to the EPA in October 2020 related to its Aquifer Storage and Recovery ("ASR") project. After EPA staff reviewed the letter of interest, the City was invited to submit an application for the WIFIA financing program.

On September 7, 2021, City Council authorized the City Manager to submit the WIFIA application in an amount not to exceed \$49,792,000. The application (along with the \$100,000 application fee) was submitted in the Fall of 2021. The application fee will be credited against the financing costs associated with the WIFIA financing.

The application process includes evaluating both the project and financials of the City. According to the EPA,

the average time from application submission to closing is approximately seven months. City staff have been in constant communication with EPA staff discussing both the engineering aspects of the project and the City's ability to repay the obligation from water revenues. Additional discussions have involved the refinement of the financing structure, responding to due diligence information requests and providing input on the legal terms for the financing.

The project proposed to be financed by the WIFIA Loan is a major component of the City's Groundwater Recovery Enhancement and Treatment (GREAT) program, which was initiated to secure reliable water supplies for the community by focusing on water reuse as the key to a sustainable water supply portfolio. The proposed project encompasses the following components:

1. Upgrades to and expansion of the City's Advanced Water Purification Facility (AWPF) to increase its capacity from the current 6.25 million gallons per day (mgd) to 12.5 mgd. Upgrades will include product water disinfection equipment and improved site security systems and new water storage tanks;
2. Construction of six ASR wells – one demonstration well and five full-scale wells;
3. A 20-inch diameter distribution pipeline to convey recovered groundwater from the ASR wells to three existing water blending stations (numbers 1, 3 & 6); and
4. Mechanical and electrical upgrades to those blending stations, as well as piping modifications and variable frequency drive pump replacements.

The demonstration well improvements are underway and is anticipated to be completed by July 2022 and is not a part of this WIFIA program application. We anticipate the demonstration period may last up to a year before the Division of Drinking Water approves the permit for indirect potable reuse (IPR). After we receive the permit, we plan on continuing to the next stage which is the ASR Completion Project.

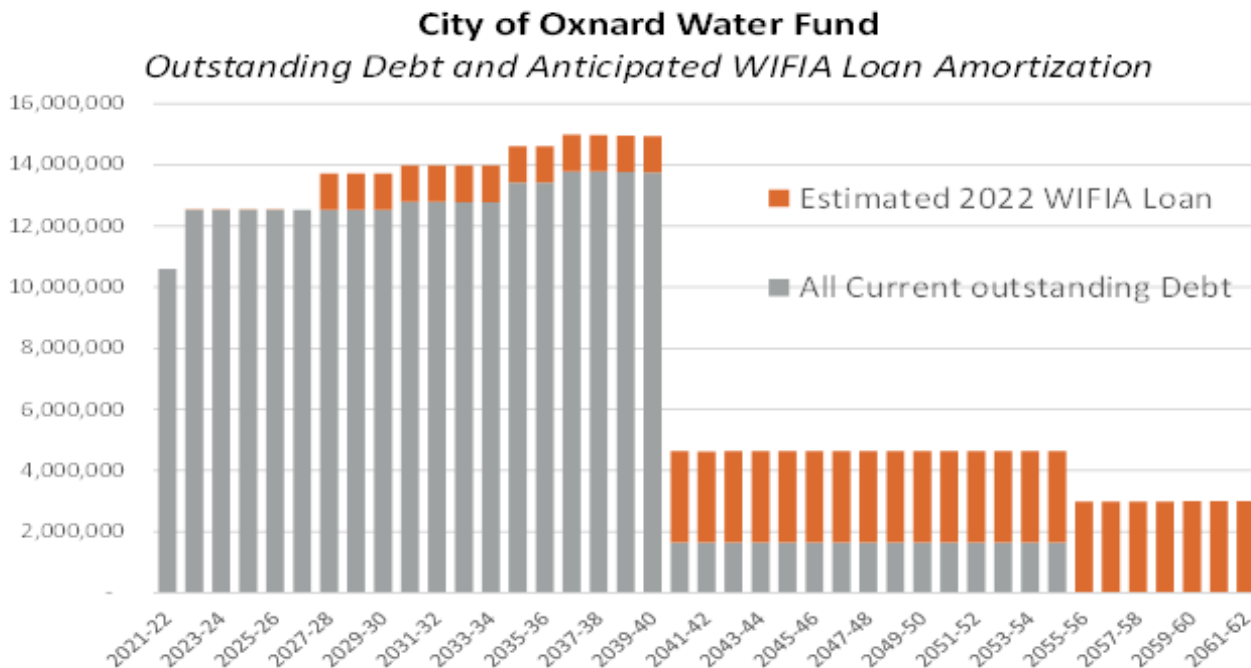
The ASR Completion Project which does fall under WIFIA consists of the design and implementation of enhancements to the City's recycled water system to increase production of advanced treated water at the AWPF, expand ASR by constructing the remaining five full-scale wells, and distribute treated water in order to augment potable water supplies for long-term water supply reliability. Project implementation will allow the City to increase production and use of recycled water treated at the City's existing AWPF and sustainably maximize groundwater pumping from the Oxnard Groundwater Basin. This would occur by supplying AWPF effluent to agricultural users and pumping an equivalent amount of groundwater through pump-back allocations for potable demands. At the same time, ASR and IPR would be expanded to increase potable water supplies and improve blended water quality. ASR allows high quality AWPF-treated water to be injected into the local groundwater aquifer and subsequently extracted for IPR.

The WIFIA financing is unique when compared to the City's existing water obligations.

1. The WIFIA financing provides flexible payment terms (extended final maturity and deferred payments). Repayment is not expected to start for five years after funding or completion of the project, whichever comes first. Once repayment begins, the WIFIA financing will be amortized over a period of 35 years. Accordingly, the City's WIFIA financing is expected to have a final maturity of June 2061 (40 years from closing).
2. The WIFIA financing will have a low, fixed interest rate based on the U.S. Treasury rate for a comparable maturity of the same weighted average life. This enables the City to secure a long-term interest rate lower than available in the capital markets. Initial estimates of the WIFIA financing include saving over \$30,000,000 during the 40-year repayment term (when compared to capital markets financing terms).
3. The WIFIA financing has a flexible amortization structure. The existing Water Fund obligations are generally maturing over the next 18 years. The WIFIA financing will be structured to have most of the payments after the existing obligations are completed. The low interest rate on the WIFIA financing

results in a lower overall repayment. This “wrap around” structure minimizes the impact on future water rate increases.

4. The WIFIA financing has flexible prepayment terms. While it is unlikely that the City would refinance the WIFIA financing (given the low long-term interest rate), the City maintains the option to prepay all or a portion of the WIFIA financing on any interest payment date.



NOTABLE WIFIA FINANCING REQUIREMENTS

WIFIA requires the City to secure matching funds to cover at least 51% of the eligible costs of the project. Eligible costs include the design, engineering, planning, construction costs, as well as construction contingency, costs of issuing the debt, capitalized interest, and reserve fund deposits. The City anticipates securing the matching funds through the issuance of water revenue bonds in fiscal year 2023-24 for the projects.

The City’s outstanding water revenue bonds have a requirement that the City maintain each year’s net water revenues equivalent to 100% of annual debt service and maintain a cash balance in the Water Fund equivalent to 25% of maximum annual debt service on all outstanding debt. The City has pledged to reduce expenses and/or raise water rates as needed to meet these covenants. The EPA has indicated that it will require the City to maintain net revenues equivalent to 110% of annual debt service (increasing the existing 100% requirement). Since the WIFIA financing is on parity with the outstanding Water obligations, this new covenant will impact future parity water obligations.

Staff believes that this requirement will not cause any debt covenant compliance concerns for the City in the immediate future given current coverage of 167% (fiscal year 2020-21).

Other than the updated coverage requirement above, the WIFIA financing will have similar legal covenants, documents, and requirements as the City’s outstanding water bonds.

STRATEGIC PRIORITIES

This agenda item supports the Infrastructure and Natural Resources strategy. The purpose of the Infrastructure and Natural Resources strategy is to preserve and improve our roads, utilities, parks, trees, water supply and

natural resources through effective planning, prioritization, and an equitable and efficient use of available funding.

FINANCIAL IMPACT

This WIFIA financing is an obligation of the Water Fund and there is no financial impact to the City's General Fund. The WIFIA financing will require an annual WIFIA administration fee, payable to the EPA. This fee is expected to range from \$8,000 to \$22,000 per year and will be paid along with the interest and principal payments. The WIFIA financing is expected to commence interest-only payments in fiscal year 2027-28 (approximately \$1,500,000/year). The repayment of principal is anticipated to begin in fiscal year 2040-41 (final maturity 2060-61), with estimated annual payments of approximately \$3,340,000/year.

ESTIMATED TIMING

City staff expect to bring the item before City council on May 3, 2022, and close on the WIFIA financing in mid-May 2022.

GOOD FAITH ESTIMATES

The good faith estimates set forth herein are provided with respect to the WIFIA financing in accordance with California Government Code Section 5852.1. Such good faith estimates have been provided to the City by the Municipal Advisor.

Principal Amount. The Municipal Advisor has informed the City that, based on the City's purchase agreements, financing plan, and current market conditions, its good faith estimate of the aggregate principal amount of the WIFIA financing is \$48,500,000 (the "Estimated Principal Amount").

True Interest Cost of the WIFIA financing. The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the WIFIA financing, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the true interest cost of the WIFIA financing is 3.00%.

Finance Charge of the WIFIA financing. The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the WIFIA financing, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the finance charge for the WIFIA financing, which means the sum of all fees and charges paid to third parties (or costs associated with the WIFIA financing), is \$450,000.

Amount of Proceeds to be Received. The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the WIFIA financing, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the amount of proceeds expected to be received by the City for the WIFIA financing is \$44,712,356.

Total Payment Amount. The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the WIFIA financing, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the total payment amount, which means the sum total of all payments the City will make to pay debt service on the WIFIA financing is \$90,309,215, which excludes any reserves or capitalized interest paid or funded with proceeds of the WIFIA financing (which may offset such total payment amount).

The foregoing estimates constitute good faith estimates only as of March 23, 2022, and are based on market conditions prevailing at the time of preparation of such estimates. The actual principal amount of the WIFIA

financing, the true interest cost thereof, the finance charges thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to (a) the actual closing date of the WIFIA financing being different than the date assumed for purposes of such estimates, (b) the actual principal amount of WIFIA financing being different from the Estimated Principal Amount, (c) the actual amortization of the WIFIA financing being different than the amortization assumed for purposes of such estimates, (d) the actual market interest rates at the time of close of the WIFIA financing being different than those estimated for purposes of such estimates, (e) other market conditions, or (f) alterations in the City's financing plan, or a combination of such factors. The actual closing date of the WIFIA financing and the actual principal amount of the WIFIA financing will be determined by the City based on the timing of the need for proceeds of the WIFIA financing and other factors. The actual interest rates borne by the WIFIA financing will depend on market interest rates at the time of sale thereof. The actual amortization of the WIFIA financing will also depend, in part, on market interest rates at the time of sale thereof. Market interest rates are affected by economic, national, international and other factors beyond the control of the City or the Municipal Advisor.

Prepared by: NHA Advisors

ATTACHMENTS

1. Oxnard 2022 WIFIA Loan - Resolution of the City-c1
2. Oxnard 2022 WIFIA Loan - Resolution of the Authority-c1
3. Oxnard 2022 WIFIA Loan - DRAFT Indenture of Trust-c1
4. Oxnard 2022 WIFIA Loan - DRAFT Installment Purchase Agreement-c1
5. Oxnard WIFIA Term Sheet_DRAFT 03-22-2022
6. Oxnard_WIFIA_Loan_Agreement-DRAFT_03-24-2022
7. Estimated WIFIA Loan Amortization Schedule
8. 4.12.22 Presentation on WIFIA Financing

CITY COUNCIL OF THE CITY OF OXNARD

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD APPROVING AN
INSTALLMENT PURCHASE AGREEMENT, INDENTURE OF TRUST, A WIFIA LOAN
AGREEMENT, AND A WIFIA LOAN TERM SHEET WITH RESPECT TO THE ISSUANCE
BY THE CITY OF OXNARD FINANCING AUTHORITY OF BONDS IN AN AGGREGATE
PRINCIPAL AMOUNT NOT TO EXCEED \$55,000,000, AND OTHER MATTERS
PERTAINING THERETO

WHEREAS, City of Oxnard Financing Authority (the “Authority”) was established for the purpose of assisting the City of Oxnard (the “City”) with financing public capital improvements; and

WHEREAS, The Aquifer Storage Recovery (ASR) Project consists of the following components: (i) expansion of the City’s Advanced Water Purification Facility capacity, (ii) construction of additional aquifer storage wells, (iii) construction of a distribution pipeline to convey recovered groundwater from the ASR wells to three existing Blending Stations, and (iv) upgrades to two of the City’s Blending Stations including mechanical and electrical upgrades as well as piping modifications and pump replacements in an amount of \$48,000,000 (the “2022 Project”); and

WHEREAS, the City has determined to finance the 2022 Project through the issuance by the Authority of an aggregate principal amount of bonds in an amount not to exceed \$55,000,000 (the “2022 Bonds”), pursuant to an Indenture of Trust to be entered into among the City, the Authority and Computershare Trust Company, N.A., as trustee (the “Trustee”); and

WHEREAS, under the terms of an Installment Purchase Agreement between the City and the Authority (the “Installment Purchase Agreement”) the Authority will sell the Prior Projects and the 2022 Project to the City and the City will agree to make installment payments to the Authority; and

WHEREAS, there has been presented to the City Council a WIFIA Loan Term Sheet (the “Term Sheet”) together with a form of WIFIA Loan Agreement (the “WIFIA Loan Agreement”) whereby 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 will purchase the 2022 Bonds; and

WHEREAS, Section 5852.1 of the California Government Code requires that the Board obtain from an underwriter, financial advisor or private lender and disclose, in a meeting open to the public, prior to authorization of the issuance of the 2022 Bonds, good faith estimates of (a) the true interest cost of the 2022 Bonds, (b) the sum of all fees and charges paid to third parties with respect to the 2022 Bonds, (c) the amount of proceeds of the 2022 Bonds expected to be received net of the fees and charges paid to third parties and any reserves or capitalized interest paid or funded with proceeds of the 2022 Bonds, and (d) the sum total of all debt service payments on the 2022 Bonds calculated to the final maturity of the 2022 Bonds, plus the fees and charges paid to third parties not paid with the proceeds of the 2022 Bonds;

WHEREAS, in compliance with Section 5852.1 of the California Government Code, the Council has obtained from NHA Advisors, Inc., the City's municipal advisor (the "Municipal Advisor") the required good faith estimates and such estimates are disclosed in the report presented to the City Council; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the issuance of the 2022 Bonds hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such issuance for the purpose, in the manner and upon the terms herein provided;

NOW, THEREFORE, the City Council of the City of Oxnard resolves as follows:

Section 1. Recitals True and Correct. The foregoing recitals are true and correct and the City Council so finds and determines.

Section 2. Funding 2022 Project approval of the Term Sheet. The City Council hereby approves the issuance of the 2022 Bonds by the Authority for the purposes of raising new money for the 2022 Project with the proceeds of the 2022 Bonds on the terms and conditions detailed in the documents presented at this meeting. Additionally, the 2022 Bonds shall pay costs incurred in connection with the issuance of the 2022 Bonds, all in accordance with the provisions of this Resolution and the Indenture of Trust as finally executed and delivered. The terms of the 2022 Bonds and the interest rate on the 2022 Bonds shall be as described in the Term Sheet, which is hereby approved, and such Term Sheet may be executed and delivered on behalf of the City by an Authorized Representative, defined below.

Section 3. Approval of Installment Purchase Agreement. The agreement entitled "Installment Purchase Agreement (Series 2022)" to be entered into by and between the City and the Authority, which provides generally for (i) the acquisition of the 2022 Project by the Authority, (iii) the purchase by the City from the Authority of the 2022 Project, and (iv) the payment by the City to the Authority of Installment Payments in amounts which will be sufficient to pay the principal of and interest owing on the 2022 Bonds until the 2022 Bonds are fully paid, is hereby approved and the Mayor, Mayor Pro Tem, the City Manager, Chief Finance Officer and City Clerk (each an "Authorized Representative") are, and each such officer is, authorized and directed to execute, acknowledge and deliver said agreement on behalf of the City in substantially the form hereby approved with such changes therein as the officer executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. Approval of Indenture of Trust. The agreement entitled "Indenture of Trust" to be entered into by and among the City, the Authority and the Trustee named therein, are hereby approved and any Authorized Representative is authorized and directed to execute, acknowledge and deliver said agreement on behalf of the City in substantially the form hereby approved with such changes therein as the officer executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. Approval of Loan Agreement and Conditions of Approval. The form of WIFIA Loan Agreement presented at this meeting is hereby approved and is hereby authorized to accept, for and in the name of the City, such WIFIA Loan Agreement in substantially the form hereby approved with such changes therein as the Authorized Representative executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof, provided that the WIFIA Loan Agreement and the provisions of the Installment Purchase Agreement, shall conform to the provisions of the Term Sheet.

Section 6. Other Acts. The officers of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the issuance of the 2022 Bonds, the financing of the 2022 Project or otherwise to effectuate the purpose of this Resolution, including obtaining bond insurance or other guarantee of the 2022 Bonds, and such actions previously taken by such officers are hereby ratified and confirmed.

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Section 7. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

PASSED AND ADOPTED this ____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

John C. Zaragoza, Mayor

ATTEST:

Rose Chapparo, City Clerk

APPROVED AS TO FORM:

Stephen Fischer, City Attorney

STATE OF CALIFORNIA)
COUNTY OF VENTURA) ss.
CITY OF OXNARD)

I, Rose Chapparo, City Clerk of the City of Oxnard, do hereby certify the attached to be a true and correct copy of City of Oxnard, City Council Resolution No. _____, adopted at the Oxnard City Council Meeting held on _____, 2022. The original resolution is on file in the City Clerk's Office at 300 W. Third Street, Oxnard, California 93030.

DATED this ____ day of _____, 2022.

Rose Chapparo
City Clerk

BOARD OF DIRECTORS OF
THE CITY OF OXNARD FINANCING AUTHORITY

RESOLUTION NO. _____

RESOLUTION OF THE BOARD OF DIRECTORS OF CITY OF OXNARD FINANCING
AUTHORITY APPROVING AN INSTALLMENT PURCHASE AGREEMENT, INDENTURE
OF TRUST, A WIFIA LOAN AGREEMENT, AND A WIFIA LOAN TERM SHEET WITH
RESPECT TO THE ISSUANCE OF BONDS IN AN AGGREGATE PRINCIPAL AMOUNT
NOT TO EXCEED \$55,000,000, APPOINTING A TRUSTEE AND OTHER MATTERS
PERTAINING THERETO

WHEREAS, City of Oxnard Financing Authority (the “Authority”) was established for the purpose of assisting the City of Oxnard (the “City”) with financing public capital improvements; and

WHEREAS, the City Council has considered financing the Aquifer Storage Recovery (ASR) Project consists of the following components: (i) expansion of the City’s Advanced Water Purification Facility capacity, (ii) construction of additional aquifer storage wells, (iii) construction of a distribution pipeline to convey recovered groundwater from the ASR wells to three existing Blending Stations, and (iv) upgrades to two of the City’s Blending Stations including mechanical and electrical upgrades as well as piping modifications and pump replacements in an amount of \$48,000,000 (the “2022 Project”); and

WHEREAS, the City has determined to finance the 2022 through the issuance by the Authority of an aggregate principal amount of bonds in an amount not to exceed \$55,000,000 (the “2022 Bonds”), pursuant to an Indenture of Trust to be entered into among the City, the Authority and Computershare Trust Company, N.A., as trustee (the “Trustee”); and

WHEREAS, under the terms of an Installment Purchase Agreement between the City and the Authority (the “Installment Purchase Agreement”) the Authority will sell the 2022 Project to the City and the City will agree to make installment payments to the Authority; and

WHEREAS, there has been presented to the City Council a WIFIA Loan Term Sheet (the “Term Sheet”) together with a form of WIFIA Loan Agreement (the “WIFIA Loan Agreement”) whereby 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 will purchase the 2022 Bonds; and;

WHEREAS, Section 5852.1 of the California Government Code requires that the Board obtain from an underwriter, financial advisor or private lender and disclose, in a meeting open to the public, prior to authorization of the issuance of the 2022 Bonds, good faith estimates of (a) the true interest cost of the 2022 Bonds, (b) the sum of all fees and charges paid to third parties with respect to the 2022 Bonds, (c) the amount of proceeds of the 2022 Bonds expected to be received net of the fees and charges paid to third parties and any reserves or capitalized interest paid or funded with proceeds of the 2022 Bonds, and (d) the sum total of all debt service payments on the 2022 Bonds calculated to the final maturity of the 2022 Bonds, plus the fees and charges paid to third parties not paid with the proceeds of the 2022 Bonds;

WHEREAS, in compliance with Section 5852.1 of the California Government Code, the Board has obtained from NHA Advisors, Inc., the Authority's municipal advisor (the "Municipal Advisor") the required good faith estimates and such estimates are disclosed in the report presented to the Board of Directors; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the issuance of the 2022 Bonds hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Authority is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such issuance for the purpose, in the manner and upon the terms herein provided;

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY the Board of Directors of the City of Oxnard Financing Authority as follows:

Section 1. Recitals True and Correct. The foregoing recitals are true and correct and the Board of Directors so finds and determines.

Section 2. Funding 2022 Project; Approval of WIFIA Loan Term Sheet. The Board of Directors hereby approves the issuance of the 2022 Bonds for the purposes of raising new money for the 2022 Project with the proceeds of the 2022 Bonds on the terms and conditions detailed in the documents presented at this meeting. Additionally, the 2022 Bonds shall pay costs incurred in connection with the issuance of the 2022 Bonds, all in accordance with the provisions of this Resolution and the Indenture of Trust as finally executed and delivered. The terms of the 2022 Bonds and the interest rate on the 2022 Bonds shall be as described in the Term Sheet, which is hereby approved, and such Term Sheet may be executed and delivered on behalf of the Authority by an Authorized Representative, defined below.

Section 3. Approval of Installment Purchase Agreement. The agreement entitled "Installment Purchase Agreement (Series 2022)" to be entered into by and between the City and the Authority, which provides generally for (i) the sale of the Prior Projects by the City to the Authority, (ii) the acquisition of the 2022 Project by the Authority, (iii) the purchase by the City from the Authority of the Prior Projects and the 2022 Project, and (iv) the payment by the City to the Authority of Installment Payments in amounts which will be sufficient to pay the principal of and interest owing on the 2022 Bonds until the 2022 Bonds are fully paid, is hereby approved and the Chair, Vice-Chair, the Executive Director, Chief Financial Officer and Secretary of the Board of Directors (each an "Authorized Representative") are, and each such officer is, authorized and directed to execute, acknowledge and deliver said agreement on behalf of the Authority in substantially the form hereby approved with such changes therein as the officer executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. Approval of Indenture of Trust. The agreement entitled "Indenture of Trust" to be entered into by and among the City, the Authority and the Trustee named therein, are hereby approved and any Authorized Representative is authorized and directed to execute, acknowledge and deliver said agreement on behalf of the Authority in substantially the form hereby approved with such changes therein as the officer executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. Approval of Loan Agreement and Conditions of Approval. The form of WIFIA Loan Agreement presented at this meeting is hereby approved and is hereby authorized to accept, for and in the name of the Authority, such WIFIA Loan Agreement in substantially the form hereby approved with such changes therein as the Authorized Representative executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof, provided that the WIFIA Loan Agreement and the provisions of the Installment Purchase Agreement, shall conform to the provisions of the Term Sheet.

Section 6. Appointment of Trustee. Computershare Trust Company, N.A., is appointed as Trustee pursuant to the Indenture of Trust to take any and all action provided therein to be taken by the Trustee.

Section 7. Forms of Bonds. The forms of the 2022 Bonds set forth in Indenture of Trust are approved, and the Trustee is authorized to authenticate the 2022 Bonds and to apply, deposit, invest, administer and utilize the proceeds Authorized Representative is authorized to determine the final aggregate principal amount of the 2022 Bonds to be purchased by the Underwriter and the final maturity date of the 2022 Bonds based on the determination of the Executive Director or Chief Financial Officer of the amount needed to refinance the Prior Projects, finance the 2022 Project, achieve the City's financing objectives, and to pay Costs of Issuance, as defined and specified in the Indenture of Trust.

Section 8. Other Acts. The officers of the Authority are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the issuance of the 2022 Bonds and the financing of the 2022 Project or otherwise to effectuate the purpose of this Resolution, including obtaining bond insurance or other guarantee of the 2022 Bonds, and such actions previously taken by such officers are hereby ratified and confirmed.

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Section 9. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

PASSED AND ADOPTED this ____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

John C. Zaragoza, Chairman

ATTEST:

Rose Chapparo, Secretary

APPROVED AS TO FORM:

Stephen Fischer, Authority Counsel

STATE OF CALIFORNIA)
COUNTY OF VENTURA) ss.
CITY OF OXNARD)

I, Rose Chapparo, Secretary of the City of Oxnard Financing Authority, do hereby certify the attached to be a true and correct copy of City of Oxnard Financing Authority Resolution No. _____, adopted at the Oxnard City Council Meeting held on _____, 2022. The original resolution is on file in the City Clerk's Office at 300 W. Third Street, Oxnard, California 93030.

DATED this ____ day of _____, 2022.

Rose Chapparo
Secretary

INDENTURE OF TRUST

by and among the

CITY OF OXNARD FINANCING AUTHORITY

and

CITY OF OXNARD

and

**COMPUTERSHARE TRUST COMPANY, N.A.,
as Trustee**

Dated as of _____, 2022

Relating to

**\$ _____
CITY OF OXNARD FINANCING AUTHORITY
WATER REVENUE BONDS
SERIES 2022A (WIFIA LOAN)**

INDENTURE OF TRUST

THIS INDENTURE OF TRUST, is dated as of _____, 2022, by and among the CITY OF OXNARD FINANCING AUTHORITY, a joint exercise of powers agency organized and existing under the laws of the State of California (the “Authority”), the CITY OF OXNARD, a general law city and a municipal corporation, duly organized and existing under the laws of the State of California (the “City”), and COMPUTERSHARE TRUST COMPANY, N.A., a national banking association organized and existing under the laws of the United States of America, and being qualified to accept and administer the trusts hereby created, as Trustee (the “Trustee”).

WITNESSETH:

WHEREAS, the Authority is a joint powers authority authorized to borrow money for the purpose of financing and refinancing public capital improvements; and

WHEREAS, the City owns and operates that certain water system referred to herein as the “Water System”; and

WHEREAS, the City desires to (a) finance the Aquifer Storage Recovery (ASR) Project consists of the following components: (i) expansion of the City’s Advanced Water Purification Facility capacity, (ii) construction of additional aquifer storage wells, (iii) construction of a distribution pipeline to convey recovered groundwater from the ASR wells to three existing Blending Stations, and (iv) upgrades to two of the city’s Blending Stations including mechanical and electrical upgrades as well as piping modifications and pump replacements (collectively, the “2022 Project”); and

WHEREAS, for the purpose of completing the Refunding and providing funds to the City to finance the 2022 Project, the Authority has determined to issue its Water Revenue Bonds, Series 2022A (the “Bonds”) in the aggregate principal amount of \$_____ all pursuant to and secured by this Indenture in the manner provided herein; and

WHEREAS, the City and the Authority have determined that it is necessary and desirable to enter into an Installment Purchase Agreement, dated the date hereof (the “Installment Purchase Agreement”), pursuant to which the Authority will sell the 2022 Project to the City in consideration for Installment Payments equal in time and amount to the debt service on the Bonds; and

WHEREAS, the Authority has determined that to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and secured and to secure the payment of the principal thereof and interest and premium (if any) thereon, the Authority has authorized the execution and delivery of this Indenture; and

WHEREAS, the City and the Authority have determined that all acts and proceedings required by law necessary to make the Bonds, when executed by the Authority, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal special obligations of the Authority, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth, in accordance with its terms, have been done and taken; and the execution and delivery of this Indenture have been in all respects duly authorized;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that to secure the payment of the principal of and the interest and premium (if any) on all Bonds at any time issued and Outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the owners thereof, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Authority does hereby covenant and agree with the Trustee, for the benefit of the respective Owners from time to time of the Bonds, as follows:

ARTICLE I

DEFINITIONS; AUTHORIZATION AND PURPOSE OF BONDS; EQUAL SECURITY

SECTION 1.01. Definitions. Unless the context otherwise requires, the terms defined in this Section shall for all purposes of this Indenture and of any Supplemental Indenture and of the Bonds and of any certificate, opinion, request or other documents herein mentioned have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. In addition, all capitalized terms used herein and not otherwise defined in this Section 1.01 shall have the respective meanings given such terms in the Installment Purchase Agreement.

“Acquisition and Construction Fund” means the fund by that name established and held by the Trustee pursuant to Section 3.05.

“Additional Payments” means the payments so designated and required to be paid by the City pursuant to Section 4.03 of the Installment Purchase Agreement.

“Annual Debt Service” means, for each Bond Year with respect to the Bonds, the sum of (a) the interest payable on the Outstanding Bonds in such Bond Year, and (b) the principal amount of the Outstanding Bonds scheduled to be paid in such Bond Year.

“Authority” means the City of Oxnard Financing Authority, a joint exercise of powers agency duly organized and existing under and by virtue of the laws of the State of California.

“Authorized Investments” means any securities in which the City may legally invest funds subject to its control.

“Authorized Representative” means: (a) with respect to the Authority, its Chairman, Vice Chairman, Executive Director, Secretary or any other person designated as an Authorized Representative of the Authority by a Written Certificate of the Authority signed by its Chairman, Vice Chairman, Executive Director and filed with the City and the Trustee; and (b) with respect to the City, its Mayor, Mayor Pro Tem, City Manager, City Finance Director, City Clerk or any other person designated as an Authorized Representative of the City by a Written Certificate of the City signed by its Mayor, Mayor Pro Tem, City Manager, or City Clerk and filed with the Trustee.

“Bond Counsel” means (a) Best Best & Krieger LLP, or (b) any other attorney or firm of attorneys appointed by or acceptable to the City of nationally recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes under the Code.

“Bond Law” means the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State, as in existence on the Closing Date or as thereafter amended from time to time.

“Bond Payment Fund” means the fund by that name established and held by the Trustee pursuant to Section 4.02(a).

“Bond Year” means any twelve-month period commencing on June 2 in a year and ending on the next succeeding June 1, both dates inclusive; except that the first Bond Year shall commence on the Closing Date and end on June 1, 20__.

“Bonds” means the City of Oxnard Financing Authority Water Revenue Bonds, Series 2022A (WIFIA Loan) issued and at any time Outstanding pursuant to the Bond Law and this Indenture.

“Business Day” means a day (other than a Saturday or a Sunday) on which banks are not required or authorized to remain closed in the city in which the Office of the Trustee is located.

“City” means the City of Oxnard, California, a general law city and a municipal corporation duly organized and existing under the laws of the State of California.

“Closing Date” means _____, being the date of delivery of the Bonds to the Original Purchaser.

“Code” means the Internal Revenue Code of 1986, as amended.

“Contracts” means the Installment Purchase Agreement and all contracts or leases of the City authorized and executed by the City under and pursuant to the laws of the State of California, the debt service, installment or lease payments under which are payable from the Net System Revenues on a parity with the Installment Purchase Agreement.

“Costs of Issuance” means all items of expense directly or indirectly relating to the authorization, issuance, sale and delivery of the Bonds, including but not limited to printing expenses, rating agency fees, filing and recording fees, fees, expenses and charges of the City, the Authority, the Trustee, and their respective counsel, including the Trustee’s first annual administrative fee, costs of obtaining bond insurance, a Qualified Reserve Fund Credit Instrument or Permitted Investment for monies held in the funds and accounts created and held hereunder, fees, charges and disbursements of bond counsel, disclosure counsel and other attorneys, municipal advisors, accounting firms, consultants and other professionals, fees and charges for preparation, execution and safekeeping of the Bonds and any other cost, charge or fee in connection with the original issuance of the Bonds and the execution and delivery of the Installment Purchase Agreement.

“Costs of Issuance Fund” means the fund by that name established and held by the Trustee pursuant to Section 3.04.

“Debt Service Payment Commencement Date” means the earlier to occur of (a) December 1, 2027; or (b) the Interest Payment Date falling closest to, but not later than, the fifth anniversary of the first disbursement date of the WIFIA Loan (but in any event no later than five (5) years after the Substantial Completion Date of the 2022 Project).

“Default Rate” has the meaning ascribed to such term in Part C of Schedule I (WIFIA Loan Specific Terms) of the WIFIA Loan Agreement.

“Depository” means DTC and its successors and assigns or if (a) the then Depository resigns from its functions as securities depository of the Bonds, or (b) the Authority discontinues use of the Depository pursuant to Section 2.12 hereof, any other securities depository which agrees to follow the procedures requested to be followed by a securities depository in connection with the Bonds and which is selected by the Authority with notice to the Trustee.

“Depository Participant” means a member of, or participant in, the Depository.

“DTC” means The Depository Trust Company, New York, New York, and its successors and assigns.

“Event of Default” means any of the events described in Section 8.01.

“Indenture” means this Indenture of Trust, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture pursuant to the provisions hereof.

“Independent Accountant” means any accountant or firm of such accountants appointed and paid by the City or the Authority, and who, or each of whom (a) is in fact independent and not under domination of the City or the Authority; (b) does not have any substantial interest, direct or indirect, with the City or the Authority; and (c) is not connected with the City or the Authority as an officer or employee of the City or the Authority, but who may be regularly retained to make annual or other audits of the books of or reports to the City or the Authority.

“Information Services” means Electronic Municipal Market Access System (referred to as “EMMA”), a facility of the Municipal Securities Rulemaking Board, at www.emma.msrb.org; provided, however, in accordance with then current guidelines of the Securities and Exchange Commission, Information Services shall mean such other organizations providing information with respect to called Bonds as the Authority may designate in writing to the Trustee.

“Installment Payments” means the payments required to be paid by the City pursuant to Section 4.02 of the Installment Purchase Agreement, including all prepayments thereof.

“Installment Purchase Agreement” means that certain Installment Purchase Agreement by and between the Authority and the City, with respect to the sale of the 2022 Project, dated as of _____, 2022, as originally executed and as it may from time to time be supplemented, modified or amended in accordance with the terms thereof and of this Indenture.

“Interest Payment Date” means December 1 and June 1 in each year, beginning the Debt Service Payment Commencement Date, and continuing so long as any Bonds remain Outstanding.

“Maximum Annual Debt Service” in respect of any Bond Year means the largest of the sums obtained for that or any succeeding Bond Year after totaling the following for each such Bond Year:

(a) the principal amount of all Outstanding Bonds maturing or required to be redeemed by mandatory Sinking Fund redemption in such Bond Year; and

(b) the interest that would be due during such Bond Year on the aggregate principal amount of Bonds which would be Outstanding in such Bond Year if the Bonds Outstanding on the date of such computation were to mature or be redeemed in accordance with the applicable maturity or mandatory Sinking Fund redemption schedule. At the time and for the purpose of making such computation, the amount of Bonds already retired in advance of the above mentioned schedule or schedules shall be deducted pro rata from the remaining amounts thereon.

“Moody’s” means Moody’s Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, or, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the Authority.

“Nominee” means the nominee of the Depository, which may be the Depository, as determined from time to time pursuant hereto.

“Office” means the corporate trust office of the Trustee in Los Angeles, California, or at such other or additional offices as may be specified in writing to the Authority and the City except that with respect to presentation of Bonds for payment or for registration of transfer and exchange such term shall mean the designated corporate trust office or agency of the Trustee.

“Original Purchaser” means the original purchaser of the Bonds upon their delivery by the Trustee on the Closing Date.

“Outstanding,” when used as of any particular time with reference to Bonds, means all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except: (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Bonds with respect to which all liability of the Authority shall have been discharged in accordance with Section 10.03; and (c) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to this Indenture.

“Owner,” when used with respect to any Bond, means the person in whose name the ownership of such Bond shall be registered on the Registration Books, being the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (hereinafter, the “USEPA”).

“Permitted Investments” 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 (the Trustee is entitled to conclusively rely upon a Written Request of the City directing investments as a certification to the Trustee that such investments are legal investments), but only to the extent that the same are acquired at fair market value:

(1) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series — “SLGS”)

(2) Direct obligations of the Treasury which have been stripped by the Treasury itself, CATS, TIGRS and similar securities.

(3) Resolution Funding Corp. (“REFCORP”) Only the interest component of REFCORP strips which have been stripped by request to the Federal Reserve Bank of New York in book entry form are acceptable.

(4) Pre-refunded municipal bonds rated “Aaa” by Moody’s and “AA+” by S&P. If however, the issue is only rated by S&P (i.e., there is no Moody’s rating), then the pre-refunded bonds must have been pre-refunded with cash, direct U.S. or U.S. guaranteed obligations, or “AA+” rated pre-refunded municipals to satisfy this condition.

(5) Obligations, debentures, notes or other evidence of indebtedness issued or fully and unconditionally guaranteed by any of the following: Federal Home Loan Bank System, Government National Mortgage Association, Farmer’s Home Administration, Federal Home Loan Mortgage Corporation or Federal Housing Administration; provided, that with respect to the funds and accounts established under this Indenture, such obligations shall at no time exceed an amount equal to ten percent (10%) of the aggregate principal amount of the Bonds Outstanding.

(6) Deposit accounts, including time deposits, trust accounts, demand deposits, trust funds, overnight bank deposits, interest bearing deposits, interest bearing money market accounts, certificates of deposit (including those placed by a third party pursuant to an agreement between the City and the Trustee and its affiliates) or savings accounts (i) fully insured by the Federal Deposit Insurance Corporation or (ii) with banks whose short term obligations are rated no lower than A-1 by S&P and P-1 by Moody’s, including those of the Trustee and its affiliates.

(7) Federal funds or banker’s acceptances with a maximum term of one year of any bank that has an unsecured, uninsured and unguaranteed obligation rating of “Prime-1” or “A3” by Moody’s and “A-1” or “A” or better by S&P (including the Trustee and its affiliates).

(8) Repurchase obligations with a term not exceeding 30 days pursuant to a written agreement between the Trustee and either a primary dealer on the Federal Reserve reporting dealer list which falls under the jurisdiction of the Securities Investor Protection Corporation (“SIPC”) or a federally chartered commercial bank whose long term debt obligations are rated A or better by S&P and Moody’s, with respect to any security described in clause (1); provided, that the securities which are the subject of such

repurchase obligation (i) must be free and clear of all liens, (ii) in the case of a SIPC dealer, were not acquired pursuant to a repurchase or reverse repurchase agreement, (iii) must be deposited with the Trustee and maintained through weekly market valuations in an amount equal to 104% of the invested funds plus accrued interest; and further provided that the Trustee must have a valid first perfected security interest in such securities.

(9) Taxable government money market portfolios that have a rating by S&P of Am-G or Am or better and rated in one of the three highest rating categories of Moody's consisting of securities issued or guaranteed as to payment of principal and interest by the full faith and credit of the United States, subject to a maximum permissible limit equal to six months of principal and interest on the Bonds, including those for which the Trustee or an affiliate receives and retains a fee for services provided to the fund, whether as a custodian, transfer agent, investment advisor or otherwise.

(10) Tax-exempt government money market portfolios that have a rating by S&P of Am-G or Am or better and rated in one of the three highest rating categories of Moody's consisting of securities which are rated in the highest Rating Categories of S&P and Moody's subject to a maximum permissible limit equal to six months of principal and interest on the Bonds including those for which the Trustee or an affiliate receives and retains a fee for services provided to the fund, whether as a custodian, transfer agent, investment advisor or otherwise.

(11) Money market mutual funds registered under the Investment Company Act of 1940, the shares in which are registered under the Securities Act of 1933 and that have a rating by S&P of AA-Am-G or AA-Am and rated in one of the two highest Rating Categories of Moody's, including those managed or advised by the Trustee or its affiliates or for which the Trustee or an affiliate of the Trustee serves as administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (i) the Trustee or an affiliate of the Trustee receives and retains a fee for services provided to the fund, (ii) the Trustee collects fees for services rendered pursuant to this Indenture, which fees are separate from the fees received from such funds, and (iii) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or an affiliate of the Trustee.

(12) Commercial paper having, at the time of investment or contractual commitment to invest therein, a rating from Moody's and S&P, of A1 and P1, respectively.

(13) Repurchase and reverse repurchase agreements collateralized with securities described in clause (1) of this definition, including those of the Trustee or any of its affiliates.

(14) The Local Agency Investment Fund of the State, created pursuant to Section 16429.1 of the California Government Code, to the extent the Trustee is authorized to register such investment in its name.

(15) Investment agreements, including guaranteed investment contracts ("GICs") forward purchase agreements and reserve fund put agreements with banks or

other financial institutions rated, or guaranteed by institutions rated, or with senior unsecured debt rated, by S&P or Moody's, in one of the three highest rating categories assigned by such agencies.

(16) Any other investments which meet the criteria established by applicable published investment guidelines issued by each rating agency then rating the Bonds.

Ratings of Permitted Investments referred to herein shall be determined at the time of purchase of such Permitted Investments and without regard to rating subcategories. The Trustee shall have no responsibility to monitor the ratings of Permitted Investments after the initial purchase of such Permitted Investments or the responsibility to validate the ratings of Permitted Investments prior to the initial purchase.

"Record Date" means, with respect to any Interest Payment Date, the fifteenth (15th) calendar day of the month preceding such Interest Payment Date.

"Redemption Fund" means the fund by that name established and held by the Trustee pursuant to Section 4.02(c).

"Registration Books" means the books maintained by the Trustee pursuant to Section 2.07 for the registration and transfer of ownership of the Bonds.

"Reserve Fund" means the fund by that name established and held by the Trustee pursuant to Section 3.03.

"Reserve Requirement" means, as of any date of calculation by the City, the least of (i) ten percent (10%) of the original issue price of the Bonds (or, if there is less than 2% net original issue discount or premium, 10% of the original stated principal amount of the Bonds); (ii) 125% of average Annual Debt Service on the Bonds as of the Closing Date; or (iii) the Maximum Annual Debt Service on the Bonds.

"Responsible Officer" means any President, Managing Director, Vice President, Assistant Vice President, Treasurer, Assistant Treasurer, Assistant Secretary, Associate, Senior Associate or any other officer of the Trustee in the Office of the Trustee in Los Angeles, California (or any successor corporate trust office) having regular responsibility for corporate trust matters and having direct responsibility for the administration of this Indenture.

"Revenue Fund" means the fund by that name established and held by the Trustee pursuant to Section 4.02.

"Revenues" means (a) all amounts received by the Authority or the Trustee pursuant, or with respect, to the Installment Purchase Agreement, including, without limiting the generality of the foregoing, all of the Installment Payments (including both timely and delinquent payments, any late charges, and whether paid from any source), prepayments, insurance proceeds, and condemnation proceeds, but excluding any Additional Payments; (b) all moneys and amounts held in the funds and accounts established hereunder; and (c) investment income with respect to any moneys held by the Trustee hereunder.

“S&P” means S&P Global Ratings, a corporation organized and existing under the laws of the State of New York, its successors and assigns, or, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the Authority.

“Securities Depositories” means The Depository Trust Company, New York, New York and its successors and assigns or if (i) the then Securities Depository resigns from its functions as depository of the Bonds or (ii) the Authority discontinues use of the then Securities Depository pursuant to Section 2.12, any other securities depository which agrees to follow the procedures required to be followed by a securities depository in connection with the Bonds and which is selected by the Authority.

“Series 2022 Bonds” means the City of Oxnard Financing Authority Water Revenue Bonds, 2022 Series A (WIFIA Loan).

“State” means the State of California.

“Substantial Completion” means, with respect to the 2022 Project, the stage at which the 2022 Project is able to perform the functions for which the 2022 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 and notice to the WIFIA Lender in accordance with Part E of Schedule V (*Reporting Requirements*) of the WIFIA Loan Agreement, that Substantial Completion has occurred.

“Supplemental Indenture” means any indenture, agreement, resolution or other instrument hereafter duly adopted or executed in accordance with the provisions of Section 7.01 of this Indenture.

[“Tax Certificate” means the Tax Exemption Certificate or similar federal tax certificate entered into with respect to the issuance of the Bonds.]

[“Tax Regulations” means temporary and permanent regulations promulgated under or with respect to Section 103 of the Code.]

“Trustee” means Computershare Trust Company, N.A., appointed by the Authority to act as trustee hereunder pursuant to Section 6.01, and its assigns or any other corporation or association which may at any time be substituted in its place, as provided in Section 6.01.

“WIFIA Interest Rate” has the meaning ascribed to such term in Part C of Schedule I (WIFIA Loan Specific Term) of the WIFIA Loan Agreement.

“WIFIA Lender” means 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.

“WIFIA Loan Agreement” means the WIFIA Loan Agreement, dated as of _____, 2022, among the City, the Authority and the WIFIA Lender.

“WIFIA Loan Amortization Schedule” means the loan amortization schedule reflected in Schedule VI (WIFIA Loan Amortization Schedule), as amended from time to time in accordance with Section 8(c) (Adjustments to WIFIA Loan Amortization Schedule) of the WIFIA Loan Agreement.

“2022 Project” means any additions, betterments, extensions or improvements to the Water System, the design, acquisition or construction of which (together with the incidental costs and expenses related thereto) is to be financed by the proceeds of any Bonds or any Contracts, that may include improvements to both the water treatment (i.e. filter control replacement system, new clarifier and filter system, raw water reservoir improvements, vehicle and equipment replacement and storage tank repairs) and water distribution (i.e. water pipeline replacement, water distribution expansion and storage tank improvements).

“Written Certificate”, “Written Request” and “Written Requisition” of the Authority or the City mean, respectively, a written certificate, request or requisition signed in the name of the Authority or the City by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

SECTION 1.02. Rules of Construction. All references in this Indenture to “Articles,” “Sections,” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; and the words “herein,” “hereof,” “hereunder,” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

SECTION 1.03. Equal Security. In consideration of the acceptance of the Bonds by the Owners thereof, this Indenture shall be deemed to be and shall constitute a contract among the Authority, the City, the Trustee and the Owners from time to time of the Bonds; and the covenants and agreements herein set forth to be performed on behalf of the Authority shall be for the equal and proportionate benefit, security and protection of all Owners of the Bonds without preference, priority or distinction as to security or otherwise of any of the Bonds over any of the others by reason of the number or date thereof or the time of sale, execution or delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.

ARTICLE II

AUTHORIZATION AND ISSUANCE OF BONDS

SECTION 2.01. Authorization of Bonds. The Authority has reviewed all proceedings heretofore taken relative to the authorization of the Bonds and has found, as a result of such review, and hereby finds and determines that, as of the date of issuance of the Bonds, all things, conditions, and acts required by law to exist, happen and be performed precedent to and in the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Authority is now authorized, pursuant to the Bond Law and each and every requirement of law, to issue the Bonds in the manner and form provided in this Indenture. Accordingly, the Authority hereby authorizes the issuance of the Bonds pursuant to the Bond Law and this Indenture.

SECTION 2.02. Terms of Bonds. (a) The Bonds authorized to be issued by the Authority under and subject to the Bond Law and the terms of this Indenture shall be designated the “City of Oxnard Financing Authority Water Revenue Bonds, Series 2022A (WIFIA Loan)” and shall be issued in the original principal amount of \$_____.

(b) The Series 2022 Bonds shall be issued in fully registered form without coupons in denominations of [\$1,000,000] or any integral multiple of \$1.00 in excess thereof, shall be dated the Closing Date, shall mature on the earliest of (a) June 1, 2061; (b) the date on which the maturity of the WIFIA Loan has been accelerated or subject to mandatory redemption or prepayment (as the case may be); or (c) the June 1 immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.

(c) Interest on the Bonds shall be payable at the WIFIA Interest Rate; provided, that, upon the occurrence of an Event of Default, the Authority shall pay interest on the Bonds Outstanding at the Default Rate, (a) in the case of an Event of Default described in Section 8.01(a) hereof, from (and including) its due date to (but excluding) the date of actual payment of the Debt Service on the Bonds then outstanding and accrued interest thereon 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 (if applicable) in accordance with the terms of this Indenture and the WIFIA Loan Agreement or waived by the WIFIA Lender and (ii) the remaining Bonds Outstanding have been irrevocably paid in full in immediately available funds. Interest shall (x) accrue on the Bonds commencing on the date of the first disbursement of the proceeds under the WIFIA Loan Agreement, (y) be payable commencing on the Debt Service Payment Commencement Date and (z) be computed on the principal amount of Bonds Outstanding on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months. Interest on the Bonds shall be payable 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 Interest Payment Date, as may be modified in writing from time to time by the WIFIA Lender; provided, that the failure to provide updated payment instructions shall not affect in any manner the Authority’s obligations hereunder or under any other WIFIA Loan Document.

SECTION 2.03. Redemption of Bonds.

(a) Redemption from Prepayments of Installment Payments. The Series 2022 Bonds may be redeemed without penalty or premium, (i) in full on any date or (ii) in part on any Interest Payment Date (and, if in part, the amounts thereof to be prepaid shall be determined by the City; provided, that such redemption shall be in principal amounts of [\$1,000,000] or any integral multiple of \$1.00 in excess thereof), in each case from time to time but not more than once annually.

(b) Mandatory Sinking Fund Redemption. The Series 2022 Bonds are also subject to redemption prior to their stated maturity, on June 1 in each year, commencing June 1, 20__, in part by lot, from mandatory Sinking Fund payments at a redemption price equal to the principal amount thereof, plus accrued interest, if any, to the redemption date, without premium, as set forth below in the aggregate respective principal amounts and on the respective dates as set forth in the following table, which shall match the WIFIA Loan Amortization Schedule; provided, however,

that if some but not all of such Series 2022 Bonds have been redeemed pursuant to redemption provisions in paragraph (b) of this Section, then the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of such Series 2022 Bonds so redeemed, to be allocated among such sinking fund payments on a pro rata basis as nearly as possible in integral multiples of \$5,000. The City shall provide the Trustee with a revised sinking fund schedule.

Schedule of Mandatory Sinking Fund Redemptions

Redemption Date (<u>June 1</u>)	Principal <u>Amount</u>
--	------------------------------------

(1) Maturity.

(c) Notice of Redemption. Each redemption hereunder shall be made on such date and in such principal amount as shall be specified by the City in a Written Request of the City and delivered to the Authority, the Trustee and the WIFIA Lender not less than thirty (30) days prior to the requested date of prepayment, unless otherwise agreed by the WIFIA Lender.

(d) Manner of Redemption. Upon the WIFIA Lender's receipt of confirmation that payment in full in immediately available funds of all Bonds Outstanding (the entire WIFIA Loan Balance) and any unpaid interest, fees and expenses with respect thereto has occurred as a result of a redemption, the WIFIA Lender shall surrender the Bonds to the Authority or its authorized representative, by mail in accordance with Section 35 (Notices) of the WIFIA Loan Agreement. If the Authority redeems part of Bonds Outstanding, then the WIFIA Lender may make a notation on the WIFIA Loan Amortization Schedule indicating the amount of principal of and interest on the Bonds and the WIFIA Loan then being prepaid. Absent manifest error, the WIFIA Lender's determination of such matters as set forth on an updated WIFIA Loan Amortization Schedule 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 Authority's obligations hereunder or under any other WIFIA Loan Document. All partial prepayments of principal shall be applied to reduce the Outstanding Bonds and WIFIA Loan Balance such that the remaining scheduled principal payments for the Bonds and WIFIA Loan set out in the WIFIA Loan Amortization Schedule are reduced in inverse order of maturity or, at the election of the City evidenced by a written request of the City filed with the WIFIA Lender at least thirty (30) days prior to the date of redemption, on a pro rata basis (provided that, in any event, the Debt Service on the Bonds following such redemption shall be equal in time and amount to the unpaid payments due under

the Installment Purchase Agreement). If such funds have not been so paid on the prepayment date, such principal amount of the Bonds and WIFIA Loan shall continue to bear interest until payment thereof at the rate provided for in Section 6 (Interest Rate) of the WIFIA Loan Agreement.

(e) Partial Redemption of Bonds. In the event only a portion of any Bond is called for redemption, then upon surrender of such Bond the Authority shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Authority, a new Bond or Bonds of the same series and maturity date, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond to be redeemed.

(f) Effect of Redemption. From and after the date fixed for redemption, if funds available for the payment of the principal of and interest (and premium, if any) on the Bonds so called for redemption shall have been duly provided, such Bonds so called shall cease to be entitled to any benefit under this Indenture other than the right to receive payment of the redemption price, and no interest shall accrue thereon from and after the redemption date specified in such notice. All Bonds redeemed pursuant to this Section shall be canceled and shall be destroyed by the Trustee.

SECTION 2.04. Forms of Bonds. The Series 2022 Bonds, the form of Trustee's certificate of authentication, and the form of assignment to appear thereon, shall be substantially in the form set forth in Exhibit A attached to the WIFIA Loan Agreement and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

SECTION 2.05. Execution of Bonds. The Bonds shall be signed in the name and on behalf of the Authority with the manual or facsimile signature of its President and attested by the manual or facsimile signature of its Secretary. The Bonds shall then be delivered to the Trustee for authentication by it. In case any officer who shall have signed any of the Bonds shall cease to be such officer before the Bonds so signed shall have been authenticated or delivered by the Trustee or issued by the Authority, such Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the Authority as though the individual who signed the same had continued to be such officer of the Authority. Also, any Bond may be signed on behalf of the Authority by any individual who on the actual date of the execution of such Bond shall be the proper officer although on the nominal date of such Bond such individual shall not have been such officer.

Only those Bonds that bear thereon a certificate of authentication in substantially the forms set forth in Exhibit A to the WIFIA Loan Agreement, manually or electronically executed by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee shall be conclusive evidence that the Bonds so authenticated have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

SECTION 2.06. Transfer and Exchange of Bonds.

(a) Transfer of Bonds. [The Bonds shall not be transferable except as provided in Section 37 of the WIFIA Loan Agreement. The registration of any Bond may, in accordance with

its terms, be transferred upon the Registration Books by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation at the Office of the Trustee, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. Whenever any Bond or Bonds shall be surrendered for registration of transfer, the Trustee shall execute and deliver a new Bond or Bonds of the same series, maturity, interest rate and aggregate principal amount, in any authorized denominations. The Authority shall pay all costs of the Trustee incurred in connection with any such transfer, except that the Trustee may require the payment by the Bond Owner of any tax or other governmental charge required to be paid with respect to such transfer.

Prior to any transfer of the Bonds outside of the book-entry system (including, but not limited to, the initial transfer outside the book-entry system) the transferor shall provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045 as amended. The Trustee shall conclusively rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.]

(b) Exchange of Bonds. Bonds may be exchanged at the Office of the Trustee, for a like aggregate principal amount of Bonds of other authorized denominations of the same series, interest rate and maturity. The Authority shall pay all costs of the Trustee incurred in connection with any such exchange, except that the Trustee may require the payment by the Bond Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange.

(c) Limitations on Transfer or Exchange. The Trustee may refuse to transfer or exchange either (i) any Bond during the period established by the Trustee for the selection of Bonds for redemption pursuant to Section 2.03, or (ii) the portion of any Bond which the Trustee has selected for redemption pursuant to the provisions of Section 2.03.

SECTION 2.07. Registration Books. The Trustee will keep or cause to be kept, at its Office, sufficient records for the registration and transfer of the Bonds, which shall at all times during normal business hours, and upon reasonable notice, be open to inspection by the City and the Authority; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Registration Books, Bonds as hereinbefore provided.

SECTION 2.08. Issuance in Temporary Form. The Bonds may be issued initially in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the Authority and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Authority and be registered and authenticated by the Trustee upon the same conditions and in substantially the same manner as the definitive Bonds. If the Authority issues temporary Bonds, it will execute and furnish definitive Bonds without delay, and thereupon the temporary Bonds may be surrendered, for cancellation, in exchange therefor at the Office of the Trustee, and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of

authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds authenticated and delivered hereunder.

SECTION 2.09. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the Authority, at the expense of the Owner of said Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like series, tenor and authorized denomination in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be canceled by it and delivered to, or upon the order of, the Authority. If any Bond issued hereunder shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence be satisfactory to the Trustee and indemnity for the Authority and the Trustee satisfactory to the Trustee shall be given, the Authority, at the expense of the Bond Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like maturity and tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen (or if any such Bond shall have matured or shall have been called for redemption, instead of issuing a substitute Bond the Trustee may pay the same without surrender thereof upon receipt of indemnity for the Authority and the Trustee satisfactory to the Trustee). The Authority may require payment of a reasonable fee for each new Bond issued under this Section and of the expenses which may be incurred by the Authority and the Trustee. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original contractual obligation on the part of the Authority whether or not the Bond alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds secured by this Indenture.

SECTION 2.10. Book-Entry System; Limited Obligation. [The Bonds shall be initially executed, authenticated and delivered in the form of a separate single fully registered Bond (which may be typewritten) for each of the maturities of the Bonds. Upon initial execution, authentication and delivery, the ownership of each such global Bond shall be registered in the Bond Register in the name of the Nominee as nominee of the Depository. Except as provided in Section 2.12 hereof, all of the Outstanding Bonds shall be registered in the Bond Register kept by the Trustee in the name of the Nominee and the Bonds may be transferred, in whole but not in part, only to the Depository, to a successor Depository or to another nominee of the Depository or of a successor Depository. Each global Bond shall bear a legend substantially to the following effect: “UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AS DEFINED IN THE INDENTURE) TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.”

With respect to Bonds registered in the Bond Register in the name of the Nominee, the Authority and the Trustee shall have no responsibility or obligation to any Depository Participant or to any person on behalf of which such a Depository Participant holds a beneficial interest in the

Bonds. Without limiting the immediately preceding sentence, the Authority and the Trustee shall have no responsibility or obligation with respect to (a) the accuracy of the records of the Depository, the Nominee or any Depository Participant with respect to any beneficial ownership interest in the Bonds, (b) the delivery to any Depository Participant, beneficial owner or any other person, other than the Depository, of any notice with respect to the Bonds, including any Redemption Notice, (c) the selection by the Depository and the Depository Participants of the beneficial interests in the Bonds to be redeemed in part, or (d) the payment to any Depository Participant, beneficial owner or any other person, other than the Depository, of any amount with respect to principal of, interest on, or premium, if any, of the Bonds. The Authority and the Trustee may treat and consider the person in whose name each Bond is registered in the Bond Register as the holder and absolute Owner of such Bond for the purpose of payment of principal of, premium, if any, and interest on, the Bond, for the purpose of giving Redemption Notices with respect to the Bonds and other notices with respect to the Bonds, and for all other purposes whatsoever, including, without limitation, registering transfers with respect to the Bonds.

The Trustee shall pay all principal of, premium, if any, and interest on, the Bonds only to or upon the order of the respective Bond Owners, as shown in the Bond Register kept by the Trustee, or their respective attorneys duly authorized in writing, and all such payments shall be valid hereunder with respect to payment of principal of, premium, if any, and interest on, the Bonds to the extent of the sum or sums so paid. No person other than a Bond Owner, as shown in the Bond Register, shall receive a Bond evidencing the obligation to make payments of principal of, premium, if any, and interest on, such Bond pursuant to this Indenture. Upon delivery by the Depository to the Trustee and the Authority of written notice to the effect that the Depository has determined to substitute a new nominee in place of the Nominee, and subject to the provisions herein with respect to Record Dates, the word Nominee in this Indenture shall refer to such new nominee of the Depository.]

SECTION 2.11. Representation Letter. [To qualify the Bonds for the Depository's book-entry system, the Authorized Representative is hereby authorized to execute, countersign and deliver on behalf of the Authority to such Depository a letter from the Authority representing such matters as shall be necessary to so qualify the Bonds (the "Representation Letter"). The execution and delivery of the Representation Letter shall not in any way limit the provisions of Section 2.10 hereof or in any other way impose upon the Authority or the City any obligation whatsoever with respect to persons having beneficial interests in the Bonds other than the Owners, as shown in the Bond Register kept by the Trustee. In the written acceptance by the Trustee of the Representation Letter, the Trustee shall agree, and hereby agrees, to take all actions necessary for all representations of the Trustee in the Representation Letter with respect to the Trustee to at all times be complied with. In addition to the execution and delivery of the Representation Letter, the Authority Representative and all other officers of the Authority, and their respective deputies and designees, each is hereby authorized to take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository's book-entry program.]

SECTION 2.12. Transfers Outside Book-Entry System. If at any time the Depository notifies the Authority that it is unwilling or unable to continue as Depository with respect to the Bonds or if at any time the Depository shall no longer be registered or in good standing under the Securities Exchange Act or other applicable statute or regulation and a successor Depository is not appointed by the Authority within 90 days after the Authority receives notice or becomes aware

of such condition, as the case may be, Section 2.10 hereof shall no longer be applicable and the Authority shall execute and the Trustee shall authenticate and deliver bonds representing the Bonds as provided below. In addition, the Authority may determine at any time that the Bonds shall no longer be represented by global bonds and that the provisions of Section 2.10 hereof shall no longer apply to the Bonds. In any such event the Authority shall execute and the Trustee shall authenticate and deliver bonds representing the Bonds as provided below. Bonds executed, authenticated and delivered in exchange for global bonds pursuant to this Section 2.12 shall be registered in such names and delivered in such Authorized Denominations as the Depository, pursuant to instructions from the Depository Participants or otherwise, shall instruct the Authority and the Trustee. The Trustee shall deliver such bonds representing the Bonds to the persons in whose names such Bonds are so registered.

If the Authority determines to replace the Depository with another qualified securities depository, the Authority shall prepare or cause to be prepared a new fully-registered global bond for each of the maturities of the Bonds, registered in the name of such successor or substitute securities depository or its nominee, or make such other arrangements as are acceptable to the Authority, the Trustee and such securities depository and not inconsistent with the terms of this Indenture.]

ARTICLE III

ISSUANCE OF BONDS AND APPLICATION OF PROCEEDS

SECTION 3.01. Issuance of Bonds. Upon the execution and delivery of this Indenture, the Authority shall execute and deliver Series 2022 Bonds in the aggregate principal amount of \$_____, and shall deliver the Bonds to the Trustee for authentication and delivery to the Original Purchaser upon the Written Request of the Authority.

SECTION 3.02. Application of Proceeds and Other Moneys. Upon the receipt of payment for the Series 2022 Bonds on the Closing Date, the Trustee shall deposit the net amount of the proceeds of the Series 2022 Bonds as follows:

- (a) The Trustee shall deposit into the Costs of Issuance Fund the amount of \$_____.
- (b) The Trustee shall deposit into the Acquisition and Construction Fund the amount of \$_____.
- (c) The Trustee shall deposit the amount of \$_____ into the Reserve Fund. The Trustee may, in its discretion, establish a temporary fund or account or subaccount in its books and records to facilitate such deposits.

SECTION 3.03. Reserve Fund. (a) There is hereby created a separate fund to be known as the “Reserve Fund,” which shall be held in trust by the Trustee. An amount equal to the Reserve Requirement shall be maintained in the Reserve Fund at all times, subject to the provisions of Section 4.02(b), and any deficiency therein shall be replenished from the first available Revenues pursuant to Section 4.02(b).

(b) Moneys in the Reserve Fund shall be used solely for the purpose of paying the principal of and interest on the Bonds, including the redemption price of the Bonds coming due and payable by operation of mandatory sinking fund redemption pursuant to Section 2.03(c), if the moneys in the Bond Payment Fund are insufficient therefor. If the amount on deposit in the Bond Payment Fund on any date is insufficient to enable the Trustee to pay in full the aggregate amount of principal of and interest on the Bonds coming due and payable, including the redemption price of the Bonds coming due and payable by operation of mandatory sinking fund redemption pursuant to Section 2.03(c), the Trustee shall withdraw the amount of such insufficiency from the Reserve Fund and transfer such amount to the Bond Payment Fund.

(c) If the amount on deposit in the Reserve Fund exceeds the Reserve Requirement on the fifteenth (15th) calendar day of the month preceding any Interest Payment Date, the amount of such excess shall be withdrawn therefrom by the Trustee and transferred to the Bond Payment Fund and credited against the Installment Payment or Installment Payments next due from the City.

SECTION 3.04. Costs of Issuance Fund. The Trustee shall establish, maintain and hold in trust a separate fund to be known as the “Costs of Issuance Fund.” Except as otherwise provided herein, moneys in each account of the Costs of Issuance Fund shall be used solely for the payment of the Costs of Issuance. The Trustee shall disburse moneys in each account of the Costs of Issuance Fund from time to time to pay Costs of Issuance (or to reimburse the Authority for payment of Costs of Issuance) upon receipt by the Trustee of a Written Request of the Authority, substantially in the form attached hereto as Exhibit A. Each such Written Request of the Authority shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts. Upon the earlier of 180 days from the Closing Date or the filing with the Trustee of a Written Certificate of the Authority stating that all Costs of Issuance have been paid, the Trustee shall withdraw all amounts then on deposit in the Costs of Issuance Fund and transfer such amounts to the Acquisition and Construction Fund or, if all Acquisition and Construction Costs have been paid as evidenced by a Written Certificate of the City, to the Bond Payment Fund, and the Costs of Issuance Fund shall then be closed.

SECTION 3.05. Acquisition and Construction Fund. The Trustee shall establish, maintain and hold in trust a separate fund to be known as the “Acquisition and Construction Fund.” For purposes of this Indenture, no proceeds shall be deposited to the Acquisition and Construction Fund, and the WIFIA Lender will hold all proceeds pursuant to Section 4 of the WIFIA Loan Agreement. Disbursement shall be requested by the Authority or the City under the WIFIA Loan Agreement, and the City shall file or cause to be filed with the WIFIA Lender, a Requisition of the City which shall be substantially in the form attached as Exhibit D to the WIFIA Loan Agreement.

SECTION 3.06. Validity of Bonds. The validity of the authorization and issuance of the Bonds shall not be affected in any way by any proceedings taken by the Authority or the Trustee with respect to or in connection with the Installment Purchase Agreement and the recital contained in the Bonds that the same are issued pursuant to the Bond Law shall be conclusive evidence of their validity and of the regularity of their issuance.

ARTICLE IV

REVENUES; FLOW OF FUNDS

SECTION 4.01. Collateral Assignment of Revenues and of the Installment Purchase Agreement. The Authority hereby assigns to the Trustee, on behalf of the Owners, as additional security for its obligations hereunder, all of the Authority's right, title and interest to and in the Revenues and all of the right, title and interest (but none of the obligations) of the Authority in the Installment Purchase Agreement (other than the rights of the Authority under Sections 8.03 and 11.14 thereof and the Authority's rights to give consents and approvals thereunder, including, without limitation, to amendments thereof); provided, that should the Authority well and truly pay or cause to be paid the principal of the Bonds with interest thereon in accordance with the terms thereof, and perform all other obligations of the Authority hereunder, then such assignment shall cease, determine and become void and the Trustee shall acknowledge and deliver to the Authority such instruments of satisfaction or release thereof as may reasonably be prepared and requested by or on behalf of the Authority. Subject to Section 4.03, all Revenues the Trustee collects and receives shall be applied to the payment of principal of and interest and premium (if any) on the Bonds equally, without priority for series, issue, number or date, in accordance with the terms hereof. So long as any of the Bonds are Outstanding, the Revenues and such moneys shall not be used for any other purpose; except that a portion of the Revenues may be used for purposes as expressly permitted by Section 4.02 hereof.

The assignment under this section to the Trustee is solely in the Trustee's capacity as Trustee under this Indenture and the duties, powers and liabilities of the Trustee in acting pursuant to such assignment shall be subject to the provisions of this Indenture, including, without limitation, the provisions of Article VI hereof. The Trustee shall not be responsible for any representations, warranties, covenants or obligations of the Authority.

SECTION 4.02. Receipt, Deposit and Application of Revenues. Except as provided in Section 4.03 hereof with regard to the deposit of earnings on investments, all of the Revenues shall be deposited by the Trustee immediately upon receipt in the Revenue Fund (which the Trustee shall establish and hold in trust hereunder) or as otherwise instructed by the City. Amounts in the Revenue Fund shall be applied solely for the uses and purposes set forth herein. The Trustee shall withdraw amounts on deposit in the Revenue Fund and apply such amounts at the times and for the purposes, and in the priority, as follows:

(a) **Bond Payment Fund.** On or before each Interest Payment Date, so long as any Bonds remain Outstanding hereunder, the Trustee shall withdraw from the Revenue Fund and deposit into the Bond Payment Fund (which the Trustee shall establish and hold in trust hereunder) an amount which, together with other available amounts then on deposit in the Bond Payment Fund, is at least equal to the sum of (i) the aggregate amount of principal of and interest coming due and payable on the Bonds on such Interest Payment Date, (ii) the principal amount Bonds maturing on such Interest Payment Date, and (iii) the redemption price of the Term Bonds coming due and payable on such Interest Payment Date by operation of mandatory sinking fund redemption pursuant to Section 2.03(c).

Amounts in the Bond Payment Fund shall be applied by the Trustee solely for the purpose of paying the principal of and interest on the Outstanding Bonds when and as such principal and interest becomes due and payable (including accrued interest on any Bonds purchased or redeemed pursuant hereto), and for the purpose of paying the principal of the Term Bonds at the maturity thereof or upon the mandatory sinking fund redemption thereof pursuant to Section 2.03(c).

If after all of the Bonds have been paid or deemed to have been paid, there are moneys remaining in the Bond Payment Fund, such moneys shall be transferred by the Trustee to the City, after the payment of any outstanding fees and expenses of the Trustee.

(b) Reserve Fund. If the amount on deposit in the Reserve Fund at any time falls below the Reserve Requirement, the Trustee shall promptly notify the City and the Authority of such fact and, subject to Section 9.02(a) hereof, the Trustee shall promptly (i) withdraw the amount of such insufficiency from available Revenues on deposit in the Revenue Fund, and (ii) transfer such amount to the Reserve Fund. No deposit need be made in the Reserve Fund so long as the balance therein or credited thereto at least equals the Reserve Requirement.

(c) Redemption Fund. The Trustee shall deposit into the Redemption Fund all amounts required to redeem any Bonds which are subject to redemption pursuant to Sections 2.03(a) and (b) when and as such amounts become available. Amounts in the Redemption Fund shall be applied by the Trustee solely for the purpose of paying the redemption price of Bonds to be redeemed pursuant to Sections 2.03(a) and (b). Following any redemption of all of the Bonds, any moneys remaining in the Redemption Fund shall be transferred by the Trustee to the City.

SECTION 4.03. Investments. All moneys in any of the funds or accounts established with the Trustee pursuant to this Indenture shall be invested by the Trustee solely in Permitted Investments, as directed pursuant to the Written Request of the City filed with the Trustee at least two (2) Business Days in advance of the making of such investments. In the absence of any such directions from the City, the Trustee shall hold such moneys uninvested. Obligations purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account. All interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder shall be deposited in the fund or account from which such investment was made. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder. The Trustee or any of its affiliates may act as sponsor, principal or agent in the acquisition or disposition of any investment. The Trustee shall incur no liability for losses arising from any investments made pursuant to this Section. The Trustee may rely conclusively upon the investment direction of the City as to the suitability and legality of the directed investments.

The Trustee may sell, or present for prepayment, any Permitted Investment so purchased by the Trustee whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee shall not be liable or responsible for any loss resulting from any such Permitted Investment.

The Authority (and the City by its execution of the Installment Purchase Agreement) acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Authority or the City the right to receive brokerage confirmations of

security transactions as they occur, at no additional cost, the Authority and the City specifically waive receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Authority and the City periodic cash transaction statements which include detail for all investment transactions made by the Trustee hereunder.

SECTION 4.04. Acquisition, Disposition and Valuation of Investments.

(a) Except as otherwise provided in subsection (b) of this Section, all investments of amounts deposited in any fund or account created by or pursuant to this Indenture, or otherwise containing gross proceeds of the Bonds (within the meaning of section 148 of the Code) shall be acquired and disposed of (as of the date that valuation is required by this Indenture or the Code) at fair market value.

(b) Except as required pursuant to Section 5.07 hereof, the fair market value of the investments held pursuant to this Indenture shall be determined as follows: “Value”, which shall be determined as of the end of each month, means that the value of any investments shall be calculated as follows: (a) as to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times); the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination; (b) as to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times; the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Trustee in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service; (c) as to certificates of deposit and bankers acceptances; the face amount thereof, plus accrued interest; and (d) as to any investment not specified above; the value thereof established by prior agreement between the Authority and the Trustee.

Notwithstanding anything to the contrary herein, in making any valuations of investments hereunder, the Trustee has no duty in connection with the determination of Fair Market Value other than to follow the investment directions of the Authority in any Written Certificate or Written Request of the Authority. Trustee shall be deemed to have complied with such valuation through use of its automated pricing service as reflected on its trust accounting statements.

ARTICLE V

COVENANTS OF THE AUTHORITY; SPECIAL TAX COVENANTS

SECTION 5.01. Punctual Payment; Compliance With Documents. The Authority shall punctually pay or cause to be paid the interest and principal to become due with respect to all of the Bonds in strict conformity with the terms of the Bonds and of this Indenture, and will faithfully observe and perform all of the conditions, covenants and requirements of this Indenture and all Supplemental Indentures.

SECTION 5.02. Extension of Payment of Bonds. The Authority shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase of such Bonds or by any other arrangement,

and in case the maturity of any of the Bonds or the time of payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest thereon which shall not have been so extended. Nothing in this Section 5.02 shall be deemed to limit the right of the Authority to issue bonds for the purpose of refunding any Outstanding Bonds, and such issuance shall not be deemed to constitute an extension of maturity of the Bonds.

SECTION 5.03. Against Encumbrances. The Authority shall not create, or permit the creation of, any pledge, lien, charge or other encumbrance upon the Revenues and other assets pledged or assigned under this Indenture while any of the Bonds is Outstanding, except the pledge and assignment created by this Indenture. Subject to this limitation, the Authority expressly reserves the right to enter into one or more other indentures for any of its corporate purposes, and reserves the right to issue other obligations for such purposes.

SECTION 5.04. Power to Issue Bonds and Make Pledge and Assignment. The Authority is duly authorized pursuant to law to issue the Bonds and to enter into this Indenture and to pledge and assign the Revenues and other assets purported to be pledged and assigned, respectively, under this Indenture in the manner and to the extent provided in this Indenture. The Bonds and the provisions of this Indenture are and will be the legal, valid and binding special obligations of the Authority in accordance with their terms, and the Authority and the Trustee shall at all times, subject to the provisions of Article VI and to the extent permitted by law, defend, preserve and protect such pledge and assignment of Revenues and other assets and all the rights of the Bond Owners under this Indenture against all claims and demands of all persons whomsoever.

SECTION 5.05. Accounting Records and Financial Statements. The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with corporate trust industry standards, in which complete and accurate entries shall be made of all transactions made by it relating to the proceeds of Bonds, the Revenues, the Installment Purchase Agreement, and all funds and accounts held by the Trustee under this Indenture. Such books of record and account shall be available for inspection by the Authority and the City, during business hours and under reasonable circumstances with reasonable notice.

SECTION 5.06. No Additional Obligations. The Authority covenants that no additional bonds, notes or other indebtedness shall be issued or incurred which are payable out of the Revenues in whole or in part, to that end, the Authority shall not without the prior written consent of the WIFIA Lender issue or incur obligations of any kind payable from, secured or supported by any of the Pledged Collateral, as defined in the WIFIA Loan Agreement, and amounts to be held in any fund or account established hereunder or the right, title and interest of the Authority in the Installment Purchase Agreement, assigned to the Trustee hereunder.

SECTION 5.07. [Tax Covenants.

(a) **General.** The Authority and the City hereby covenant with the owners of the Series 2022 Bonds that, notwithstanding any other provisions of this Indenture, it shall not take any action, or fail to take action, if any such action or failure to take action would adversely affect the exclusion from gross income of interest on the Series 2022 Bonds under Section 103 of the Code.

Neither the Authority nor the City, directly or indirectly, shall use or permit the use of proceeds of the Series 2022 Bonds or any of the property financed or refinanced with proceeds of the Series 2022 Bonds, or any portion thereof, by any person other than a governmental person (as such term is used in Section 141 of the Code and applicable Treasury Regulations), in such manner or to such extent as would result in the loss of exclusion from gross income for federal income tax purposes of interest on the Series 2022 Bonds.

(b) Use of Proceeds. Neither the Authority nor the City shall take any action, or fail to take action, if any such action or failure to take action would cause the Series 2022 Bonds to be “private activity bonds” within the meaning of Section 141 of the Code and applicable Treasury Regulations, and in furtherance thereof, shall not make any use of the proceeds of the Series 2022 Bonds or any of the property financed or refinanced with proceeds of the Series 2022 Bonds, or any portion thereof, that would cause the Series 2022 Bonds to be “private activity bonds” within the meaning of Section 141 of the Code. So long as any Series 2022 Bonds are outstanding, the Authority and the City, with respect to such proceeds and property, will comply with the requirements of the Code and the Treasury Regulations, to the extent such requirements are, at the time, applicable and in effect. The City shall establish reasonable procedures necessary to ensure continued compliance with Section 141 of the Code and the continued qualification of the Series 2022 Bonds as “governmental bonds.”

(c) Arbitrage. Neither the Authority nor the City shall directly or indirectly use or permit the use of any proceeds of any Series 2022 Bonds, or of any property financed or refinanced thereby, or of other funds of the Authority or the City, that would cause the Series 2022 Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and applicable Treasury Regulations, and shall not otherwise take any action, or fail to take action, if such action or failure to take action would cause the Series 2022 Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and applicable Treasury Regulations. The Authority and the City shall comply with all requirements of Section 148 of the Code and the Treasury Regulations to the extent such requirements are, at the time, in effect and applicable to the Series 2022 Bonds.

(d) Federal Guarantee. Neither the Authority nor the City shall make any use of the proceeds of the Series 2022 Bonds, or of any other funds of the Authority or the City, that would cause the Series 2022 Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code, and shall not otherwise take any action, or fail to take action, when such action or failure to take action would cause the Series 2022 Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

(e) Compliance with Tax Certificate. In furtherance of the foregoing tax covenants of this Section 5.07, the Authority and the City each covenant that it will comply with the provisions of the Tax Certificate, which is incorporated herein as if fully set forth herein. These covenants shall survive payment in full or defeasance of the Series 2022 Bonds.]

SECTION 5.08. Installment Purchase Agreement. The Trustee shall promptly collect all amounts due from the City pursuant to the Installment Purchase Agreement. Subject to the provisions of Article VI and Article IX, the Trustee may enforce, and take all steps, actions and proceedings which the Trustee determines to be reasonably necessary for the enforcement of all of its rights thereunder as assignee of the Authority and for the enforcement of all of the obligations

of the City under the Installment Purchase Agreement with respect to the timely collection of the Installment Payments.

SECTION 5.09. Waiver of Laws. The Authority shall not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force that may affect the covenants and agreements contained in this Indenture or in the Bonds, and all benefit or advantage of any such law or laws is hereby expressly waived by the Authority to the extent permitted by law.

SECTION 5.10. Further Assurances. The Authority will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture, and for the better assuring and confirming unto the Trustee and Owners of the Bonds the rights and benefits provided in this Indenture.

SECTION 5.11. Reporting Requirements. The City and the Authority hereby agree to comply with each of the reporting requirements set out in Schedule V (*Reporting Requirements*) of the WIFIA Loan Agreement, unless otherwise agreed or waived by the WIFIA Lender in writing.

ARTICLE VI

THE TRUSTEE

SECTION 6.01. Appointment of Trustee. Computershare Trust Company, N.A., a national banking association organized and existing under and by virtue of the laws of the United States of America, is hereby appointed Trustee by the Authority for the purpose of receiving all moneys required to be deposited with the Trustee hereunder and to allocate, use and apply the same as provided in this Indenture. The Authority agrees that it will maintain a Trustee having a combined capital and surplus of at least One Hundred Million Dollars (\$100,000,000), and subject to supervision or examination by federal or State authority, so long as any Bonds are Outstanding. If such bank, national banking association or trust company publishes a report of condition at least annually pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this Section 6.01 the combined capital and surplus of such bank, national banking association or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

SECTION 6.02. Payment of Bonds; Registration Books. The Trustee is hereby authorized to pay the Bonds when duly presented for payment at maturity, or on redemption or purchase prior to maturity, and to cancel all Bonds upon payment thereof. The Trustee shall keep accurate records of all funds administered by it and of all Bonds paid and discharged. The Trustee will keep or cause to be kept at its Office sufficient books for the registration and transfer of the Bonds, which shall at all times during regular business hours upon reasonable notice be open to inspection by the City and the Authority. Upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, as provided in this Indenture with respect to the Bonds.

SECTION 6.03. Acceptance of Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. Prior to the time that an Event of Default hereunder has occurred or after the curing of all Events of Default which may have occurred, the Trustee shall perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or duties shall be read into this Indenture against the Trustee. In case an Event of Default hereunder has occurred (which has not been cured or waived) the Trustee may exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall have no liability for the actions of any such attorney, agent or receiver chosen with reasonable care, and the Trustee shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder. The Trustee shall not be liable for any action taken or not taken in reliance upon advice or opinion of such counsel.

(c) The Trustee shall not be responsible for any recital herein, or in the Bonds, or for any of the supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby and the Trustee shall not be bound to ascertain or inquire as to the observance or performance of any covenants, conditions or agreements on the part of the Authority hereunder. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with the City's investment direction or as otherwise provided in this Indenture.

(d) The Trustee shall not be accountable for the use of any proceeds of sale of the Bonds delivered hereunder. The Trustee may become the Owner of Bonds secured hereby with the same rights which it would have if not the Trustee; may acquire and dispose of other bonds or evidence of indebtedness of the Authority with the same rights it would have if it were not the Trustee; and may act as a depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners of Bonds, whether or not such committee shall represent the Owners of the majority in principal amount of the Bonds then Outstanding.

(e) In the absence of bad faith on its part, the Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram, requisition, facsimile transmission, electronic mail or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken or omitted to be taken by the Trustee in good faith and without negligence pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Owner of any Bond, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof. The Trustee shall not be bound to recognize any person as an Owner of any Bond or to take any action

at his request unless the ownership of such Bond by such person shall be reflected on the Registration Books.

(f) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a Written Certificate of the City or a Written Certificate of the Authority as sufficient evidence of the facts therein contained and prior to the occurrence of an Event of Default hereunder of which the Trustee has been given notice or is deemed to have notice, as provided in Section 6.03(h) hereof, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed by it to be necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a Written Certificate of the Authority to the effect that an authorization in the form therein set forth has been adopted by the Authority, as conclusive evidence that such authorization has been duly adopted and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and it shall not be answerable for other than its negligence or willful misconduct. The immunities and exceptions from liability of the Trustee shall extend to its officers, directors, employees and agents. In acting under the Installment Purchase Agreement or any other document executed in connection herewith or therewith, the Trustee shall have the same rights, protections and indemnities as afforded to it hereunder.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any Event of Default hereunder or under the Installment Purchase Agreement, except failure by the City to make any of the payments to the Trustee required to be made by the City pursuant to the Installment Purchase Agreement, or failure by the Authority to file with the Trustee any document required by this Indenture to be so filed subsequent to the issuance of the Bonds by a certain date, unless a Responsible Officer of the Trustee shall be specifically notified in writing of such default by the Owners of at least twenty-five percent (25%) in aggregate principal amount of the Bonds then Outstanding and all notices or other instruments required by this Indenture or under the Installment Purchase Agreement to be delivered to the Trustee must, to be effective, be delivered at the Office of the Trustee, and in the absence of such notice so delivered the Trustee may conclusively assume there is no Event of Default hereunder or thereunder except as aforesaid.

(i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right (but not the duty) fully to inspect the Water System, all books, papers and records of the City or the Authority pertaining to the Water System and the Bonds, and to take such memoranda from and with regard thereto as may be desired but which is not privileged by statute or by law.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises. Under no circumstances shall the Trustee be liable in its individual capacity for the obligations evidenced by the Bonds.

(k) Notwithstanding anything elsewhere in this Indenture with respect to the execution of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever

within the purview of this Indenture, the Trustee shall have the right, but shall not be required, to demand any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, as may be deemed desirable for the purpose of establishing the right of the Authority to the execution of any Bonds, or the right of the City or the Authority to the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) Before taking the action referred to in Section 8.03 or any other actions besides making payments of principal of and interest on the Bonds, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct in connection with any such action.

(m) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law. The Trustee shall not be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

(n) No provision in this Indenture shall require the Trustee to risk or expend its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder. The Trustee shall provide the Authority and the City with seven days' notice prior to making any advance of its own funds hereunder (which it is in no event required to do), and, if the City or the Authority does not provide moneys in the amount needed, the Trustee shall be entitled to interest on the amounts advanced at a rate equal to its prime rate then in effect; provided that no such prior notice shall need be given and such interest on amounts advanced shall accrue from the date of any such advance following the occurrence of an Event of Default hereunder.

(o) The Trustee shall have no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds.

(p) The Trustee shall not be liable for any action taken or not taken by it in accordance with the direction of a majority (or other percentage provided for herein) in aggregate principal amount of the Bonds outstanding relating to the exercise of any right, power or remedy available to the Trustee.

(q) The Trustee shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay ("unavoidable delay") in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, pandemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Trustee.

(r) The Trustee shall not be concerned with or accountable to anyone for the subsequent use or application of any moneys which shall be released or withdrawn in accordance with the provisions hereof.

(s) Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate of the City, and such certificate shall be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such certificate, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as it may deem reasonable.

(t) The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct.

(u) The Trustee may consult with counsel, who may or may not be counsel to the City, and in reliance upon the written opinion of such counsel shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith.

(v) The Trustee shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Indenture and delivered using Electronic Means ("Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder); provided, however, that the Authority and City shall provide to the Trustee an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Authority and City whenever a person is to be added or deleted from the listing. If the Authority and City elect to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee's understanding of such Instructions shall be deemed controlling. The Authority and City understand and agree that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. The Authority and City shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Trustee and that the Authority and City and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Authority and City. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Authority and City agree: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks

associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Authority and City; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

SECTION 6.04. Fees, Charges and Expenses of Trustee. The Trustee shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all reasonable advances, reasonable counsel fees (including expenses) and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services, but solely from Additional Payments made by the City under the Installment Purchase Agreement. Upon the occurrence of an Event of Default, the Trustee shall have a first lien with right of payment prior to payment of any Bond upon the amounts held hereunder for the foregoing fees, charges and expenses incurred by it respectively. When the Trustee incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

SECTION 6.05. Notice to Bond Owners of Default. If an Event of Default hereunder occurs with respect to any Bonds, of which the Trustee has been given or is deemed to have notice, as provided in Section 6.03(h), then the Trustee shall promptly give written notice thereof by first-class mail to the Owner of each such Bond, unless such Event of Default shall have been cured before the giving of such notice.

SECTION 6.06. Intervention by Trustee. In any judicial proceeding to which the Authority is a party which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Owners of any of the Bonds, the Trustee may intervene on behalf of such Bond Owners, and subject to Section 6.03(l), shall do so if requested in writing by the Owners of a majority in aggregate principal amount of such Bonds then Outstanding.

SECTION 6.07. Removal of Trustee. The Owners of a majority in aggregate principal amount of the Outstanding Bonds, or the Authority (so long as no Event of Default has occurred or is continuing), may at any time upon thirty (30) days prior written notice remove the Trustee.

SECTION 6.08. Resignation by Trustee. The Trustee and any successor Trustee may at any time resign by giving written notice by registered or certified mail to the City and the Authority. Upon receiving such notice of resignation, the Authority shall promptly appoint a successor Trustee in accordance with Section 6.09. Any resignation or removal of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. Upon such acceptance, the successor Trustee shall mail notice thereof to the Bond Owners at their respective addresses set forth on the Registration Books.

SECTION 6.09. Appointment of Successor Trustee. In the event of the removal or resignation of the Trustee pursuant to Sections 6.06 or 6.07, respectively, the Authority shall promptly appoint a successor Trustee; provided that any such successor shall be a bank, national banking association or trust company meeting the requirements of Section 6.01. In the event the

Authority shall for any reason whatsoever fail to appoint a successor Trustee within sixty (60) days following the delivery to the Trustee of the instrument described in Section 6.06 or within sixty (60) days following the receipt of notice by the Authority pursuant to Section 6.07, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee meeting the requirements of Section 6.01. Any such successor Trustee appointed by such court shall become the successor Trustee hereunder notwithstanding any action by the Authority purporting to appoint a successor Trustee following the expiration of such sixty (60) day period. Upon the acceptance by any successor Trustee of appointment as such, the successor Trustee shall cause notice thereof to be given by first class mail to the Bond Owners at their respective addresses set forth on the Registration Books.

SECTION 6.10. Merger or Consolidation. Any company into which the Trustee may be merged or converted or which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided that such company shall be eligible under Section 6.01, shall be the successor to the Trustee and vested with all of the title to the trust estate and all of the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

SECTION 6.11. Concerning any Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Authority an instrument in writing accepting such appointment hereunder and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors; but such predecessor shall, nevertheless, on the Written Request of the Authority, or of its successor, execute and deliver an instrument transferring to such successor all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as the Trustee hereunder to its successor. Should any instrument in writing from the Authority be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Authority.

SECTION 6.12. Appointment of Co-Trustee. It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of the State) denying or restricting the right of banking corporations or associations to transact business as Trustee in such jurisdiction. It is recognized that in the case of litigation under this Indenture, and in particular in case of the enforcement of the rights of the Trustee on default, or in the case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate or co-trustee. The following provisions of this Section 6.12 are adopted to these ends.

If the Trustee appoints an additional individual or institution as a separate or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee but only to the extent necessary to enable such separate or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them.

Should any instrument in writing from the Authority be required by the separate trustee or co-trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Authority. In case any separate trustee or co-trustee, or a successor to either, shall become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate trustee or co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new trustee or successor to such separate trustee or co-trustee.

SECTION 6.13. Indemnification; Limited Liability of Trustee. The Authority further covenants and agrees to indemnify and save the Trustee and its officers, directors, agents and employees, harmless against any loss, costs, claims, expense (including, without limitation, legal fees and expenses), suits, actions, judgements and liabilities which it may incur arising out of or in the exercise and performance of its powers and duties hereunder, including the costs and expenses of defending against any claim of liability or enforcing its indemnification rights hereunder, but excluding any and all losses, costs, claims, expenses and liabilities which are finally determined to have been primarily caused by the negligence or willful misconduct of the Trustee, its officers, directors or employees. No provision in this Indenture shall require the Trustee to risk or expend its own funds or otherwise incur any financial liability hereunder or pursuant to the Installment Purchase Agreement. The Trustee shall not be liable for any action taken or omitted to be taken by it in accordance with the direction of the Owners of a majority in aggregate principal amount of Bonds Outstanding relating to the time, method and place of conducting any proceeding or remedy available to the Trustee under this Indenture. The obligations of the Authority under this paragraph shall be payable solely from Additional Payments made by the City under the Installment Purchase Agreement and shall survive the resignation or removal of the Trustee under this Indenture or any defeasance of the Bonds. The Trustee's rights to immunities and protection from liability hereunder and its rights to payment of its fees and expenses shall survive its resignation or removal and final payment or defeasance of the Bonds. All indemnifications and releases from liability granted herein to the Trustee shall extend to the directors, officers, employees and agents of the Trustee.

The Trustee shall have no responsibility or liability with respect to any information, statements or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of these Bonds. Before taking any action under Article VIII or this Article at the request of the Owners, the Trustee may require that a satisfactory indemnity bond be furnished by the Owners for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct in connection with any action so taken.

ARTICLE VII

MODIFICATION AND AMENDMENT OF THIS INDENTURE

SECTION 7.01. Amendment by Consent of Owner. This Indenture and the rights and obligations of the Authority and of the Owner may be modified or amended at any time by a Supplemental Indenture which shall become binding when the written consent of the Owner, exclusive of Bonds disqualified as provided in Section 7.02 hereof, are filed with the Trustee

SECTION 7.02. Disqualified Bonds. Bonds owned or held by or for the account of the City or the Authority (but excluding Bonds held in any employees' retirement fund) shall not be deemed Outstanding for the purpose of any consent or other action or any calculation of Outstanding Bonds in this article provided for, and shall not be entitled to consent to, or take any other action in this article provided for, unless all of the Outstanding Bonds shall be owned or held by or for the account of the City or the Authority, provided however, that the Trustee shall not be deemed to have knowledge that any Bond is owned by the Authority or the City or for the account of the Authority or the City unless the Authority or the City is a Registered Owner or the Trustee has received written notice that any other Registered Owner is the owner of a Bond for the account of the City or Authority.

SECTION 7.03. Endorsement or Replacement of Bonds After Amendment. After the effective date of any action taken as hereinabove provided, the Authority may determine that the Bonds shall bear a notation, by endorsement in form approved by the Authority, as to such action, and in that case upon demand of the Owner of the Bonds Outstanding at such effective date and presentation of the Bond for that purpose at the Office of the Trustee, a suitable notation as to such action shall be made on such Bond. If the Authority shall so determine, new Bonds so modified as, in the opinion of the Authority, shall be necessary to conform to the Owner's action shall be prepared and executed, and in that case upon demand of the Owner of the Bond Outstanding at such effective date such new Bonds shall be exchanged at the Office of the Trustee, without cost to the Owner, for Bonds then Outstanding, upon surrender of such Outstanding Bonds.

SECTION 7.04. Amendment by Mutual Consent. The provisions of this Article VII shall not prevent the Owner from accepting any amendment as to the particular Bond held by such Owner, provided that due notation thereof is made on such Bond.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES OF BOND OWNERS

SECTION 8.01. Events of Default and Acceleration of Maturities. The following events shall be Events of Default hereunder:

(a) Default in the due and punctual payment of the principal of any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for mandatory sinking fund redemption, by declaration or otherwise.

(b) Default in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable.

(c) Default by the Authority in the observance of any of the other covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, if such default shall have continued for a period of thirty (30) days after written notice thereof, specifying such default and requiring the same to be remedied, shall have been given to the City and the Authority by the Trustee; provided, however, that if in the reasonable opinion of the Authority the default stated in the notice (other than a default in the payment of any fees and expenses owing to the Trustee) can be corrected, but not within such thirty (30) day period, such default shall not constitute an Event of Default hereunder if the Authority shall commence to cure such default within such thirty (30) day period and thereafter diligently and in good faith cure such failure in a reasonable period of time, which period shall not be longer than one hundred eighty (180) days from the date of such default notice.

(d) The filing by the Authority of a petition or answer seeking reorganization or arrangement under the Federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the Authority, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Authority or of the whole or any substantial part of its property.

(e) The occurrence and continuation of an Event of Default under and as defined in the Installment Purchase Agreement.

(f) The occurrence and continuation of an Event of Default under the WIFIA Loan Agreement.

Upon the occurrence and during the continuance of any Event of Default the Trustee may, and at the written direction of the Owner, the Trustee shall, declare the principal of all of the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the Authority shall deposit with the Trustee a sum sufficient to pay all of the principal of and interest on the Bonds having come due prior to such declaration, with interest on such overdue principal and interest calculated at the net effective rate of interest per annum then borne by the Outstanding Bonds, and the reasonable fees and expenses of the Trustee, together with interest thereon at the prime rate of the Trustee then in effect, and any and all other defaults actually known to the Trustee (other than in the payment of the principal of and interest on the Bonds having come due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall have been made therefor, then, and in every such case, the Trustee or the Owner may, by written notice to the Authority and to the Trustee, on behalf of the Owner, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

SECTION 8.02. Application of Funds Upon Acceleration. All amounts received by the Trustee pursuant to any right given or action taken by the Trustee under the provisions of this Indenture shall be applied by the Trustee in the following order upon presentation of the several Bonds, and the stamping thereon of the amount of the payment if only partially paid, or upon the surrender thereof if fully paid:

First, to the payment of reasonable fees, charges and expenses of the Trustee (including reasonable fees and disbursements of its counsel) incurred in and about the performance of its powers and duties under this Indenture;

Second, to the payment of the whole amount then owing and unpaid upon the Bonds for interest and principal, with interest on such overdue amounts to the extent permitted by law at the net effective rate of interest then borne by the Outstanding Bonds, and in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid upon the Bonds, then to the payment of such interest, principal and interest on overdue amounts without preference or priority among such interest, principal and interest on overdue amounts ratably to the aggregate of such interest, principal and interest on overdue amounts; and

Third, to any amounts owing the Owner to the extent not otherwise paid pursuant to Second above.

SECTION 8.03. Other Remedies: Rights of Bond Owner. Upon the occurrence of an Event of Default, the Trustee may pursue any available remedy, in addition to the remedy specified in Section 8.01, at law or in equity to enforce the payment of the principal of, premium, if any, and interest on the Outstanding Bonds, and to enforce any rights of the Trustee under or with respect to this Indenture.

If an Event of Default shall have occurred and be continuing and if requested so to do by the Owner and indemnified as provided in Section 6.03(l), the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article VIII, as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Owner.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Owner) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Owner hereunder or now or hereafter existing at law or in equity.

No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein; such right or power may be exercised from time to time as often as may be deemed expedient.

Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of the Owner any plan of reorganization, arrangement, adjustment, or composition affecting the Bonds or the rights of the Owner thereof, or to authorize the Trustee to vote in respect of the claim of the Owner in any such proceeding without the approval of the Owners so affected.

SECTION 8.04. Power of Trustee to Control Proceeding. If the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the request of the Owner, it shall have full power, in the exercise of its discretion for the best interests of the Owner, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; provided, however, that the Trustee shall not, unless there no longer continues an Event of Default, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Owner opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation and the Trustee has been indemnified to its satisfaction. Any suit, action or proceeding which the Owner of Bonds shall have the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of the Owner similarly situated and the Trustee is hereby appointed (and the successive respective Owner issued hereunder, by taking and holding the same, shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the respective Owner for the purpose of bringing any such suit, action or proceeding and to do and perform any and all acts and things for and on behalf of the Owner as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact.

SECTION 8.05. Appointment of Receivers. Upon the occurrence of an Event of Default hereunder, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Owner under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Revenues and other amounts pledged hereunder, pending such proceedings, with such powers as the court making such appointment shall confer.

SECTION 8.06. Non-Waiver. Nothing in this Article VIII or in any other provision of this Indenture, or in the Bonds, shall affect or impair the obligation of the Authority, which is absolute and unconditional, to pay the interest on and principal of the Bonds to the Owner at the respective dates of maturity, as herein provided, out of the Revenues and other moneys herein pledged for such payment.

A waiver of any default or breach of duty or contract by the Trustee or the Owner shall not affect any subsequent default or breach of duty or contract, or impair any rights or remedies on any such subsequent default or breach. No delay or omission of the Trustee or the Owner of any of the Bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy conferred upon the Trustee or Owner by the Bond Law or by this Article VIII may be enforced and exercised from time to time and as often as shall be deemed expedient by the Trustee or the Owner, as the case may be.

SECTION 8.07. Rights and Remedies of Bond Owners. No Owner of any Bond issued hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture, or the Installment Purchase Agreement, unless (a) the Owner shall have previously given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owner shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) the Owner

shall have tendered to the Trustee indemnity reasonably acceptable to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request; (d) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee; and (e) the Trustee has not received any inconsistent direction during such 60-day period from the Owner.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by the Owner of Bonds of any remedy hereunder; it being understood and intended that the Owner of Bonds shall not have any right in any manner whatever by his or their action to enforce any right under this Indenture, the Installment Purchase Agreement, or the WIFIA Loan Agreement except in the manner herein provided, and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner herein provided and for the benefit of the Owner.

The right of the Owner to receive payment of the principal of and interest and premium (if any) on such Bond as herein provided or to institute suit for the enforcement of any such payment, shall not be impaired or affected without the written consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision of this Indenture.

SECTION 8.08. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case, the Authority, the Trustee and the Owner shall be restored to their former positions and rights hereunder, respectively, with regard to the property subject to this Indenture, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

ARTICLE IX

MISCELLANEOUS

SECTION 9.01. Limited Liability of Authority. Notwithstanding anything in this Indenture contained, the Authority shall not be required to advance any moneys derived from any source of income other than the Revenues for the payment of the principal of or interest on the Bonds, or any premiums upon the redemption thereof, or for the performance of any covenants herein contained (except to the extent any such covenants are expressly payable hereunder from the Revenues or any Additional Revenues). The Authority may, however, advance funds for any such purpose, provided that such funds are derived from a source legally available for such purpose and may be used by the Authority for such purpose without incurring indebtedness.

The Bonds shall be revenue bonds, payable exclusively from the Revenues and other funds pledged hereunder as in this Indenture provided. The general fund of the Authority is not liable, and the credit of the Authority is not pledged, for the payment of the interest on or principal of the Bonds. The Owners of the Bonds shall never have the right to compel the forfeiture of any property of the Authority. The principal of and interest on the Bonds, and any premiums upon the

redemption of any thereof, shall not be a debt of the Authority, or a legal or equitable pledge, charge, lien or encumbrance upon any property of the Authority or upon any of its income, receipts or revenues except the Revenues and other funds pledged to the payment thereof as in this Indenture provided.

SECTION 9.02. Benefits of Indenture Limited to Parties. Nothing in this Indenture, expressed or implied, is intended to give to any person other than the City, the Authority, the Trustee, and the Owners of the Bonds, any right, remedy or claim under or by reason of this Indenture. Any covenants, stipulations, promises or agreements in this Indenture contained by and on behalf of the Authority shall be for the sole and exclusive benefit of the Trustee, the Insurer and the Owners of the Bonds.

SECTION 9.03. Discharge of Indenture. If the Authority shall pay and discharge each Outstanding Bond in any one or more of the following ways –

(a) by well and truly paying or causing to be paid the principal of and interest and premium (if any) on such Bonds, as and when the same become due and payable;

(b) by irrevocably depositing with the Trustee, in trust, at or before maturity, money which, together with the available amounts then on deposit in the funds and accounts established pursuant to this Indenture, is fully sufficient to pay such Bonds, including all principal, interest and redemption premiums;

(c) by irrevocably depositing with the Trustee, in trust, Permitted Investments described in paragraph (1), (2) or (3) of the definition thereof in such amount as Bond Counsel or an Independent Accountant shall determine as evidenced by an opinion or report, respectively, delivered to the Trustee (the “Verification Report”) will, together with the interest to accrue thereon and available moneys then on deposit in the funds and accounts established pursuant to this Indenture, be fully sufficient to pay and discharge the indebtedness on such Bonds (including all principal, interest and redemption premiums) at or before their respective maturity dates; and if such Bonds are to be redeemed prior to the maturity thereof notice of such redemption shall have been mailed pursuant to Section 2.03(d) or provision satisfactory to the Trustee shall have been made for the mailing of such notice; or

(d) by delivering such Bonds to the Trustee for cancellation –

then, at the election of the Authority, and notwithstanding that any of such Bonds shall not have been surrendered for payment, the assignment of the Installment Purchase Agreement and pledge of the Revenues and other funds provided for in this Indenture securing its performance with respect to such Bonds, and all other pecuniary obligations of the Authority under this Indenture with respect to such Bonds, shall cease and terminate, except only the obligation of the Authority to pay or cause to be paid to the Owners of such Bonds not so surrendered and paid all sums due thereon from amounts set aside for such purpose as aforesaid, and all expenses and costs of the Trustee. Notice of such election shall be filed with the Trustee. Any funds thereafter held by the Trustee, which are not required for said purposes, shall be paid over to the City.

SECTION 9.04. Successor Is Deemed Included in All References to Predecessor. Whenever in this Indenture or any Supplemental Indenture either the Authority is named or referred to, such reference shall be deemed to include the successor to the powers, duties and functions, with respect to the management, administration and control of the affairs of the Authority, that are presently vested in the Authority, and all the covenants, agreements and provisions contained in this Indenture by or on behalf of the Authority shall bind and inure to the benefit of its successors whether so expressed or not.

SECTION 9.05. Execution of Documents by Bond Owners. Any request, consent or other instrument required by this Indenture to be signed and executed by Bond Owners may be in any number of concurrent writings of substantially similar tenor and may be signed or executed by such Bond Owners in person or by agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and of the Authority if made in the manner provided in this Section 9.05. The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument or writing acknowledged to him the execution thereof. The ownership of Bonds shall be proved by the Registration Books. Any request, consent or vote of the Owner shall bind every future Owner with respect to the same Bond and the Owner with respect to any Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Authority in pursuance of such request, consent or vote. In lieu of obtaining any demand, request, direction, consent or waiver in writing, the Trustee may call and hold a meeting of the Owners upon such notice and in accordance with such rules and obligations as the Trustee considers fair and reasonable for the purpose of obtaining any such action.

SECTION 9.06. Waiver of Personal Liability. No member of the Authority's Board of Directors or, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the interest on or principal of the Bonds; but nothing herein contained shall relieve any such officer, agent or employee from the performance of any official duty provided by law.

SECTION 9.07. Partial Invalidity. If any one or more of the covenants or agreements, or portions thereof, provided in this Indenture on the part of the Authority (or of the Trustee) to be performed should be contrary to law, then such covenant or covenants, such agreement or agreements, or such portions thereof, shall be null and void and shall be deemed separable from the remaining covenants and agreements or portions thereof and shall in no way affect the validity of this Indenture or of the Bonds; but the Bond Owners shall retain all rights and benefits accorded to them under the Bond Law or any other applicable provisions of law. The Authority hereby declares that it would have entered into this Indenture and each and every other section, paragraph, subdivision, sentence, clause and phrase hereof and would have authorized the issuance of the Bonds pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this Indenture or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

SECTION 9.08. Destruction of Canceled Bonds. Whenever in this Indenture provision is made for the surrender to the Authority of any Bonds which have been paid or canceled pursuant to the provisions of this Indenture, the Trustee shall destroy such Bonds and furnish to the Authority upon the Authority's Written Request a certificate of such destruction.

SECTION 9.09. Funds and Accounts. Any fund or account required by this Indenture to be established and maintained by the Authority or the Trustee may be established and maintained in the accounting records of the Authority or the Trustee, as the case may be, either as a fund or an account, and may, for the purpose of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account. All such records with respect to all such funds and accounts held by the Authority shall at all times be maintained in accordance with generally accepted accounting principles and all such records with respect to all such funds and accounts held by the Trustee shall be at all times maintained in accordance with corporate trust industry practices; in each case with due regard for the protection of the security of the Bonds and the rights of every Owner thereof.

SECTION 9.10. Notices. All written notices to be given under this Indenture shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) upon receipt after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The City, the Authority or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the Authority: City of Oxnard Financing Authority
 300 West Third Street
 Oxnard, CA 93030
 Attention: Executive Director

If to the City: City of Oxnard
 300 West Third Street
 Oxnard, CA 93030
 Attention: City Manager

If to the Trustee: Computershare Trust Company, N.A.,
 CTSO Mail Operations
 Attention: Tracy Mason
 MAC: N9300-070
 600 South 4th Street, 7th Floor
 Minneapolis, MN 55415

If to WIFIA Lender: Environmental Protection Agency
 WJC-E 7334A
 1200 Pennsylvania Avenue NW
 Washington, D.C. 20460
 Attention: WIFIA Director
 Email: WIFIA_Portfolio@epa.gov

SECTION 9.11. Unclaimed Moneys. Anything in this Indenture to the contrary notwithstanding, any moneys held by the Trustee in trust for the payment and discharge of any of the Bonds which remain unclaimed for two (2) years after the date when such Bonds or interest thereon have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such moneys were held by the Trustee at such date, or for two (2) years after the date of deposit of such moneys if deposited with the Trustee after said date when such Bonds become due and payable, shall be repaid by the Trustee (without liability for interest) to the Authority, as its absolute property and free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Bond Owners shall look only to the Authority for the payment of such Bonds; provided, however, that before being required to make any such payment to the Authority, the Trustee shall, at the Written Request of the Authority (and of its expense), cause to be mailed to the Owners of all such Bonds, at their respective addresses appearing on the Registration Books, a notice that said moneys remain unclaimed and that, after a date named in said notice, which date shall not be less than thirty (30) days after the date of mailing of such notice, the balance of such moneys then unclaimed will be returned to the Authority.

SECTION 9.12. Execution in Several Counterparts. This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

SECTION 9.13. Governing Law. This Indenture shall be governed by and construed in accordance with the laws of the State.

(Signature page follows)

IN WITNESS WHEREOF, the CITY OF OXNARD FINANCING AUTHORITY and the CITY OF OXNARD have caused this Indenture to be signed in their names by their respective authorized officers, and Computershare Trust Company, N.A., in token of its acceptance of the trust created hereunder, has caused this Indenture to be signed in its corporate name by its officer identified below, all as of the day and year first above written.

CITY OF OXNARD FINANCING
AUTHORITY

By: _____
Alexander Nguyen
Executive Director

CITY OF OXNARD

By: _____
Alexander Nguyen
City Manager

COMPUTERSHARE TRUST COMPANY,
N.A., as Trustee

By: _____
Authorized Officer

*-Signature Page-
Indenture of Trust*

EXHIBIT A

\$23,305,000
CITY OF OXNARD FINANCING AUTHORITY
WATER REVENUE BONDS
SERIES 2022A

(Issue Dated Date: _____, 2022)

Requisition of the Authority
(Costs of Issuance Fund)
(Section 3.04 of the Indenture)

The undersigned hereby states and certifies:

(i) That I am the duly appointed [_____] of the City of Oxnard Financing Authority, a public body, corporate and politic, duly organized and existing under the laws of the State of California (the “Authority”), and as such, is familiar with the facts herein certified and is authorized and qualified to execute and deliver this certificate;

(ii) I have been authorized to execute this requisition pursuant to the Indenture of Trust, dated as of _____, 2022 (the “Indenture”), by and among the Authority, the City of Oxnard and _____, as Trustee (the “Trustee”) for the Authority’s Water Revenue Bonds, Series 2022A (the “Bonds”); and

(iii) The Trustee is hereby directed to disburse this date from the Costs of Issuance Fund established pursuant to the Indenture to the payees, designated on Exhibit A attached hereto and by this reference incorporated herein, at the address set forth below such payee name, the respective sums set forth opposite such payees, in payment of the Costs of Issuance related to the Bonds described on said Exhibit A; and

(iv) That each obligation shown on said Exhibit A has been properly incurred and is a proper charge against the Costs of Issuance Fund;

(v) That no item to be paid pursuant to this Requisition has been previously paid or reimbursed from the Costs of Issuance Fund; and

(vi) That capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Indenture.

Dated: _____, 20__

CITY OF OXNARD FINANCING
AUTHORITY

By: _____
Authorized Representative

DRAFT

EXHIBIT B TO WRITTEN REQUISITION NO. 1
COSTS OF ISSUANCE
TO BE PAID AT CLOSING

1. Immediately upon release of the Bonds by DTC, or as soon thereafter as practicable, pay the following amounts to the following parties from the Costs of Issuance Fund held under the Indenture:

DRAFT

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DRAFT

INSTALLMENT PURCHASE AGREEMENT

by and between

**CITY OF OXNARD,
as Purchaser**

and

**CITY OF OXNARD FINANCING AUTHORITY,
as Seller**

Dated as of _____, 2022

Relating to

**\$ _____
CITY OF OXNARD FINANCING AUTHORITY
WATER REVENUE BONDS
SERIES 2022A (WIFIA LOAN)**

INSTALLMENT PURCHASE AGREEMENT

This INSTALLMENT PURCHASE AGREEMENT, made and entered into as of _____, 2022, by and between the CITY OF OXNARD, a general law city and a municipal corporation duly organized and existing under and by virtue of the laws of the State of California (the “City”), and the CITY OF OXNARD 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 “Authority”):

WITNESSETH:

WHEREAS, the City proposes to finance certain improvements to the City’s water system, as more particularly described herein (collectively, the “2022 Project”); and

WHEREAS, the City desires to (a) finance the Aquifer Storage Recovery (ASR) Project consists of the following components: (i) expansion of the City’s Advanced Water Purification Facility capacity, (ii) construction of additional aquifer storage wells, (iii) construction of a distribution pipeline to convey recovered groundwater from the ASR wells to three existing Blending Stations, and (iv) upgrades to two of the city’s Blending Stations including mechanical and electrical upgrades as well as piping modifications and pump replacements (collectively, the “2022 Project”) and (b) pay costs of issuance of the Bonds; and

WHEREAS, the City and the Authority have duly authorized the execution of this Agreement; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THESE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. Unless the context otherwise requires, the terms defined in this section shall for all purposes hereof and of any amendment hereof or supplement hereto and of any report or other document mentioned herein or therein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein. All capitalized terms used herein and not defined herein shall have the meanings ascribed thereto in the Indenture.

“Acquisition and Construction” means, with respect to the 2022 Project, the acquisition, construction, improvement, equipping, renovation, remodeling or reconstruction thereof.

“Acquisition and Construction Costs” means, with respect to any of the 2022 Project, all costs of the Acquisition and Construction thereof which are paid from moneys on deposit in the Acquisition and Construction Fund, including but not limited to:

(a) all costs required to be paid to any person under the terms of any agreement for or relating to the Acquisition and Construction of the 2022 Project;

(b) obligations incurred for labor and materials in connection with the Acquisition and Construction of the 2022 Project;

(c) the cost of performance or other bonds and any and all types of insurance that may be necessary or appropriate to have in effect in connection with the Acquisition and Construction of the 2022 Project;

(d) all costs of engineering and architectural services, including the actual out-of-pocket costs for test borings, surveys, estimates, plans and specifications and preliminary investigations therefor, development fees, sales commissions, and for supervising construction, as well as for the performance of all other duties required by or consequent to the proper Acquisition and Construction of the 2022 Project;

(e) any sums required to reimburse the Authority or the City for advances made for any of the above items or for any other costs incurred and for work done which are properly chargeable to the Acquisition and Construction of the 2022 Project;

(f) all financing costs incurred in connection with the Acquisition and Construction of the 2022 Project, including but not limited to Costs of Issuance and other costs incurred in connection with this Agreement and the financing of the 2022 Project; and

(g) the interest components of the Installment Payments during the period of Acquisition and Construction of the 2022 Project, to the extent not paid from the proceeds of the Authority Bonds deposited in the Interest Account pursuant to the Indenture.

“Additional Obligations” means Obligations other than this Installment Purchase Agreement, which are either currently outstanding or issued pursuant to Section 5.03 hereof.

“Agreement” or “Installment Purchase Agreement” means this Installment Purchase Agreement, dated as of _____, 2022, by and between the City and the Authority, as originally executed and as it may from time to time be amended or supplemented in accordance herewith.

“Authority” means City of Oxnard Financing Authority, a joint exercise of powers agency duly organized and existing under and by virtue of the laws of the State of California.

“Authority Bonds” means the Series 2022 Bonds.

“Bond Counsel” means (a) Best Best & Krieger LLP, or (b) any other attorney or firm of attorneys appointed by or acceptable to the City of nationally recognized standing in matters pertaining to the tax-exempt nature of interest on obligations of states and their political subdivisions and duly admitted to the practice of law before the highest court of any state of the United States of America or the District of Columbia.

“Bonds” means all revenue bonds or notes of the City authorized, executed, issued and delivered by the City, the payments of which are on a parity with the Series 2022 Installment Payments and Installment Payments and that are secured by a pledge of and lien on the Net Water System Revenues.

“Build America Bonds” means the bonds with which the Authority has irrevocably elected (i) to apply the provisions of Section 54AA(d) of the Code and intends that the bonds be treated as “build America bonds” within the meaning of Section 54AA(d) of the Code and (ii) to apply the provisions of Section 54AA(g) of the Code and intends that the Bonds be treated as “qualified bonds” within the meaning of Section 54AA(g) of the Code, such that the bonds will bear interest that is not excluded from federal income taxation and, as provided for in Section 54AA(b) and 6431 of the Code, the bonds are eligible to receive Interest Subsidy Payments and for which the Authority or the Authority’s authorized designated recipient has filed the requires Internal Revenue Service Forms.

“City” means the City of Oxnard, a general law city and a municipal corporation duly organized and existing under and by virtue of the laws of the State of California.

“City Bonds” means all revenue bonds or notes of the City authorized, executed, issued, and delivered under and pursuant to the laws of the State of California, the payments of which are made from the Net Water System Revenues and which are on a parity with the Installment Payments. The term “City Bonds” includes, but is not limited to, obligations in the form of bonds, notes, bond anticipation notes, and commercial paper.

“Contract Payments” means Installment Payments due and payable under this Installment Purchase Agreement, installment or lease payments of interest and principal or, if there are no separate payments of interest and principal, the installment or lease payments, scheduled to be paid by the City under and pursuant to the Contracts.

“Contracts” means this Installment Purchase Agreement and all contracts or leases of the City authorized and executed by the City under and pursuant to the laws of the State of California, installment or lease payments under which are payable from the Net Water System Revenues on a parity with this Installment Purchase Agreement.

“Debt Service” means, for any Fiscal Year or other period, the sum of (i) the interest payable during such Fiscal Year or 12-month period on all outstanding City Bonds, assuming that all outstanding serial City Bonds are retired as scheduled and that all outstanding term City Bonds are redeemed or paid from sinking fund payments as scheduled (except to the extent that such interest is to be paid from the proceeds of sale of any City Bonds), (2) that portion of the principal amount of all outstanding serial City Bonds maturing on any principal payment date which falls in such Fiscal Year or 12-month period, (3) that portion of the principal amount of all outstanding term City Bonds required to be redeemed or paid on any redemption date which falls in such Fiscal Year or 12-month period, and (4) that portion of the Contract Payments required to be made in such Fiscal Year or 12-month period (except to the extent such interest is capitalized). For purposes of calculating Debt Service, the following assumptions shall be used:

provided that, as to any such City Bonds or Contract Payments bearing or comprising interest at other than a fixed rate, the rate of interest used to calculate Debt Service shall be the rate set forth in the applicable Qualified Swap, and if there is no Qualified Swap in effect with respect thereto, the greatest of (a) the actual interest rate on such City Bonds or Contract Payments on the date of calculation, or if the indebtedness is not yet outstanding, the initial interest rate (if established and binding), (b) if the City Bonds or Contracts have been outstanding for at least twelve months, the average rate over the twelve calendar months immediately preceding the date of calculation, and (c) (i) 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 50 basis points, or (ii) if interest is not so excludable, the interest rate on direct U.S. Treasury Obligations with comparable maturities plus 50 basis points; provided, however, that for purposes of any portion of Sections 5.03 (Additional Obligations) and 6.10 (Amount of Rates and Charges) of the Installment Purchase Agreement,

measuring actual debt service 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 City Bonds or Contract Payments have twenty-five percent (25%) or more of the aggregate principal amount of such series or issue due in any one year, Debt Service shall be determined for the Fiscal Year or other 12-month period of determination as if the principal of and interest on such series or issue of such City Bonds or Contract Payments 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 City Bonds or Contract Payments or portions thereof bearing no interest but that are sold at a discount and which discount accretes with respect to such City Bonds or Contract Payments or portions thereof, such accreted discount shall be treated as interest in the calculation of Debt Service; and

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

provided further that, Debt Service shall not include interest that is paid from investment earnings on amounts on deposit in the applicable Reserve Account and transferred to the Debt Service Fund; and

provided further that, for purposes of any portion of Sections 5.03 (Additional Obligations) and 6.10 (Amount of Rates and Charges) of the Installment Purchase Agreement measuring actual debt service coverage during a test period, Debt Service with respect to all City Bonds, Contract Payments, and bonds issued by the Authority secured by such Contract Payments for which the City or the Authority is entitled to receive Interest Subsidy Payments or any similar payments from the United States Department of the Treasury shall be determined net of all such Interest Subsidy Payments or similar payments from the United States Department of the Treasury received or scheduled to be received by the City or the Authority during such test period.

“Debt Service Payment Commencement Date” means the earlier to occur of (a) December 1, 2027; or (b) the Series 2022 Installment Payment Date falling closest to, but not later than, the fifth anniversary of the first disbursement date of the WIFIA Loan (but in any event no later than five (5) years after the Substantial Completion Date of the 2022 Project).

“Default Rate” has the meaning ascribed to such term in Part C of Schedule I (WIFIA Loan Specific Terms) of the WIFIA Loan Agreement.

“Event of Default” means an event described in Section 8.01.

“Fiscal Year” means the period beginning on July 1 of each year and ending on the last day of June of the next succeeding year, or any other twelve-month period selected and designated as the official Fiscal Year of the City.

“Indenture” means the Indenture of Trust, dated as of _____, 2022, by and among the City, the Authority and the Trustee, as originally executed and as it may from time to time be amended or supplemented in accordance with its terms.

“Independent Certified Public Accountant” means any certified public accountant or firm of certified public accountants appointed and paid by the Authority, and who, or each of whom:

- (a) is in fact independent and not under domination of the Authority or the City;
- (b) does not have any substantial interest, direct or indirect, in the Authority or the City; and
- (c) is not connected with the Authority or the City as an officer or employee of the Authority or the City but who may be regularly retained to make annual or other audits of the books of or reports to the Authority or the City.

“Independent Financial Consultant” means a financial consultant or firm of such consultants appointed by the City, and who, or each of whom:

- (1) is in fact independent and not under domination of the City or the Authority;
- (2) does not have any substantial interest, direct or indirect, with the City or the Authority; and
- (3) is not connected with the City or the Authority as an officer or employee thereof, but who may be regularly retained to make reports thereto.

“Installment Payment Date,” “Series 2022 Installment Payment Date”

The term “Installment Payment Date” means each date on which Installment Payments are scheduled to be paid by the City under and pursuant to any Contracts. The term “Series 2022 Installment Payment Date” means the fifth day prior to each Interest Payment Date, or if said date is not a Business Day, then the preceding Business Day.

“Installment Payments,” “Series 2022 Installment Payments,” “Interest Component of Series 2022 Installment Payments,” “Principal Component of Series 2022 Installment Payments”

The term “Installment Payments” means the installment payments of interest and principal scheduled to be paid by the City under and pursuant to the Contracts. The term “Series 2022 Installment Payments” means the Installment Payments scheduled to be paid by the City under and pursuant hereto, including all amounts payable to the Insurer for draws on the Insurance Policy or the Reserve Policy, plus interest on such draws as set forth in the Indenture. The term “Interest Component of Series 2022 Installment Payment”, with respect to any Series 2022 Installment Payment, means the “Amount Attributable to Interest” in respect of such payment as reflected in Exhibit A hereto. The term “Principal Component of Series 2022 Installment Payment”, with respect to any Series 2022 Installment Payment, means the “Amount Attributable to Principal” in respect of such payment as reflected in Exhibit A hereto.

“Interest Payment Date” means June 1 and December 1 in each year, as applicable, beginning the Debt Service Payment Commencement Date, and continuing so long as any Authority Bonds remain Outstanding.

“Interest Subsidy Payment” means with respect to Build America Bonds, each payment received by the Authority or the Authority’s designated recipient directly from the United States Department of the Treasury in an amount equal to 35% of the corresponding interest payable on such Build America Bonds of the Water System, as provided for in Sections 54AA(b) and 6431 of the Code.

“Maintenance and Operation Costs” means (1) costs spent or incurred for maintenance and operation of the Water System calculated in accordance with generally accepted accounting principles applicable to governmental agencies, including, but not limited to, the reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Water System in good repair and working order, and including administrative costs of the City that are charged directly or apportioned to the Water 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 the City Bonds, or any other Contract, other than Debt Service, or of any resolution or indenture authorizing the issuance of any City Bonds or Contracts, and (2) 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.

“Maximum Annual Debt Service” means, at any point in time, with respect to City Bonds and Contracts then outstanding, the largest amount of Debt Service on the City Bonds and Contracts in the then current or any future Fiscal Year.

“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 reasonable attorneys’ fees) incurred in the collection of such proceeds.

“Net Water System Revenues” means (i) for any Fiscal Year, the Water System Revenues for such Fiscal Year less the Maintenance and Operation Costs for such Fiscal Year, or (ii) in applying the provisions of the Installment and Purchase Agreement with respect to Additional Obligations only, the Water System Revenues for the selected 12-month period less the Maintenance and Operation Costs for the same 12-month period.

“Obligations” means City Bonds and Contract Payments.

“Purchase Price” means the principal amount plus interest thereon owed by the City to the Authority under the terms hereof as provided in Section 4.01.

“Qualified Swap” means any financial arrangement (i) that is entered into by the City with an entity that is a Qualified Swap Provider at the time the arrangement is entered into; (ii) that provides that the City shall pay to such entity an amount based on the interest accruing at a fixed rate on an amount equal to the principal amount of the Authority Bonds Outstanding, and that such entity shall pay to the City an amount based on the interest accruing on such principal amount at a variable rate of interest computed according to a formula set forth in such arrangement (which need not be the same as the actual rate of interest borne by the Authority Bonds) or that one shall pay to the other any net amount due under such arrangement; and (iii) that has been designated in writing to the Trustee by the City and the Authority as a Qualified Swap with respect to the Authority Bonds.

“Qualified Swap Provider” means a financial institution whose senior long term debt obligations or an insurance provider whose claims-paying ability, or whose obligations under a Qualified Swap are guaranteed by a financial institution whose senior long term debt obligations or by an insurance provider whose claims-paying ability, are rated (at the time the subject Qualified Swap is entered into) not lower than Aa3 by Moody’s and AA- by S&P, or the equivalent thereof by any successor thereto.

“Revenue Fund” means the fund by that name established pursuant to Section 5.02 hereof.

“Series 2022 Bonds” means the \$ _____ aggregate principal amount of City Of Oxnard Financing Authority Water Revenue Bonds Series 2022A.

“Substantial Completion” means, with respect to the 2022 Project, the stage at which the 2022 Project is able to perform the functions for which the 2022 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 and notice to the WIFIA Lender in accordance with Part E of Schedule V (Reporting Requirements) of the WIFIA Loan Agreement, that Substantial Completion has occurred.

“Trustee” means Computershare Trust Company, N.A., acting in its capacity as Trustee under and pursuant to the Indenture, and its successors and assigns.

“Water Service” means the water distribution service provided by the City.

“Water 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.

“Water System Revenues” means all income, rents, rates, fees, charges, and other moneys derived from the ownership of or operation of the Water System, including, without limiting the generality of the foregoing, (1) all in lieu charges and groundwater augmentation charges (including investment earnings thereon) collected by or on behalf of the City, (2) all income, rents, rates, fees, charges, business interruption insurance proceeds, or other moneys derived by the City from the sale, furnishing, and supplying of the water, drainage or other services, facilities, and commodities sold, furnished, or supplied through the facilities of or in the conduct or operation of the business of the Water System, and (3) the earnings on and income derived from the investment of such income, rents, rates, fees, charges, proceeds, or other moneys, including City reserves; but excluding in all cases (a) customers’ deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the City, (b) 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, and (c) connection fees and charges.

“WIFIA Interest Rate” has the meaning ascribed to such term in Part C of Schedule I (WIFIA Loan Specific Term) of the WIFIA Loan Agreement.

“WIFIA Lender” means 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.

“WIFIA Loan Agreement” means the WIFIA Loan Agreement, dated as of _____, 2022, among the City, the Authority and the WIFIA Lender.

“Written Consent of the Authority or City,” “Written Order of the Authority or City,” “Written Request of the Authority or City,” “Written Requisition of the Authority or City”

The terms “Written Consent of the Authority or City,” “Written Order of the Authority or City,” “Written Request of the Authority or City,” and “Written Requisition of the Authority or City” mean, respectively, a written consent, order, request or requisition signed by or on behalf of (i) the Authority by its Chairman, Vice Chairman, or Executive Director or (ii) the City by the Mayor, Vice Mayor or City

Manager or by any person who is specifically authorized by resolution of the City (a certified copy of which has been delivered to the Trustee) to sign or execute such a document on its behalf.

“2022 Project” means any additions, betterments, extensions or improvements to the Water System, the design, acquisition or construction of which (together with the incidental costs and expenses related thereto) is to be financed by the proceeds of the Authority Bonds, that may include improvements to both the water treatment (i.e. filter control replacement system, new clarifier and filter system, raw water reservoir improvements, vehicle and equipment replacement and storage tank repairs) and water distribution (i.e. water pipeline replacement, water distribution expansion and storage tank improvements).

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.01. Representations by the City. The City makes the following representations:

- (a) The City is a general law city and a municipal corporation duly organized and existing under and pursuant to the laws of the State of California.
- (b) The City has full legal right, power and authority to enter into this Agreement and carry out its obligations hereunder, to carry out and consummate all other transactions contemplated by this Agreement, and the City has complied with the provisions of the Law in all matters relating to such transactions.
- (c) By proper action, the City has duly authorized the execution, delivery and due performance of this Agreement.
- (d) The City will not take or, to the extent within its power, permit any action to be taken as a consequence of which any Interest Component of Series 2022 Installment Payments would fail to be excluded pursuant to section 103(a) of the Code from the gross income of the Authority or its assigns for purposes of federal income taxation, or to fail to be exempt from State of California personal income taxes.
- (e) The City has determined that it is necessary and proper for City uses and purposes within the terms of the Law that the City finance/refinance the 2022 Project in the manner provided for in this Agreement.
- (f) The City affirms all of the representations and warranties made by the City under Section 13 of the WIFIA Loan Agreement.

SECTION 2.02. Representations and Warranties by the Authority. The Authority makes the following representations and warranties:

- (a) The Authority is a joint exercise of powers agency duly organized and in good standing under the laws of the State of California, has full legal right, power and authority to enter into this Agreement and to carry out and consummate all transactions contemplated by this Agreement and by proper action has duly authorized the execution and delivery and due performance of this Agreement.
- (b) The execution and delivery of this Agreement and the consummation of the transactions herein contemplated will not violate any provision of law, any order of any court or other

agency of government, or any indenture, material agreement or other instrument to which the Authority is now a party or by which it or any of its properties or assets is bound, or be in conflict with, result in a breach of or constitute a default (with due notice or the passage of time or both) under any such indenture, agreement or other instrument, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Authority.

(c) The Authority will not take or permit any action to be taken as a consequence of which the interest on any Authority Bond would fail to be excluded pursuant to section 103(a) of the Code from the gross income of the owner thereof for purposes of federal income taxation, or to fail to be exempt from State of California personal income taxes.

(d) The Authority affirms all of the representations and warranties made by the Authority in Section 12 of the WIFIA Loan Agreement.

ARTICLE III

ISSUANCE OF AUTHORITY BONDS; SALE AND PURCHASE OF THE PROJECT

SECTION 3.01. The Authority Bonds. The Authority has authorized the issuance of the Authority Bonds pursuant to the Indenture in the aggregate principal amount of _____ Dollars (\$ _____) of Series 2022 Bonds. The Authority and the City agree that the proceeds of sale of the Authority Bonds shall be paid to the Trustee on the Closing Date for deposit pursuant to the terms and conditions of the Indenture. The City hereby approves the Indenture, the assignment to the Trustee of the rights of the Authority assigned under and pursuant to the Indenture, and the issuance of the Authority Bonds by the Authority under and pursuant to the Indenture. The Authority Bonds and the Series 2022 Installment Payments shall mature the earliest of (a) June 1, 2061; (b) the date on which the maturity of the WIFIA Loan has been accelerated or subject to mandatory redemption or prepayment (as the case may be); and (c) the June 1 immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.

SECTION 3.02. Appointment of City as Agent of Authority. The Authority hereby appoints the City as its agent to carry out all phases of the Acquisition and Construction of the additional 2022 Project to the Water System pursuant to and in accordance with the provisions hereof and the Indenture. The City hereby accepts such appointment and assumes all rights, liabilities, duties and responsibilities of the Authority regarding the Acquisition and Construction of the 2022 Project. The Authority, or the City as agent of the Authority hereunder, shall enter into, administer and enforce all purchase orders or other contracts relating to the Acquisition and Construction of the 2022 Project. All contracts for, and all work relating to, the Acquisition and Construction of the 2022 Project shall be subject to all applicable provisions of law relating to the acquisition, construction, improvement, and equipping of like facilities and property by the City.

SECTION 3.03. Sale and Purchase of the 2022 Project. As consideration for the proceeds of the Authority Bonds, the Authority hereby agrees to purchase, and the City hereby agrees to sell, the 2022 Project. As consideration for the City's agreement to make Series 2022 Installment Payments in accordance with Section 4.02 hereof, the Authority hereby agrees to sell, and the City hereby agrees to purchase, the 2022 Project. All right, title and interest in the 2022 Project shall vest in the City immediately upon execution of this Agreement. Such vesting shall occur without further action by the Authority or the City; and the Authority shall, if requested by the City or if necessary to assure such automatic vesting, deliver any and all documents required to assure such vesting.

ARTICLE IV

SERIES 2022 INSTALLMENT PAYMENTS

SECTION 4.01. Purchase Price.

(a) The Purchase Price to be paid by the City hereunder to the Authority is the sum of the principal amount of the City's obligations hereunder plus the interest to accrue on the unpaid balance of such principal amount from the effective date hereof over the term hereof, subject to prepayment as provided in Article VII.

(b) The principal amount of the payments to be made by the City hereunder on each Series 2022 Installment Payment Date is set forth in Exhibit A hereto; provided, however, the amount payable by the City to the Authority on each Series 2022 Installment Payment Date shall be reduced by the amount, if any, on deposit in the Bond Payment Fund and available or to be available for the payment of principal of and interest on the Authority Bonds on such Interest Payment Date as a result of prepayment in accordance with Article VII.

(c) The interest to accrue on the unpaid balance of such principal amount is as specified in Section 4.02 and Exhibit A hereto, and shall be paid by the City as and constitute interest paid on the principal amount of the City's obligations hereunder.

SECTION 4.02. Series 2022 Installment Payments. The Borrower shall pay interest on the Purchase Price outstanding at the WIFIA Interest Rate; provided, that, upon the occurrence of an Event of Default, the City shall pay interest on the Purchase Price outstanding at the Default Rate, (a) in the case of an Event of Default described in Section 8.01(1), from (and including) its due date to (but excluding) the date of actual payment of the overdue amount of the Purchase Price then outstanding and accrued interest thereon 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 (if applicable) in accordance with the terms of this Agreement and the WIFIA Loan Agreement or waived by the WIFIA Lender and (ii) the remaining balance of the Purchase Price has been irrevocably paid in full in immediately available funds. Interest shall (x) accrue on the Purchase Price commencing on the date of the first disbursement of the proceeds under the WIFIA Loan Agreement, (y) be payable commencing on the Debt Service Payment Commencement Date and (z) be computed on the Purchase Price outstanding on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months. Each Series 2022 Installment Payment shall be paid to the Authority in lawful money of the United States of America. If the City fails to make any of the payments required to be made by it under this section, such payment shall continue as an obligation of the City until such amount shall have been fully paid; and the City agrees to pay the same with interest accruing thereon at the rate or rates of interest then applicable to the remaining unpaid principal balance of the Series 2022 Installment Payments if paid in accordance with their terms.

The obligation of the City to make the Series 2022 Installment Payments is absolute and unconditional, and until such time as the Purchase Price and any amounts owing the Insurer shall have been paid in full (or provision for the payment thereof shall have been made pursuant to Article IX), the City will not discontinue or suspend any Series 2022 Installment Payments required to be made by it under this section when due, whether or not the Water System or any part thereof is operating or operable or has been completed, or its use is suspended, interfered with, reduced, curtailed or terminated in whole or in part and such payments shall not be subject to reduction whether by offset, abatement or otherwise and shall not be conditional upon the performance or nonperformance by any party to any agreement for any cause whatsoever.

SECTION 4.03. Additional Payments. In addition to the Series 2022 Installment Payments, the City shall pay when due all costs and expenses incurred by the Authority to comply with the provisions of the Indenture, including without limitation all amounts owing to the Insurer relating to the Insurance Policy or the Reserve Policy that is not payable as a Series 2022 Installment Payment, all Costs of Issuance (to the extent not paid from amounts on deposit in the Costs of Issuance Fund or the Acquisition and Construction Fund), and shall pay to the Trustee upon request therefor all compensation for fees due to the Trustee and all of its costs and expenses payable as a result of the performance of and compliance with its duties hereunder or under the Indenture or any related documents, together with all amounts required to indemnify the Trustee pursuant to Section 6.13 of the Indenture, and all costs and expenses of attorneys, auditors, engineers and accountants. The rights of the Trustee and the obligations of the City under this Section 4.03 shall survive the termination of this Agreement and the resignation and removal of the Trustee.

ARTICLE V

SECURITY

SECTION 5.01. Pledge of Net Water System Revenues. All Net Water System Revenues are hereby irrevocably pledged to the payment of the Series 2022 Installment Payments as provided herein and Net Water System Revenues shall not be used for any purpose other than as permitted herein while any of the Series 2022 Installment Payments remain unpaid. This pledge shall constitute a lien on Net Water System Revenues, including Net Water System Revenues in the Revenue Fund established herein, subject to the terms hereof, for the payment of the Series 2022 Installment Payments and all other Obligations in accordance with the terms hereof and the Indenture.

SECTION 5.02. Allocation of Net Water System Revenues. To carry out and effectuate the pledge and lien contained herein, the City agrees and covenants that all Water System Revenues shall be received by the City in trust hereunder and shall be deposited when and as received in a special fund designated as the "Revenue Fund," which fund is hereby created and established and which fund the City agrees and covenants to maintain and to hold in trust separate and apart from other funds so long as any Obligations remain unpaid. Moneys in the Revenue Fund shall be used and applied by the City as provided in this Agreement. Investment earnings received by the Trustee from the investment of moneys on deposit in the Bond Payment Fund and the Reserve Fund are to be retained by the Trustee and applied by it as provided for in the Indenture.

The City shall, first from the moneys in the Revenue Fund, pay all Maintenance and Operation Costs (including amounts reasonably required to be set aside in contingency reserves for Maintenance and Operation Costs, the payment of which is not then immediately required) as they become due and payable. Thereafter, all Net Water System Revenues in the Revenue Fund shall be set aside by the City at the following times for the transfer to the following respective special funds in the following order of priority; and all moneys in each of such funds shall be held in trust and shall be applied, used and withdrawn only for the purposes set forth in this Section 5.02.

(a) **Bond Payment Fund.** On or before each Series 2022 Installment Payment Date until the Authority Bonds have been paid or provision for their payment has been made as provided in Section 9.03 of the Indenture, the City shall, from the moneys in the Revenue Fund, transfer to the Trustee for deposit in the Bond Payment Fund the Series 2022 Installment Payment due and payable on that Series 2022 Installment Payment Date. Such deposit to the Bond Payment Fund shall be reduced to the extent amounts on deposit therein are available for application to the Series 2022 Installment Payment due and payable on such Series 2022 Installment Payment Date.

The City shall also, from the moneys in the Revenue Fund, transfer to the trustee for deposit in the respective payment fund, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, to pay any other debt service in accordance with the provisions of any Bond or Contract.

(b) Reserve Fund. On or before each Series 2022 Installment Payment Date until the Authority Bonds have been paid, or provision for their payment has been made as provided in Section 10.03 of the Indenture, the City shall, from the remaining moneys in the Revenue Fund, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, transfer to the Trustee or other fiduciary for deposit in the Reserve Fund and such other reserve funds and/or accounts, if any, as may have been established in connection with Bonds or Contracts, other than this Agreement, that sum, if any, necessary to restore the Reserve Fund to an amount equal to the Reserve Requirement and/or such reserve funds or accounts to an amount equal to the amount required to be maintained therein.

No transfer of moneys for deposit to the Reserve Fund in connection with the Series 2022 Installment Payments need be made if the amount contained therein is at least equal to the Reserve Requirement.

(c) Surplus. Moneys on deposit in the Revenue Fund not necessary to make any of the payments required above, may be expended by the City at any time for any purpose permitted by law; provided however, for the term of the WIFIA Loan Agreement, the City shall not permit Net Water System Revenues or other assets of the Water System, or any funds in any accounts held under the Installment Purchase Agreement or in any other fund or account held by or on behalf of the City for the benefit of the Water System, to be paid or transferred or otherwise applied for purposes other than ownership, operation or maintenance of the Water System; provided that the City may transfer excess Net Water System Revenues from the Revenue Fund to the general fund of the City for the sole purpose of reimbursing to the City's general fund amounts previously expended out of the City's general fund to pay for costs directly related to the ownership, construction and improvement, operation or maintenance of the Water System.

SECTION 5.03. Additional Obligations. The City may at any time execute any Contract or issue any City Bonds, as the case may be, in accordance herewith, provided, however, that: (1) the City shall not issue or incur any Additional Obligations during the term of the WIFIA Loan Agreement having any priority in payment of principal or interest out of the Gross Revenues or the Net Water System Revenues senior to the Series 2022 Installment Payments; and (2) the City may not issue or incur any Additional Obligations during the term of the WIFIA Loan Agreement unless all of the following conditions are satisfied:

(a) No Event of Default shall have occurred and be continuing, and the City shall deliver a certificate to that effect to the Trustee; and

(b) the City obtains or provides a certificate or certificates prepared by an Independent Financial Consultant showing that

(i) the Net Water System Revenues as shown by the books of the City for the twelve (12) calendar months ending 90 days prior to the end of the month in which such Additional Obligations are incurred (the "Look Back Period"), shall have amounted to at least the sum of (x) one hundred ten percent (110%) of Debt Service for such Look Back Period, plus (y) the amount by which the amount on deposit in the Revenue Fund on the first day of such Look Back Period was less than twenty-five percent (25%) of Maximum Annual Debt Service on all Outstanding City Bonds and Contracts calculated on the first

day of such Look Back Period; for purposes of preparing the certificate or certificates described above, the Consultant or Consultants may rely upon financial statements prepared by the City for all or any part of the Look Back Period, which have not been subject to audit by an Independent Certified Public Accountant if audited financial statements for the Fiscal Year or period are not available;

(ii) the estimated Net Water System Revenues for the twelve (12) calendar months following the date of incurring such Additional Obligations will be at least equal to one hundred ten percent (110%) of Maximum Annual Debt Service on all City Bonds and Contracts to be outstanding immediately after the incurring of such Additional Obligations; and

(iii) the amount on deposit in the Revenue Fund on the date of incurring such Additional Obligations is at least equal to twenty-five percent (25%) of Maximum Annual Debt Service on all Outstanding City Bonds and Contracts as of the date of incurring of such Additional Obligations.

(c) For purposes of the computations to be made as described in clause (ii) above, the determination of the Net Water System Revenues:

(i) may take into account any increases in rates and charges that relate to the Water System and shall take into account any reduction in such rates and charges that will be effective prior to or at the time of incurring such proposed Additional Obligations;

(ii) may take into account an allowance for any estimated increase in such Net Water System Revenues from any revenue producing additions to or improvements or extensions of the Water System to be made with the proceeds of such Additional Obligations or with the proceeds of Obligations previously issued, as shown by a certificate of an Independent Financial Consultant; and

(iii) for the period contemplated by clause (ii) above, Maintenance and Operation Costs of the Water System shall be deemed to be the same as for the period for which a calculation is done pursuant to clause (i) above, but adjusted, if deemed necessary by the Independent Financial Consultant, for any increased Maintenance and Operation Costs of the Water System which are, in the judgment of the Independent Financial Consultant, essential to maintaining and operating the Water System, including any additions or betterments thereto to be made with the proceeds of such Additional Obligations.

The certificate or certificates described above shall not be required if the Additional Obligations being incurred are for the purpose of refunding then outstanding Obligations and at the time of the incurring of such Additional Obligations a certificate of an Authorized Official shall be delivered showing that Maximum Annual Debt Service on all Outstanding City Bonds and Contracts after the incurring of such Additional Obligations will not exceed Maximum Annual Debt Service on all Obligations outstanding prior to the incurring of such Additional Obligations.

(d) The City shall not, for the term of the WIFIA Loan Agreement, issue or incur any Obligations for the 2022 Project that are secured by a lien on any assets or property of the City other than the Net Water System Revenues.

SECTION 5.04. Investments. 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.

ARTICLE VI

COVENANTS OF THE CITY

SECTION 6.01. Compliance with Installment Purchase Agreement and Ancillary Agreements. The City will punctually pay the Series 2022 Installment Payments in strict conformity with the terms hereof, and will faithfully observe and perform all the agreements, conditions, covenants and terms contained herein required to be observed and performed by it, and will not terminate this Agreement for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Water System, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of California or any political subdivision of either or any failure of the Authority to observe or perform any agreement, condition, covenant or term contained herein required to be observed and performed by it, whether express or implied, or any duty, liability or obligation arising out of or connected herewith or the insolvency, or deemed insolvency, or bankruptcy or liquidation of the Authority or any force majeure, including acts of God, tempest, storm, earthquake, war, rebellion, riot, civil disorder, acts of public enemies, blockade or embargo, strikes, industrial disputes, lock outs, lack of transportation facilities, fire, explosion, or acts or regulations of governmental authorities.

The City will faithfully observe and perform all the agreements, conditions, covenants and terms contained in the Indenture required to be observed and performed by it; and it is expressly understood and agreed by and between the parties to this Agreement that, subject to Section 11.07 hereof, each of the agreements, conditions, covenants and terms contained in each of this Agreement and the Indenture is an essential and material term of the purchase of and payment for the 2022 Project by the City pursuant to and in accordance with this Agreement.

The City will faithfully observe and perform all the agreements, conditions, covenants and terms required to be observed and performed by it pursuant to all outstanding Contracts and Bonds as such may from time to time be executed or issued, as the case may be.

SECTION 6.02. Against Encumbrances. The City will not make any pledge of or place any lien on Net Water System Revenues or the moneys in the Revenue Fund except as provided herein. The City may at any time, or from time to time, issue evidences of indebtedness or incur other obligations for any lawful purpose that are payable from and secured by a pledge of and lien on Net Water System Revenues or any moneys in the Revenue Fund as may from time to time be deposited therein (as provided in Section 5.02), provided that such pledge and lien shall be subordinate in all respects to the pledge of and lien thereon provided herein. The City will not issue any evidences of indebtedness or incur other obligations that are payable from and secured by a pledge of and lien on Net Water System Revenues senior to the pledge of and lien on Net Water System Revenues of the Series 2022 Installment Payments.

SECTION 6.03. Against Sale or Other Disposition of Property. The City will not enter into any agreement or lease that impairs the operation of the Water System or any part thereof necessary to secure adequate Net Water System Revenues for the payment of the Series 2022 Installment Payments, or that would otherwise impair the rights of the Authority hereunder or the operation of the Water System. Any real or personal property that has become nonoperative or that is not needed for the efficient and proper operation of the Water System, or any material or equipment that has become worn out, may be sold if such

sale will not impair the ability of the City to pay the Series 2022 Installment Payments and if the proceeds of such sale are deposited in the Revenue Fund.

Nothing herein shall restrict the ability of the City to sell any portion of the Water 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 Water System exercising any remedy that would deprive the City of or otherwise interfere with its right to own and operate such portion of the Water System.

SECTION 6.04. Maintenance and Operation of the Water System. The City will maintain and preserve the Water System in good repair and working order at all times and will operate the Water System in an efficient and economical manner and will pay all Maintenance and Operation Costs as they become due and payable.

SECTION 6.05. Payment of Claims. The City will pay and discharge any and all lawful claims for labor, materials or supplies that, if unpaid, might become a lien on the Net Water System Revenues or the funds or accounts created hereunder or under the Indenture or on any funds in the hands of the City pledged to pay the Series 2022 Installment Payments or to the Owners prior or superior to the lien of the Series 2022 Installment Payments or that might impair the security of the Series 2022 Installment Payments, except that if the City desires to contest any such lien it may do so. If any such lien shall be reduced to final judgment and such judgment or any process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and such stay thereafter expires, the City will forthwith pay or cause to be paid and discharged such judgment.

SECTION 6.06. Insurance.

(a) The City will procure and maintain or cause to be procured and maintained insurance relating to the Water System with responsible insurers in such amounts and against such risks (including damage to or destruction of the Water System) as are usually covered in connection with facilities similar to the Water System, so long as such insurance is available from reputable insurance companies at reasonable costs.

In the event of any damage to or destruction of the Water System caused by the perils covered by such insurance, the following shall apply; provided however, the following shall not apply, if (1) the Net Proceeds are less than \$50,000, in which case the City may determine the use of such proceeds; or (2) the City certifies in a Written Order of the City delivered to the Trustee that if the damaged or destroyed portion of the Water System is not repaired or replaced, the Water System will generate Net Water System Revenues equal to at least 125% of the amount described in clause (b) of Section 6.10 for each future fiscal year that the Authority Bonds are scheduled to remain outstanding without a rate increase triggering a noticed Proposition 218 rate hearing:

(i) The Net Proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the Water 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 Water System shall be free and clear of all claims and liens.

(ii) If such Net Proceeds are sufficient to enable the City to retire the entire obligation evidenced hereby prior to the final due date of the Series 2022 Installment Payments as well as the entire obligations evidenced by Bonds and Contracts 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 Water System, and/or not to construct other additions, betterments, extensions or improvements to the Water System; and thereupon such Net Proceeds shall be applied to the prepayment of Series 2022 Installment Payments as provided in Article VII and to the retirement of such Bonds and Contracts.

(iii) If such Net Proceeds exceed the costs of such reconstruction, repair or replacement portion of the Water System, and/or the cost of the construction of additions, betterments, extensions or improvements to the Water System, then the excess Net Proceeds may, in the City's discretion, be applied in part to the prepayment of Series 2022 Installment Payments as provided in Article VII and in part to such other fund or account as may be appropriate and used for the retirement of Bonds and Contracts in the same proportion that the aggregate unpaid principal balance of Series 2022 Installment Payments then bears to the aggregate unpaid principal amount of such Bonds and Contracts.

(b) The City will procure and maintain such other insurance as it shall deem advisable or necessary to protect its interests and the interests of the Authority, 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 Water System.

(c) Any insurance required to be maintained by paragraph (a) above and, if the City determines to procure and maintain insurance pursuant to paragraph (b) above, 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 Water System and is, in the opinion of an accredited actuary, actuarially sound.

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

The Trustee shall not be responsible for the sufficiency or adequacy of the insurance maintained by the City.

SECTION 6.07. Accounting Records; Financial Statements and Other Records.

(a) The City will keep appropriate accounting records in which complete and correct entries shall be made of all transactions relating to the Water System, which records shall be available for inspection by the Authority and the Trustee at reasonable hours and under reasonable conditions.

(b) The City will prepare and file with the Authority and, upon request of the Insurer or the Trustee, annually within one hundred eighty (180) days after the close of each Fiscal Year (commencing with the Fiscal Year ending June 30, 20__);

(1) financial statements of the City for the preceding Fiscal Year prepared in accordance with generally accepted accounting principles, together with a report of an Independent Certified Public Accountant thereon; and

(2) a detailed report as to all insurance policies maintained and self-insurance programs maintained by the City with respect to the Water System, as of the close of such Fiscal

Year, including the names of the insurers that have issued the policies and the amounts thereof and the property or risks covered thereby and a statement that all such policies comply with Section 6.08 hereof.

The Trustee shall have no duty to review, verify or analyze the documents provided to it pursuant to this Section 6.07(b)(1) and shall hold such documents solely as a repository for the benefit of the Owners. The Trustee shall not be deemed to have notice of any information contained therein or default or Event of Default which may be disclosed therein in any manner.

SECTION 6.08. Protection of Security and Rights of the Authority. The City will preserve and protect the security hereof and the rights of the Authority to the Series 2022 Installment Payments hereunder and will warrant and defend such rights against all claims and demands of all persons.

SECTION 6.09. Payment of Taxes and Compliance with Governmental Regulations. The City will pay and discharge all taxes, assessments and other governmental charges that may hereafter be lawfully imposed upon the Water System, or any part thereof or upon the Water System Revenues when the same shall become due. The City will duly observe and conform with all valid regulations and requirements of any governmental authority relative to the operation of the Water System, or any part thereof, but the City shall not be required to comply with any regulations or requirements so long as the validity or application thereof shall be contested in good faith.

SECTION 6.10. Amount of Rates and Charges, Operating Reserves. (i) The City shall fix, prescribe, and collect fees, rates, and charges for the Water System which will be at least sufficient to yield during each Fiscal Year Net Water System Revenues equal to the sum of (a) one hundred ten percent (110%) of the Debt Service for such Fiscal Year and the amounts, if any, then due and owing to the Insurer under the Reserve Policy, if applicable, plus (b) the amount by which the amount on deposit in the Revenue Fund on the last day of the immediately preceding Fiscal Year was less than twenty-five percent (25%) of Maximum Annual Debt Service as of such day. The City may make adjustments from time to time in such rates and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates and charges then in effect unless the Net Water System Revenues from such reduced rates and charges will at all times be sufficient to meet the requirements of this Section; and

(ii) So long as the WIFIA Loan Agreement is in effect, if:

(A) the forecast furnished by the City in the most recent Updated Financial Model/Plan, as defined in the WIFIA Loan Agreement, delivered by the City pursuant to Part A of Schedule V (Reporting Requirements) of the WIFIA Loan Agreement demonstrates that projected Net Water System Revenues may be inadequate to satisfy paragraph (i) above for any Fiscal Year during the Forecast Period, as defined in the WIFIA Loan Agreement, then the City shall propose a remedial course of action, which plan shall demonstrate to the WIFIA Lender's satisfaction that such plan will generate an equivalent or greater increase to the Net Water System Revenues so as to satisfy paragraph (i) above; and/or

(B) the City fails to satisfy paragraph (i) above for the most recently ended Fiscal Year, then the City shall (A) within thirty (30) days after request by the WIFIA Lender, engage the Technical and Rate Consultant, as defined in the WIFIA Loan Agreement, to review and analyze the operations of the Water System and recommend actions regarding revising the rates or changing the methods of operations, or any other actions to increase the Net Water System Revenues so as to satisfy paragraph (i) of this Section 6.10, (B) cause the Technical and Rate Consultant to issue its report, including any

such recommended actions, no later than ninety (90) days following such engagement, and (C) either, within sixty (60) days following the issuance of the Technical and Rate Consultant's report, (1) implement the Technical and Rate Consultant's recommendations or (2) undertake an alternative course of action after demonstrating to the WIFIA Lender's satisfaction that an alternative plan will generate an equivalent or greater increase to the Net Water System Revenues so as to satisfy paragraph (i) of this Section 6.10.

SECTION 6.11. Collection of Rates and Charges. The City will have in effect at all times rules and regulations requiring each customer to pay the rates, fees and charges applicable to the Water Services and providing for the billing thereof and for a due date and a delinquency date for each bill.

SECTION 6.12. Eminent Domain Proceeds. If all or any part of the Water System shall be taken by eminent domain proceedings, the Net Proceeds thereof shall be applied as follows; provided however, the following shall not apply, if (1) the Net Proceeds are less than \$50,000, in which case the City may determine the use of such proceeds; or (2) the City certifies in a Written Order of the City delivered to the Trustee that if the portion of the Water System taken by eminent domain is not replaced, the Water System will generate Net Water System Revenues equal to at least 125% of the amount described in clause (b) of Section 6.10 for each future fiscal year that the Authority Bonds are scheduled to remain outstanding without a rate increase triggering a noticed Proposition 218 rate hearing:

(a) If (1) the City files with the Authority and the Trustee a certificate showing (i) the estimated loss of annual Net Water System Revenues, if any, suffered or to be suffered by the City by reason of such eminent domain proceedings, (ii) a general description of the additions, betterments, extensions or improvements to the Water System proposed to be acquired and constructed by the City from such Net Proceeds, and (iii) an estimate of the additional annual Net Water System Revenues to be derived from such additions, betterments, extensions or improvements, and (2) the City, on the basis of such certificate filed with the Authority and the Trustee, determines that the estimated additional annual Net Water System Revenues will sufficiently offset the estimated loss of annual Net Water System Revenues resulting from such eminent domain proceedings so that the ability of the City to meet its obligations hereunder will not be substantially impaired (which determination shall be final and conclusive), then the City shall promptly proceed with the acquisition and construction of such additions, betterments, extensions or improvements substantially in accordance with such certificate and such Net Proceeds shall be applied for the payment of the costs of such acquisition and construction, and any balance of such Net Proceeds not required by the City for such purpose shall be deposited in the Revenue Fund.

(b) If the foregoing conditions are not met, then such Net Proceeds shall be applied by the City in part to the prepayment of Series 2022 Installment Payments as provided in Article VII and in part to such other fund or account as may be appropriate and used for the retirement of Bonds and Contracts in the same proportion that the aggregate unpaid principal balance of Series 2022 Installment Payments then bears to the aggregate unpaid principal amount of such Bonds and Contracts.

SECTION 6.13. 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 Authority of the rights and benefits provided to it herein.

SECTION 6.14. Continuing Disclosure. The City will comply with the continuing disclosure requirements promulgated under U.S. Securities and Exchange Commission Rule 15c2 12 and will also comply with the terms of the Continuing Disclosure Agreement.

SECTION 6.15. [Tax Exempt Status of Series 2022 Bonds.

(a) **Private Activity Bond Limitation.** The City and the Authority shall assure that the proceeds of the Series 2022 Bonds are not so used as to cause the Series 2022 Bonds to satisfy the private business tests of section 141(b) of the Code.

(b) **Private Loan Financing Limitation.** The City and the Authority shall assure that the proceeds of the Series 2022 Bonds are not so used as to cause the Series 2022 Bonds to satisfy the private loan financing test of section 141(c) of the Code.

(c) **Federal Guarantee Prohibition.** The City and the Authority shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Series 2022 Bonds to be “federally guaranteed” within the meaning of section 149(b) of the Code.

(d) **No Arbitrage.** The City and the Authority shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Series 2022 Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Series 2022 Bonds would have caused the Series 2022 Bonds to be “arbitrage bonds” within the meaning of section 148 of the Code.

(e) **Maintenance of Tax-Exemption.** The City and the Authority shall take all actions necessary to assure the exclusion of interest on the Series 2022 Bonds from the gross income of the Owners of the Series 2022 Bonds to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the Series 2022 Bonds, including compliance with the requirements of the code relating to rebate of excess arbitrage earnings to the federal government.]

SECTION 6.16. Access to the Water System. The City agrees that the Authority and the Trustee, and any duly authorized representative thereof, shall have the right at all reasonable times to enter upon and to examine and inspect the Water System. The City further agrees that the Authority and the Trustee, and any duly authorized representative thereof, shall have such rights of access to the Water System as may be reasonably necessary to cause the proper maintenance of the Water System in the event of failure by the City to perform its obligations hereunder.

SECTION 6.17. Covenants in WIFIA Loan Agreement. The City agrees that it will comply with all of the covenants and conditions in Sections 18 and 19 of the WIFIA Loan Agreement during the Term of the WIFIA Loan Agreement.

ARTICLE VII

PREPAYMENT OF SERIES 2022 INSTALLMENT PAYMENTS

SECTION 7.01. Prepayment. The City may exercise its option to prepay the principal components of the Series 2022 Installment Payments without penalty or premium, (i) in full on any date or (ii) in part on any Series 2022 Installment Payment Date (and, if in part, the amounts thereof to be prepaid shall be determined by the City; provided, that such prepayment shall be in principal amounts of \$[1,000,000] or any integral multiple of \$1.00 in excess thereof), in each case from time to time but not more than once annually. Each prepayment hereunder shall be made on such date and in such principal

amount as shall be specified by the City in a Written Request of the City and delivered to the Authority, the Trustee and the WIFIA Lender not less than thirty (30) days prior to the requested date of prepayment, unless otherwise agreed by the WIFIA Lender.

SECTION 7.02. Method of Prepayment. Upon the WIFIA Lender's receipt of confirmation that payment in full in immediately available funds of all outstanding Series 2022 Installment Payments (the entire WIFIA Loan Balance) and any unpaid interest, fees and expenses with respect thereto has occurred as a result of a prepayment, the WIFIA Lender shall surrender the WIFIA Bond to the Authority or its authorized representative, by mail in accordance with Section 35 (Notices) of the WIFIA Loan Agreement or as otherwise agreed between the parties hereto. If the City prepays only part of the unpaid balance of principal of the Series 2022 Installment Payments and WIFIA Loan, the WIFIA Lender may make a notation on the WIFIA Loan Amortization Schedule 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 an updated WIFIA Loan Amortization Schedule 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 City's obligations hereunder or under any other WIFIA Loan Document. All partial prepayments of principal shall be applied to reduce the principal component of Series 2022 Installment Payments and WIFIA Loan Balance such that the remaining scheduled principal components of the Series 2022 Installment Payments due hereunder and principal payments for the WIFIA Loan set out in the WIFIA Loan Amortization Schedule are reduced in inverse order of maturity or, at the election of the City evidenced by a written request of the City filed with the WIFIA Lender at least thirty (30) days prior to the date of prepayment, on a pro rata basis (provided that, in any event, the WIFIA Debt Service following such prepayment shall be equal in time and amount to the unpaid payments due under this Installment Purchase Agreement). If such funds have not been so paid on the prepayment date, such principal components of the Series 2022 Installment Payments due hereunder and principal amount of the WIFIA Loan shall continue to bear interest until payment thereof at the rate provided for in Section 6 (Interest Rate) of the WIFIA Loan Agreement.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES OF THE AUTHORITY

SECTION 8.01. Events of Default and Acceleration of Maturities. If one or more of the following Events of Default shall happen, that is to say --

(1) if default shall be made in the due and punctual payment of any Series 2022 Installment Payment or any Contract or Bond when and as the same shall become due and payable;

(2) if default shall be made by the City in the performance of any of the agreements or covenants required herein to be performed by it, and such default shall have continued for a period of sixty (60) days after the City shall have been given notice in writing of such default by the Authority; provided, however, if in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such sixty (60) day period, such failure shall not constitute an Event of Default if corrective action is instituted by the City within such sixty (60) day period and the City shall thereafter diligently and in good faith cure such failure in a reasonable period of time, which period shall not extend more than one hundred eighty (180) days from the date of the default notice; or

(3) if the City shall file a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction shall approve a petition filed with or without

the consent of the City seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property; or

(4) any Event of Default, as described in Section 21 of the WIFIA Loan Agreement and not otherwise described herein;

then and in each and every such case during the continuance of such Event of Default specified in clause (3) above, the Authority shall, and for any other such Event of Default the Authority may, by notice in writing to the City, declare the entire principal amount of the unpaid Series 2022 Installment Payments and the accrued interest thereon to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything contained herein to the contrary notwithstanding. This subsection however, is subject to the condition that if at any time after the entire principal amount of the unpaid Series 2022 Installment Payments and the accrued interest thereon shall have been so declared due and payable and before any judgment or decree for the payment of the moneys due shall have been obtained or entered the City shall deposit with the Authority a sum sufficient to pay the unpaid principal amount of the Series 2022 Installment Payments or the unpaid payment of any other Contract or Bond referred to in clause (1) above due prior to such declaration and the accrued interest thereon, with interest on such overdue installments, at the rate or rates applicable to the remaining unpaid principal balance of the Series 2022 Installment Payments or such Contract or Bond if paid in accordance with their terms, and the reasonable expenses of the Authority, and any and all other defaults known to the Authority (other than in the payment of the entire principal amount of the unpaid Series 2022 Installment Payments and the accrued interest thereon due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Authority or provision deemed by the Authority to be adequate shall have been made therefor, then and in every such case the Authority, by written notice to the City, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon.

SECTION 8.02. Application of Funds Upon Acceleration. Upon the date of the declaration of acceleration as provided in Section 8.01, all Net Water System Revenues thereafter received shall be applied in the following order –

First, to the payment of the fees, costs and expenses of the Trustee, if any, in carrying out the provisions of this article, including reasonable compensation to its accountants, advisors and legal counsel and then to the payment of the fees, costs and expenses of the Authority, if any, in carrying out the provisions of this article, including reasonable compensation to its accountants, advisors and legal counsel; and

Second, to the payment of the entire principal amount of the unpaid Series 2022 Installment Payments and the unpaid principal amount of all Bonds and Contracts and the accrued interest thereon, with interest on the overdue installments at the rate or rates of interest applicable to the Series 2022 Installment Payments and such Bonds and Contracts if paid in accordance with their respective terms.

SECTION 8.03. Other Remedies of the Authority. The Authority shall have the right –

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the City or any director, officer or employee thereof, and to compel the City or

any such director, officer or employee to perform and carry out its or his duties under the Law and the agreements and covenants required to be performed by it or him contained herein:

(b) by suit in equity to enjoin any acts or things that are unlawful or violate the rights of the Authority or the Trustee; or

(c) by suit in equity upon the happening of an Event of Default to require the City and its directors, officers and employees to account as the trustee of an express trust; or

(d) to the extent not otherwise described herein, such remedies described in Section 21(b) of the WIFIA Loan Agreement.

Notwithstanding anything contained herein, the Authority shall have no security interest in or mortgage on the 2022 Project or the Water System or any other real property of the City and no default hereunder shall result in the loss of the 2022 Project or the Water System or any other real property of the City

SECTION 8.04. Non-Waiver. Nothing in this article or in any other provision hereof shall affect or impair the obligation of the City, which is absolute and unconditional, to pay the Series 2022 Installment Payments to the Authority at the respective due dates or upon prepayment from the Net Water System Revenues, the Revenue Fund and the other funds herein pledged for such payment, or shall affect or impair the right of the Authority, which is also absolute and unconditional, to institute suit to enforce such payment by virtue of the contract embodied herein.

A waiver of any default or breach of duty or contract by the Authority shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Authority to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Authority by the Law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Authority.

If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely to the Authority, the City and the Authority shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

SECTION 8.05. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Authority or the Bond Owners, or as provided in the Indenture, is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Indenture or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by the Law or any other law.

ARTICLE IX

DISCHARGE OF OBLIGATIONS

SECTION 9.01. Discharge of Obligations. When:

(a) all or any portion of the Series 2022 Installment Payments shall have become due and payable in accordance herewith or a written notice of the City to prepay all or any portion of the Series 2022 Installment Payments shall have been filed with the Trustee; and

(b) there shall have been deposited with the Trustee at or prior to the Series 2022 Installment Payment Dates or date (or dates) specified for prepayment, in trust for the benefit of the Authority or its assigns and irrevocably appropriated and set aside to the payment of all or any portion of the Series 2022 Installment Payments, sufficient moneys and Permitted Investments, in the amounts required by Section 10.03 of the Indenture, described in paragraph (1), (2) or (3) of the definition thereof, the principal of and interest on which when due will provide money sufficient to pay all principal, prepayment premium, if any, and interest of such Series 2022 Installment Payments to their respective Series 2022 Installment Payment Dates or prepayment date or dates as the case may be; and

(c) provision shall have been made for paying all fees and expenses of the Trustee and the Insurer,

then and in that event, if an opinion of Bond Counsel is filed with the Trustee to the effect that the actions authorized by and taken pursuant to this Article IX shall not adversely affect the tax exempt status of the interest portion of the Series 2022 Installment Payments payable to the Series 2022 Bonds, the right, title and interest of the Authority herein and the obligations of the City hereunder shall, with respect to all or such portion of the Series 2022 Installment Payments as have been so provided for, thereupon cease, terminate, become void and be completely discharged and satisfied (except for the right of the Trustee and the obligation of the City to have such moneys and such Permitted Investments applied to the payment of such Series 2022 Installment Payments).

In such event, upon request of the City the Trustee shall cause an accounting for such period or periods as may be requested by the City to be prepared and filed with the City and shall execute and deliver to the City all such instruments as may be necessary or desirable to evidence such total or partial discharge and satisfaction, as the case may be, prepared by or on behalf of and at the expense of the City, and, in the event of a total discharge and satisfaction, the Trustee shall pay over to the City, after payment of all amounts due the Trustee pursuant to the Indenture, as an overpayment of Series 2022 Installment Payments, all such moneys or such Permitted Investments held by it pursuant hereto other than such moneys and such Permitted Investments as are required for the payment or prepayment of the Series 2022 Installment Payments, which moneys and Permitted Investments shall continue to be held by the Trustee in trust for the payment of the Series 2022 Installment Payments and shall be applied by the Trustee to the payment of the Series 2022 Installment Payments of the City.

ARTICLE X

[RESERVED]

ARTICLE XI

MISCELLANEOUS

SECTION 11.01. Liability of City Limited to Net Water System Revenues. Notwithstanding anything contained herein, the City shall not be required to advance any moneys derived from any source of income other than the Net Water System Revenues, the Revenue Fund and the other funds provided herein and in the Indenture for the payment of the Series 2022 Installment Payments or for the performance of any agreements or covenants required to be performed by it contained herein. The City may, however,

advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the City for such purpose.

The obligation of the City to make the Series 2022 Installment Payments is a special obligation of the City payable solely from Net Water System Revenues, the Revenue Fund and other funds described in this Agreement and in the Indenture, and does not constitute a debt of the City or of the State of California or of any political subdivision thereof in contravention of any constitutional or statutory debt limitation or restriction.

SECTION 11.02. Benefits of Installment Purchase Agreement Limited to Parties. Except as provided in Section 11.05 hereto, nothing contained herein, expressed or implied, is intended to give to any person other than the City or the Authority any right, remedy or claim under or pursuant hereto, and any agreement or covenant required herein to be performed by or on behalf of the City or the Authority shall be for the sole and exclusive benefit of the other party.

SECTION 11.03. Successor Is Deemed Included in all References to Predecessor. Whenever either the City or the Authority is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the City or the Authority, and all agreements and covenants required hereby to be performed by or on behalf of the City or the Authority shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

SECTION 11.04. Waiver of Personal Liability. No director, officer or employee of the City shall be individually or personally liable for the payment of the Series 2022 Installment Payments, but nothing contained herein shall relieve any director, officer or employee of the City from the performance of any official duty provided by any applicable provisions of law or hereby.

SECTION 11.05. Third Party Beneficiary. The Trustee and the Insurer shall each be and is hereby made a third party beneficiary hereunder with all rights of a third party beneficiary and may enforce the provisions of this Agreement as if they were a party hereto.

SECTION 11.06. Article and Section Headings; Gender and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to "Articles," "Sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith" and other words of similar import refer to this Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

SECTION 11.07. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the City or the Authority shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof. The City and the Authority hereby declare that they would have executed this Agreement, and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

SECTION 11.08. Assignment. This Agreement and any rights hereunder may be assigned by the Authority to the Trustee, as a whole or in part, without the necessity of obtaining the prior consent of the City.

SECTION 11.09. Net Contract. This Agreement shall be deemed and construed to be a net contract, and the City shall pay absolutely net during the term hereof the Series 2022 Installment Payments and all other payments required hereunder, free of any deductions and without abatement, diminution or set-off whatsoever.

SECTION 11.10. California Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 11.11. Notices. All written notices to be given hereunder shall be given by mail to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other party in writing from time to time, namely:

If to the City:	City of Oxnard 300 West Third Street Oxnard, CA 93030 Attention: City Manager
If to the Authority:	City of Oxnard Financing Authority 300 West Third Street Oxnard, CA 93030 Attention: Executive Director
If to WIFIA Lender:	Environmental Protection Agency WJC-E 7334A 1200 Pennsylvania Avenue NW Washington, D.C. 20460 Attention: WIFIA Director Email: WIFIA_Portfolio@epa.gov

SECTION 11.12. Effective Date. This Agreement shall become effective upon its execution and delivery, and shall terminate when the Purchase Price shall have been fully paid (or provision for the payment thereof shall have been made to the written satisfaction of the Authority).

SECTION 11.13. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

SECTION 11.14. Indemnification of Authority. The City hereby agrees to indemnify and hold harmless the Authority if and to the extent permitted by law, from and against all claims, advances, damages and losses, including legal fees and expenses, arising out of or in connection with the acceptance or the performance of its duties hereunder and under the Indenture; provided that no indemnification will be made for willful misconduct, negligence or breach of an obligation hereunder or under the Indenture by the Authority.

SECTION 11.15. Amendments Permitted. (a) This Agreement and the rights and obligations of the Authority, the City, the Owners of the Authority Bonds and of the Trustee may be modified or amended at any time, by an amendment hereto that shall become binding when the written consents of the Owners of a majority in aggregate principal amount of the Authority Bonds then Outstanding, exclusive of Authority Bonds disqualified as provided in Section 7.02 of the Indenture, shall have been filed with the Trustee; provided, however, that the Insurer shall be deemed the Owner of the Authority Bonds then

Outstanding entitled to consent to such modification or amendment pursuant to this Section. No such modification or amendment shall –

(1) extend the stated maturities of the Authority Bonds, or reduce the rate of interest represented thereby, or extend the time of payment of interest, or reduce the amount of principal represented thereby, or reduce any premium payable on the prepayment thereof, without the consent of the Owner of each Authority Bond so affected, or

(2) reduce the aforesaid percentage of Owners of Authority Bonds whose consent is required for the execution of any amendment or modification of this Agreement, or

(3) modify any of the rights or obligations of the Trustee or the Authority without its respective written consent thereto.

(b) This Agreement and the rights and obligations of the Authority, the City and of the Owners of the Authority Bonds may also be modified or amended at any time, by an amendment hereto that shall become binding upon adoption, without the consent of the Owners of any Authority Bonds, but only to the extent permitted by law and only for any one or more of the following purposes-

(1) to add to the covenants and agreements of the Authority or the City contained in this Agreement other covenants and agreements thereafter to be observed or to surrender any right or power herein reserved to or conferred upon the Authority or the City so long as such limitation or surrender of such rights or powers shall not materially adversely affect the Owners of the Authority Bonds;

(2) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Agreement, or in any other respect whatsoever as the Authority or the City may deem necessary or desirable, provided under any circumstances that such modifications or amendments shall not materially adversely affect the interests of the Owners of the Authority Bonds in the reasonable judgment of the Authority;

(3) to maintain the exclusion of interest on the Series 2022 Bonds from gross income for federal income tax purposes under the Code, if applicable; and

(4) to make such other amendments or modifications that do not materially adversely affect the interests of the Owners of the Authority Bonds.

(c) No amendment without consent of the Owners may modify any of the rights or obligations of the Trustee without its written consent thereto.

(Signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed and attested this Installment Purchase Agreement by their officers thereunto duly authorized as of the day and year first written above.

CITY OF OXNARD

By: _____
Alexander Nguyen
City Manager

CITY OF OXNARD FINANCING AUTHORITY

By: _____
Alexander Nguyen
Executive Director

*-Signature Page-
Installment Purchase Agreement*

EXHIBIT A

PURCHASE PRICE

1. The principal amount of payments to be made by the City hereunder is \$_____.

2. The installment payments of principal and interest are payable five days prior to each Interest Payment Date in the amounts set forth as follows:

<u>Interest Payment Dates</u>	<u>Amount Attributable to Principal</u>	<u>Amount Attributable to Interest</u>	<u>Total</u>
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

[____], 2022

The City of Oxnard
300 West Third Street
Oxnard, CA 93030

City of Oxnard Finance Authority
300 West Third Street
Oxnard, CA 93030

RE: WIFIA Term Sheet for the City of Oxnard
Aquifer Storage Recovery (ASR) Project
WIFIA Project No. 20107CA

Ladies and Gentlemen:

This WIFIA Term Sheet (this “**Term Sheet**”) constitutes (a) the approval of the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (hereinafter, the “**USEPA**”), of the application for credit assistance of the City (as defined below) received September 27, 2021 (the “**Application**”) and (b) the agreement of USEPA to provide financing for the above-referenced project (as further described below, the “**Project**”) in the form of a secured loan (the “**WIFIA Loan**”), pursuant to the Water Infrastructure Finance and Innovation Act (“**WIFIA**”), § 5021 *et seq.* of Public Law 113-121 (as amended, and as may be further amended from time to time, the “**Act**”), codified as 33 U.S.C. §§ 3901-3914, subject in all respects to (i) the terms and conditions contained herein and (ii) the execution and delivery of the WIFIA loan agreement among USEPA, the City and the Authority (as defined below) to be entered into on or after the date hereof (the “**WIFIA Loan Agreement**”) on the terms and conditions acceptable to the USEPA contained therein. The financing shall be documented under the following four documents: (1) the WIFIA Loan Agreement; (2) a 2022 Installment Purchase Agreement, between the City and the Authority (the “**2022 Installment Purchase Agreement**”); (3) a 2022 Indenture of Trust (the “**2022 Indenture**”) between the Authority and [____] (the “**Trustee**”); and (4) a bond to be issued by the Authority pursuant to the 2022 Indenture and the WIFIA Loan Agreement (the “**WIFIA Bond**” and together with the 2022 Installment Purchase Agreement, the 2022 Indenture, the WIFIA Loan Agreement, and certain other documents referenced in the definition thereof in the WIFIA Loan Agreement, the “**WIFIA Loan Documents**”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the WIFIA Loan Agreement or the 2022 Indenture.

By executing this Term Sheet, the City confirms its agreement to reimburse USEPA for any and all fees and expenses that USEPA incurs for legal counsel, financial advice, and other consultants in connection with the evaluation of the Project and the negotiation and preparation of

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the WIFIA Loan Agreement and related documents, whether or not such agreement is ultimately executed.

This Term Sheet shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable, and the internal laws of the State of California, if and to the extent such federal laws are not applicable. This Term Sheet, and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Electronic delivery of an executed counterpart of a signature page shall be effective as delivery of an original executed counterpart.

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INDICATIVE TERMS OF THE WIFIA LOAN

WIFIA LENDER	United States Environmental Protection Agency, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “ WIFIA Lender ”).
BORROWER	The City of Oxnard, a municipal corporation duly organized and existing under the laws of the State of California (the “ City ”) and the City of Oxnard Finance Authority, a joint exercise of powers agency duly organized and existing under the laws of the State of California (the “ Authority ”).
PROJECT	The Aquifer Storage Recovery (ASR) Project consists of the following components: (i) expansion of the City’s Advanced Water Purification Facility capacity, (ii) construction of additional aquifer storage wells, (iii) construction of a distribution pipeline to convey recovered groundwater from the ASR wells to three existing Blending Stations, and (iv) upgrades to two of the city’s Blending Stations including mechanical and electrical upgrades as well as piping modifications and pump replacements (the “ Project ”).
WIFIA LOAN AMOUNT	A maximum principal amount (sum of disbursements and excluding capitalized interest) not to exceed \$[47,839,000]; <u>provided</u> that (a) the maximum principal amount of the WIFIA Loan, together with the amount of any other credit assistance provided under the Act, shall not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs, and (b) the total federal assistance for the Project, including but not limited to the maximum principal amount of the WIFIA Loan and all federal grants, shall not exceed eighty percent (80%) of Total Project Costs.
INTEREST RATE	The WIFIA Loan shall bear interest at a fixed rate, calculated by adding one basis point (0.01%) to the rate of securities of a similar maturity (based on the weighted-average life of the WIFIA Loan) as published, on the execution date of the WIFIA Loan Agreement, in the United States Treasury Bureau of Public Debt’s daily rate table for State and Local Government Series (SLGS) securities. The WIFIA Loan shall also bear default interest at a rate of five hundred (500) basis points above the otherwise applicable interest rate, at such times and upon such terms as provided in the WIFIA Loan Agreement.

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PAYMENT DATES	Principal and interest on the WIFIA Loan shall be repaid in accordance with the terms set forth in the WIFIA Loan Agreement, which will reflect annual installments of principal payable on June 1 of each year, beginning on June 1, 2041, and semiannual payments of interest in arrears on June 1 and December 1 of each year, beginning on December 1, 2027. The debt service payment commencement date of the WIFIA Loan shall in no event be later than five (5) years after the date on which the WIFIA Loan amounts are first disbursed (but in any event no later than five (5) years after the Substantial Completion Date of the Project).
FINAL MATURITY DATE	The earliest of (a) June 1, 2061; (b) the date on which the maturity of the WIFIA Loan has been accelerated or subject to mandatory redemption or prepayment (as the case may be); and (c) the Principal Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.
DEDICATED SOURCE OF REPAYMENT	The dedicated source of repayment for the WIFIA Loan shall be the Net Water System Revenues, payable to the Authority through the Installment Payments received by the Authority pursuant to or with respect to the Installment Purchase Agreement, and all interest or gain derived from the investment of amounts in the funds or accounts established under the Installment Purchase Agreement (the “Authority Revenue”). The Installment Payments shall be payable to the WIFIA Lender as assignee of the Authority, from, and secured by, the Net Water System Revenues of the Water System in accordance with the Installment Purchase Agreement. The provisions below summarize the Installment Purchase Agreement. “Net Water System Revenues” means (i) for any Borrower Fiscal Year, the Water System Revenues for such Borrower Fiscal Year less the Maintenance and Operation Costs for such Borrower Fiscal Year, or (ii) in applying the provision of the Installment Purchase Agreement with respect to Additional Obligations only, the Water System Revenues for the selected 12-month period less the Maintenance and Operation Costs for the same 12-month period. “Water System Revenues” means all income, rents, rates, fees, charges, and other moneys derived from the ownership of or operation of the Water System, including, without limiting the generality of the foregoing:

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	(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 Water 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: (i) customers' deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the City, (ii) 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, and (iii) connection fees and charges. “Maintenance and Operation Costs” means: (i) costs spent or incurred for maintenance and operation of the Water System calculated in accordance with generally accepted accounting principles applicable to governmental agencies, including, but not limited to, the reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Water System in good repair and working order, and including administrative costs of the City that are charged directly or apportioned to the Water 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 the City Bonds, or any Contract, other than Debt Service, or of any resolution or indenture authorizing the issuance of any City Bonds or Contracts, and (ii) all payments under any contract for the purchase of water; but excluding in all cases depreciation, replacement, and obsolescence charges or reserves therefor and
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	amortization of intangibles or other bookkeeping entries of a similar nature. "Water 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 effective date of the WIFIA Loan Agreement, and including all additions, betterments, extensions, and improvements to such water system or any part thereof acquired or constructed after the effective date of the WIFIA Loan Agreement. "City Bonds" means all revenue bonds or notes of the City authorized, executed, issued, and delivered under and pursuant to the laws of the State of California, the payments of which are made from the Net Water System Revenues and which are on a parity with the Installment Payments. The term "City Bonds" includes, but is not limited to, obligations in the form of bonds, notes, bond anticipation notes, and commercial paper. "Contracts" means the 2022 Installment Purchase Agreement and all contracts or leases of the City authorized and executed by the City under and pursuant to the laws of the State of California, installment or lease payments under which are payable from the Net Water System Revenues on a parity with the 2022 Installment Purchase Agreement.
INSTALLMENT PAYMENTS; SECURITY AND LIEN PRIORITY	<i>Installment Payments</i> Under the WIFIA Loan Documents, the City will acquire the Project from the Authority, in exchange for installment payments paid by the City to the Authority ("Series 2022 Installment Payments"), which will be equal in time and amount to the debt service on the WIFIA Loan (and, without duplication, the WIFIA Bond). Each Series 2022 Installment Payment includes an Interest Component and, on each Principal Payment Date, a Principal Component, which mimics a debt service structure under a traditional loan agreement. <i>Security and Lien Priority</i> Payment of the Series 2022 Installment Payments by the City to the Authority shall be secured by a first priority lien on the Net Water System Revenues. All Water System Revenues received by the City shall be deposited in a separately maintained fund established and held by the City with respect to the Water System

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	Revenues (the “Revenue Fund”) from which the City will pay all Maintenance and Operation Costs as they become due and payable, and the remaining money on deposit, which shall constitute the Net Water System Revenues, will be used to make deposits with the Trustee in such amounts as required to pay the Series 2022 Installment Payments and debt service in accordance with the provisions of any Bond or Contract, which are <i>pari passu</i> with the Series 2022 Installment Payments. Payment of the WIFIA Bond (and the WIFIA Loan) by the Authority shall be secured by a first priority lien on, and security interest in, (i) all amounts held in the fund to be established and held by the Trustee under the 2022 Indenture (the “Bond Payment Fund”) (including the funds and accounts therein), (ii) all amounts held in the reserve fund to be established and held by the Trustee under the 2022 Indenture (the “Reserve Fund”) (including the funds and accounts therein), (iii) the Authority Revenues received by the Authority or the Trustee under the 2022 Installment Purchase Agreement and (iv) all money on deposit from time to time in the accounts and funds established under the 2022 Indenture. Additionally, pursuant to the 2022 Indenture, the Authority will assign to the Trustee, on behalf of the WIFIA Lender (as holder of the WIFIA Bond) and the other holders of bonds issued pursuant to the 2022 Indenture, as additional security for the Authority’s obligations thereunder, all of the Authority’s rights, title and interest to and in (A) (i) the Series 2022 Installment Payments, prepayments, insurance proceeds, condemnation proceeds and all other amounts received pursuant to the 2022 Installment Purchase Agreement (excluding any Additional Payments), (ii) all money and amounts held in the funds established under the 2022 Indenture, and (iii) investment income with respect to any moneys held by the Trustee under the 2022 Indenture, and (B) all of the right, title and interest (but none of the obligations) of the Authority in the 2022 Installment Purchase Agreement (other than the rights of the Authority under Sections 8.03 and 11.14 thereof and the Authority’s rights to give consents and approvals thereunder, including, without limitation, to amendments thereof).
FLOW OF FUNDS	As set forth in further detail in the WIFIA Loan Agreement, the 2022 Installment Purchase Agreement and the 2022 Indenture, the City shall deposit all Water System Revenues, when and as

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	received, in the Revenue Fund. The Water System Revenues in the Revenue Fund shall be applied: (i) <i>first</i>, to pay all Maintenance and Operations Costs (including amounts reasonably required to be set aside in contingency reserves for Maintenance and Operation costs, the payment of which is not then immediately required) as they become due and payable; (ii) <i>second</i>, on or before each date on which a Series 2022 Installment Payment is due, to fund the Bond Payment Fund in an amount equal to the Series 2022 Installment Payment due and payable on such date (such amount shall be reduced to the extent amounts on deposit therein are available for application to the Series 2022 Installment Payment due and payable on such date) (the City shall also, from the moneys in the Revenue Fund, transfer to the trustee for deposit in the respective payment fund, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, to pay any other debt service in accordance with the provision of any Bond or Contract); and (iii) <i>third</i>, on or before each date on which a Series 2022 Installment Payment is due, to fund, without preference or priority, and in the event of any insufficiency of such money ratably without any discrimination or preference, the Reserve Fund and such other reserve funds and/or accounts, if any, as may have been established in connection with Bonds or Contracts, other than the 2022 Installment Purchase Agreement, that sum, if any, necessary to restore the Reserve Fund to an amount equal to the Reserve Requirement and/or such reserve funds or accounts to an amount equal to the amount required to be maintained therein.
RATE COVENANT	As set forth in further detail in the WIFIA Loan Agreement, the City shall, subject to the remainder of this paragraph, fix, charge and collect rates, fees and charges for the Water System during each Borrower Fiscal Year, which will be at least sufficient to yield, during each Borrower Fiscal Year, Net Water System Revenues equal to the sum of at least: (i) one hundred ten percent (110%) of the Debt Service payable during such Borrower Fiscal Year with respect to all outstanding Obligations, and the amounts, if any, then due and owing to the Insurer under the Reserve Policy, if applicable; and

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	(ii) the amount by which the amount on deposit in the Water System Revenue Fund on the last day of the immediately preceding Borrower Fiscal Year was less than twenty five percent (25%) of Maximum Annual Debt Service as of such day.
ADDITIONAL INDEBTEDNESS	<i>The City</i> As set forth in further detail in the WIFIA Loan Agreement, the City shall not issue or incur any Additional Obligations unless the conditions described below and in Section [15(a)] of the WIFIA Loan Agreement are satisfied: (a) The City shall not issue or incur any Obligations during the term of the WIFIA Loan Agreement having any priority in payment of principal or interest out of the Water System Revenues or the Net Water System Revenues over the 2022 Installment Payments. (b) Except for obligations incurred to prepay or discharge the 2022 Installment Payments, the City may not issue or incur any Obligations during the term of the WIFIA Loan Agreement unless all of the following conditions are satisfied: (i) No Event of Default has occurred and is continuing. (ii) The City obtains or provides a certificate or certificates prepared by an Independent Financial Consultant showing that: a. the Net Water System Revenues as shown by the books of the City for the twelve (12) calendar months ending 90 days prior to the end of the month in which such Additional Obligations are incurred (the “Look Back Period”), will have amounted to at least the sum of (x) one hundred ten percent (110%) of Debt Service for such Look Back Period, plus (y) the amount by which the amount on deposit in the Revenue Fund on the first day of such Look Back Period was less than twenty-five percent (25%) of Maximum Annual Debt Service on all Outstanding City Bonds and Contracts calculated on the first day of such Look Back Period; for purposes of preparing the certificate or certificates described above, the

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	Consultant or Consultants may rely upon financial statements prepared by the City for all or any part of the Look Back Period, which have not been subject to audit by an Independent Certified Public Accountant if audited financial statements for the Borrower Fiscal Year or period are not available; b. the estimated Net Water System Revenues for the twelve (12) calendar months following the date of incurring such Additional Obligations will be at least equal to one hundred ten percent (110%) of Maximum Annual Debt Service on all City Bonds and Contracts to be outstanding immediately after the incurring of such Additional Obligations; and c. the amount on deposit in the Water Revenue Fund on the date of incurring such Additional Obligations is at least equal to twenty-five percent (25%) of Maximum Annual Debt Service on all Outstanding City Bonds and Contracts as of the date of incurring of such Additional Obligations. If the Additional Obligations are being issued solely to refund outstanding Obligations, and the resulting Maximum Annual Debt Service on all Outstanding City Bonds and Contracts after incurring such Additional Obligations will not exceed the Maximum Annual Debt Service on all Obligations outstanding prior to incurring such Additional Obligations, the City need not comply with the provisions of paragraph (ii) above. (c) The City shall not issue or incur any Obligations for the Project that are secured by a Lien on any assets or property of the City other than the Net Water System Revenues. <i>The Authority</i> The Authority shall not without the prior written consent of the WIFIA Lender issue or incur obligations of any kind payable from, secured or supported by any of the Series 2022 Installment Payments and amounts to be held in any fund or account established under the 2022 Indenture or the right, title and interest of the Authority to the 2022 Installment Purchase Agreement, to be assigned by the Authority to the Trustee under the 2022 Indenture.
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OTHER	<u>Project Substantial Completion Date:</u> July 1, 2027. <u>Capitalized Interest Period:</u> Subject to the terms and conditions of the WIFIA Loan Agreement, no principal or interest shall be paid during the capitalized interest period and interest payments will be capitalized through December 1, 2027.
RESTRICTED PAYMENTS AND TRANSFERS	The City shall not permit Water System Revenues or other assets of the Water System, or any funds in any accounts held under the 2022 Installment Purchase Agreement or any ancillary agreement related thereto, to be paid or transferred or otherwise applied for purposes other than ownership, construction and improvement, operation or maintenance of the Water System or as otherwise permitted in the WIFIA Loan Agreement; <u>provided</u> that the City may transfer excess Water System Revenues from the Revenue Fund to the general fund of the City for the sole purpose of reimbursing to the City's general fund amounts previously expended out of the City's general fund to pay for costs directly related to the ownership, construction and improvement, operation or maintenance of the Water System.
WIFIA LOAN DOCUMENTATION	The WIFIA Loan shall be subject to the preparation, execution and delivery of the WIFIA Loan Documents and any other loan documentation required by the WIFIA Lender in connection therewith, in each case acceptable to the WIFIA Lender, the Authority and the City, which will contain certain conditions precedent, representations and warranties, affirmative and negative covenants, events of default, and other provisions as agreed between the WIFIA Lender, the Authority and the City.

[Signature pages follow]

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

Sincerely,

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

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

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*[Signature Page to the City of Oxnard and the City of Oxnard Finance Authority - Aquifer Storage Recovery (ASR)
Project – WIFIA Term Sheet]*

ACKNOWLEDGED AND AGREED:

THE CITY OF OXNARD,
by its authorized representative

By: _____
Name:
Title:

CITY OF OXNARD FINANCE AUTHORITY,
by its authorized representative

By: _____
Name:
Title:

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*[Signature Page to the City of Oxnard and the City of Oxnard Finance Authority - Aquifer Storage Recovery (ASR)
Project – WIFIA Term Sheet]*



Draft 03/24/2022
WIFIA CUSIP Number: []

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

WIFIA LOAN AGREEMENT

For Up to \$[47,839,000]

With

THE CITY OF OXNARD

And

THE CITY OF OXNARD FINANCING AUTHORITY

For the

**THE AQUIFER STORAGE RECOVERY PROJECT
(WIFIA ID – N20107CA)**

Dated as of [], 2022

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 EXHIBIT B – Form of Closing Certificate
 EXHIBIT C – Form of Public Benefits Report
 EXHIBIT D – Form of Requisition
 EXHIBIT E – Form of Certification of Eligible Project Costs Documentation
 EXHIBIT F – Form of Construction Monitoring Report
 EXHIBIT G – Form of Certificate of Substantial Completion

Schedules

Exhibits

EXHIBIT H-1 – Opinions Required from General Counsel to the Borrower

EXHIBIT H-2 – Opinions Required from Bond Counsel to the Borrower

EXHIBIT H-4 – Opinions Required from General Counsel to the City

EXHIBIT H-5 – Opinions Required from Bond Counsel to the City

EXHIBIT I – Form of Certificate of Trustee

DRAFT

WIFIA LOAN AGREEMENT

THIS WIFIA LOAN AGREEMENT (this “**Agreement**”), dated as of the Effective Date, is by and between the Borrower (as defined herein), the City (as defined herein), and the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, an agency of the United States of America (“**EPA**”), 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 the Maximum Principal Amount (as defined herein) to be used to pay a portion of the Eligible Project Costs (as defined herein) pursuant to the Application (as defined herein);

WHEREAS, pursuant to the WIFIA Term Sheet (as defined herein), 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 for a portion of the costs of the Project through the issuance of the WIFIA Bond (as defined herein), upon the terms and conditions set forth herein;

WHEREAS, as of [____], 2022, the Borrower has entered into the Installment Purchase Agreement (as defined herein) with the City, pursuant to which (i) the 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 Installment Payments (as defined herein) by the City to the Borrower, such payments being secured by the Revenues (as defined herein);

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

WHEREAS, the WIFIA Lender has entered into this Agreement in reliance upon, among other things, the information and representations of the Borrower and 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 between the Borrower and the WIFIA Lender as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

Section 1. Definitions. Capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 or as otherwise defined in this Agreement, except as otherwise expressly provided herein. 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.

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

“**Additional Bonds Test**” has the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*).

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

“**Additional Obligations**” means Additional Senior Obligations and Additional Subordinated Obligations.

“**Additional Senior Obligations**” means any Senior Obligations permitted under Section 16(a) (*Indebtedness*), Section 19(a) (*Indebtedness*), under the Indenture, and under the Installment Purchase Agreement, which Senior Obligations are issued or incurred after the Effective Date.

“**Additional Subordinated Obligations**” means any Subordinated Obligations permitted under Section 16(a) (*Indebtedness*), Section 19(a) (*Indebtedness*), under the Indenture, and under the Installment Purchase Agreement, which Subordinated Obligations are issued or incurred after the Effective Date.

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

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

“**Application**” means the Borrower’s application for WIFIA financial assistance received by the WIFIA Lender on the Application Receipt Date.

“Application Receipt Date” has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

“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 (*Repayments*) 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 Pledged Collateral 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 Senior Obligations, or (ii) any Person shall commence a process pursuant to which all or a substantial part of the Pledged Collateral may be sold or otherwise disposed of pursuant to a sale or disposition of such Pledged Collateral 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 the Obligations, funds on deposit in any of the System Accounts upon the occurrence and during the continuation of an Event of Default under this Agreement or an event of default under the Indenture Documents for application to the prepayment or repayment of any principal amount of the Senior Obligations other than in accordance with the provisions of the Indenture.

“Base Case Financial Model” means the financial model or plan, prepared by the City and delivered to the WIFIA Lender as part of the Application, forecasting the capital costs of the System (including the Project) and the estimated debt service coverage, rates, revenues, operating expenses and major maintenance requirements of the System (as may be applicable) for the Forecast Period and based upon assumptions and methodology provided by the City and acceptable to the WIFIA Lender as of the Effective Date, which model or plan shall have been provided to the WIFIA Lender as a fully functional Microsoft Excel-based financial model or such other format agreed with the WIFIA Lender.

“Bond Year” means any twelve-month period commencing on June 2 in a year an ending on the next succeeding June 1, both dates inclusive; except that the first Bond Year shall commence on the Effective Date and end on June 1, 20[].

“Borrower” has the meaning ascribed to such term in **Part A of Schedule I** (*Loan Specific Terms*).

“Borrower Fiscal Year” means (a) as of the Effective Date, the Initial Borrower Fiscal 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 **Part E of Schedule V** (*Reporting Requirements*).

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

“Business Day” means any day other than a Saturday, a Sunday or a day on which offices of the Federal 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, the Trustee Location or the Project Location.

“Capitalized Interest Period” has, if applicable, the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as “Not Applicable” in **Schedule I**, means capitalized interest shall not be applicable with respect to the WIFIA Loan hereunder.

“City” has the meaning ascribed to such term in **Part A of Schedule I** (*Loan Specific Terms*).

“City Bonds” means all revenue bonds or notes of the City authorized, executed, issued, and delivered under and pursuant to the laws of the State, the payments of which are made from the Net System Revenues and which are on a parity with the Installment Payments. The term “City Bonds” includes, but is not limited to, obligations in the form of bonds, notes, bond anticipation notes and commercial paper.

“City Contracts” means the Installment Purchase Agreement and all contracts or leases of the City authorized and executed by the City under and pursuant to the laws of the State, installment or lease payments under which are payable from the Net System Revenues on a parity with the Installment Purchase Agreement.

“City Fiscal Year” means the period beginning on July 1 of each year and ending on the last day of June of the next succeeding year, or any other twelve-month period selected and designated as the official fiscal year of the City.

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

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

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

“Construction Monitoring Report” means a report on the status of the Project, substantially in the form of **Exhibit F** (*Form of Construction Monitoring Report*), unless otherwise agreed to be in a different form by the WIFIA Lender.¹

“Construction Period” means the period from the Effective Date through (and including) the end of the Federal Fiscal Year during which the Substantial Completion Date occurs.

“Construction Period Servicing Fee” has the meaning ascribed to such term in **Part F of Schedule I** (*WIFIA Loan Specific Terms*).

“Construction Schedule” means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached hereto as **Part B of Schedule II** (*Project Details*), and (b) any updates thereto included in the Construction Monitoring Report most recently submitted to the WIFIA Lender in accordance with **Part C of Schedule V** (*Reporting Requirements*).

“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 Service” means, for any City Fiscal Year or other period, the sum of (i) the interest payable during such City Fiscal Year or 12-month period on all outstanding City Bonds, assuming that all outstanding serial City Bonds are retired as scheduled and that all outstanding term City Bonds are redeemed or paid from sinking fund payments as scheduled (except to the extent that such interest is to be paid from the proceeds of sale of any City Bonds), (ii) that portion of the principal amount of all outstanding serial City Bonds maturing on any principal payment date which falls in such City Fiscal Year or 12-month period, (iii) that portion of the principal amount of all outstanding term City Bonds required to be redeemed or paid on any redemption date which falls in such City Fiscal Year or 12-month period, and (iv) that portion of the Contract Payments (as defined in the Installment Purchase Agreement) required to be made in such City Fiscal Year or 12-month period (except to the extent such interest is capitalized). For purposes of calculating Debt Service, the following assumptions shall be used:

Provided that, as to any such City Bonds or Contract Payments (as defined in the Installment Purchase Agreement) bearing or comprising interest at other than a fixed rate, the

¹ **Note to Borrower:** The WIFIA Program has flexibility to accept the form of existing quarterly reports that the Borrower is already preparing, instead of the form in Exhibit F, so long as such other format provides sufficient reporting information required by the WIFIA Program.

rate of interest used to calculate Debt Service shall be the are set forth in the applicable Qualified Swap (as defined in the Installment Purchase Agreement) in effect with respect thereto, the greatest of (a) the annual interest rate on such City Bonds or Contract Payments (as defined in the Installment Purchase Agreement) on the date of calculation, or if the indebtedness is not yet outstanding, the initial interest rate (if established and binding), (b) if the City Bonds or City Contracts have been outstanding for at least twelve months, the average rate over the twelve calendar months immediately preceding the date of calculation, and (c) (i) if interest on the indebtedness is excludable from gross income under the applicable provisions of the Internal Revenue Code of 1986, as amended, the most recently published Bond Buyer “Revenue Bond Index” (or comparable index if no longer published) plus 50 basis points, or (ii) if interest is not so excludable, the interest rate on direct U.S. Treasury Obligations with comparable maturities plus 50 basis points; provided, however, that for purposes of any portion of Section [5.03] (Additional Obligations) and [6.10] (Amount of Rates and Charges) of the Installment Purchase Agreement, measuring actual debt service 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 City Bonds or Contract Payments (as defined in the Installment Purchase Agreement) have twenty-five percent (25%) or more of the aggregate principal amount of such series or issue due in any one year, Debt Service shall be determined for the City Fiscal Year or other 12-month period of determination as if the principal of and interest on such series or issue of such City Bonds or Contract Payments (as defined in the Installment Purchase Agreement) 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 City Bonds or Contract Payments (as defined in the Installment Purchase Agreement) or portions thereof bearing no interest but that are sold at a discount and which discount accretes with respect to such City Bonds or Contract Payments or portions thereof, such accreted discount shall be treated as interest in the calculation of Debt Service; and

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

Provided further that, Debt Service shall not include interest that is paid from investment earnings on amounts on deposit in the applicable Reserve Account (as defined in the Installment Purchase Agreement) and transferred to the Debt Service Fund (as defined in the Installment Purchase Agreement); and

Provided further that, for purposes of any portion of Sections [5.03] (Additional Obligations) and [6.10] (Amount of Rates and Charges) of the Installment Purchase Agreement measuring actual debt service coverage during a test period, Debt Service with respect to all City Bonds, Contract Payments (as defined in the Installment Purchase Agreement), and bonds issued by the Borrower secured by such Contract Payments (as defined in the Installment Purchase

Agreement) for which the City or the Borrower is entitled to receive Interest Subsidy Payments (as defined in the Installment Purchase Agreement) or any similar payments from the United States Department of the Treasury shall be determined net of all such Interest Subsidy Payments (as defined in the Installment Purchase Agreement) or similar payments from the United States Department of Treasury received or scheduled to be received by the City or the Borrower during such test period.

“Debt Service Payment Commencement Date” means the earlier to occur of (a) December 1, 2027; or (b) the Payment Date falling closest to, but not later than, the fifth anniversary of the first disbursement date of the WIFIA Loan (but in any event no later than five (5) years after the Substantial Completion Date of the Project).

“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” has the meaning ascribed to such term in **Part C of Schedule I (WIFIA Loan Specific Terms)**.

“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 the Development Default Date, unless such failure to achieve Substantial Completion shall occur by reason of an Uncontrollable Force that is not due to the fault or gross negligence of the City (and which the City could not reasonably have avoided or mitigated), in which case the Development Default Date shall be extended by the number of days equal to the duration of such Uncontrollable Force.

“Development Default Date” has the meaning ascribed to such term in **Part B of Schedule I (WIFIA Loan Specific Terms)**.

“Disbursement” means a disbursement of WIFIA Loan proceeds, subject to and in accordance with this Agreement.

“Dollars” and **“\$”** means the lawful currency of the U.S.

“Effective Date” means the date of this Agreement, as specified in **Part A of Schedule I (WIFIA Loan Specific Terms)**.

“Eligible Project Costs” means amounts in the Project Budget approved by the WIFIA Lender, which are paid by or for the account of the City in connection with the Project (including, as applicable, Project expenditures incurred 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 33 U.S.C. §3905(8)), 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” means all supporting documentation with respect to the Eligible Project Costs, including copies of invoices and records evidencing incurred or previously paid Eligible Project Costs, which documentation should contain sufficient detail satisfactory to the WIFIA Lender (e.g. if the City (as agent of the Borrower) intends to utilize WIFIA Loan proceeds to make construction progress payments for Eligible Project Costs, the documentation should demonstrate that such progress payments are commensurate with the cost of the work that has been completed).

“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.

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

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

“Event of Loss” means any event or series of events that causes any portion of the System to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a casualty, a failure of title, or any loss of such property through eminent domain.

“Existing Construction Contract” means each Construction Contract of the City in effect as of the Effective Date as set forth in **Part C of Schedule II** (*Project Details*).

“Existing Indebtedness” means indebtedness of, as applicable, (i) the Borrower that has been issued or incurred prior to the Effective Date, as listed and described in **Part A of Schedule III-A** (*Borrower Disclosures*) or (ii) the City that has been issued or incurred prior to the Effective Date, as listed and described in **Part A of Schedule III-B** (*City Disclosures*).

“Federal Fiscal Year” means the fiscal year of the Federal 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 Government” means the U.S. and its departments and agencies.

“**FEIN**” means a Federal Employer Identification Number.

“**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 WIFIA Loan Disbursement Schedule; (c) the date as of 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**” has the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*).

“**Financial Statements**” has the meaning provided in Section 12(q) (*Financial Statements*).

“**Flow of Funds**” has the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*).

“**Forecast Period**” means, as of any date, the time period from and including the then-current City Fiscal Year until the later ending date of either (a) the five (5) immediately succeeding City Fiscal Years or (b) the end of the City Fiscal Year in which the City’s then-currently effective capital improvement plan for the System concludes.

“**GAAP**” means generally accepted accounting principles for U.S. state and local governments, as established by the Government Accounting Standards Board (or any successor entity with responsibility for establishing accounting rules for governmental entities), in effect from time to time in the U.S.

“**Governmental Approvals**” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, registrations, 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 U.S. 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.

“**Indemnitee**” has the meaning provided in Section 36 (*Indemnification*).

“**Indenture**” has the meaning ascribed to such term in **Part E of Schedule I** (*WIFIA Loan Specific Terms*).

“Indenture Documents” means the Indenture, each Supplemental Indenture, the Installment Purchase Agreement, and each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing.

“Initial Borrower Fiscal Year” has the meaning ascribed to such term in **Part A of Schedule I** (*Loan Specific Terms*).

“Initial Construction Period Servicing Fee” has the meaning ascribed to such term in **Part F of Schedule I** (*WIFIA Loan Specific Terms*).

“Insolvency Laws” means the U.S. 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 Payments” means the payments required to be paid by the City pursuant to Section [4.02] of the Installment Purchase Agreement, including all prepayments thereof.

“Installment Purchase Agreement” has the meaning ascribed to such term in **Part A of Schedule I** (*Loan Specific Terms*).

“Interest Only Period” has, if applicable, the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as “Not Applicable” in **Schedule I**, means no interest only period shall be applicable with respect to the WIFIA Loan hereunder.

“Interest Payment Date” has the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*).

“Interim Financing” means interim bond anticipation notes, commercial paper or other short-term temporary financing, in each case with a maturity not later than five (5) years following the issuance or incurrence thereof, the proceeds of which are applied to pay Eligible Project Costs.

“Investment Grade Rating” means a rating of ‘BBB-’, ‘Baa3’, ‘bbb-’, or ‘BBB (low)’, or higher, from a Nationally Recognized Rating Agency.

“Legal Entity” has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

“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.

“Loss Proceeds” means any proceeds of builders’ risk or casualty insurance (other than any proceeds from any policy of business interruption insurance insuring against loss of revenues

upon the occurrence of certain casualties or events covered by such policy of insurance) or proceeds of eminent domain proceedings resulting from any Event of Loss.

“Maintenance and Operation Costs” has the meaning in the Installment Purchase Agreement.

“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 Borrower or the City, (c) the legality, validity or enforceability of any material provision of any Indenture Document or WIFIA Loan Document, (d) the ability of the Borrower or the City to enter into, perform or comply with any of its material obligations under any Indenture Document or WIFIA Loan Document, (e) the validity, enforceability or priority of the Liens provided under the Indenture Documents on the Pledged Collateral or (f) the WIFIA Lender’s rights or remedies available under any WIFIA Loan Document.

“Maximum Annual Debt Service” means, at any point in time, with respect to City Bond and City Contracts then outstanding, the largest amount of Debt Service on the City Bonds and City Contracts in the then current or any future Borrower Fiscal Year.

“Maximum Principal Amount” has the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*).

“Nationally Recognized Rating Agency” means any nationally recognized statistical rating organization registered with, and 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” has the meaning ascribed to such term in **Part B of Schedule I** (*WIFIA Loan Specific Terms*).

“Net System Revenues” means, (i) for any City Fiscal Year, the System Revenues for such City Fiscal Year, less Maintenance and Operation Costs for such City Fiscal Year, or (ii) in applying the provision of the Installment Purchase Agreement with respect to Additional Obligations only, the System Revenues for the selected 12-month period less the Maintenance and Operation Costs for the same 12-month period.

“Obligations” means debt of the Borrower that is secured by a pledge and lien on all or a portion of the Revenues, including the Senior Obligations and Subordinated Obligations.

“Operating Period Servicing Fee” has the meaning ascribed to such term in **Part F of Schedule I** (*WIFIA Loan Specific Terms*).

“Organizational Documents” means: (a) the constitutional and statutory provisions that are the basis for the existence and authority of the Borrower or the City, including any enabling statutes, ordinances or public charters and any other organic laws establishing the Borrower or

the City, as applicable, and (b) the resolutions, bylaws, or other organizational documents (including any amendments, modifications or supplements thereto) of or adopted by the Borrower or the City, as applicable, by which the Borrower or the City, as applicable, the Borrower's or the City's, as applicable, powers, operations or procedures or the Borrower's or the City's, as applicable, securities, bonds, notes or other obligations are governed or from which such powers are derived.

“Other Financing Documents” means any agreement, instrument, or document (excluding the Indenture Documents and the WIFIA Loan Documents) entered into between the Borrower and a holder of Obligations providing for the issuance of Obligations secured by a pledge and lien on all or a portion of the Net System Revenues.

“Outstanding” means (a) with respect to Obligations other than the WIFIA Loan, Obligations that have not been cancelled or legally defeased or discharged within the meaning of the Indenture, and (b) with respect to the WIFIA Loan, the (i) entire amount available to be drawn under this Agreement (including amounts drawn and amounts that remain available to be drawn), less (ii) any amount that has been irrevocably determined will not be drawn under this Agreement, less (iii) the aggregate principal amount of the WIFIA Loan Balance that has been repaid or prepaid.

“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” has the meaning provided in Section 21(a)(i) (*Payment Default*).

“Permitted Debt” means:

- (a) Existing Indebtedness;
- (b) the WIFIA Loan;
- (c) Additional Senior Obligations that satisfy the requirements of Sections 16(a) (*Indebtedness*) and 19(a) (*Indebtedness*) and the Indenture;
- (d) Additional Subordinated Obligations that satisfy the requirements of Sections 16(a) (*Indebtedness*) and 19(a) (*Indebtedness*) and the Indenture; and
- (e) indebtedness incurred in respect of hedging transactions permitted under the Indenture and the WIFIA Loan Documents.

“Permitted Investments”, as applied to the Borrower, has the meaning set forth in the Indenture, and, as applied to the City, has the meaning set forth in the Installment Purchase Agreement.

“Permitted Liens” means:

- (a) Liens imposed pursuant to the Indenture;
- (b) Liens imposed pursuant to the Installment Purchase Agreement;
- (c) Liens on the Net System Revenues, including Net System Revenues on deposit in the System Revenue Fund, in favor of City Bonds and City Contracts;
- (d) Liens imposed by law, including Liens for taxes that are not yet due or are being contested in compliance with Section 15(j) (*Material Obligations*);
- (e) 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(j) (*Material Obligations*);
- (f) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance, and other social security laws or regulations;
- (g) deposits to secure the performance of 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;
- (h) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 21(a)(viii) (*Material Adverse Judgment*); and
- (i) 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 the Borrower.

"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, including in each case such Person's successors and permitted assigns.

"Pledged Collateral" has the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*).

"Principal Payment Date" has the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Terms*).

"Project" has the meaning ascribed to such term in **Part B of Schedule I** (*WIFIA Loan Specific Terms*).

“Project Budget” means the budget for the Project attached to this Agreement as **Part A of Schedule II** (*Project Details*) 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.

“Project Location” has the meaning ascribed to such term in **Part B of Schedule I** (*Loan Specific Terms*).

“Projected Substantial Completion Date” has the meaning ascribed to such term in **Part B of Schedule I** (*WIFIA Loan Specific Terms*).

“Public Benefits Report” means the report, in the form attached hereto as **Exhibit C** (*Form of Public Benefits Report*).

“Rate Covenant” has the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*).

“Related Documents” means the WIFIA Loan Documents, the Indenture Documents and the Other Financing Documents.

“Requisition” means the request for Disbursement in the form attached hereto as **Exhibit D** (*Form of Requisition*).

“Revenue Account” has the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*).

“Revenues” has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

“SAM” means the federal System for Award Management (www.SAM.gov) (or any successor system or registry).

“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.

“Senior Obligations” means (a), as applied to the City, Existing Indebtedness that ranks *pari passu* in right of payment and right of security with the Installment Purchase Agreement, and (b) Additional Senior Obligations, in each case, that ranks senior in right of payment and right of security to the Subordinated Obligations.

“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 ascribed to such term in **Part F of Schedule I** (*WIFIA Loan Specific Terms*).

“State” has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

“Subordinated Obligations” means, as applied to the Borrower, any Obligation that is fully subordinated to the WIFIA Loan and the WIFIA Bond in priority of payment (as to both principal and interest), voting and priority of security interest in the Pledged Collateral, including with respect to payment from revenues and reserves and payment upon default or acceleration of any such Obligations and, as applied to the City, any Obligation that is fully subordinated to the Installment Purchase Agreement in priority of payment (as to both principal and interest) and priority of security interest in the Net System Revenues and the System Revenue Fund, including with respect to payment from revenues and reserves and payment upon default or acceleration of any such 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 and notice to the WIFIA Lender in accordance with **Part E of Schedule V** (*Reporting Requirements*), that Substantial Completion has occurred.

“Supplemental Indenture” means a supplement to or modification of the provisions of the Indenture entered into by the Borrower and the Trustee in accordance with the terms of the Indenture, authorizing the issuance of Additional Obligations or amending the terms of the Indenture.

“System” has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

“System Accounts” has the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*).

“System Revenue Fund” has the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*).

“System 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:

- (i) customers' deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the City;
- (ii) 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; and
- (iii) Connection fees and charges.

“Technical and Rate Consultant” means a single individual or firm, or a combination of one or more individuals or firms, not related to the Borrower and considered independent with respect to the Borrower (i.e. not an employee of the Borrower or any affiliate of the Borrower) authorized to do business in and qualified to practice in the areas required to provide the services required of the Technical and Rate Consultant, that together have expertise in the technical requirements for operation and maintenance of systems similar in size and scope to the System and delivering the services provided by the System, and establishing rates and charges for governmental water or wastewater systems similar in size and scope to the System, selected by the Borrower and reasonably acceptable to the WIFIA Lender.

“Total Project Costs” means (a) the costs paid or incurred or to be paid or incurred by the Borrower 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 Indenture Documents or the WIFIA Loan Documents to be paid into any fund or account upon the incurrence of the WIFIA Loan or any other Obligations, 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) in respect of any indebtedness of the Borrower (other than the WIFIA Loan), in each case in connection with the acquisition, design, construction and equipping of the Project; and (d) costs of equipment and supplies and initial working capital and reserves required by the Borrower for the commencement of operation of the Project, including general administrative expenses and overhead of the Borrower.

“Trustee” has, if applicable, the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as “Not Applicable” in **Schedule I**, means a trustee shall not be applicable with respect to the WIFIA Loan hereunder.

“Trustee Location” has, if applicable, the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as “Not Applicable” in **Schedule I**, means a trustee location shall not be applicable with respect to the WIFIA Loan hereunder.

“UEI Number” means, with respect to any Person, a number issued by the Federal Government (including through SAM.gov) as the unique entity identifier for such Person.

“Uncontrollable Force” means any cause beyond the control of 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, pandemic, or act of God (provided, that the City shall not 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 City and the City does not control 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 City.

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

“Updated Financial Model/Plan” means (a) an updated Base Case Financial Model or (b) a financial plan in a format agreed with the WIFIA Lender, in each case reflecting the then-current and projected conditions for the Forecast Period, in accordance with **Part A of Schedule V** (*Reporting Requirements*).

“U.S.” means the United States of America.

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

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

“WIFIA Bond” has, if applicable, the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as “Not Applicable” in **Schedule I**, means a bond as evidence of the Borrower’s Obligation shall not be applicable with respect to the WIFIA Loan hereunder.

“WIFIA CUSIP Number” has the meaning ascribed to such term in **Part A of Schedule I** (*WIFIA Loan Specific Terms*).

“WIFIA Debt Service” means with respect to any Payment Date occurring on or after the Debt Service Payment Commencement Date, the principal portion of the 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 the WIFIA Loan Amortization Schedule and (b) due and payable on such Payment Date in accordance with the provisions of Section 8(a) (*Payment of WIFIA Debt Service*).

“WIFIA Debt Service Account” has, if applicable, the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as “Not Applicable” in

Schedule I, means a separate debt service account designated for the WIFIA Lender shall not be applicable with respect to the WIFIA Loan hereunder.

“WIFIA Debt Service Reserve Account” has, if applicable, the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*), or if designated as “Not Applicable” in **Schedule I**, means a separate debt service reserve account designated for the WIFIA Lender shall not be applicable with respect to the WIFIA Loan hereunder.

“WIFIA Debt Service Reserve Requirement” has, if applicable, the meaning ascribed to such term in **Part D of Schedule I** (*WIFIA Loan Specific Terms*).

“WIFIA Interest Rate” has the meaning ascribed to such term in **Part C of Schedule I** (*WIFIA Loan Specific Term*).

“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 26 (*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 the Maximum Principal Amount, to be used in respect of Eligible Project Costs.

“WIFIA Loan Amortization Schedule” means the loan amortization schedule reflected in **Schedule VI** (*WIFIA Loan Amortization Schedule*), as amended from time to time in accordance with Section 8(c) (*Adjustments to WIFIA Loan Amortization Schedule*).

“WIFIA Loan Balance” means (a) the aggregate principal amount of the WIFIA Loan disbursed by the WIFIA Lender to the Borrower hereunder, *plus* (b) if applicable, capitalized interest added to the principal balance of the WIFIA Loan pursuant to Section 8(a)(iii) (*Payments of WIFIA Debt Service*), *minus* (c) the aggregate principal amount of the WIFIA Loan repaid or prepaid by the Borrower, as reflected from time to time in the WIFIA Loan Amortization Schedule in accordance with Section 8(c) (*Adjustments to WIFIA Loan Amortization Schedule*).

“WIFIA Loan Disbursement Schedule” means the disbursement schedule set forth in **Schedule VI** (*WIFIA Loan Amortization 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(b) (*Disbursement Conditions*).

“WIFIA Loan Documents” means this Agreement, the WIFIA Bond, and the other Indenture Documents.

“WIFIA Term Sheet” has the meaning ascribed to such term in **Part E of Schedule I** (*WIFIA Loan Specific Terms*).

Section 2. Interpretation. The rules of interpretation set forth below in this Section 2 shall apply to this Agreement, except as otherwise expressly provided herein.

(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 recitals, 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 35 (*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 the purchase price of the WIFIA Bond”.

(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 Bond. Whenever there is a prepayment of the WIFIA Loan, it is intended that such prepayment be implemented through a prepayment of the WIFIA Bond.

(m) Whenever this Agreement sets forth a time period for a number of days by when a deliverable must be provided or an action must be taken, such time period shall be computed on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months.

ARTICLE II THE WIFIA LOAN

Section 3. WIFIA Loan Amount. The principal amount of the WIFIA Loan shall not exceed the Maximum Principal Amount.

Section 4. Disbursement Conditions.

(a) WIFIA Loan proceeds shall be disbursed solely in respect of Eligible Project Costs paid or incurred and approved for payment by or on behalf of the Borrower or the City in connection with the Project, including, for the avoidance of doubt, Eligible Project Costs that were initially funded with Interim Financing proceeds. Each Disbursement of the WIFIA Loan shall be made pursuant to the procedures of **Schedule IV** (*Requisition Procedures*) and subject to the requirements of this Section 4 and the conditions set forth in Section 11(b) (*Conditions Precedent to Disbursements*); provided, that no Disbursements shall be made after the Final Disbursement Date.

(b) Subject to this Section 4, any scheduled Disbursement (as reflected in the WIFIA Loan Disbursement Schedule) that remains undrawn as of its scheduled date shall automatically be available for the next scheduled Disbursement date, up to the Final Disbursement Date, with the effect of automatically updating the WIFIA Loan Disbursement Schedule (and the WIFIA Loan Amortization Schedule) without need for the WIFIA Lender's approval. The Borrower may also amend the 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 WIFIA Loan Disbursement Schedule shall become effective upon the WIFIA Lender's approval thereof, which approval shall be deemed granted if the WIFIA Lender has not objected within thirty (30) days from receipt of the revised schedule, and which approval shall have the effect of updating the WIFIA Loan Amortization Schedule to reflect the updated WIFIA Loan Disbursement Schedule. Notwithstanding the foregoing, the date of the first Disbursement shall not be earlier than the initial date of Disbursement set out in the WIFIA Loan Amortization Schedule as of the Effective Date.

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 Borrower shall pay interest on the WIFIA Loan Balance at the WIFIA Interest Rate; provided, that, upon the occurrence of an Event of Default, the Borrower shall pay interest on the 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 of the overdue amount of principal of the WIFIA Loan and accrued interest thereon 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 (if applicable) in accordance with the terms of this Agreement or waived by the WIFIA Lender and (ii) the WIFIA Loan Balance has been irrevocably paid in full in immediately available funds. Interest shall (x) accrue on the WIFIA Loan commencing on the date of the first disbursement of the WIFIA Loan, (y) be payable commencing on the Debt Service Payment Commencement Date and (z) be computed on the WIFIA Loan Balance on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months.

Section 7. Security and Priority; Flow of Funds.

(a) Pursuant to the Installment Purchase Agreement, as security for the Installment Payments, the City has pledged, assigned and granted to the Borrower for its benefit, Liens on the Net System Revenues. The Installment Payments are and shall (i) be secured by the Liens on the Net System Revenues and (ii) not be subordinate in right of payment (other than with respect to Maintenance and Operation Costs) or in right of security to any Lien on the Net System Revenues for the benefit of any City Bond or City Contract.

(b) As security for the WIFIA Bond and the WIFIA Loan, the Borrower has pledged, assigned and granted to the Trustee for the benefit of the WIFIA Lender for its benefit, a senior priority Lien on the Pledged Collateral. The Lien on the Pledged Collateral to secure the WIFIA Loan for the benefit of the WIFIA Lender is and shall be (i) on a parity in right of payment and right of security to the Lien on the Pledged Collateral in favor of the Senior Obligations and (ii) senior in right of payment and right of security to the Lien on the Pledged Collateral in favor of the Subordinate Obligations. As evidence of the Borrower's obligation to repay the WIFIA Loan, the Borrower shall issue and deliver to the WIFIA Lender, as the registered owner, on or prior to the Effective Date, the WIFIA Bond. The WIFIA Bond shall be a Bond (as defined in the Indenture), entitled to all of the benefits of a Bond under the Indenture Documents.

(c) Amounts deposited in the Revenue Account shall be applied in the order of priority described in, and in accordance with, the Flow of Funds.

Section 8. Repayments.

(a) Payment of WIFIA Debt Service.

(i) No WIFIA Debt Service shall be due or payable prior to the Debt Service Payment Commencement Date. The Borrower shall pay (A) WIFIA Debt Service in the amounts and manner and on the Payment Dates as set forth in the WIFIA Loan Amortization Schedule, as the same may be revised pursuant to Section 8(c) (*Adjustments to WIFIA Loan Amortization Schedule*) and (B) payments of any other amounts on each other date on which payment thereof is required to be made hereunder; provided, that, in either case 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.

(ii) Notwithstanding anything herein to the contrary, the WIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on the Final Maturity Date.

(iii) If a Capitalized Interest Period is applicable as set forth in **Part C of Schedule I (WIFIA Loan Specific Terms)**, during the Capitalized Interest Period, no payment of principal or interest on the WIFIA Loan will be required to be made. On each Interest Payment Date occurring during the Capitalized Interest Period (including the day immediately following the end of the Capitalized Interest Period), interest accrued and not paid on the WIFIA Loan during each such six (6) month period shall be capitalized and added to the WIFIA Loan Balance, as set forth in the WIFIA Loan Amortization Schedule. Within thirty (30) days after the end of the Capitalized Interest Period, the WIFIA Lender shall give written notice to the Borrower stating the WIFIA Loan Balance as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other WIFIA Loan Documents. Notwithstanding the foregoing, the Capitalized Interest Period shall end immediately upon written notification to the Borrower by the WIFIA Lender that an Event of Default has occurred and that the WIFIA Lender is ending the Capitalized Interest Period, in which case interest shall no longer be capitalized, payments of interest shall be due and payable beginning on the next Interest Payment Date and payments of principal shall be due and payable beginning on the next Principal Payment Date, in each case in accordance with the terms hereof.

(iv) If an Interest Only Period is applicable as set forth in **Part C of Schedule I (WIFIA Loan Specific Terms)**, 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 WIFIA Loan Balance, and no payment of principal on the WIFIA Loan will be due and payable during the Interest Only Period.

(v) Any defeasance of the WIFIA Loan pursuant to the Indenture and in accordance with applicable law shall not be deemed a repayment or prepayment of the WIFIA Loan in full, and the Borrower shall comply with all of its 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 WIFIA 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 of the WIFIA Loan Balance, together with all accrued interest, fees and expenses with respect thereto.

(b) Manner of Payment. Payments under this Agreement (and the WIFIA Bond, which payments shall not be duplicative) shall be made 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 the failure to provide updated payment instructions shall not affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document.

(c) Adjustments to WIFIA Loan Amortization Schedule. The WIFIA Lender may, from time to time, modify the WIFIA Loan Amortization Schedule included in **Schedule VI** (*WIFIA Loan Amortization Schedule*) to reflect (A) any change to the 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 hereunder in accordance with 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 WIFIA Loan Amortization Schedule as a result of a decrease in the WIFIA Loan Balance shall be applied to reduce future payments due on the WIFIA Loan in inverse order of maturity, other than prepayments which shall be applied in accordance with Section 9(b) (*General Prepayment Instructions*). If the WIFIA Loan Amortization Schedule is modified pursuant to this Section 8(c), the WIFIA Lender shall provide the Borrower with a copy of such revised WIFIA Loan Amortization Schedule, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents. The WIFIA Lender may also, from time to time or when so requested by the Borrower, advise the Borrower by written notice of the amount of the WIFIA Loan Balance as of the date of such notice. Absent manifest error, the WIFIA Lender's determination of the WIFIA Loan Balance and all matters as set forth on the WIFIA Loan Amortization Schedule shall be deemed conclusive evidence thereof absent manifest error; provided, that neither the failure to make any such determination, modification, or recordation nor any error in such determination, modification, or recordation shall affect in any manner the Borrower's obligations hereunder or under any other WIFIA Loan Document.

Section 9. Prepayment.

(a) Optional Prepayments. The Borrower may prepay the WIFIA Loan, without penalty or premium, (i) in full on any date or (ii) in part on any Payment Date (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided, that such prepayment shall be in principal amounts of \$[1,000,000] or any integral multiple of \$1.00 in excess thereof), in each case from time to time but not more than once annually in accordance with 33 U.S.C. § 3908(c)(4)(A). The Borrower may make such prepayment 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 and all fees and expenses then due and payable to the WIFIA Lender. Each prepayment of the WIFIA Loan pursuant to this Section 9(a) shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice, signed by the Borrower's Authorized Representative and delivered to the WIFIA Lender not less than thirty (30) days prior to the requested date of 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(a) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(b) General Prepayment Instructions. Upon the WIFIA Lender's receipt of confirmation that payment in full in immediately available funds of the entire WIFIA Loan Balance and any unpaid interest, fees and expenses with respect thereto has occurred as a result of a prepayment, the WIFIA Lender shall surrender the WIFIA Bond to the Borrower or its authorized representative, by mail in accordance with Section 35 (*Notices*) or as otherwise agreed between the parties hereto. If the Borrower prepays only part of the unpaid balance of principal of the WIFIA Loan, the WIFIA Lender may make a notation on the WIFIA Loan Amortization Schedule 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 an updated WIFIA Loan Amortization Schedule 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. All partial prepayments of principal shall be applied to reduce the WIFIA Loan Balance such that the remaining scheduled principal payments for the WIFIA Loan set out in the WIFIA Loan Amortization Schedule are reduced in inverse order of maturity or, at the election of the Borrower evidenced by a written request of the Borrower filed with the WIFIA Lender at least sixty (60) days prior to the date of prepayment, on a pro rata basis (provided that, in any event, the WIFIA Debt Service following such prepayment shall be equal in time and amount to the unpaid payments due under the Installment Purchase Agreement). 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*).

(c) [Reserved]

Section 10. Fees and Expenses.

(a) Fees. The Borrower shall pay to the WIFIA Lender:

(i) the Servicing Set-Up Fee, which shall be due and payable within thirty (30) days after receipt by the Borrower of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the date of the first Disbursement of the WIFIA Loan);

(ii) 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 period beginning from the Effective Date through (and including) the end of 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 by the Borrower of an invoice from the WIFIA Lender with respect thereto (or, if earlier, the date of the first Disbursement of the WIFIA Loan); and

(iii) 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 Borrower 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 Borrower 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 by the Borrower 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 monitoring, protection or preservation of any right or claim under, the Liens on the Pledged Collateral or any provision of this Agreement or any of the other WIFIA Loan Documents or the rights of the WIFIA Lender thereunder; (ii) any amendment, modification, re-execution, waiver, or consent with respect to this Agreement or any other WIFIA Loan Document; and (iii) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement or the other WIFIA Loan Documents, including during the pendency of any Event of Default.

(d) The obligations of the Borrower under this Section 10 shall survive the payment or prepayment in full or transfer of the WIFIA Bond, 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.

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 Borrower shall have duly executed and delivered to the WIFIA Lender the WIFIA Bond, each in form and substance satisfactory to the WIFIA Lender.

(ii) The Borrower and the City shall have delivered to the WIFIA Lender complete and fully executed copies of (A) the Indenture, together with any amendments, supplements, waivers or modifications thereto (but excluding any document that solely provides for the issuance or incurrence of Additional Obligations, hedging Obligations or Interim Financing) and (B) any Related Document with respect to which all or a portion of the proceeds or payments thereof are or will be applied to fund all or any portion of Total Project Costs, in each case that has been entered into on or prior to the Effective Date, along with a certification in the Closing Certificate that each such document is complete, fully executed and in full force and effect, and that all conditions contained in the Related Documents that are necessary to the closing of the WIFIA transaction contemplated hereby (if any) have been fulfilled.

(iii) The City shall have delivered to the WIFIA Lender fully executed copies of each Existing Construction Contract, together with any amendments, waivers or modifications thereto.

(iv) 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 H-1** (*Opinions Required from Counsel to the Borrower*)] and 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 H-2** (*Opinions Required from Bond Counsel to the Borrower*))]. 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 H-3** (*Opinions Required from Counsel to the City*)] and 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 H-4** (*Opinions Required from Bond Counsel to the City*))].

(v) The Borrower and the City shall each have delivered to the WIFIA Lender a certificate, signed by the Borrower's or the City's Authorized Representative, as applicable, substantially in the form attached hereto as **Exhibit B-1** (*Form of Borrower Closing Certificate*) and **Exhibit B-2** (*Form of City Closing Certificate*), as applicable, (each a "**Closing Certificate**"), designating the Borrower's Authorized Representative or the City's Authorized Representative, as applicable, confirming such person's position and incumbency, and certifying as to the satisfaction of the certain conditions precedent (and, if requested by the WIFIA Lender, has provided evidence satisfactory to the WIFIA Lender of such satisfaction), including the following:

(A) as of the Effective Date, (1) the maximum principal amount of the WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower and the City, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs; (2) the aggregate amount of Eligible Project Costs previously incurred prior to the Effective Date does not exceed fifty-one percent (51%) of Eligible Project Costs; and (3) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs;

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

(C) the Borrower and the City each have (1) obtained a FEIN (as evidenced by the delivery of a copy of the Borrower's and the City's W-9, as applicable), (2) obtained a UEI Number, and (3) registered with, and obtained confirmation of active SAM registration status;

(D) the Borrower has obtained the WIFIA CUSIP Number;

(E) the representations and warranties of the Borrower and the City set forth in this Agreement and in each other WIFIA Loan Document to which the Borrower or 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 Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since the date of the Application.

(vi) 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 on the WIFIA Loan, along with a certification in the Closing Certificate that no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(vii) The Borrower and the City shall each have delivered to the WIFIA Lender the Public Benefits Report.

(viii) The Borrower shall have paid in full all invoices delivered by the WIFIA Lender to the Borrower 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.

(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 the WIFIA Loan 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 Borrower and the City shall have delivered to the WIFIA Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*), **Schedule IV** (*Requisition Procedures*) and **Exhibit D** (*Form of Requisition*), including satisfactory Eligible Project Costs Documentation relating to such Requisition. The Borrower's Authorized Representative shall also certify in such Requisition 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 and no event of default under any other Related Document has occurred and is 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, has occurred and is continuing;

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

(C) the aggregate amount of all Disbursements (including the requested Disbursement amount but excluding any interest that is capitalized in accordance with the terms hereof) does not exceed (1) the maximum principal amount of the WIFIA Loan or (2) the amount of Eligible Project Costs paid or incurred by the Borrower and the City;

(D) the Eligible Project Costs for which reimbursement or payment is being requested has not been reimbursed or paid by any previous disbursement of (1) WIFIA Loan proceeds or (2) any other source of funding for the Project as identified in the Project Budget;

(E) (1) the Borrower, the City, and each of the City's contractors and subcontractors at all tiers with respect to the Project, has 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;

(F) the representations and warranties of the Borrower and the City set forth in this Agreement and in each other WIFIA Loan Document are 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 are true and correct as of such earlier date); and

(G) the Borrower and the City each represent that they have delivered all required deliverables under and in compliance with the requirements of **Schedule V** (*Reporting Requirements*), except as has been otherwise agreed by the WIFIA Lender; and

(H) the amount being requested for Disbursement is with respect to Eligible Project Costs for which all or a portion of the Eligible Project Costs Documentation was previously submitted to and approved by the WIFIA Lender in accordance with **Schedule IV** (*Requisition Procedures*) and **Schedule V** (*Reporting Requirements*) of the WIFIA Loan Agreement, and/or the Borrower or the City has set out in the Requisition (or attached separately to the Requisition) a summary of any Eligible Project Costs that have not otherwise been previously submitted to the WIFIA Lender for approval, together with supporting Eligible Project Costs Documentation.

(ii) If applicable, to the extent necessary to make the representations and warranties in Section 12(f) (*Litigation*) and 12(j)(iii) (*Compliance with Laws*) true, correct and complete as of the date of the applicable Disbursement, the Borrower shall have delivered an updated **Schedule III-A** (*Borrower Disclosures*) and the City shall have delivered an updated **Schedule III-B** (*City Disclosures*).

(iii) The Borrower or 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 delivered by the WIFIA Lender to the Borrower or 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 below other than those contained in Section 12(b) (*Officers' Authorization*) and the first sentence of Section 12(m) (*Construction Contracts*), 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 Legal Entity 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 WIFIA Loan Documents then in existence, to execute and deliver this Agreement and the WIFIA Bond, 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 Bond, and the other WIFIA Loan Documents. Other than such Organizational Documents and the Indenture Documents, there are no additional instruments or documents necessary for the Borrower to execute and deliver, or 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.

(b) Officers' Authorization. As of the Effective Date, the officers of the Borrower executing (or that previously executed) the WIFIA Loan 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 WIFIA Loan 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 the Borrower in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the WIFIA Loan Documents to which the Borrower is a party, the consummation of the transactions contemplated by the WIFIA Loan Documents, and the fulfillment of or compliance with the terms and conditions of all of the WIFIA Loan Documents, do not and 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 described in clause (a) of the definition thereof.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any obligations 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. The Borrower is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Borrower Material Adverse Effect.

(f) Litigation. Except as set forth in **Part B of Schedule III-A** (*Borrower Disclosures*), 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 the Borrower or affecting the ability of the Borrower to execute, deliver and perform its obligations under the WIFIA Loan Documents or that in any case could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. The Indenture Documents [and the Organizational Documents together] establish and the Borrower has taken all necessary action to pledge, assign, and grant, in each case for the benefit of the WIFIA Lender, legal, valid, binding and enforceable Liens on the Pledged Collateral purported to be created, pledged, assigned, and granted pursuant to and in accordance with the Indenture Documents, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act, and if applicable, the security interests created in the Pledged Collateral have been duly perfected under applicable State law. Such Liens are in full force and effect and are not subordinate or junior to any other Liens in respect of the Pledged Collateral except for the Liens arising by operation of law, and not *pari passu* with any Liens on the Pledged Collateral. The Borrower is not in breach of any covenant set forth in Section 15(b) (*Securing Liens*) or in the Indenture Documents with respect to the matters described in Section 15(b) (*Securing Liens*). As of the Effective Date and as of each other date this representation and warranty is made, (A) 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 and, if applicable, perfected, Lien on the Pledged Collateral in favor of the Trustee (for the benefit of the WIFIA Lender) to the extent contemplated by the Indenture Documents, and (B) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid. Neither the attachment, validity, enforceability, priority or, if applicable, perfection, of the security interest in the Pledged Collateral granted pursuant to the Indenture Documents is governed by Article 9 of the UCC. Neither the attachment, validity, enforceability or priority of the security interest in the Pledged Collateral 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 supplemented by 2 C.F.R. § 1532.995) (i) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters, (ii) is presently indicted for or otherwise criminally or civilly charged by a Governmental Authority with

commission of any of the offenses listed in 2 C.F.R. § 180 or 2 C.F.R. § 1532; and (iii) have, within the three (3) year period preceding the Effective Date, (x) been convicted for or had a civil judgment rendered against the Borrower for any of the offenses within such period or (y) had any public transactions (federal, state or local) terminated for cause or default.

(i) No Lobbying. Pursuant to 31 U.S.C. §1352, to the best of the Borrower's knowledge and belief, (A) no Federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, to any Person for influencing or attempting to influence an officer or employee of an agency, a member (or employee of a member), officer, or employee of the U.S. Congress, in connection with the making of the WIFIA Loan, execution (including amendments or modifications) of the WIFIA Loan Documents, or any other federal action under 31 U.S.C. §1352(a)(2); and (B) if any funds other than Federal appropriated funds 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 (or employee of a member), officer, or employee of the U.S. Congress in connection with the WIFIA Loan, the Borrower has completed and submitted to the WIFIA Lender Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(j) Compliance with Laws.

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

(ii) T The Borrower has complied with all applicable laws, rules, regulations and requirements.

(k) Credit Ratings. 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 such rating has not 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, has occurred and is continuing.

(m) Information. The information furnished by, or on behalf of, the Borrower to the WIFIA Lender, when taken as a whole, is true and correct in all material respects (other than for projections and other forward-looking statements contained in the Base Case Financial Model and any Updated Financial Model/Plan which have been made in good faith and based on reasonable assumptions) and does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading as of the date made or furnished.

(n) Insurance. The Borrower is in compliance with all insurance obligations required under each Related Document to which the Borrower is a party (including Section 15(f) (*Insurance*) hereof) 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.

(o) No Prohibited Liens. Except for Permitted Liens described in clause (a) of the definition thereof, 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 Pledged Collateral, or the Borrower's respective rights in the foregoing.

(p) Financial Statements. Each income statement, balance sheet and statement of operations and cash flows (collectively, "**Financial Statements**") delivered to the WIFIA Lender pursuant to **Part B of Schedule V** (*Reporting Requirements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition (including any liabilities or obligations that are required to be disclosed in accordance with GAAP) 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.

(q) Securities Laws. Under existing law, the WIFIA Bond may be issued and sold without registration under the Securities Act of 1933, as amended, and any State blue sky laws, and the Indenture is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended.

(r) No Delinquent Taxes or 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).

(s) 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 WIFIA Loan Documents to which it 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(m) (*Immunity*).

(t) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and the other WIFIA Loan Documents 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).

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 below other than those contained in Section 12(b) (*Officers' Authorization*) and the first sentence of Section 12(m) (*Construction Contracts*), 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 general law city and municipal corporation duly organized and validly existing under and by virtue of the laws of the State, has full legal right, power and authority to do business in the State and to enter into the WIFIA Loan Documents then in existence, 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 WIFIA Loan Documents. Other than [*Describe authorizing resolution/ordinance*] and the Indenture Documents, there are no additional instruments or documents necessary for the City to execute and deliver, or 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.

(b) Officers' Authorization. As of the Effective Date, the officers of the City executing (or that previously executed) the WIFIA Loan 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 WIFIA Loan 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 the City in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the WIFIA Loan Documents to which the City is a party, the consummation of the transactions contemplated by the WIFIA Loan Documents, and the fulfillment of or compliance with the terms and conditions of all of the WIFIA Loan Documents, do not and 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. 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, construction and completion by the City of the Project and the operation and maintenance of the System, and to execute and deliver and perform its obligations under the WIFIA Loan Documents and the Construction Contracts, have been obtained or effected and are in full force and effect. The City is not in default with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect. No consent or approval of any trustee, holder of any indebtedness of the City or

any other Person is necessary in connection with the execution, delivery, and performance by the City of the WIFIA Loan Documents and the consummation of any transaction contemplated thereunder, except as have been obtained or made and as are in full force and effect.

(f) Litigation. Except as set forth in **Part B of Schedule III-B** (*Borrower Disclosures*), 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 the City or affecting the System, the Project or the ability of the City to execute, deliver and perform its obligations under the WIFIA Loan Documents or that in any case could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. The Installment Purchase Agreement [and the Organizational Documents together] establish and the City has taken all necessary action to pledge, assign, and grant, in each case for the benefit of the Borrower, legal, valid, binding and enforceable Liens on the Net System Revenues, including Net System Revenues in the System Revenue Fund, purported to be created, pledged, assigned, and granted pursuant to and in accordance with the Installment Purchase Agreement, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act, and if applicable, the security interests created in the Net System Revenues, including Net System Revenues in the System Revenue Fund, have been duly perfected under applicable State law. Such Liens are in full force and effect and are not subordinate or junior to any other Liens in respect of the Net System Revenues, including Net System Revenues in the System Revenue Fund, except for the Liens arising by operation of law, and not *pari passu* with any Liens other than the Liens on the Net System Revenues, including Net System Revenues in the System Revenue Fund, in favor of debt service in accordance with the provisions of any City Bond or City Contract, which are *pari passu* with the Installment Payments. The City is not in breach of any covenant set forth in Section 19(b) (*Securing Liens*) or in the Indenture Documents with respect to the matters described in Section 19(b) (*Securing Liens*). As of the Effective Date and as of each other date this representation and warranty is made, (A) 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 and, if applicable, perfected, Lien on the Net System Revenues, including Net System Revenues in the System Revenue Fund, in favor of the Borrower to the extent contemplated by the Installment Purchase Agreement, and (B) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid. Neither the attachment, validity, enforceability, priority or, if applicable, perfection, of the security interest in the Net System Revenues, including Net System Revenues in the System Revenue Fund, granted pursuant to the Installment Purchase Agreement 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) (i) is debarred, suspended or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters, (ii) is presently

indicted for or otherwise criminally or civilly charged by a Governmental Authority with commission of any of the offenses listed in 2 C.F.R. § 180 or 2 C.F.R. § 1532; and (iii) have, within the three (3) year period preceding the Effective Date, (x) been convicted for or had a civil judgment rendered against the City for any of the offenses within such period or (y) had any public transactions (federal, state or local) terminated for cause or default.

(i) No Lobbying. Pursuant to 31 U.S.C. §1352, to the best of the City's knowledge and belief, (A) no Federal appropriated funds have been paid or will be paid, by or on behalf of the City, to any Person for influencing or attempting to influence an officer or employee of an agency, a member (or employee of a member), officer, or employee of the U.S. Congress, in connection with the making of the WIFIA Loan, execution (including amendments or modifications) of the WIFIA Loan Documents, or any other federal action under 31 U.S.C. §1352(a)(2); and (B) if any funds other than Federal appropriated funds 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 (or employee of a member), officer, or employee of the U.S. Congress in connection with the WIFIA Loan, the City has completed and submitted to the WIFIA Lender Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(j) Compliance with Laws.

(i) The City, and to the best of the City's knowledge, each of the City's contractors and subcontractors at all tiers with respect to the Project, has 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), 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 and 49 C.F.R. §20.100 (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 applicable federal requirements (such as Davis-Bacon and Equal Employment Opportunity) and (B) requirements that its contractors (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 12(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 12(j).

(iii) Except as set forth in **Part C of Schedule III-B (City Disclosures)**, the City is in compliance with all laws applicable to the System (including the Project) relating to environmental, health or safety matters.

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

(l) Construction Contracts. **Part C of Schedule II** (*Project Details*) sets forth a list of the Existing Construction Contracts as of the Effective Date. 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.

(m) Information. The information furnished by, or on behalf of, the City to the WIFIA Lender, when taken as a whole, is true and correct in all material respects (other than for projections and other forward-looking statements contained in the Base Case Financial Model and any Updated Financial Model/Plan which have been made in good faith and based on reasonable assumptions) and does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading as of the date made or furnished.

(n) Insurance. The City is in compliance with all insurance obligations required under each Related Document to which the City is a party (including Section 18(f) (*Insurance*) hereof) 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.

(o) 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 Net System Revenues, including Net System Revenues in the System Revenue Fund, the System, the Project, the Revenues, or the City's respective rights in any of the foregoing.

(p) Financial Statements. Each income statement, balance sheet and statement of operations and cash flows (collectively, "**Financial Statements**") delivered to the WIFIA Lender pursuant to **Part B of Schedule V** (*Reporting Requirements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition (including any liabilities or obligations that are required to be disclosed in accordance with GAAP) 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.

(q) No Delinquent Taxes or 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).

(r) 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

(excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs. The Updated Financial Model/Plan most recently delivered to the WIFIA Lender pursuant to **Part A of Schedule V** (*Reporting Requirements*) demonstrates that the projected Revenues are sufficient to meet the WIFIA Loan Amortization Schedule. 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.

(s) 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 WIFIA Loan Documents to which it 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 18(m) (*Immunity*).

(t) Accuracy of Representations and Warranties. The representations, warranties and certifications of the City set forth in this Agreement and the other WIFIA Loan Documents 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).

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 WIFIA Loan Documents to which it is a party.

(b) Due Execution; Enforceability. The WIFIA Loan 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 WIFIA Loan 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 Bond and all of the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full 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) [Reserved].

(b) 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, granting, assigning, securing and confirming the Liens on the Pledged Collateral (whether now existing or hereafter arising) granted to the WIFIA Lender for its benefit pursuant to the WIFIA Loan Documents, or intended so to be granted pursuant to the WIFIA Loan Documents, or which the Borrower may become bound to grant. The Borrower shall at all times maintain the Pledged Collateral free and clear of any Lien that has priority over, or equal rank with, the Liens created by the Indenture Documents, 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 Liens on the Pledged Collateral granted pursuant to the WIFIA Loan Documents and for the benefit of the WIFIA Lender under the WIFIA Loan Documents against all claims and demands of all Persons whomsoever.

(c) Use of Proceeds. The Borrower shall use the proceeds of the WIFIA Loan solely for purposes permitted by applicable law, this Agreement and the other WIFIA Loan Documents.

(d) Verification Requirements.

(i) [Reserved]

(ii) 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.

(e) [Reserved].

(f) [Reserved]

(g) Maintain Legal Structure. The Borrower shall maintain its existence as a Legal Entity organized and existing under its Organizational Documents and the laws of the State.

(h) System Accounts; Permitted Investments.

(i) The Borrower shall maintain the Revenue Account in accordance with the terms hereof and the Indenture Documents. All Revenues received shall be deposited into the Revenue Account in accordance with Section 4.02(a) of the Indenture. The Borrower shall not apply any portion of the Revenues in contravention of this Agreement or the Indenture Documents. Any funds then on deposit in the WIFIA Debt Service Account (if applicable) shall only be used for payments of WIFIA Debt Service by the Borrower (or Trustee, if applicable, as directed by the Borrower) in accordance with the WIFIA Loan Documents.

(ii) If a WIFIA Debt Service Reserve Requirement is applicable as set forth in **Part D of Schedule I** (*WIFIA Loan Specific Terms*), the Borrower shall maintain the WIFIA Debt Service Reserve Account in an amount equal to the WIFIA Debt Service Reserve Requirement in accordance with the provisions of the applicable Indenture Documents[, including Section [] of the Indenture].

(iii) Amounts on deposit in the System Accounts shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder at such times as may be necessary to ensure that funds will be available within the applicable account to be applied towards the purpose for which the applicable account has been established.

(i) Compliance with Laws.

(i) The Borrower shall comply with all applicable laws, rules, regulations and requirements, including all applicable Sanctions Laws.

(ii) To ensure such compliance, the Borrower shall include in all contracts to which it is a party with respect to the Project (A) the contract clauses relating to applicable federal requirements (such as Davis-Bacon and Equal Employment Opportunity) and (B) requirements that its contractors (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 14(i) 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 14(i).

(j) Material Obligations.

(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 Pledged Collateral, before the same 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 Pledged Collateral.

(k) SAM Registration and UEI Number. The Borrower shall obtain and maintain, on or prior to the Effective Date through (i) the Final Disbursement Date, an active SAM registration status and (ii) the Final Maturity Date, a UEI Number.

(l) [Reserved]

(m) 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.

(n) Accounting and Audit Procedures.

(i) The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all (A) Revenues, operating expenses, capital expenses, depreciation, reserves, debt issued and outstanding and debt payments and (B) Project-related costs, Requisitions submitted, WIFIA Loan proceeds received, payments made by the Borrower with respect 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 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 in all cases 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 Project or the WIFIA Loan, to the WIFIA Lender, or the designee thereof, for any such project or programmatic audit.

(o) 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 visit, monitor and/or inspect any portion of the Project and its operations, to examine books of account and records of the Borrower relating to the Project, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower'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 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 14(o) 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 Borrower 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 14(o) at any time when an Event of Default shall have occurred and be continuing.

(ii) The Borrower shall maintain and retain all pertinent files relating to the Project and the WIFIA Loan, as may be necessary for the WIFIA Lender to facilitate an effective and accurate audit and performance evaluation of the Project, until five (5) years after the later of the date on which (A) all rights and duties under this Agreement and under the WIFIA Bond (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 Borrower. The Borrower 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.

Section 16. Negative Covenants of the Borrower. The Borrower covenants and agrees as follows until the date the WIFIA Bond and all of the Obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full 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) Indebtedness.

(i) Program Requirements. The Borrower may not create, incur or suffer to exist any Obligations (1) the payments with respect to which are payable from Revenues or (2) secured by a Lien on the Pledged Collateral.

(ii) Issuance of Additional Obligations. The Borrower shall not issue or incur any Additional Obligations except in accordance with all requirements and conditions set forth in the Additional Bonds Test.

(b) 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) amend, modify, terminate, assign, replace or supplement, or permit a waiver of any provision of, the Installment Purchase Agreement, (ii) amend, modify, replace or supplement any Related Document to which the Borrower is a party (other than the WIFIA Installment Purchase Agreement) 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 Material Adverse Effect, or (iii) terminate, assign or replace any Related Document to which the Borrower is a party (other than (A) the WIFIA Installment Purchase Agreement and (B) transaction documents relating to Subordinate Obligations) in a manner that could adversely affect the WIFIA Lender or could reasonably be expected to have a Material Adverse Effect.

(c) No Prohibited Liens. Except for Permitted Liens described in clause (a) of the definition thereof, the Borrower shall not create, incur, assume or permit to exist any Lien on the Pledged Collateral, the Revenues, or the Borrower's respective rights in any of the foregoing and the Pledged Collateral will be free and clear of any Lien that is of equal rank with or senior to the pledge of the Borrower created under the Indenture Documents for the benefit of the WIFIA Lender.

(d) Restricted Payments and Transfers. The Borrower shall not permit Revenues or other assets of the System, or any funds in any accounts held under the Indenture or in any other fund or account held by or on behalf of the Borrower, to be paid or transferred or otherwise applied for purposes other than payment of WIFIA Debt Service and other amounts due and payable by the Borrower under the WIFIA Loan Documents.

(e) No Prohibited Sale, Lease or Assignment. The Borrower shall not sell, lease or assign its rights in and to the Pledged Collateral.

(f) Mergers and Acquisitions. The Borrower shall not, and shall not agree to, reorganize, consolidate with or merge into another Person unless (i) such reorganization, merger or consolidation is with or into another entity established by State law and such reorganization, merger or consolidation is permitted by State law, and in each case, does not adversely affect or impair to any extent or in any manner (A) the Revenues or other elements of the Pledged Collateral or (B) the availability of the Revenues for the payment and security of the obligations of the Borrower under this Agreement; and (ii) the Borrower provides to the WIFIA Lender notice of such reorganization, consolidation or merger in accordance with **Part E of Schedule V** (*Reporting Requirements*) and such other information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the WIFIA Lender.

(g) Hedging. Other than interest rate hedging transactions permitted under the Indenture, the Borrower shall not enter into any swap or hedging transaction, including any such transaction that is speculative or creates extraordinary leverage or risk, without the prior written consent of the WIFIA Lender.

Section 17. Reporting Requirements. The Borrower agrees to comply with each of the reporting requirements set out in **Schedule V** (*Reporting Requirements*), unless otherwise agreed or waived by the WIFIA Lender in writing.

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

(a) Rate Covenant. (i) The City shall comply with all requirements and conditions specified in the Rate Covenant.

(ii) If:

(A) the forecast furnished by the City in the most recent Updated Financial Model/Plan delivered by the City pursuant to **Part A of Schedule V (Reporting Requirements)** demonstrates that projected Net System Revenues may be inadequate to satisfy the Rate Covenant for any City Fiscal Year during the Forecast Period, the City shall propose a remedial course of action, which plan shall demonstrate to the WIFIA Lender's satisfaction that such plan will generate an equivalent or greater increase to the Net System Revenues so as to satisfy the Rate Covenant; and/or

(B) the City fails to satisfy the Rate Covenant for the most recently ended City Fiscal Year, the City shall (A) within thirty (30) days after request by the WIFIA Lender, engage the Technical and Rate Consultant to review and analyze the operations of the System and recommend actions regarding revising the rates or changing the methods of operations, or any other actions to increase the Net System Revenues so as to satisfy the Rate Covenant, (B) cause the Technical and Rate Consultant to issue its report, including any such recommended actions, no later than ninety (90) days following such engagement, and (C) either, within sixty (60) days following the issuance of the Technical and Rate Consultant's report, (1) implement the Technical and Rate Consultant's recommendations or (2) undertake an alternative course of action after demonstrating to the WIFIA Lender's satisfaction that an alternative plan will generate an equivalent or greater increase to the Net System Revenues so as to satisfy the Rate Covenant.

(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 Net System Revenues, including Net System Revenues in the System Revenue Fund, (whether now existing or hereafter arising) granted to the Borrower for its benefit pursuant to the Installment Purchase Agreement, or intended so to be granted pursuant to the Installment Purchase Agreement, or which the City may become bound to grant. The City shall at all times maintain the Net System Revenues, including Net System Revenues in the System Revenue Fund, free and clear of any Lien that has priority over the Liens created by the Installment Purchase Agreement, other than Permitted Liens described in clause (a) of the definition thereof, 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 maintain the Net System Revenues, including Net System Revenues in the System Revenue Fund, free and clear of any Lien that is of equal rank with the Liens created by the Installment Purchase Agreement, other than Permitted Liens created in respect of City Bonds and City Contracts that are permitted hereunder, and all organizational, regulator 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 Net System Revenues, including Net System Revenues in the System Revenue Fund, granted pursuant to the Installment Purchase

Agreement and for the benefit of the Borrower under the Installment Purchase Agreement 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, this Agreement and the other WIFIA Loan Documents.

(d) Prosecution of Work; Verification Requirements.

(i) The City shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule (and on or prior to the Development Default Date), the Governmental Approvals in connection with the Project, and prudent utility and industry practice.

(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) Operations and Maintenance. The City shall operate and maintain the System (including the Project) substantially in accordance with the Updated Financial Model/Plan most recently delivered by the City to the WIFIA Lender pursuant to **Part A of Schedule V (Reporting Requirements)** and its operations and maintenance plan (that incorporates the Project). The City shall operate and maintain the System (including the Project) in a reasonable and prudent manner and in good repair, working order and condition and in accordance with the requirements of all applicable laws and each applicable WIFIA Loan Document. 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 and the operation and maintenance of the System.

(f) Insurance.

(i) The City shall at all times procure and maintain or cause to be maintained insurance on the System and the construction of the Project, with responsible insurers, or as part of a reasonable system of self-insurance that is actuarially sound and adequately funded, in such amounts and against such risks (including damage to or destruction of the System) as are customarily maintained with respect to works and properties of like character against accident to, loss of, or damage to such works or properties, including insurance against public liability, property damage, workers' compensation, and builders' risk, casualty and liability, as appropriate, and otherwise in accordance with the Installment Purchase Agreement and Construction Contracts. The insurance policies shall be available at all reasonable times for inspection upon request by the WIFIA Lender, its agents and representatives.

(ii) The City shall cause all liability insurance policies that it maintains (excluding property damage, automobile or workers' compensation insurance), to reflect the WIFIA Lender as an additional insured to the extent of its insurable interest.

(g) Maintain Legal Structure. The City shall maintain its existence as a Legal Entity organized and existing under its Organizational Documents and the laws of the State.

(h) Accounts; Permitted Investments.

(i) The City shall maintain the System Revenue Account in accordance with the terms hereof and the Installment Purchase Agreement. All System Revenues received shall be deposited into the System Revenue Account in accordance with Section [5.02] of the Installment Purchase Agreement, subject to the application of System Revenues to Maintenance and Operation Costs of the System. The City shall not apply any portion of the System Revenues in contravention of this Agreement or the Installment Purchase Agreement.

(ii) [Reserved]

(iii) Amounts on deposit in the System Accounts shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder at such times as may be necessary to ensure that funds will be available within the applicable account to be applied towards the purpose for which the applicable account has been established.

(i) Compliance with Laws.

(i) The City shall, and shall require 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 shall include in all contracts with respect to the Project (A) the contract clauses relating to applicable federal requirements (such as Davis-Bacon and Equal Employment Opportunity) and (B) requirements that its contractors (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 18(i) 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 18(i).

(j) Material Obligations. The City shall pay its material obligations payable from the System Revenues promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon the Net System Revenues or System Revenue Fund or other assets of the System, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, might give rise to a Lien upon the System or any part thereof or on the Net System Revenues or the System Revenue Fund;

provided, however, 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.

(k) SAM Registration and UEI Number. The City shall obtain and maintain, on or prior to the Effective Date through (i) the Final Disbursement Date, an active SAM registration status and (ii) the Final Maturity Date, a UEI Number.

(l) Events of Loss; Loss Proceeds. If an Event of Loss shall occur with respect to the System (including the Project) or any part thereof, the City shall (i) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as applicable, in respect of such Event of Loss and (ii) apply all Loss Proceeds (after excluding any proceeds of delay-in-start-up insurance and proceeds covering liability of the City to third parties) in respect of such Event of Loss in accordance with Section [6.06] of the Installment Purchase Agreement.

(m) 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.

(n) Accounting and Audit Procedures.

(i) The City shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all (A) System Revenues, operating expenses, capital expenses, depreciation, reserves, debt issued and outstanding and debt payments and (B) Project-related costs, Requisitions submitted, WIFIA Loan proceeds received, payments made by the City with respect 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 Loan, 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 in all cases 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.

(o) 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 visit, monitor and/or inspect any portion of the Project and its operations, 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 18(o) 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 18(o) at any time when an Event of Default shall have occurred and be continuing.

(ii) The City shall maintain and retain all pertinent files relating to the Project and the WIFIA Loan, as may be necessary for the WIFIA Lender to facilitate an effective and accurate audit and performance evaluation of the Project, until five (5) years after the later of the date on which (A) all rights and duties under this Agreement and under the WIFIA Bond (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.

Section 19. Negative Covenants of the City. The City covenants and agrees as follows until the date the WIFIA Bond and all of the Obligations of the City under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in immediately available funds and the WIFIA Lender no longer has any commitment to make Disbursements to the City, unless the WIFIA Lender waives compliance in writing:

(a) Indebtedness.

(i) Program Requirements.

(A) The City shall not create, incur or suffer to exist any Obligations (1) the payments with respect to which are senior or prior in right of payments by the City of the Installment Payments or (2) secured by a Lien on the

Net System Revenues or System Revenue Fund that is senior to the Lien on the Net System Revenues, including Net System Revenues in the System Revenue Fund, in favor of the Borrower.

(B) The City shall not create, incur or suffer to exist any Obligations (1) the payments with respect to which are *pari passu* with the Installment Payments or (2) secured by a Lien on the Net System Revenues, including Net System Revenues in the System Reserve Fund, that is *pari passu* with the Lien on the Net System Revenues or System Revenue Fund in favor of the Borrower, in each case other than City Bonds and City Contracts that satisfy the Additional Bonds Test.

(C) The City shall not create, incur or suffer to exist 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 Net System Revenues.

(ii) Issuance of Additional Obligations. The City shall not issue or incur any Additional Obligations except in accordance with all requirements and conditions set forth in the Additional Bonds Test.

(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 the Rate Covenant; (ii) extinguish or impair the Liens on the Net System Revenues or System Revenue Fund or any dedicated source of Installment Payments or any other Obligations (the proceeds of which are applied to fund Total Project Costs), in each case granted pursuant to the Installment Purchase Agreement, (iii) amend, modify, replace or supplement the Installment Purchase Agreement or permit a waiver of any provision thereof in a manner that could adversely affect the WIFIA Lender, or (iv) terminate, assign or replace the Installment Purchase Agreement in a manner that could adversely affect the WIFIA Lender.

(c) No Prohibited Liens. Except for Permitted Liens, the City shall not create, incur, assume or permit to exist any Lien on the Project, the Net System Revenues, the System Revenue Fund, or the City's respective rights in any of the foregoing and the Net System Revenue and System Revenue Fund will be free and clear of any Lien that is of equal rank with or senior to the pledge of the City created under the Installment Purchase Agreement for the benefit of the Borrower.

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

of the System; provided that the City may transfer excess System Revenues from the System Revenue Fund to the general fund of the City for the sole purpose of reimbursing to the City's general fund amounts previously expended out of the City's general fund to pay for costs directly related to the ownership, construction and improvement, operation or maintenance of the System.

(e) No Prohibited Sale, Lease or Assignment. The City shall not sell, lease or assign its rights in and to the System or a substantial portion of the assets included in the System, unless such sale, lease or assignment (i) could not reasonably be expected to have a Material Adverse Effect and (ii) is made by the City in the ordinary course of business.

(f) Mergers and Acquisitions. The City shall not, and shall not agree to, reorganize, consolidate with or merge into another Person unless (i) such reorganization, merger or consolidation is with or into another entity established by State law and such reorganization, merger or consolidation is permitted by State law, and in each case, does not adversely affect or impair to any extent or in any manner (A) the System Revenues or other elements of the Net System Revenues or System Revenue Fund or (B) the availability of the System Revenues for the payment and security of the obligations of the City under the Installment Purchase Agreement; and (ii) the City provides to the WIFIA Lender notice of such reorganization, consolidation or merger in accordance with **Part E of Schedule V** (*Reporting Requirements*) and such other information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the WIFIA Lender.

(g) Hedging. Other than interest rate hedging transactions permitted under the Installment Purchase Agreement, the City shall not enter into any swap or hedging transaction, including any such transaction that is speculative or creates extraordinary leverage or risk, without the prior written consent of the WIFIA Lender.

Section 20. Reporting Requirements. The City agrees to comply with each of the reporting requirements set out in **Schedule V** (*Reporting Requirements*), unless otherwise agreed or waived by the WIFIA Lender in writing.

ARTICLE VI EVENTS OF DEFAULT AND REMEDIES

Section 21. Events of Default and Remedies.

(a) An “**Event of Default**” shall exist under this Agreement if any of the following occurs; provided, that the occurrence of an event set forth in sub-clauses (v) through (and including) (ix) below shall not constitute an Event of Default under this Agreement until the WIFIA Lender has provided a notice of such Event of Default to the Borrower or the City; provided, further, that nothing in this paragraph is intended to limit any obligation of the Borrower or the City hereunder, including any obligation to cure any event or condition contemplated under this Section 21(a):

(i) Payment Default. The Borrower shall fail to 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 (*Repayment*)) or the City shall fail to pay when due any part of the Installment Payments, and such failure continues for a period of five (5) days, when and as the payment thereof shall be required under this Agreement, the WIFIA Bond or the Installment Purchase Agreement or on the Final Maturity Date (each such failure, a “**Payment Default**”).

(ii) Occurrence of a Bankruptcy Related Event. A Bankruptcy Related Event shall occur with respect to the Borrower or the City.

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

(iv) Invalidity of WIFIA Loan Documents. (A) Any WIFIA Loan Document 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 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; (B) any Indenture Document 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 Pledged Collateral other than as a result of actions or a failure to act by, and within the control of, the Trustee, the WIFIA Lender, or any other holder of Obligations secured by the Pledged Collateral, and with the priority purported to be created thereby; (C) the Installment Purchase Agreement 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 Net System Revenues and System Revenue Fund other than as a result of actions or a failure to act by, and within the control of, the Trustee, the WIFIA Lender, or any other holder of Obligations secured by the Net System Revenues and System Revenue Fund, and with the priority purported to be created thereby; or (D) any event occurs that results in the impairment in the validity, enforceability, perfection or priority of the WIFIA Lender’s security interest in the Pledged Collateral.

(v) Covenant Default. The Borrower or the City shall fail to observe or perform any covenant, agreement or obligation of the Borrower or the City, as applicable, under this Agreement, the WIFIA Bond or any other WIFIA Loan Document (other than in the case of any 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 Borrower or the City from the WIFIA Lender of written notice thereof or (B) the Borrower’s or 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 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 or the City, as applicable, 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; provided, however, that with respect to a failure to comply with the Rate Covenant, the cure period shall be the longer of (x) one hundred eighty (180) days as described above or (y) the relevant cure period provided in the Indenture (if applicable).

(vi) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower or the City made in or delivered pursuant to the WIFIA Loan Documents (or in any certificates delivered by the Borrower or the City in connection with the WIFIA Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made; provided, that no Event of Default shall be deemed to have occurred under this Section 21(a)(vi) if and so long as (A) such misrepresentation is not intentional, (B) such misrepresentation is not a misrepresentation in respect of Section 12(g) (*Security Interests*), Section 12(h) (*No Debarment*), Section 12(i) (*No Lobbying*), or Section 12(j) (*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 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 or the City, as applicable, within thirty (30) days after the date on which the Borrower or the City, as applicable, first became aware (or reasonably should have become aware) of such misrepresentation.

(vii) Enforcement of Other Financing Documents. The holder(s) of Obligations under a Related Document exercises remedies permitted thereunder for an event of default that has occurred and is continuing (and has not been cured or waived by the expiration of any applicable grace period), in respect of the performance of any covenant, agreement or obligation of the Borrower or the City under such Related Document.

(viii) Material Adverse Judgment. Any final, non-appealable judgment related to the Pledged Collateral that results in the impairment of (A) the Borrower's ability to comply with any of its payment obligations under the WIFIA Bond or this Agreement, (B) the City's ability to comply with any of its payment obligations under the Installment Purchase Agreement, or (C) the existence, priority or perfection (if applicable) of the WIFIA Lender's security interest in the Pledged Collateral.

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

(b) Upon the occurrence of any Bankruptcy Related Event, 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.

(c) 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 cease permitting interest on the WIFIA Loan to be capitalized (if applicable);

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

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

(v) the WIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder or under the WIFIA Bond 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, including all rights and remedies of a secured creditor under the Uniform Commercial Code (if applicable), 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 Bond 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 Bond or the other WIFIA Loan Documents.

(d) Pursuant to Section [8.01] of the Indenture, upon the occurrence and continuance of any Event of Default (as defined in the Indenture), so long as such Event of Default shall not have been cured, the WIFIA Lender may, in accordance with Section [8.01] of the Indenture, declare the unpaid principal amount of the WIFIA Bond 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 Bond or the other WIFIA Loan Documents, all without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

(e) No action taken pursuant to this Section 21 shall (i) relieve the Borrower or the City from its obligations pursuant to this Agreement, the WIFIA Bond or the other WIFIA Loan Documents, all of which shall survive any such action or (ii) limit the WIFIA Lender's rights under the Indenture Documents, including Article [VIII] (*Events of Default and Remedies of Bond Owners*) of the Indenture.

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 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 Federal Government, or the WIFIA Lender, solely by virtue of the WIFIA Loan, and that no third-party creditor of the Borrower shall have any right against the WIFIA Lender with respect to the WIFIA Loan made pursuant to this Agreement.

Section 25. Borrower's and City's Authorized Representatives. 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. 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 26. 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 35 (*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 within a reasonable time period following the succession.

Section 27. 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 Bond. 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 Bond. 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 28. Amendments, Waivers and Termination. No amendment, modification, termination, or waiver of any provision of this Agreement or the WIFIA Bond shall in any event be effective without the prior written consent of each of the parties hereto. Notwithstanding the foregoing sentence, if the first Disbursement of the WIFIA Loan has not occurred on or prior to the Final Disbursement Date, the WIFIA Lender or the Borrower or the City may terminate this Agreement upon no less than ten (10) Business Days' prior written notice to the other party. Once terminated, this Agreement may not be reinstated.

Section 29. 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 30. 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 31. 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 Borrower's rights or obligations hereunder or under the WIFIA Bond 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 City's rights or obligations hereunder nor any interest herein may be assigned or delegated by the City without the prior written consent of the WIFIA Lender.

Section 32. Remedies Not Exclusive. No remedy conferred herein or in the WIFIA Bond 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 Bond or now or hereafter existing at law or in equity or by statute.

Section 33. 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 Bond upon a default of 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 under the WIFIA Bond 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 34. 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 35 (*Notices*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

Section 35. Notices.

(a) All notices, requests, or communication hereunder shall be given in writing.

(b) Notices to the WIFIA Lender should be made by (i) email to the email address noted below for the WIFIA Lender or (ii) submission through another electronic medium or transmission system as designated by and in a format acceptable to the WIFIA Lender, unless otherwise instructed by the WIFIA Lender:

If to WIFIA Lender: Environmental Protection Agency
WJC-E 7334A
1200 Pennsylvania Avenue NW
Washington, D.C. 20460
Attention: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

(c) Notices to the Borrower should be made by (i) nationally recognized courier service, (ii) hand delivery, (iii) email, to the email address noted below for the Borrower, or (iv) another electronic medium in a format acceptable to the Borrower, unless otherwise instructed by the Borrower's Authorized Representative:

If to Borrower: The notice details set forth in **Part G of Schedule I**
(*WIFIA Loan Specific Terms*)

(d) Notices to the City should be made by (i) nationally recognized courier service, (ii) hand delivery, (iii) email, to the email address noted below for the City, or (iv) another electronic medium in a format acceptable to the City, unless otherwise instructed by the City's Authorized Representative:

If to City: The notice details set forth in **Part G of Schedule I**
(*WIFIA Loan Specific Terms*)

(e) 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 35 (or in accordance with the latest unrevoked written direction from the receiving party), and (y) if given by email or other electronic method, when such email is delivered to the email address specified in this Section 35 or submitted to the electronic medium as directed by the receiving party, in each case with the sender's receipt of an acknowledgement

from the intended recipient (such as by a “read receipt,” return email, or other written acknowledgement) (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.

Section 36. Indemnification. The Borrower and the City each shall, to the extent permitted by law, indemnify the WIFIA Lender, the Servicer (if any), and any official, employee, agent, advisor or representative of the WIFIA Lender (each such Person being herein referred to as an “**Indemnatee**”) against, and hold each Indemnatee 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 Indemnatee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement, any Construction Contract, or any Related Document, (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 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 Indemnatee, 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 non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee. In case any action or proceeding is brought against an Indemnatee by reason of any claim with respect to which such Indemnatee is entitled to indemnification hereunder, the Borrower and the City each shall be entitled, at its expense, to participate in the defense thereof; provided, that such Indemnatee has the right to retain its own counsel, at the Borrower’s or the City’s expense, as applicable, and such participation by the Borrower or the City in the defense thereof shall not release the Borrower or the City, as applicable, of any liability that it may have to such Indemnatee. Any Indemnatee against whom any indemnity claim contemplated in this Section 36 is made shall be entitled, after consultation with the Borrower or the City, as applicable, and upon consultation with legal counsel wherein such Indemnatee 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 or the City, as applicable, for purposes of this Section 36. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnatee. To the extent permitted by applicable law, neither the Borrower, the City nor the WIFIA Lender shall assert, and each of the Borrower, the City and the WIFIA Lender hereby waives, any claim against any Indemnatee or 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 Construction Contract, or any Related Document, 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 Indemnatee is entitled to indemnification hereunder. All amounts due to any Indemnatee under this Section 36 shall be payable promptly upon demand therefor. The obligations of the Borrower and the City under this Section 36 shall survive the payment or prepayment in full or transfer of the WIFIA Loan, 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 36) 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 37. Sale of WIFIA Loan. The WIFIA Lender shall not sell the WIFIA Loan at any time prior to the later of (a) the Substantial Completion Date and (b) other than with respect to a sale or transfer to another Governmental Entity within the Federal Government, the Final Disbursement 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 37. 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 28 (*Amendments and Waivers*). Prior to any sale or reoffering of the WIFIA Loan, the WIFIA Lender shall provide reasonable written notice to the Borrower and the City of the WIFIA Lender's intention to consummate such a sale or reoffering. The provision of any notice pursuant to this Section 37 shall neither (x) obligate the WIFIA Lender to sell nor (y) provide 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.

Section 38. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 39. Release of Lien. Upon the irrevocable payment in full in immediately available funds by the Borrower of the WIFIA Loan Balance, together with all accrued interest, fees and expenses with respect thereto, the WIFIA Lender shall cancel and discharge the Lien on the Pledged Collateral and surrender the WIFIA Bond to the Borrower in accordance with Section 9(b) (*General Prepayment Instructions*).

Section 40. Survival. The indemnification requirements of Section 36 (*Indemnification*), the reporting and record keeping requirements of Section 15(o) (*Access; Records*), the reporting and record keeping requirements of Section 18(o) (*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.]

DRAFT

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.

**THE CITY OF OXNARD FINANCE
AUTHORITY,**
by its authorized representative

By: _____
Name: _____
Title: _____

*[Signature Page to the City of Oxnard Finance Authority and the City of Oxnard Aquifer Storage Recovery (ASR)
Project – WIFIA Loan Agreement]*

THE CITY OF OXNARD,
by its authorized representative

By: _____
Name:
Title:

DRAFT

*[Signature Page to the City of Oxnard Finance Authority and the City of Oxnard Aquifer Storage Recovery (ASR)
Project – WIFIA Loan Agreement]*

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

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

*[Signature Page to the City of Oxnard Finance Authority and the City of Oxnard Aquifer Storage Recovery (ASR)
Project – WIFIA Loan Agreement]*

SCHEDULE I

WIFIA LOAN SPECIFIC TERMS

No.	Item	WIFIA Loan Specific Term
PART A. Key Borrower Metrics		
1.	Effective Date	[].
2.	Borrower	The City of Oxnard Finance Authority, a Legal Entity organized and existing under the State.
3.	Legal Entity	joint exercise of powers agency.
4.	State	California.
5.	Borrower FEIN	[].
6.	Borrower UEI Number	[].
7.	Initial Borrower Fiscal Year	The fiscal year of the Borrower commencing on July 1 of any given calendar year and ending on June 30 of the immediately succeeding calendar year.
8.	Application Receipt Date	September 27, 2021.
9.	WIFIA CUSIP Number	[], as the CUSIP number for the WIFIA Loan for purposes of monitoring through EMMA.
10.	System ¹	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 Effective Date, and including all additions, betterments, extensions, and improvements to such water system or any part thereof acquired or constructed after the Effective Date.
11.	Revenues	Has the meaning ascribed to such term in the Indenture.
12.	Trustee	[Trustee name], a [] organized and existing under the laws of the state of [].
13.	Trustee Location	[City, State].
14.	The City	The City of Oxnard, a municipal corporation duly organized and existing under the laws of the State of California.

¹ **Note to Borrower:** To be clarified whether the System includes all drinking water, wastewater, sewer and other water supply infrastructure of the City (or only specific portions thereof).

No.	Item	WIFIA Loan Specific Term
PART B. Key Project Metrics		
15.	Project	The project is the Aquifer Storage Recovery (ASR) Project, located at the Project Location, and consists of the following components: (i) expansion of the City's Advanced Water Purification Facility capacity, (ii) construction of additional aquifer storage wells, (iii) construction of a distribution pipeline to convey recovered groundwater from the ASR wells to three existing Blending Stations, and (iv) upgrades to two of the city's Blending Stations including mechanical and electrical upgrades as well as piping modifications and pump replacements.
16.	Project Location	Oxnard, California.
17.	Projected Substantial Completion Date	[07/01/2027], ² as such date may be adjusted in accordance with Part C of Schedule V (Reporting Requirements) .
18.	Development Default Date	[07/01/2028]. ³
19.	NEPA Determination	[Finding of No Significant Impact][Categorical Exclusion][Record of Decision] for the Project issued by EPA on [___], 20[___] in accordance with NEPA.
20.	[Other/TBD]	
PART C. Key Loan Metrics		
21.	Maximum Principal Amount	Principal amount up to \$[47,839,000] (excluding interest that is capitalized in accordance with this Agreement).
22.	WIFIA Interest Rate	[___]% per annum.
23.	Default Rate	Interest rate equal to the sum of (a) the WIFIA Interest Rate plus (b) 500 basis points.
24.	Interest Payment Date	Each June 1 and December 1, beginning on the Debt Service Payment Commencement Date.

² **Note:** To be confirmed prior to closing.

³ **Note:** To be confirmed prior to closing.

No.	Item	WIFIA Loan Specific Term
25.	Capitalized Interest Period	The period from (and including) the first Disbursement to (but excluding) the date that is six (6) months prior to the first Payment Date, subject to earlier termination as set forth in Section 8(a)(iii) (<i>Payment of WIFIA Debt Service</i>).
26.	Interest Only Period	The period commencing from (and including) the Debt Service Payment Commencement Date and ending on June 1, 2041 (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).
27.	Principal Payment Date	Each June 1, beginning on June 1, 2041.
28.	Final Maturity Date	The earliest of (a) June 1, 2061, (b) the date on which the maturity of the WIFIA Loan and corresponding WIFIA Bond have been accelerated or subject to mandatory redemption or prepayment (as the case may be) prior to maturity thereof; and (c) the Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.
29.	[Other/TBD]	
PART D. Key Security Metrics		
30.	Lien priority	Senior lien.
31.	Springing lien	Not Applicable
32.	Dedicated revenue source	Net System Revenues, payable to the Borrower through the Installment Payments received by the Borrower pursuant to or with respect to the Installment Purchase Agreement, and all interest or gain derived from the investment of amounts in the funds or accounts established under the Installment Purchase Agreement. The Installment Payments shall be payable to the WIFIA Lender as assignee of the Borrower, from, and secured by, the Net System Revenues of the System in accordance with the Installment Purchase Agreement.

No.	Item	WIFIA Loan Specific Term
33.	Pledged Collateral	The WIFIA Loan shall be secured by a first priority lien on, and security interest in, (i) all amounts held in the Revenue Account (including the funds and accounts therein), (ii) all amounts held in the WIFIA Debt Service Reserve Account (including the funds and accounts therein), (iii) the Revenues received by the Borrower or the Trustee under the Installment Purchase Agreement and (iv) all money on deposit from time to time in the accounts and funds established under the Indenture. Payment of the Installment Payments by the City to the Borrower shall be secured by a first priority lien on the Net System Revenues. All System Revenues received by the City shall be deposited in a separately maintained fund established and held by the City with respect to the System Revenues (the "System Revenue Fund") from which the City will pay all Maintenance and Operation Costs as they become due and payable, and the remaining money on deposit, which shall constitute the Net System Revenues, will be used to make deposits with the Trustee in such amounts as required to pay the Installment Payments and debt service in accordance with the provisions of any City Bond or City Contract, which are <i>pari passu</i> with the Installment Payments.
34.	System Accounts	The Revenue Account, the WIFIA Debt Service Account, and the WIFIA Debt Service Reserve Account.
35.	Revenue Account	Has the meaning ascribed to the "Revenue Fund" in the Indenture.
36.	WIFIA Debt Service Account	Has the meaning ascribed to the "Bond Payment Fund" in the Indenture.
37.	WIFIA Debt Service Reserve Account	That certain Reserve Fund, as defined in the Indenture.
38.	WIFIA Debt Service Reserve Requirement	Means, as of any date of calculation, the least of (i) ten percent (10%) of the original issue price of the WIFIA Bonds (or, if there is less than 2% net original issue discount or premium, 10% of the original stated principal amount of the WIFIA Bonds); (ii) 125% of the average WIFIA Debt Service determined as of the Effective Date; or (iii) the Maximum Annual Debt Service (as defined in the Indenture) on the WIFIA Bonds.

Schedule I-4

No.	Item	WIFIA Loan Specific Term
39.	Rate Covenant	[The rate covenant set forth in Section [6.10] of the Installment Purchase Agreement, which for reference purposes as of the Effective Date is set out below:] The City shall, subject to the remainder of this paragraph, fix, charge and collect rates, fees, and charges for the System during each City Fiscal Year which will be at least sufficient to yield, during each City Fiscal Year, Net System Revenues equal to at least: (i) one hundred ten percent (110%) of the Debt Service payable during such City Fiscal Year with respect to all outstanding City Bonds and City Contracts, and the amounts, if any, then due and owing to any Insurer under any Reserve Policy (as such terms are defined in the Installment Purchase Agreement); and (ii) the amount by which the amount on deposit in the System Revenue Fund on the last day of the immediately preceding City Fiscal Year was less than twenty five percent (25%) of Maximum Annual Debt Service as of such day.
40.	Additional Bonds Test	<u>The City</u> The City shall not issue or incur any Additional Obligations unless the conditions described below and in Section 19(a) are satisfied: (a) The City shall not issue or incur any Obligations during the term of this Agreement having any priority in payment of principal or interest out of the System Revenues or the Net System Revenues over the Installment Payments. (b) Except for obligations incurred to prepay or discharge the Installment Payments, the City may not issue or incur any Obligations during the term of this Agreement unless all of the following conditions are satisfied: (i) No Event of Default has occurred and is continuing. (ii) The City obtains or provides a certificate or certificates prepared by an independent financial consultant (the “Consultant”) showing that:

No.	Item	WIFIA Loan Specific Term
		a. the Net System Revenues as shown by the books of the City for the twelve (12) calendar months ending 90 days prior to the end of the month in which such Additional Obligations are incurred (the “Look Back Period”), will have amounted to at least the sum of (x) one hundred ten percent (110%) of Debt Service for such Look Back Period, plus (y) the amount by which the amount on deposit in the System Revenue Fund on the first day of such Look Back Period was less than twenty-five percent (25%) of Maximum Annual Debt Service (as defined in the Installment Purchase Agreement for all purposes of this Additional Bonds Test) on all Outstanding City Bonds and City Contracts calculated on the first day of such Look Back Period; for purposes of preparing the certificate or certificates described above, the Consultant or Consultants may rely upon financial statements prepared by the City for all or any part of the Look Back Period, which have not been subject to audit by an Independent Certified Public Accountant if audited financial statements for the City Fiscal Year or period are not available; b. the estimated Net System Revenues for the twelve (12) calendar months following the date of incurring such Additional Obligations will be at least equal to one hundred ten percent (110%) of Maximum Annual Debt Service on all City Bonds and City Contracts to be outstanding immediately after the incurring of such Additional Obligations; and c. the amount on deposit in the System Revenue Fund on the date of incurring such Additional Obligations is at least equal to twenty-five percent (25%) of Maximum Annual Debt Service on all Outstanding City Bonds and City Contracts as of the date of incurring of such Additional Obligations. If the Additional Obligations are being issued solely to refund outstanding Obligations, and the resulting Maximum Annual Debt Service on all Outstanding City Bonds and City Contracts after incurring such Additional Obligations will not exceed the Maximum Annual Debt Service on all Obligations outstanding prior to incurring such Additional Obligations, the City need not comply with the provisions of paragraph (ii) above.

No.	Item	WIFIA Loan Specific Term
		(c) The City shall not issue or incur any Obligations for the Project that are secured by a Lien on any assets or property of the City other than the Net System Revenues. <u>The Borrower</u> The Borrower shall not without the prior written consent of the WIFIA Lender issue or incur obligations of any kind payable from, secured or supported by any of the Pledged Collateral and amounts to be held in any fund or account established under the Indenture or the right, title and interest of the Borrower to the Installment Purchase Agreement, to be assigned by the Borrower to the Trustee under the Indenture.
41.	Flow of Funds	The requirements and conditions specified below and in Section [4.02] of the Indenture:. The City shall deposit all System Revenues, when and as received, in the System Revenue Fund. The System Revenues in the System Revenue Fund shall be applied: (i) [To Come]
42.	[Other/TBD]	
PART E. Other Key WIFIA Loan Documents		
43.	WIFIA Bond	The bond issued and delivered by the Borrower in substantially the form of Exhibit A (<i>Form of WIFIA Bond</i>).
44.	Indenture	That certain [Indenture of Trust], dated [as of] [____], 2022, between the Borrower and the Trustee.
45.	Installment Purchase Agreement	That certain [Installment Purchase Agreement], dated [as of] [____], 2022, between the City and the Borrower.
46.	WIFIA Term Sheet	WIFIA term sheet, dated as of [the Effective Date], between the Borrower and the WIFIA Lender.
47.	[Other/TBD]	
PART F. Fees		
48.	Servicing Set-Up Fee	A servicing set-up fee equal to \$10,790.00.

No.	Item	WIFIA Loan Specific Term
49.	Construction Period Servicing Fee	An annual construction period servicing fee equal to \$10,790.00.
50.	Initial Construction Period Servicing Fee	The initial Construction Period Servicing Fee in a pro-rated amount equal to \$3,590.00. ⁴
51.	Operating Period Servicing Fee	An annual operating period servicing fee equal to \$8,100.00.
PART G. Borrower Related Notices		
52.	Borrower notice details	[Name] ⁵ [Address] Attention: [] Email: []
53.	City notice details	[Name] ⁶ [Address] Attention: [] Email: []
54.	Trustee notice details	[Name] ⁷ [Address] Attention: [] Email: []

⁴ **Note to Borrower:** The pro-rated construction servicing fee amount assumes a current closing date in May, 2022.

⁵ **Note to Borrower:** Borrower to provide.

⁶ **Note to Borrower/City:** Borrower/City to provide.

⁷ **Note to Borrower/Trustee:** Borrower to provide.

SCHEDULE II
PROJECT DETAILS

PART A. Project Budget.¹

SOURCES OF FUNDS	AMOUNT (\$ USD)	PERCENTAGE (%)
[]		
Total Sources of Funds		
USES OF FUNDS	AMOUNT (\$ USD)	PERCENTAGE (%)
[]		
Total Uses of Funds		
Total Eligible Project Costs		
Total Project Costs		

PART B. Construction Schedule.

Projected Substantial Completion Date: []

PROJECT ELEMENT	DESIGN COMPLETION	CONSTRUCTION START	CONSTRUCTION END

¹ To be provided by WIFIA Underwriter (in consultation with WIFIA Engineer and Borrower).

PART C. Existing Construction Contracts.²

Contract Name	Effective Date	Amount	Parties	Description

² **Note to Borrower:** Borrower to provide.

SCHEDULE III-A
BORROWER DISCLOSURES¹

PART A. Existing Indebtedness.

1. Senior Obligations

1.	[Series [] senior revenue bonds, issued pursuant to the [], dated [], maturing on []] [Loan agreement, dated [], between the Borrower and [], maturing on []]	
2.		
3.		
4.		
5.		

2. Subordinated Obligations

1.	[Series [] subordinate revenue bonds], issued pursuant to the [], dated [], maturing on [] [Loan agreement, dated [], between the Borrower and [], maturing on []]	
2.		
3.		
4.		
5.		

¹ **Note to Borrower:** Borrower to complete.

PART B. Litigation Disclosure.

[]²

No.	Parties	Date Initiated	Description / Status	Venue

PART C. Environmental Matter Disclosure.

[]³

² Include “None” if no litigation disclosures are necessary.

³ Include “None” if no environmental matter disclosures are necessary.

SCHEDULE III-B
CITY DISCLOSURES¹

PART A. Existing Indebtedness.

1. Senior Obligations

1.		
2.		
3.		
4.		
5.		

2. Subordinated Obligations

1.		
2.		
3.		
4.		
5.		

¹ **Note to City:** City to complete.

PART B. Litigation Disclosure.

[]²

No.	Parties	Date Initiated	Description / Status	Venue

PART C. Environmental Matter Disclosure.

[]³

² Include “None” if no litigation disclosures are necessary.

³ Include “None” if no environmental matter disclosures are necessary.

SCHEDULE IV

REQUISITION PROCEDURES

This **Schedule IV** sets out the procedures which the City agrees to follow in submitting Requisitions for any Disbursement of the WIFIA Loan. Pursuant to the Installment Purchase Agreement, 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.¹⁷ The City expressly agrees to the terms hereof, and further agrees 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 Documents, 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 City if it fails to carry out its obligations under the WIFIA Loan Agreement during the term thereof.

PART A. General Requirements.

(a) Manner of Request: All requests by the City for a Disbursement shall be made in writing by electronic submission to the WIFIA Lender, in accordance with Section 35 (*Notices*) of the WIFIA Loan Agreement.

(b) Required Documentation: Any request by the City should include the submission of:

(i) a Requisition, in the form attached as **Exhibit D** (*Form of Requisition*), completed and executed by the City's Authorized Representative, and otherwise in form and substance satisfactory to the WIFIA Lender; and

(ii) all Eligible Project Costs Documentation that has not otherwise been provided to the WIFIA Lender in accordance with **Part C of Schedule V** (*Reporting Requirements*) of the WIFIA Loan Agreement.

(c) Timing: Any request for a Disbursement must be received by the WIFIA Lender and the Servicer (if any) at or before 5:00 P.M. (Eastern Time) on either:

(i) the first (1st) Business Day of a calendar month in order to obtain the requested Disbursement by the fifteenth (15th) day of such calendar month;

(ii) the fifteenth (15th) day of a calendar month, in order to obtain the requested Disbursement by the first (1st) day of the immediately following calendar month;

provided, that, (x) if any such day is not a Business Day, the Disbursement request or payment (as the case may be) shall be made by the next succeeding Business Day; (y)

¹⁷ **Note to Borrower**: Please add appointment language to Installment Purchase Agreement.

the City shall not request to receive more than one (1) Disbursement per month or every thirty (30) days (whichever is longer); and (z) no Disbursements shall be made after the Final Disbursement Date.

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PART B. WIFIA Lender Review Process.

(a) The WIFIA Lender shall review the Requisition and the Eligible Project Costs Documentation for compliance with WIFIA Disbursement requirements.

(b) If a Requisition is approved by the WIFIA Lender, the WIFIA Lender will notify [the Borrower][and][the City] of such approval and of the amount so approved. A Requisition containing an apparent mathematical error will be corrected by the WIFIA Lender, after telephonic or email notification to [the Borrower][and][the City], and will thereafter be treated as if submitted in the corrected amount. If the amount requested for Disbursement in the Requisition exceeds the available balance of the WIFIA Loan proceeds remaining to be disbursed, the Disbursement 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].

(c) 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: (i) a Default or an Event of Default shall have occurred and be continuing or (ii) the Borrower or the City (1) 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; (2) prevents or materially impairs the ability of the WIFIA Lender to monitor compliance by the Borrower or the City with applicable law pertaining to the Project or with the terms and conditions of the WIFIA Loan Agreement; (3) fails to observe or comply with any applicable law, or any term or condition of the WIFIA Loan Agreement; (4) fails to satisfy the conditions set forth in Section 4 (*Disbursement Conditions*) and Section 11(b) (*Conditions Precedent to Disbursements*) of the WIFIA Loan Agreement; or (5) 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 sub-clause (5) above, the WIFIA Lender may, in its sole discretion, partially approve a Requisition in respect of any amounts for which adequate Eligible Project Costs Documentation has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts. The WIFIA Lender will notify [the Borrower][and][the City] of any withholding, and the reasons therefor.

(d) A Requisition may be rejected in whole or in part by the WIFIA Lender if it is: (i) submitted without signature; (ii) submitted under signature of a Person other than a City's Authorized Representative; (iii) submitted after prior Disbursement of all proceeds of the WIFIA Loan; or (iv) submitted without adequate Eligible Project Costs Documentation. 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 under this paragraph (d) must be resubmitted in proper form in order to be considered for approval.

SCHEDULE V

REPORTING REQUIREMENTS

PART A. Updated Financial Model/Plan.

The City shall provide to the WIFIA Lender, not later than one hundred eighty (180) days after the end of each City Fiscal Year, an Updated Financial Model/Plan. The Updated Financial Model/Plan shall reflect the City's reasonable expectations, using assumptions that the City believes to be reasonable, and 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 Operating Expenses for a reasonable projection period consistent with the City's operating and financial planning and demonstrating that the City has developed and identified adequate revenues to implement a plan for operating, maintaining, and repairing the Project; (b) evidence of compliance with the Rate Covenant for the most recent City Fiscal Year for which the City's Financial Statements are available and the projected debt service coverage ratios (including projected Rate Covenant coverages) through the Forecast Period; and (c) a written narrative identifying any material changes to the underlying assumptions from the previous Updated Financial Model/Plan.

PART B. Annual Financial Statements.

The City shall deliver to the WIFIA Lender, as soon as available, but no later than one hundred eighty (180) days after the end of each City Fiscal Year, a copy of the audited income statement and balance sheet of the City as of the end of such City Fiscal Year and the related audited statements of operations and of cash flow of the City for 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, with respect to the annual financial statements, for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

PART C. Construction Monitoring.

(a) 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 reports, documentation or other information as shall be requested by the WIFIA Lender or its agents, including any independent engineer reports, documentation or information.

(b) Construction Monitoring Report. 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, the Construction Monitoring Report. The report shall be delivered to the WIFIA Lender within thirty (30) days of the end of each such 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 different than the Projected Substantial Completion Date, the City shall provide in the Construction Monitoring Report a description in reasonable detail to the reasonable satisfaction of the WIFIA Lender of the reasons for such projected delay or difference. The Projected Substantial Completion Date shall automatically be adjusted to the new date specified by the City in the Construction Monitoring Report unless the WIFIA Lender objects to the adjustment in writing to the City within sixty (60) days following receipt of such Construction Monitoring Report on the basis that such report does not demonstrate the matters specified in this paragraph.

(c) Quarterly Certification of Eligible Project Costs. If requested by the WIFIA Lender, on a basis not more frequently than quarterly, the City shall submit to the WIFIA Lender, concurrently with the delivery of the Construction Monitoring Report, a certificate, in the form of **Exhibit E** (*Form of Certification of Eligible Project Costs Documentation*), signed by the City's Authorized Representative, and attaching Eligible Project Costs Documentation as applicable. If there are no applicable Eligible Project Costs for such quarter, the City may notify the WIFIA Lender by written confirmation of the same by email in accordance with Section 35 (*Notices*) of the WIFIA Loan Agreement. Within sixty (60) days following the receipt of such certificate and accompanying Eligible Project Costs Documentation (if applicable), the WIFIA Lender shall notify the City confirming (i) which Eligible Project Costs incurred by the City set forth in the certification have been approved or denied (and, if denied, the reasons therefor) and (ii) the cumulative amount of Eligible Project Costs that have been approved as of the date of such notice. Any such approved amounts of Eligible Project Costs shall then be deemed to be available for Disbursement at such time as the City submits a Requisition in respect of such approved amounts in accordance with Section 4 (*Disbursement Conditions*).

(d) Final Specifications. 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.

(e) [Reserved]

PART D. Public Benefits Report.

The City shall deliver to the WIFIA Lender the Public Benefits Report (a) no later than thirty (30) days prior to the Effective Date, (b) within ninety (90) days following the Substantial Completion Date and (c) within ninety (90) days following the fifth (5th) anniversary of the Substantial Completion Date. The Borrower and the City each agree that information described in the Public Benefits Report may be made publicly available by the WIFIA Lender at its discretion.

PART E. Notices.

(a) The Borrower and the City shall each, within fifteen (15) days (or such other time as may be specified below) after the Borrower or the City, as applicable, 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:

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

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

(iv) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower or the City, as applicable, before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, that could reasonably be expected to have a Material Adverse Effect, and (2) any final, non-appealable judgment related to the Pledged Collateral, System Revenues or Net System Revenues, that could reasonably be expected to result in the impairment of (A) the Borrower's or the City's ability to comply with any of its payment obligations under the WIFIA Bond or this Agreement, as applicable, or (B) the existence, priority or perfection (if applicable) of the WIFIA Lender's security interest in the Pledged Collateral or the Borrower's security interest in the Net System Revenues;

(v) 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;

(vi) Environmental Notices: any material notice of violation related to the Project or any material change to the Project that could reasonably be expected to affect the NEPA Determination;

(vii) Amendments: except as otherwise agreed by the WIFIA Lender in writing, copies of any fully executed amendments, modifications, replacements or supplements to any Related Document; provided, that such notice may be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement;

(viii) Related Document Defaults: any material breach or default or event of default on the part of the Borrower or the City or any other party under any Related Document; provided, that such notice may be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement;

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

(x) Ratings Changes: any change in the rating assigned to the WIFIA Loan or any Obligations, in each case by any Nationally Recognized Rating Agency that has provided a public rating on such indebtedness, 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 may be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement;

(xi) 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 or the City to disclose information previously required to have been disclosed or due to the Borrower or the City or any of its principals meeting any of the criteria set forth in 2 C.F.R. § 180.335;

(xii) 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 Permitted Debt (including any Additional Obligations), together with a confirmation by the Borrower or the City, as applicable, that such additional indebtedness satisfies the applicable requirements under the definition of “Permitted Debt”; provided, that such notice may be accomplished through the posting of the relevant documents on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement;

(xiii) Postings on EMMA: the posting of any document on EMMA in accordance with the requirements of any continuing disclosure agreement or similar document with respect to any Outstanding Obligations relating to annual financial information and operating data and the reporting of significant events; provided, that such notice may be accomplished through the posting of the relevant document on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement;

(xiv) SAM / UEI: any change in the Borrower’s or the City’s SAM registration status (including any exclusions, expiration or inactive registration) or UEI Number (including any expiration or change in effectiveness); provided, that such notice may be accomplished through the posting of the relevant document on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement;

(xv) Reorganization, Consolidation or Merger: the occurrence of any reorganization, consolidation, or merger, together with the agreements and documents authorizing the reorganization, consolidation or merger; and

(xvi) Fiscal Year: any change to or adoption by the Borrower of any fiscal year other than the Initial Borrower Fiscal Year or any change to or adoption of any

fiscal year by the City other than the previously applicable City Fiscal Year; provided, that such notice may be accomplished through the posting of the relevant document on EMMA under the WIFIA CUSIP Number with a reference to the relevant WIFIA provision of this Agreement;

(xvii) Other Adverse Events: the occurrence of any other event or condition, including without limitation 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; and

(xviii) Draws on WIFIA Debt Service Reserve Account: the occurrence of any draws on the WIFIA Debt Service Reserve Account to fund payments of interest on or principal of the WIFIA Bond when due.

(b) The Borrower and the City each 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 City or regarding the System, the Project or the System Revenues as the WIFIA Lender may from time to time reasonably request. The Borrower and the City each agrees that the delivery of any documents or information under and pursuant to this Agreement shall not be construed as compliance with, or affect in any manner, any obligations of the Borrower or the City under any other contracts, agreements, decrees, Governmental Approvals, or other documents with EPA (other than the WIFIA Loan Documents) or the Federal Government.

SCHEDULE VI
WIFIA LOAN AMORTIZATION SCHEDULE¹

[To be attached with final interest rate on the Effective Date]

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¹ WIFIA Underwriter to work with Borrower to provide an initial amortization schedule that is shared with the transaction team prior to closing. The final schedule will be finalized on the day of closing to account for the final interest rate.

EXHIBIT A

FORM OF WIFIA BOND

THE CITY OF OXNARD FINANCE AUTHORITY

AQUIFER STORAGE RECOVERY PROJECT

(WIFIA ID – N20107CA)
WIFIA BOND

Interest Rate	Final Maturity Date	Dated Date	WIFIA CUSIP
[]%, subject to the Default Rate (as defined and in accordance with the WIFIA Loan Agreement)	June 1, 2061 , subject to adjustment as set forth in the WIFIA Loan Agreement	[]	[]
Registered Owner	UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator of the Environmental Protection Agency		
Maximum Principal Amount	\$[] (excluding capitalized interest, if any)		

THE CITY OF OXNARD FINANCE AUTHORITY, a joint exercise of powers agency duly organized and existing under 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 made by the WIFIA Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the WIFIA Loan Agreement (as defined below), 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) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in that certain WIFIA Loan Agreement, dated as of the date hereof, between the WIFIA Lender, the Borrower and the City of Oxnard, a municipal corporation duly organized and existing under the laws of the State of California (the “**City**”)

(the “**WIFIA Loan Agreement**”). All capitalized terms used in this WIFIA Bond and not defined herein shall have the meanings set forth in the WIFIA Loan Agreement.

The WIFIA Debt Service hereof shall be payable in the amounts, manner and on the Payment Dates as set forth in the WIFIA Loan Amortization Schedule in accordance with the WIFIA Loan Agreement (which WIFIA Loan Amortization Schedule may be revised from time to time in accordance with the WIFIA Loan Agreement), until paid in full (which Loan Amortization Schedule, 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 Bond). The WIFIA Lender is hereby authorized to modify the WIFIA Loan Amortization Schedule from time to time to reflect the amount of each Disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder and otherwise in accordance with the terms of the WIFIA Loan Agreement. Absent manifest error, the WIFIA Lender’s determination of such matters as set forth on the WIFIA Loan Amortization Schedule to the WIFIA Loan Agreement shall be conclusive evidence thereof; provided, however, 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(b) (*Manner of Payment*) and Section 35 (*Notices*) of the WIFIA Loan Agreement as the same become due. Principal of and interest on this WIFIA Bond shall be made in Dollars and in immediately available funds (without counterclaim, offset or deduction). Any payment in respect of the WIFIA Bond 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 Bond. If the Final Maturity Date is adjusted in accordance with the WIFIA Loan Agreement, the due date of this WIFIA Bond shall be deemed to be amended to change the due date to such revised Final Maturity Date without any further action required on the part of the Borrower or the WIFIA Lender and such amendment shall in no way amend, modify or affect the other provisions of this WIFIA Bond without the prior written agreement of the WIFIA Lender. Any such amendment shall be reflected in a revised Loan Amortization Schedule.

This WIFIA Bond has been executed under and pursuant to the WIFIA Loan Documents and is issued to evidence the obligation of the Borrower under the WIFIA Loan Documents 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.

Payment of the obligations of the Borrower under this WIFIA Bond is secured pursuant to the Indenture. This WIFIA Bond is a Bond (as such term is defined in the Indenture), entitled to all of the benefits of a Bond under the Indenture. The Lien on the Pledged Collateral securing this WIFIA Bond for the benefit of the WIFIA Lender is (i) the exclusive senior priority Lien with respect to the Pledged Collateral and (ii) senior in right of payment and right of security to the Lien on the Pledged Collateral in favor of the Subordinated Obligations.

This WIFIA Bond 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, however, such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1 in excess thereof), without penalty or premium, and otherwise in accordance with the WIFIA Loan Agreement.

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 Bond have happened, exist and have been performed as so required. This WIFIA Bond 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, THE CITY OF OXNARD FINANCE AUTHORITY has caused this WIFIA Bond 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.

**THE CITY OF OXNARD FINANCE
AUTHORITY,**
by its authorized representative

(SEAL)

By: _____
Name:
Title:

ATTEST:

By: _____
Name:
Title:

CERTIFICATE OF AUTHENTICATION

This WIFIA Bond is the WIFIA Bond described in the within-mentioned Indenture.

[NAME OF TRUSTEE]

By: _____
Authorized Signer

DRAFT

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the Undersigned hereby unconditionally sells, assigns
and transfers unto

(Please Insert Social Security or other identifying number of Assignee(s)):

the within WIFIA Bond and all rights thereunder.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatever.

EXHIBIT B-1

FORM OF BORROWER CLOSING CERTIFICATE

Reference is made to that certain WIFIA Loan Agreement, dated as of [____], 2022 (the “**WIFIA Loan Agreement**”), by and among the City of Oxnard Finance Authority (the “**Borrower**”), the City of Oxnard (the “**City**”), and the United States Environmental Protection Agency, acting by and through the Administrator (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.

In connection with Section 11(a) (*Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, the undersigned, as the 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)(v) of the WIFIA Loan Agreement, 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 or will be a party, and who have been appointed as a Borrower’s Authorized Representative in accordance with Section 25 (*Borrower’s and City’s Authorized Representatives*) of the WIFIA Loan Agreement;
- (b) pursuant to Section 11(a)(ii) of the WIFIA Loan Agreement, the Borrower has delivered to the WIFIA Lender copies of (i) the Indenture, together with any amendments, supplements, waivers or modifications thereto (but excluding any document that solely provides for the issuance or incurrence of Additional Obligations, hedging Obligations or Interim Financing) and (ii) any Related Document with respect to which all or a portion of the proceeds are or will be applied to fund all or any portion of Total Project Costs, in each case 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 the Related Documents that are necessary to the closing of the WIFIA transaction contemplated hereby (if any) have been fulfilled;
- (c) pursuant to Section 11(a)(v)(A) of the WIFIA Loan Agreement, (i) the maximum principal amount of the WIFIA Loan (excluding any capitalized interest), together with the amount of any other credit assistance provided under the Act to the Borrower and the City, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs; (ii) the aggregate amount of Eligible Project Costs previously incurred prior to the Effective Date does not exceed fifty-one percent (51%) of Eligible Project Costs; and (iii) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan (excluding any capitalized interest), does not exceed eighty percent (80%) of Total Project Costs;

- (d) pursuant to Section 11(a)(v)(C) of the WIFIA Loan Agreement, the Borrower has (i) obtained a FEIN, as evidenced by the Borrower's W-9 which is attached hereto as Annex B-1, and a UEI Number, in each case as set forth on Part A of Schedule I (*WIFIA Loan Specific Terms*) to the WIFIA Loan Agreement, and (ii) registered with, and obtained confirmation of active SAM registration status, which confirmation is attached hereto as Annex B-2;
- (e) pursuant to Section 11(a)(v)(D) of the WIFIA Loan Agreement, the Borrower has obtained the WIFIA CUSIP Number, as set forth on Part A of Schedule I (*WIFIA Loan Specific Terms*) to the WIFIA Loan Agreement, and which confirmation is attached hereto as Annex C;
- (f) pursuant to Section 11(a)(v)(E) of the WIFIA Loan Agreement, 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;
- (g) pursuant to Section 11(a)(v)(F) of the WIFIA Loan Agreement, no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since the date of the Application; and
- (h) pursuant to Section 11(a)(vi) of the WIFIA Loan Agreement, the rating letter delivered to the WIFIA Lender pursuant to such Section 11(a)(vi) has not been reduced, withdrawn or suspended as of the Effective Date.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

**THE CITY OF OXNARD FINANCE
AUTHORITY,**
by its authorized representative

By: _____
Name:
Title:

ANNEX A TO EXHIBIT B-1

INCUMBENCY CERTIFICATE

The undersigned certifies that he/she is the [Secretary] of the City of Oxnard Finance Authority, a joint exercise of powers agency duly organized and existing under 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 as the Borrower’s Authorized Representative (each as defined in that certain WIFIA Loan Agreement, dated as of the date hereof, between the Borrower, the City of Oxnard, and the United States Environmental Protection Agency, acting by and through the Administrator):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this _____ day of [____], 20[____].

**THE CITY OF OXNARD FINANCE
AUTHORITY,**

by its authorized representative

By: _____

Name:

Title:

EXHIBIT B-2

FORM OF CITY CLOSING CERTIFICATE

Reference is made to that certain WIFIA Loan Agreement, dated as of [____], 2022 (the “**WIFIA Loan Agreement**”), by and among the City of Oxnard Finance Authority (the “**Borrower**”), the City of Oxnard (the “**City**”), and the United States Environmental Protection Agency, acting by and through the Administrator (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.

In connection with Section 11(a) (*Conditions Precedent to Effectiveness*) of the WIFIA Loan Agreement, the undersigned, as the 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)(v) of the WIFIA Loan Agreement, 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 or will be a party, and who have been appointed as a City’s Authorized Representative in accordance with Section 25 (*Borrower’s and City’s Authorized Representatives*) of the WIFIA Loan Agreement;
- (b) pursuant to Section 11(a)(ii) of the WIFIA Loan Agreement, the City has delivered to the WIFIA Lender copies of (i) the Indenture, together with any amendments, supplements, waivers or modifications thereto (but excluding any document that solely provides for the issuance or incurrence of Additional Obligations, hedging Obligations or Interim Financing) and (ii) any Related Document with respect to which all or a portion of the proceeds are or will be applied to fund all or any portion of Total Project Costs, in each case 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 the Related Documents that are necessary to the closing of the WIFIA transaction contemplated hereby (if any) have been fulfilled;
- (c) pursuant to Section 11(a)(v)(A) of the WIFIA Loan Agreement, (i) the maximum principal amount of the WIFIA Loan (excluding any capitalized interest), together with the amount of any other credit assistance provided under the Act to the Borrower and the City, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs; (ii) the aggregate amount of Eligible Project Costs previously incurred prior to the Effective Date does not exceed fifty-one percent (51%) of Eligible Project Costs; and (iii) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan (excluding any capitalized interest), does not exceed eighty percent (80%) of Total Project Costs;

- (d) pursuant to Section 11(a)(v)(B) of the WIFIA Loan Agreement, the City is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project;
- (e) pursuant to Section 11(a)(v)(C) of the WIFIA Loan Agreement, the City has (i) obtained a FEIN, as evidenced by the City's W-9 which is attached hereto as Annex B-1, and a UEI Number, in each case as set forth on Part A of Schedule I (*WIFIA Loan Specific Terms*) to the WIFIA Loan Agreement, and (ii) registered with, and obtained confirmation of active SAM registration status, which confirmation is attached hereto as Annex B-2;
- (f) pursuant to Section 11(a)(v)(E) of the WIFIA Loan Agreement, 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;
- (g) pursuant to Section 11(a)(v)(F) of the WIFIA Loan Agreement, no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since the date of the Application; and

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

THE CITY OF OXNARD,
by its authorized representative

By: _____
Name:
Title:

ANNEX A TO EXHIBIT B-2

INCUMBENCY CERTIFICATE

The undersigned certifies that he/she is the [Secretary] of the City of Oxnard, a municipal corporation duly organized and existing under 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 as the City’s Authorized Representative (each as defined in that certain WIFIA Loan Agreement, dated as of the date hereof, between the City of Oxnard Finance Authority, the City and the United States Environmental Protection Agency, acting by and through the Administrator):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this _____ day of [____], 20[____].

THE CITY OF OXNARD,
by its authorized representative

By: _____
Name:
Title:

EXHIBIT C

FORM OF PUBLIC BENEFITS REPORT

Pursuant to Section 11(a)(vii) and Part D of Schedule V (*Reporting Requirements*) of the WIFIA Loan Agreement (as defined below), the City of Oxnard Finance Authority (the “**Borrower**”) and the City of Oxnard (the “**City**”) are providing this Public Benefits Report in connection with the Aquifer Storage Recovery (ASR) Project (WIFIA ID – N20107CA). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Loan Agreement dated [on or about the date hereof][____] (the “**WIFIA Loan Agreement**”), between the Borrower, the City and the United States Environmental Protection Agency, acting by and through the Administrator.

Reporting Period: [Prior to the Effective Date][within ninety (90) days following the Substantial Completion Date][within ninety (90) 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 Borrower projects [____] will be direct jobs.

- (ii) **Indicate (yes or no) whether the Project will assist the Borrower 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 Borrower with the following environmental measure:**

Measure(s): The amount by which the Project will increase the volume of water recycled, recharged, or redirected (measured in MGD capacity at Substantial Completion).

Value: [14.4 MGD (5 wells at 2.88 MGD capacity each)].

EXHIBIT D

FORM OF REQUISITION

VIA EMAIL

United States Environmental Protection Agency¹
1200 Pennsylvania Avenue NW
WJC-E 7334A
Washington, D.C. 20460
Attention: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

Re: Aquifer Storage Recovery (ASR) Project (WIFIA ID – N20107CA)

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) and Schedule IV (*Requisition Procedures*) of the WIFIA Loan Agreement, dated as of [date] (the “**WIFIA Loan Agreement**”), by and between THE CITY OF OXNARD FINANCE AUTHORITY (the “**Borrower**”), THE CITY OF OXNARD (the “**City**”), and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “**WIFIA Lender**”), the Borrower and the City hereby request a Disbursement in the amount set forth below in respect of Eligible Project Costs paid or incurred by the Borrower and the City. 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 Borrower’s Authorized Representative (except with respect to item 19) and the City’s Authorized Representative (except with respect to item 18), hereby represent and certify the following:

1.	Project name	Aquifer Storage Recovery (ASR) Project
2.	Borrower name	The City of Oxnard Finance Authority
3.	WIFIA Loan ID	N20107CA
4.	Borrower UEI Number	
5.	Borrower FEIN number	
6.	City UEI Number	
7.	City FEIN number	
8.	Requisition number	
9.	Requested Disbursement amount	\$
10.	Requested date of Disbursement (the “Disbursement Date”)²	

¹ If there is a Servicer for the WIFIA Loan, provide a copy to the Servicer as well and include its notice details here.

11.	Total amounts previously disbursed under the WIFIA Loan Agreement	\$[]
12.	Wire or ACH transfer instructions (please specify method)	[]

13. As of the date hereof, and immediately after giving effect to the Disbursement of WIFIA Loan proceeds requested under this Requisition, (a) no Default or Event of Default and no event of default under any other Related Document shall have occurred and be continuing 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 other Related Document, shall have occurred and be continuing.
14. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since the Effective Date.
15. The aggregate amount of all Disbursements (including the requested Disbursement amount under this Requisition but excluding any interest that is capitalized in accordance with the WIFIA Loan Agreement) does not exceed (a) the maximum principal amount of the WIFIA Loan or (b) the amount of Eligible Project Costs paid or incurred by the Borrower.
16. The Eligible Project Costs for which reimbursement or payment is being requested has not been reimbursed or paid by any previous disbursement of (a) WIFIA Loan proceeds or (b) any other source of funding for the Project as identified in the Project Budget.
17. The City, and each of the City's contractors and subcontractors at all tiers with respect to the Project, has 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.
18. The representations and warranties of the Borrower set forth in the WIFIA Loan Agreement and in each other WIFIA Loan Document 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).
19. The representations and warranties of the City set forth in the WIFIA Loan Agreement and in each other WIFIA Loan Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties

(cont'd from previous page)

² Note this should be the actual disbursement date on which the Borrower requests to receive the funds, not the date that this Requisition form is submitted to the WIFIA Lender.

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

20. The Borrower has delivered all required deliverables under and in compliance with the requirements of Schedule V (*Reporting Requirements*), except as has been otherwise agreed by the WIFIA Lender.³
21. The amount hereby being requested for Disbursement is with respect to Eligible Project Costs for which [all][a portion][none] of the Eligible Project Costs Documentation was previously submitted to and approved by the WIFIA Lender in accordance with Schedule IV (*Requisition Procedures*) and Schedule V (*Reporting Requirements*) of the WIFIA Loan Agreement. The [following table below][attached excel sheet] sets out a summary of any Eligible Project Costs that have not otherwise been previously submitted to the WIFIA Lender for approval, and supporting Eligible Project Costs Documentation in respect of such new Eligible Project Costs is attached hereto.⁴

								WIFIA USE ONLY	
Vendor or Contractor Name ⁵	Invoice Number ⁶	Invoice Date	Payment Date	Invoice Amount	WIFIA Requested Amount ⁷	Activity Type ⁸	Description of Activity ⁹	Approved Amount	Notes

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.

³ The most recent quarterly progress report should set out a summary of the progress of construction of the Project, as well as a general description of the work done for which the funds being requisitioned are being applied and a summary of any material changes/risks. If not, PM should request additional information (including a risk register, if applicable).

⁴ See Schedules IV, V and Exhibit E of the WIFIA Loan Agreement for additional details on EPC Documentation.

⁵ If seeking reimbursement for internal costs, enter "Internally financed activities."

⁶ Vendor's number indicated on the invoice sent to the Borrower.

⁷ 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.

⁸ 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.

⁹ 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.

Date: _____

THE CITY OF OXNARD FINANCE
AUTHORITY,
by its authorized representative

By: _____

Name:

Title: _____

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: _____

THE CITY OF OXNARD,
by its authorized representative

By: _____

Name:

Title: _____

EXHIBIT E

FORM OF CERTIFICATION OF ELIGIBLE PROJECT COSTS DOCUMENTATION

VIA EMAIL

United States Environmental Protection Agency¹
1200 Pennsylvania Avenue NW
WJC-E 7334A
Washington, D.C. 20460
Attention: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

Re: Aquifer Storage Recovery (ASR) Project (WIFIA ID – N20107CA)

Ladies and Gentlemen:

Pursuant to Part C of Schedule V (*Reporting Requirements*) of the WIFIA Loan Agreement, dated as of [date] (the “**WIFIA Loan Agreement**”), by and between THE CITY OF OXNARD FINANCE AUTHORITY (the “**Borrower**”), THE CITY OF OXNARD (the “**City**”), and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “**WIFIA Lender**”), the Borrower hereby presents this certificate in connection with the Borrower’s delivery of Eligible Project Costs Documentation to the WIFIA Lender. Capitalized terms used but not defined herein have the meaning set forth in the WIFIA Loan Agreement.

The undersigned does hereby represent and certify the following:

1. This certificate is being delivered to the WIFIA Lender in connection with the Eligible Project Costs during the period between [] and [] (the “**Quarterly Period**”).
2. A summary of the Eligible Project Costs incurred, invoiced and/or paid (as the case may be) is set out in the [attached excel sheet][table on the following page:]

¹ If there is a Servicer for the WIFIA Loan, provide a copy to the Servicer as well and include its notice details here.

							WIFIA USE ONLY	
Vendor or Contractor Name ²	Invoice Number ³	Invoice Date	Payment Date	Invoice Amount	Activity Type ⁴	Description of Activity ⁵	Approved Amount	Notes

3. The anticipated sources of funding for such Eligible Project Costs are [listed below][set forth in the attached excel sheet].
4. Supporting Eligible Project Costs Documentation for the above Eligible Project Costs for the Quarterly Period are also attached hereto.⁶
5. The most recently delivered Construction Monitoring Report delivered in accordance with Part C of Schedule V (*Reporting Requirements*) sets out a summary of the progress of construction of the Project, no change has occurred since the date of such Construction Monitoring Report that could reasonably be expected to cause a Material Adverse Effect, and the Borrower is otherwise in compliance with Part C of Schedule V (*Reporting Requirements*).

Date: _____

**THE CITY OF OXNARD FINANCE
AUTHORITY⁷**

By: _____

Name: _____

Title: _____

² If the expectation is to seek reimbursement for internal costs, enter "Internally financed activities."

³ Vendor's number indicated on the invoice sent to the Borrower.

⁴ 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 on other Project Obligations during construction, 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.

⁵ 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 documentation.

⁶ See Schedules IV and V of the WIFIA Loan Agreement for additional details on EPC Documentation.

⁷ To be executed by the Borrower's Authorized Representative.

DRAFT

EXHIBIT F

FORM OF CONSTRUCTION MONITORING REPORT

VIA EMAIL

United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
WJC-E 7334A
Washington, DC 20460
Attn: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

Re: Aquifer Storage Recovery (ASR) Project (WIFIA ID – N20107CA)

This Construction Monitoring Report for the period of *[insert relevant quarterly period]* (the “**Quarterly Period**”) is provided pursuant to Part D of Schedule V (*Reporting Requirements*) of the WIFIA Loan Agreement, dated as of *[date]* (the “**WIFIA Loan Agreement**”), by and between THE CITY OF OXNARD FINANCE AUTHORITY (the “**Borrower**”), THE CITY OF OXNARD (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 Construction Monitoring 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 Construction Monitoring 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: _____

**THE CITY OF OXNARD FINANCE
AUTHORITY**

By: _____

Name: _____

Title: _____

APPENDIX A ¹ / ²

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										

Project Scope					Project Schedule						Project Costs		
Project Component	Complete (Y/N)	Description	Location	Covered by existing NEPA?	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

¹ Appendix A summarizes all project components that will be bid in the next quarter, are currently under construction, or have completed construction. It should be a cumulative list of projects that is updated each quarter. A Microsoft Excel spreadsheet with similar table format is acceptable.

² Include the appropriate option and delete the other option prior to circulating a draft to the Borrower.

EXHIBIT G

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of Borrower]

[Date]

VIA EMAIL

United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
WJC-E 7334A
Washington, DC 20460
Attn: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

Project: Aquifer Storage Recovery (ASR) Project (WIFIA ID – N20107CA)

Dear Director:

This Notice is provided pursuant to Part E of Schedule V (*Reporting Requirements*) of that certain WIFIA Loan Agreement (the “**WIFIA Loan Agreement**”), dated as of *[date]*, by and between THE CITY OF OXNARD FINANCE AUTHORITY (the “**Borrower**”), THE CITY OF OXNARD (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 Borrower’s Authorized Representative and not in my individual capacity, do hereby certify to the WIFIA Lender that:

- (a) the Project has satisfied each of the requirements for Substantial Completion set forth in the Construction Contracts;
- (b) Substantial Completion has been declared under each of the relevant Construction Contracts and copies of the notices of Substantial Completion under such agreements are attached to this certification;
- (c) Substantial Completion, as defined in the WIFIA Loan Agreement, has been achieved and the Substantial Completion Date is ; and
- (d) The total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

**THE CITY OF OXNARD FINANCE
AUTHORITY,**
by its authorized representative

Exhibit G-1

By: _____
Name:
Title:

DRAFT

EXHIBIT H-1

OPINIONS REQUIRED FROM GENERAL COUNSEL TO THE BORROWER

An opinion of the counsel of the Borrower, dated as of the Effective Date, to the effect that:

(a) the Borrower is duly formed, validly existing, and in good standing under the laws of the jurisdiction of its organization;

(b) the Borrower has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the WIFIA Loan Documents to which it is a party;

(c) the execution and delivery by the Borrower of, and the performance of its respective obligations under, the WIFIA Loan Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action, and other than the Borrower's Organizational Documents and the Indenture Documents, no further instruments or documents 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;

(d) the Borrower has duly executed and delivered each WIFIA Loan Document to which it is a party and each such WIFIA Loan Document constitutes the legal, valid and binding obligation of such party; enforceable against such party in accordance with their respective terms;

(e) 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 such party of, and the performance of such party under, any WIFIA Loan 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;

(f) the execution and delivery by the Borrower of, and compliance with the provisions of, the WIFIA Loan Documents to which it is a party in each case do not (i) violate the Organizational Documents of the Borrower, (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 such counsel to which the Borrower is a party, or to the best of such counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject;

(g) the Borrower is not an investment company required to register under the Investment Company Act of 1940, as amended; and

(h) to the knowledge of such counsel 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.

EXHIBIT H-2

OPINIONS REQUIRED FROM BOND COUNSEL TO THE BORROWER

An opinion of bond counsel, dated as of the Effective Date, to the effect that:

(a) The Borrower has been duly created and validly exists as a joint exercise of powers agency of the State under and pursuant to the laws of the State (including the [*Borrower enabling legislation*] as amended to the date hereof) (the “**Borrower Act**”), with good right and power to issue the WIFIA Bond.

(b) The Borrower has the right and power under the laws of the State, including the Borrower Act, to enter into the Indenture Documents, the WIFIA Loan Documents and the WIFIA Bond, and each has been duly authorized, executed and delivered by the Borrower, is in full force and effect, and constitutes a legal, valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its respective terms and conditions.

(c) the WIFIA Bond (i) is secured by the Pledged Collateral, (ii) is a Bond (as defined in the Indenture) entitled to the benefits of a Bond under the Indenture, (iii) is enforceable under the laws of the State without any further action by the Borrower or any other Person, and (iv) ranks *pari passu* in right of payment and right of security with all Senior Obligations and are senior in right of payment and right of security to all Subordinated Obligations;

(d) the Indenture creates the valid and binding assignment and pledge of the Pledged Collateral to secure the payment of the principal of, interest on, and other amounts payable in respect of, the WIFIA Bond, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act;

(e) all actions by the Borrower that are required for the application of Revenues as required under the Indenture and under the WIFIA Loan Agreement have been duly and lawfully made;

(f) the Borrower has complied with the requirements of State law to lawfully pledge the Pledged Collateral and use the Revenues as required by the terms of the Indenture and the WIFIA Loan Agreement;

(g) [the Borrower is not eligible to be a debtor in either a voluntary or involuntary case under the United States Bankruptcy Code]; and

(h) [the Borrower is not entitled to claim governmental immunity in any breach of contract action under the WIFIA Loan Agreement or the WIFIA Bond or by the Trustee under the Indenture Documents].

EXHIBIT H-3

OPINIONS REQUIRED FROM GENERAL COUNSEL TO THE CITY

An opinion of the counsel of the City, dated as of the Effective Date, to the effect that:

(a) the City is duly formed, validly existing, and in good standing under the laws of the jurisdiction of its organization;

(b) 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 Loan Documents to which it is a party;

(c) the execution and delivery by the City of, and the performance of its respective obligations under, the WIFIA Loan Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action, and other than the City's Organizational Documents and the Indenture Documents, no further instruments or documents 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;

(d) the City has duly executed and delivered each WIFIA Loan Document to which it is a party and each such WIFIA Loan Document constitutes the legal, valid and binding obligation of such party; enforceable against such party in accordance with their respective terms;

(e) 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 such party of, and the performance of such party under, any WIFIA Loan 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 City;

(f) the execution and delivery by the City of, and compliance with the provisions of, the WIFIA Loan Documents to which it is a party in each case do not (i) violate the Organizational Documents of the City, (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 such counsel to which the City is a party, or to the best of such counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the City is subject;

(g) the City is not an investment company required to register under the Investment Company Act of 1940, as amended; and

(h) to the knowledge of such counsel 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 Related Documents or the System (including the Project) that are pending.

EXHIBIT H-4

OPINIONS REQUIRED FROM BOND COUNSEL TO THE CITY

An opinion of bond counsel, dated as of the Effective Date, to the effect that:

(a) The City has been duly created and validly exists as a municipal corporation of the State under and pursuant to the laws of the State (including the [*City enabling legislation*] as amended to the date hereof) (the “**City Act**”), with good right and power to issue the WIFIA Bond.

(b) The City has the right and power under the laws of the State, including the City Act, to enter into the Indenture Documents, the WIFIA Loan Documents and the WIFIA Bond, and each has been duly authorized, executed and delivered by the City, is in full force and effect, and constitutes a legal, valid and binding agreement of the City enforceable against the City in accordance with its respective terms and conditions.

(c) the WIFIA Bond (i) is secured by the Pledged Collateral, (ii) is a Bond (as defined in the Indenture) entitled to the benefits of a Bond under the Indenture, (iii) is enforceable under the laws of the State without any further action by the City or any other Person, and (iv) ranks *pari passu* in right of payment and right of security with all Senior Obligations and are senior in right of payment and right of security to all Subordinated Obligations;

(d) the Indenture creates the valid and binding assignment and pledge of the Pledged Collateral to secure the payment of the principal of, interest on, and other amounts payable in respect of, the WIFIA Bond, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act;

(e) all actions by the City that are required for the application of Revenues as required under the Indenture and under the WIFIA Loan Agreement have been duly and lawfully made;

(f) the City has complied with the requirements of State law to lawfully pledge the Pledged Collateral and use the Revenues as required by the terms of the Indenture and the WIFIA Loan Agreement;

(g) [the City is not eligible to be a debtor in either a voluntary or involuntary case under the United States Bankruptcy Code]; and

(h) [the City is not entitled to claim governmental immunity in any breach of contract action under the WIFIA Loan Agreement or the WIFIA Bond or by the Trustee under the Indenture Documents].

EXHIBIT I

FORM OF CERTIFICATE OF TRUSTEE

THE CITY OF OXNARD FINANCE AUTHORITY

**With respect to the WIFIA Bond,
Aquifer Storage Recovery Project
(WIFIA ID – N20107CA)**

The undersigned, [] (the “**Trustee**”), by its duly appointed, qualified and authorized representative below, certifies with respect to the above referenced bond (the “**WIFIA Bond**”) dated as of [], 2022, as follows (capitalized terms used in this Certificate which are not otherwise defined shall have the meanings given to such terms in the Indenture (as defined below)):

1. That the Trustee is a national association duly organized and validly existing under the laws of the United States of America.

2. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Trustee of its duties and obligations under the documents pertaining to the issuance of the WIFIA Bond have been obtained by the Trustee and are in full force and effect.

3. That the documents pertaining to the issuance of the WIFIA Bond to which the Trustee is a party were executed by the Trustee and the WIFIA Bond was authenticated on behalf of the Trustee by one or more of the persons whose names and offices appear on Annex One attached hereto and made part hereof, that each person was at the time of the execution of such documents and the authentication of the WIFIA Bond and now is duly appointed, qualified and acting incumbent of his or her respective office, that each such person was authorized to execute such documents and to authenticate the WIFIA Bond, and that the signature appearing after the name of each such person is a true and correct specimen of that person’s genuine signature.

4. That the undersigned has the power and authority to act as Trustee and accept the trusts conveyed to it under the Indenture (“**Trusts**”), has accepted the Trusts so conveyed and in so accepting the Trusts and so acting is not in violation of any provision of its articles of association or bylaws, any law, regulation or court or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.

5. That receipt is acknowledged of all instruments, certifications and other documents or confirmations required to be received by the Trustee pursuant to Section [] of that certain Indenture (the “**Indenture**”), dated as of [], 2022, between the City of Oxnard Finance Authority (the “**Borrower**”), the City of Oxnard (the “**City**”), and the Trustee.

7. That receipt is also acknowledged of that certain WIFIA Loan Agreement, dated as of [], 2022 (the “**WIFIA Loan Agreement**”), between the Borrower, the City, and the United States Environmental Protection Agency, acting by and through the Administrator.

8. That the Trustee accepts its appointment and agrees to perform the duties and responsibilities of Trustee for and in respect of the WIFIA Bond as set forth in the Indenture and the WIFIA Loan Agreement, including from time to time redeeming all or a portion of the WIFIA Bond as provided in Section [] of the Indenture. In accepting such duties and responsibilities, the Trustee shall be entitled to all of the privileges, immunities, rights and protections set forth in Section [] of the Indenture.

9. That all funds and accounts for the payment of the WIFIA Bond pursuant to the Indenture [(including, but not limited to, the WIFIA Debt Service Account[and the WIFIA Debt Service Reserve Account])] have been established as provided in the Indenture.

Dated: [], 20[]

[TRUSTEE]

By: _____
Name:
Title:

City of Oxnard Financing Authority
Estimated/Projected 2022 WIFIA Loan Amortization
Aquifer Storage Recovery (ASR) Project Funding (49% of Project Cost Total)
3/23/2022 30-Year Treasury Rate + 0.4% Buffer

Period	Principal	Coupon	Gross Interest	Pre Completion Interest (Increases Loan Amount)	Net Debt Service	Annual Servicing Fees	DS + Servicing Fees	Total Fiscal Year DS + Servicing
Ending								
6/1/2022	-		-		-		-	-
6/1/2023	-		166,874	(166,874)	-	21,300	21,300	21,300
6/1/2024	-		226,249	(226,249)	-	10,650	10,650	10,650
6/1/2025	-		352,244	(352,244)	-	10,650	10,650	10,650
6/1/2026	-		880,646	(880,646)	-	10,650	10,650	10,650
6/1/2027	-		1,405,630	(1,405,630)	-	10,650	10,650	10,650
6/1/2028	-	3.000%	1,546,119	-	1,546,119	8,000	1,554,119	1,554,119
6/1/2029	-	3.000%	1,546,119	-	1,546,119	8,240	1,554,359	1,554,359
6/1/2030	-	3.000%	1,546,119	-	1,546,119	8,487	1,554,607	1,554,607
6/1/2031	-	3.000%	1,546,119	-	1,546,119	8,742	1,554,861	1,554,861
6/1/2032	-	3.000%	1,546,119	-	1,546,119	9,004	1,555,124	1,555,124
6/1/2033	-	3.000%	1,546,119	-	1,546,119	9,274	1,555,394	1,555,394
6/1/2034	-	3.000%	1,546,119	-	1,546,119	9,552	1,555,672	1,555,672
6/1/2035	-	3.000%	1,546,119	-	1,546,119	9,839	1,555,958	1,555,958
6/1/2036	-	3.000%	1,546,119	-	1,546,119	10,134	1,556,254	1,556,254
6/1/2037	-	3.000%	1,546,119	-	1,546,119	10,438	1,556,558	1,556,558
6/1/2038	-	3.000%	1,546,119	-	1,546,119	10,751	1,556,871	1,556,871
6/1/2039	-	3.000%	1,546,119	-	1,546,119	11,074	1,557,193	1,557,193
6/1/2040	-	3.000%	1,546,119	-	1,546,119	11,406	1,557,526	1,557,526
6/1/2041	1,797,198	3.000%	1,546,119	-	3,343,317	11,748	3,355,066	3,355,066
6/1/2042	1,851,114	3.000%	1,492,204	-	3,343,317	12,101	3,355,418	3,355,418
6/1/2043	1,906,647	3.000%	1,436,670	-	3,343,317	12,464	3,355,781	3,355,781
6/1/2044	1,963,847	3.000%	1,379,471	-	3,343,317	12,838	3,356,155	3,356,155
6/1/2045	2,022,762	3.000%	1,320,555	-	3,343,317	13,223	3,356,540	3,356,540
6/1/2046	2,083,445	3.000%	1,259,872	-	3,343,317	13,619	3,356,937	3,356,937
6/1/2047	2,145,948	3.000%	1,197,369	-	3,343,317	14,028	3,357,345	3,357,345
6/1/2048	2,210,327	3.000%	1,132,991	-	3,343,317	14,449	3,357,766	3,357,766
6/1/2049	2,276,636	3.000%	1,066,681	-	3,343,317	14,882	3,358,200	3,358,200
6/1/2050	2,344,935	3.000%	998,382	-	3,343,317	15,329	3,358,646	3,358,646
6/1/2051	2,415,283	3.000%	928,034	-	3,343,317	15,789	3,359,106	3,359,106
6/1/2052	2,487,742	3.000%	855,575	-	3,343,317	16,262	3,359,580	3,359,580
6/1/2053	2,562,374	3.000%	780,943	-	3,343,317	16,750	3,360,067	3,360,067
6/1/2054	2,639,246	3.000%	704,072	-	3,343,317	17,253	3,360,570	3,360,570
6/1/2055	2,718,423	3.000%	624,894	-	3,343,317	17,770	3,361,088	3,361,088
6/1/2056	2,799,976	3.000%	543,342	-	3,343,317	18,303	3,361,621	3,361,621
6/1/2057	2,883,975	3.000%	459,342	-	3,343,317	18,853	3,362,170	3,362,170
6/1/2058	2,970,494	3.000%	372,823	-	3,343,317	19,418	3,362,735	3,362,735
6/1/2059	3,059,609	3.000%	283,708	-	3,343,317	20,001	3,363,318	3,363,318
6/1/2060	3,151,397	3.000%	191,920	-	3,343,317	20,601	3,363,918	3,363,918
6/1/2061	3,245,939	3.000%	97,378	-	3,343,317	21,219	3,364,536	3,364,536
6/1/2062	-		-	-	-		-	-
	51,537,316*		41,803,542	(3,031,643)	90,309,215	525,741	90,834,956	90,834,956

*Total higher than original expected loan amount (\$48.5M) due to \$3M of pre-completion interest, which is capitalized into the loan after closing and between 12/1/2022 and 6/1/2027 to increase the outstanding principal.

City of Oxnard

WIFIA Financing for Water Infrastructure Improvements

PRESENTATION TO FINANCE & GOVERNANCE COMMITTEE

APRIL 12, 2022



Recommendation

- ▶ That the Finance and Governance Committee recommend:
 1. City Council adopt a resolution approving an Installment Purchase Agreement, Indenture of Trust, a WIFIA Loan Agreement, and a WIFIA Loan Term Sheet with respect to the issuance by the City of Oxnard Financing Authority of bonds in an aggregate principal amount not to exceed \$55,000,000 and other matters pertaining thereto.
 2. That the Board of Directors of the City of Oxnard Financing Authority adopt a resolution approving an Installment Purchase Agreement, Indenture of Trust, a WIFIA Loan Agreement, and a WIFIA Loan Term Sheet with respect to the issuance by the City of Oxnard Financing Authority of bonds in an aggregate principal amount not to exceed \$55,000,000 and other matters pertaining thereto.

Background

- ▶ Water Infrastructure Finance and Innovation Act (“WIFIA”) program was authorized in 2014 to help local agencies finance needed water infrastructure projects
- ▶ City submitted a letter of interest in October 2020, was formally invited to apply
- ▶ City submitted formal application in September 2021
- ▶ From October 2021 to March 2022, City staff have been in frequent communication with EPA staff regarding the project engineering, City’s ability to repay, and the structure of the financing

Needed Water Infrastructure

- ▶ Aquifer Storage and Recovery (“ASR”) Project
- ▶ Increase Capacity of Advanced Water Purification Facility (“AWPF”) from 6.25 to 12.5 million gallons per day
- ▶ Mechanical and electrical upgrades to blending stations 1, 3, and 6
- ▶ \$85 million in total capital costs, including design, planning, construction and contingency, of which the WIFIA loan can cover up to 49% of eligible costs

WIFIA Financing Benefits to the City

Extended maturity Terms

- 40-year final maturity for City's loan

Low, fixed interest rate based on US Treasuries

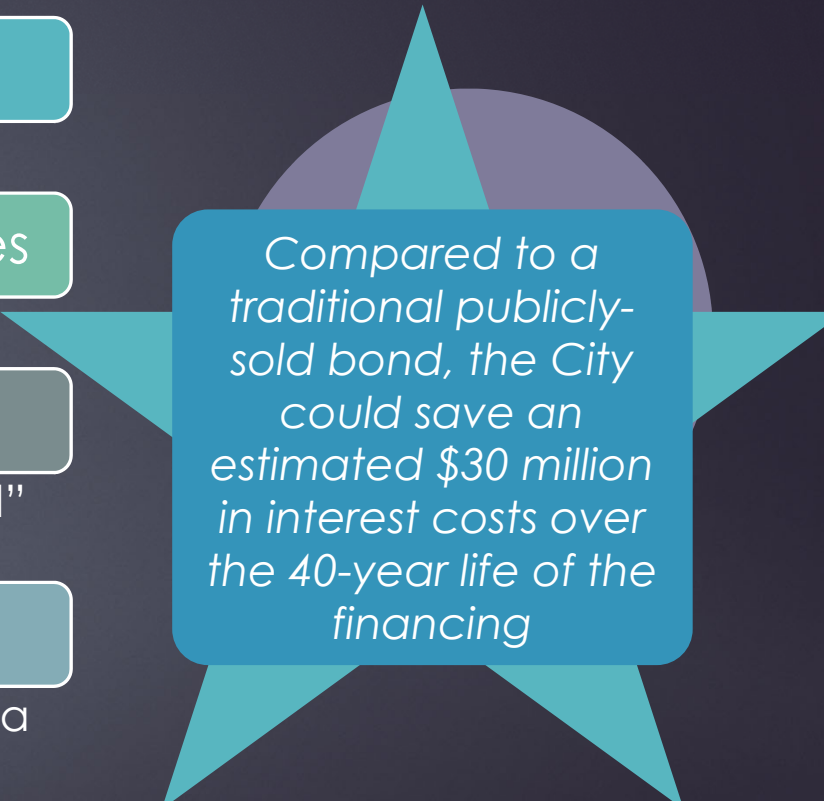
- Estimated 3.0% rate for 40-year debt

Flexible Structuring

- No principal repayment until 2041, "wrapped around" outstanding Water Fund debt

Beneficial prepayment terms

- City can prepay the loan in full on any date; prepay a portion of the loan on any interest payment date

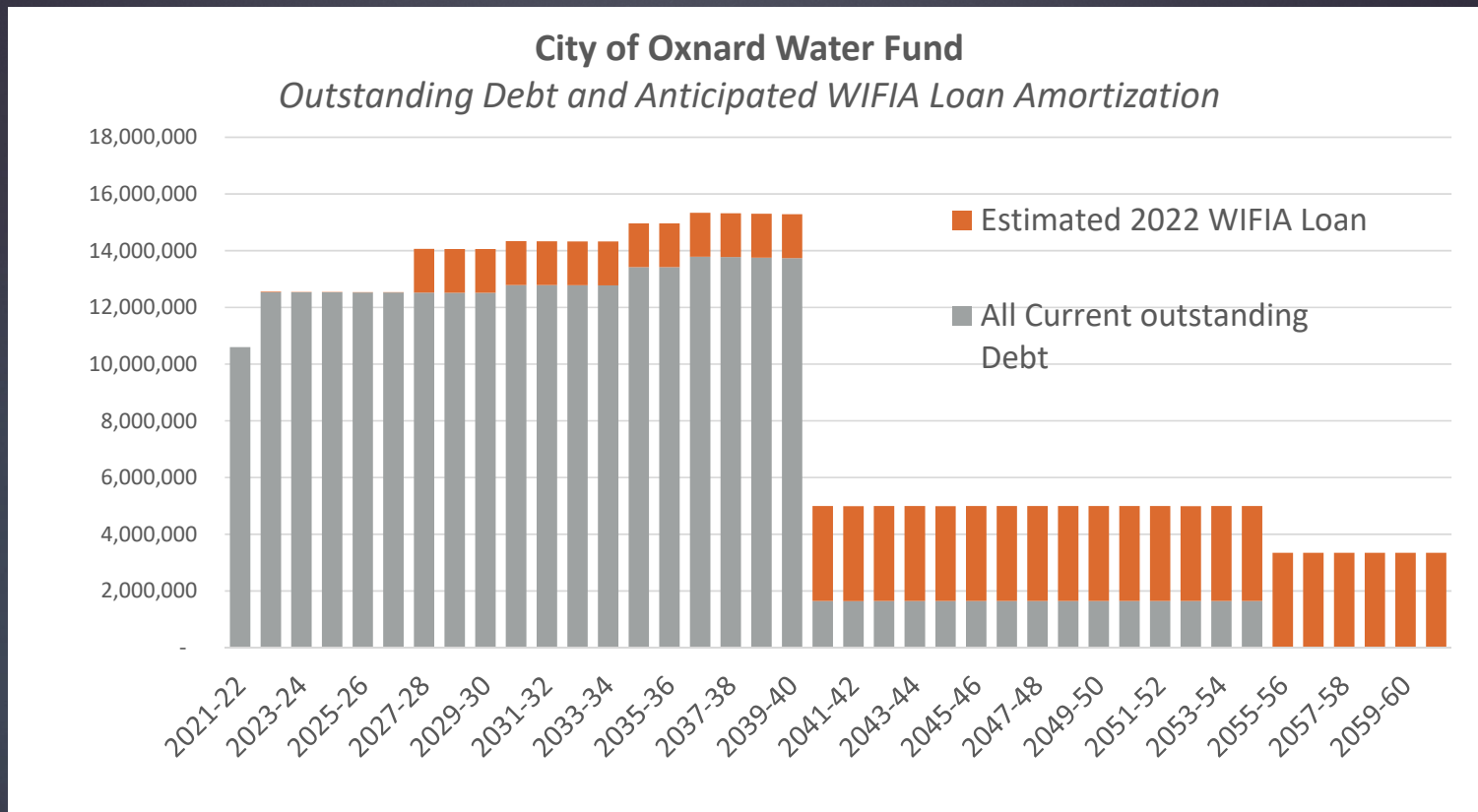


Compared to a traditional publicly-sold bond, the City could save an estimated \$30 million in interest costs over the 40-year life of the financing

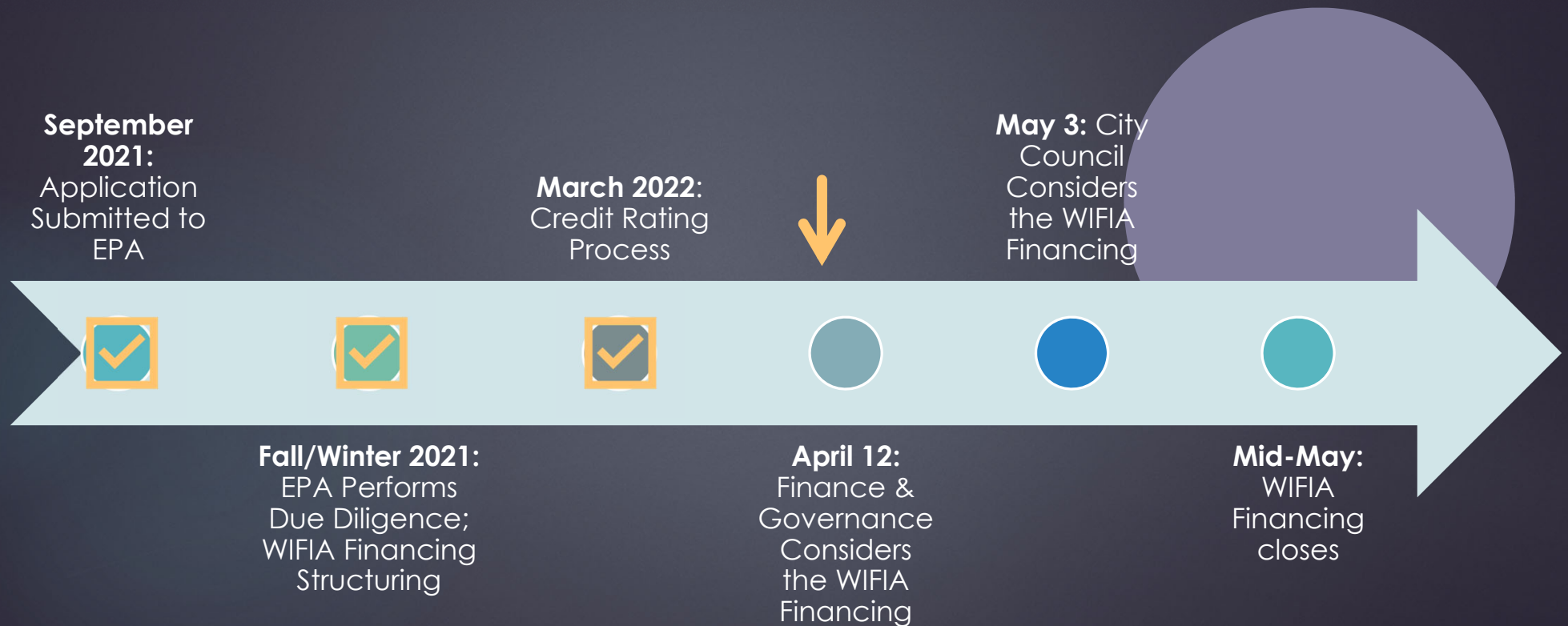
Notable WIFIA Financing Requirements

- ▶ 51% of eligible costs must come from City match
 - ❑ City expects to issue Bonds in 2023-24 to finance the 51% share
- ▶ Requires City to maintain net revenues at 110% of debt service due in each year
 - ❑ Existing Water Debt has 100% requirement
 - ❑ City's 2020-21 net revenues were 167% of debt service
 - ❑ Future Water Bonds will need this same 110% covenant in order to be considered parity debt
- ▶ In other respects, the WIFIA financing will be structured very similarly to other City Water Fund Debt

Estimated Water Fund Debt Service



Tentative Schedule



Recommendation

- ▶ That the Finance and Governance Committee recommend:
 1. City Council adopt a resolution approving an Installment Purchase Agreement, Indenture of Trust, a WIFIA Loan Agreement, and a WIFIA Loan Term Sheet with respect to the issuance by the City of Oxnard Financing Authority of bonds in an aggregate principal amount not to exceed \$55,000,000 and other matters pertaining thereto.
 2. That the Board of Directors of the City of Oxnard Financing Authority adopt a resolution approving an Installment Purchase Agreement, Indenture of Trust, a WIFIA Loan Agreement, and a WIFIA Loan Term Sheet with respect to the issuance by the City of Oxnard Financing Authority of bonds in an aggregate principal amount not to exceed \$55,000,000 and other matters pertaining thereto.

Questions?

