



Council Meeting Agenda

AUGUST 25, 2021
COUNCIL CHAMBERS
5:00 P.M. Regular Session
201 N. Broadway, Escondido, CA 92025

MAYOR	Paul McNamara
DEPUTY MAYOR	Michael Morasco
COUNCIL MEMBERS	Consuelo Martinez Tina Inscoe Joe Garcia
CITY MANAGER	Sean McGlynn
CITY CLERK	Zack Beck
CITY ATTORNEY	Michael McGuinness
DIRECTOR OF COMMUNITY DEVELOPMENT	Adam Finestone (Interim)
DIRECTOR OF ENGINEERING SERVICES	Julie Procopio

Public Comment: To submit comments in writing, please do so at the following link:
<https://www.escondido.org/agenda-position.aspx>.

The meeting will be available for viewing via public television on Cox Communications Channel 19 (Escondido only). The meeting will also be live streamed online at the following link:
<https://www.escondido.org/meeting-broadcasts.aspx>

In the event a quorum of the City Council loses electrical power or suffers an internet connection outage not corrected within 15 minutes, the meeting will be adjourned. Any items noticed as public hearings will be continued to the next regularly scheduled meeting of the City Council. Any other agenda items the Council has not taken action on will be placed on a future agenda.

ELECTRONIC MEDIA:

Electronic media which members of the public wish to be used during any public comment period should be submitted to the City Clerk's Office at least 24 hours prior to the Council meeting at which it is to be shown.

The electronic media will be subject to a virus scan and must be compatible with the City's existing system. The media must be labeled with the name of the speaker, the comment period during which the media is to be played and contact information for the person presenting the media.

The time necessary to present any electronic media is considered part of the maximum time limit provided to speakers. City staff will queue the electronic information when the public member is called upon to speak. Materials shown to the Council during the meeting are part of the public record and may be retained by the Clerk.

The City of Escondido is not responsible for the content of any material presented, and the presentation and content of electronic media shall be subject to the same responsibilities regarding decorum and presentation as are applicable to live presentations.



Council Meeting Agenda

**August 25, 2021
5:00 P.M. Meeting**

Escondido City Council

CALL TO ORDER

MOMENT OF REFLECTION:

City Council agendas allow an opportunity for a moment of silence and reflection at the beginning of the evening meeting. The City does not participate in the selection of speakers for this portion of the agenda, and does not endorse or sanction any remarks made by individuals during this time. If you wish to be recognized during this portion of the agenda, please notify the City Clerk in advance.

FLAG SALUTE

ROLL CALL: Garcia, Inscoc, Martinez, Morasco, McNamara

PRESENTATIONS: Certificate of Recognition for the Witman Family Foundation
Library Update

ORAL COMMUNICATIONS

The public may address the Council on any item that is not on the agenda and that is within the subject matter jurisdiction of the legislative body. State law prohibits the Council from discussing or taking action on such items, but the matter may be referred to the City Manager/staff or scheduled on a subsequent agenda. (Please refer to the back page of the agenda for instructions.) NOTE: Depending on the number of requests, comments may be reduced to less than 3 minutes per speaker and limited to a total of 15 minutes. Any remaining speakers will be heard during Oral Communications at the end of the meeting.

CONSENT CALENDAR

Items on the Consent Calendar are not discussed individually and are approved in a single motion. However, Council members always have the option to have an item considered separately, either on their own request or at the request of staff or a member of the public.

- [1. AFFIDAVITS OF PUBLICATION, MAILING AND POSTING \(COUNCIL/RRB\)](#)**

2. **APPROVAL OF WARRANT REGISTER (Council)**

Request the City Council approve the City Council and Housing Successor Agency warrant numbers:

- 355245 - 355438 dated August 4, 2021
- 355439 - 355597 dated August 11, 2021

Staff Recommendation: **Approval (Finance Department: Christina Holmes)**

3. **APPROVAL OF MINUTES: Regular Meeting of August 11, 2021**

4. **APPROVAL OF FINANCING AGREEMENT WITH THE CA IBANK FOR CONSTRUCTION OF THE SAN PASQUAL UNDERGROUNDING PROJECT -**

Request the City Council approve authorizing the execution of a financing agreement in the amount of \$25 million with the California Infrastructure and Economic Development Bank (IBank) for construction of the San Pasqual Undergrounding Project.

Staff Recommendation: **Approval (Utilities Department: Christopher McKinney)**

RESOLUTION NO. 2021-120

5. **HALE AVENUE RESOURCE RECOVERY FACILITY (HARRF) INFLUENT PUMP STATION SCREENINGS CONVEYANCE SYSTEM PROJECT BID AWARD -**

Request the City Council approve authorizing the Mayor to execute a Public Improvement Agreement with the lowest responsive and responsible bidder for construction of the HARRF Influent Pump Station Screenings Conveyance System Project.

Staff Recommendation: **Approval (Utilities Department: Christopher McKinney)**

RESOLUTION NO. 2021-98

6. **FIRST AMENDMENT TO REIMBURSEMENT AGREEMENT TO ADD EVALUATION OF THE MOUNTAIN HOUSE PROJECT ZONE INTO THE PROPOSED COMMUNITY FACILITIES DISTRICT FOR THE DEL PRADO PROJECT -**

Request the City Council approve authorizing the Mayor to execute a First Amendment to the Reimbursement Agreement with CWC ESCONDIDO 113, LLC, for the Del Prado Project. The developer, CAL West, desires to add a second project to be included in the evaluation for a facilities Community Facilities District (CFD). The second project, Mountain House, formerly known as Highpoint, consists of 28 single family homes. The total estimated costs have been amended to include additional Special Tax Advisor, City Staff time, and Market Price Study budget. CAL West has offered to annex the projects into Citywide Services CFD 2020-1 if the proposed Facilities CFD is approved.

Staff Recommendation: **Approval (Engineering Services Department: Julie Procopio)**

RESOLUTION NO. 2021-115

7. **NOTICE OF COMPLETION FOR CRANSTON SELF-STORAGE AND RESIDENTIAL SUBDIVISION (SUB15-0031; TRACT 900) LOCATED AT 2319 CRANSTON DRIVE -**

Request the City Council approve and accept the public improvements and authorize City staff to file a Notice of Completion (NOC) for Self Storage SUB15-0031; Tract 900.

Staff Recommendation: **Approval (Engineering Services Department: Julie Procopio)**

RESOLUTION NO. 2021-127

8. FISCAL YEAR 2020 URBAN AREA SECURITY INITIATIVE GRANT AND BUDGET ADJUSTMENT -

Request the City Council approve authorizing the Escondido Police Department to accept a Fiscal Year 2020 Urban Area Security Initiative (UASI) Grant in the amount of \$70,481; authorize the Chief of Police or his designee to execute grant documents on behalf of the City; and approve budget adjustments need to spend grant funds. The Escondido Police and Fire Department receive FY2020 UASI funding. The funding must be spent on the following: \$50,000 for Next Generation CAD to CAD Information Sharing; and \$20,481 for Fire Department and Police Department training - including Confined Space Rescue Tech, Rescue Systems 1, CFED Conference, California Narcotics Canine Conference, Dark Web Conference, Southern California Gang Conference and Western States Canine Association Conference.

Staff Recommendation: **Approval (Police Department: Edward Varso)**

CONSENT RESOLUTIONS AND ORDINANCES (COUNCIL/RRB)

The following Resolutions and Ordinances were heard and acted upon by the City Council/RRB at a previous City Council/Mobilehome Rent Review meeting. (The title of Ordinances listed on the Consent Calendar are deemed to have been read and further reading waived.)

9. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, APPROVING AN AMENDMENT TO THE DOWNTOWN SPECIFIC PLAN TO ADDRESS GROUND-FLOOR RETAIL REQUIREMENTS AND ADOPTING AN ADDENDUM TO AN ADOPTED EIR PREPARED FOR THE PROJECT -

Approved on August 11, 2021 with a vote of 5/0.

ORDINANCE NO. 2021-08 (Second Reading and Adoption)

FUTURE AGENDA

10. FUTURE AGENDA -

The purpose of this item is to identify issues presently known to staff or which members of the City Council wish to place on an upcoming City Council agenda. Council comment on these future agenda items is limited by California Government Code Section 54954.2 to clarifying questions, brief announcements, or requests for factual information in connection with an item when it is discussed.

Staff Recommendation: **None (City Clerk's Office: Zack Beck)**

COUNCIL MEMBERS SUBCOMMITTEE REPORTS AND OTHER REPORTS

CITY MANAGER'S WEEKLY ACTIVITY REPORT

The most current information from the City Manager regarding Economic Development, Capital Improvement Projects, Public Safety and Community Development. This report is also available on the City's website, www.escondido.org.

- [WEEKLY ACTIVITY REPORT -](#)

ORAL COMMUNICATIONS

The public may address the Council on any item that is not on the agenda and that is within the subject matter jurisdiction of the legislative body. State law prohibits the Council from discussing or taking action on such items, but the matter may be referred to the City Manager/staff or scheduled on a subsequent agenda. Speakers are limited to only one opportunity to address the Council under Oral Communications.

ADJOURNMENT

UPCOMING MEETING SCHEDULE				
Date	Day	Time	Meeting Type	Location
September 1	Wednesday	4:00 & 5:00 p.m.	Regular Meeting	Council Chambers
September 8	-	-	No Meeting (Labor Day)	-
September 15	Wednesday	4:00 & 5:00 p.m.	Regular Meeting	Council Chambers
September 22	-	-	No Meeting (League of CA Cities)	-

TO ADDRESS THE COUNCIL

The public may address the City Council on any agenda item. Please complete a Speaker's form and give it to the City Clerk. Submission of Speaker forms prior to the discussion of an item is highly encouraged. Comments are generally limited to 3 minutes.

If you wish to speak concerning an item not on the agenda, you may do so under "Oral Communications." Please complete a Speaker's form as noted above.

Handouts for the City Council should be given to the City Clerk. To address the Council, use the podium in the center of the Chambers, STATE YOUR NAME FOR THE RECORD and speak directly into the microphone.

AGENDA, STAFF REPORTS AND BACK-UP MATERIALS ARE AVAILABLE:

- Online at <http://www.escondido.org/meeting-agendas.aspx>
- In the City Clerk's Office at City Hall
- Placed in the Council Chambers (See: City Clerk/Minutes Clerk) immediately before and during the Council meeting.

AVAILABILITY OF SUPPLEMENTAL MATERIALS AFTER AGENDA POSTING: Any supplemental writings or documents provided to the City Council regarding any item on this agenda will be made available for public inspection in the City Clerk's Office located at 201 N. Broadway during normal business hours, or in the Council Chambers while the meeting is in session.

LIVE BROADCAST

Council meetings are broadcast live on Cox Cable Channel 19 and U-verse Channel 99 – Escondido Gov TV. They can also be viewed the following Sunday and Monday evenings at 6:00 p.m. on those same channels. The Council meetings are also available live via the Internet by accessing the City's website at www.escondido.org, and clicking the "Live Streaming –City Council Meeting now in progress" button on the home page.

Please turn off all cellular phones and pagers while the meeting is in session.

**The City Council is scheduled to meet the first four Wednesdays
of the month at 4:00 in Closed Session and 5:00 in Open Session.
(Verify schedule with City Clerk's Office)**

**Members of the Council also sit as the Successor Agency to the Community Development
Commission, Escondido Joint Powers Financing Authority,
and the Mobilehome Rent Review Board.**

**CITY HALL HOURS OF OPERATION
Monday-Friday 8:00 a.m. to 5:00 p.m.**



If you need special assistance to participate in this meeting, please contact our ADA Coordinator at 839-4643. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility.

Listening devices are available for the hearing impaired – please see the City Clerk.



A F F I D A V I T S

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I T E M

P O S T I N G



CITY COUNCIL STAFF REPORT

Consent Item No. 2

August 25, 2021

File No. 0400-40

SUBJECT: Approval of Warrants

DEPARTMENT: Finance Department

RECOMMENDATION:

Request approval for City Council and Housing Successor Agency warrant numbers:

355245 – 355438 dated August 4, 2021

355439 – 355597 dated August 11, 2021

FISCAL ANALYSIS:

The total amount of the warrants for the following periods are as follows:

July 29 – August 4, 2021, is \$ 591,697.27

August 5 – August 11, 2021, is \$ 3,105,460.55

BACKGROUND:

The Escondido Municipal Code Section 10-49 states that warrants or checks may be issued and paid prior to audit by the City Council, provided the warrants or checks are certified and approved by the Director of Finance as conforming to the current budget. These warrants or checks must then be ratified and approved by the City Council at the next regular Council meeting.

**August 11, 2021
4:00 p.m. Meeting**

Escondido City Council

CALL TO ORDER

The Regular Meeting of the Escondido City Council was called to order at 4:00 p.m. on July 21, 2021 in the Parkview Room at City Hall with Mayor McNamara presiding.

ATTENDANCE

The following members were present: Councilmember Joe Garcia, Councilmember Tina Inscoc, Councilmember Consuelo Martinez, Deputy Mayor Michael Morasco, and Mayor Paul McNamara. Quorum present.

ORAL COMMUNICATIONS

None.

CLOSED SESSION: (COUNCIL/RRB)

I. CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Government Code §54956.8)

Property: 1050 N. Broadway, Escondido

City Negotiators: Sean McGlynn (City Manager), Michael McGuinness (City Attorney) and/or designees

Negotiating Parties: American Heritage Education Foundation

Under Negotiation: Price and Terms of Lease

II. CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION (Government Code §54956(d)(2))

a. Claim of Jamie Zeller

ADJOURNMENT

Mayor McNamara adjourned the meeting at 4:50 p.m.

MAYOR

CITY CLERK

**August 11, 2021
5:00 P.M. Meeting**

Escondido City Council

CALL TO ORDER

The Regular Meeting of the Escondido City Council was called to order at 5:00 p.m. August 21, 2021 in the City Council Chambers with Mayor McNamara presiding.

MOMENT OF REFLECTION

Zack Beck, City Clerk led the Moment of Reflection

FLAG SALUTE

Michael McGuinness, City Attorney, led the Flag Salute

ATTENDANCE

The following members were present: Councilmember Joe Garcia, Councilmember Tina Inscoe, Councilmember Consuelo Martinez, Deputy Mayor Michael Morasco, and Mayor Paul McNamara. Quorum present.

Also present were: Sean McGlynn, City Manager; Michael McGuinness, City Attorney; and Zack Beck, City Clerk.

PROCLAMATION Sierra Club North County Group & North County Wilderness Basics Course Day, 50th Anniversary

PRESENTATION Recycling Programs Update

CLOSED SESSION REPORT

ORAL COMMUNICATIONS

Ana Marie Velasco - Serves on the Environmental Community Advisory Group. Would like to educate the public on how plastic waste impacts the environment. The Public Art Commission approved funds to support the Escondido Alley art project.

Zachary Schaefer - Expressed concern regarding traffic in Escondido. Especially those who run red lights.

CONSENT CALENDAR

MOTION: Moved by Councilmember Martinez and seconded by Deputy Mayor Morasco to approve all consent calendar items. Approved unanimously.

1. AFFIDAVITS OF PUBLICATION, MAILING AND POSTING (COUNCIL/RRB)

2. APPROVAL OF WARRANT REGISTER (Council)

Request the City Council approve the City Council and Housing Successor Agency warrant numbers:

- 354574 - 354837 dated July 14, 2021
- 354838 - 355068 dated July 21, 2021
- 355069 - 355244 dated July 28, 2021

Staff Recommendation: **Approval (Finance Department: Christina Holmes)**

3. APPROVAL OF MINUTES: Regular Meetings of July 14, 2021 and July 21, 2021

4. TREASURER'S INVESTMENT REPORT FOR THE QUARTER ENDED JUNE 30, 2021 -

Request the City Council receive and file the April through June 2021 Treasurer's Report. (File No. 0400-85)

Staff Recommendation: **Receive and File (City Treasurer's Office: Douglas W. Shultz)**

5. RENEW SIGNATURE AUTHORIZATIONS FOR INVESTING CITY FUNDS IN THE LOCAL AGENCY INVESTMENT FUND -

Request the City Council approve designating the fiscal agents who are authorized to deposit or withdraw monies from the Local Agency Investment Fund. (File No. 0490-30)

Staff Recommendation: **Approval (City Treasurer's Office: Douglas W. Shultz)**

RESOLUTION NO. 2021-111

6. NOTICE OF COMPLETION FOR THE MULTI-NEIGHBORHOOD STREET LIGHT L.E.D. RETROFIT PROJECT PHASE 2 -

Request the City Council approve a change order in the amount of \$22,177.17 to retrofit an additional 66 street lights and to accept the public improvements as complete and authorize staff to file a Notice of Completion for the Multi Neighborhood Street Light L.E.D. Retrofit Project – Phase 2. This project replaced over nine hundred existing street and safety light fixtures with energy efficient, low maintenance L.E.D. fixtures. (File No. 0600-95)

Staff Recommendation: **Approval (Engineering Services Department: Julie Procopio)**

RESOLUTION NO. 2021-100

7. MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ESCONDIDO AND THE ESCONDIDO CITY EMPLOYEES' ASSOCIATION-ADMINISTRATIVE, CLERICAL, AND ENGINEERING (ACE) BARGAINING UNIT -

Request the City Council approve for a successor ECEA – Administrative, Clerical, and Engineering (ACE) Bargaining Unit Contract. (File No. 0740-30)

Staff Recommendation: **Approval (Human Resources Department: Jessica Perpetua)**

RESOLUTION NO. 2021-116

8. MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ESCONDIDO AND THE ESCONDIDO CITY EMPLOYEES' ASSOCIATION-SUPERVISORY (SUP) BARGAINING UNIT -

Request the City Council approve for a successor ECEA-Supervisory (SUP) Bargaining Unit Contract. (File No. 0740-30)

Staff Recommendation: **Approval (Human Resources Department: Jessica Perpetua)**

RESOLUTION NO. 2021-117

9. **VIA ROBLE AND ORANGE PLACE AFFORDABLE HOUSING APARTMENTS -**
Request the City Council approve to allow Wakeland Housing and Development Corporation to record a new Regulatory Agreement against Via Roble and Orange Place Apartments, Affordable Housing developments at 1565 S Escondido Boulevard and 1611 Orange Place, developed, in part, with City funding. (File No. 0873-01)

Staff Recommendation: **Approval (Community Development Department: Adam Finestone)**

RESOLUTION NO. 2021-118

10. **FISCAL YEAR 2021 DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL LOCAL LAW ENFORCEMENT GRANT AND BUDGET ADJUSTMENT -**

Request the City Council approve authorizing the Chief of Police to accept a \$44,920 grant from the California Department of Alcoholic Beverage Control (ABC); authorize the Chief of Police or his designee to execute contract documents on behalf of the City; and approve budget adjustments needed to spend grant funds. The Police Department will use this allocation to fund overtime expenses related to Shoulder Tap Details, Minor Decoy Operations, Inspections and training to enhance local efforts to reduce alcohol related problems in the community. (File No. 0480-70)

Staff Recommendation: **Approval (Police Department: Edward Varso)**

RESOLUTION NO. 2021-119

CONSENT RESOLUTIONS AND ORDINANCES (COUNCIL/RRB)

The following Resolutions and Ordinances were heard and acted upon by the City Council/RRB at a previous City Council/Mobilehome Rent Review meeting. (The title of Ordinances listed on the Consent Calendar are deemed to have been read and further reading waived.)

11. **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, PROVIDING FOR THE ESTABLISHMENT AND ADMINISTRATION OF A RECORDS MANAGEMENT PROGRAM FOR THE CITY OF ESCONDIDO -**

Approved on July 14, 2021 with a vote of 5/0.

ORDINANCE NO. 2021-06 (Second Reading and Adoption)

12. **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AMENDING ARTICLE 4 OF CHAPTER 25 OF THE ESCONDIDO MUNICIPAL CODE, AND ARTICLES 1 AND 63 OF THE ESCONDIDO ZONING CODE TO ALLOW THE CONVERSION OF HOTELS AND MOTELS TO HOUSING -**

Approved on July 14, 2021 with a vote of 5/0.

ORDINANCE NO. 2021-07 (Second Reading and Adoption)

PUBLIC HEARINGS

13. DOWNTOWN SPECIFIC PLAN AMENDMENT - GROUND FLOOR RETAIL REQUIREMENT (PL21-0227) -

Request the City Council approve amending the Downtown Specific Plan to require ground floor commercial uses only at key locations or preference areas based on context or planning objectives, rather than as a blanket requirement to ensure that future projects are feasible and the desired community character is preserved. (File No. 0830-20)

Staff Recommendation: **Approval (Community Development Department: Adam Finestone)**

a) RESOLUTION NO. 2021-114 b) ORDINANCE NO. 2021-08 (First Reading and Introduction)

Ed Gallo - Expressed opposition to this item.

MOTION: Moved by Councilmember Inscoe and seconded by Councilmember Garcia to approve amending the Downtown Specific Plan to require ground floor commercial uses only at key locations or preference areas based on context or planning objectives, rather than as a blanket requirement to ensure that future projects are feasible and the desired community character is preserved. Approved unanimously.

14. 2021 – 2029 GENERAL PLAN HOUSING ELEMENT UPDATE (PHG 20-0030) -

Request the City Council approve the 2021-2029 General Plan Housing Element, and General Plan Community Health and Services Chapter amendment; and adopt third addendum to the Final Environmental Impact Report previously certified for the 2012 General Plan Update, Downtown Specific Plan Update, and Climate Action Plan. (File No. 0830-20)

Staff Recommendation: **Approval (Community Development Department: Adam Finestone)**

RESOLUTION NO. 2021-110

Lori Pfeiler - CEO of Building Industry Association, expressed support for this item.

Francisco Pena - Lived in Escondido for over 30 years. Encourage Council to include an apprenticeship program as part of the Housing Element.

Jorge Viramontes - Member of Southwest Regional Carpenters. Requested that the City Council makes sure that workers are treated fairly in future development projects. Local, skilled, workforce State-certified apprenticeship program.

John Souza - Requested the City implement a local, skilled, workforce program as part of the Housing Element.

Doug Hicks - Expressed concern that current development projects use an undocumented workforce. Requested that the City implement a local, skilled, workforce program as part of the Housing Element.

Bobby Velasquez - Union carpenter for 43 years. Requested that the City implement a local, skilled, workforce program as part of the Housing Element.

Rob Jenkins - Requested that the City Council create a Housing Commission.

Yusef Miller - Requested that the City Council create a Housing Commission.

Maria Bowman - Expressed support for this item.

Boris Greeley - Requested that the City Council makes sure that workers are treated fairly in future development projects.

Chris Nava - Expressed support for this item.

Elizabeth Reid-Wainscoat - Expressed opposition to this item.

Evelyn Langston - Expressed opposition to this item.

Madison Coleman - Expressed support for this item.

Marie Brown - Expressed support for this item.

Pamela Heatherington - Expressed support for this item.

Cara Lacey - Requested that the City Council make housing more robust and affordable in Escondido.

MOTION: Moved by Councilmember Martinez and seconded by Councilmember Garcia to approve the 2021-2029 General Plan Housing Element, and General Plan Community Health and Services Chapter amendment; and adopt third addendum to the Final Environmental Impact Report previously certified for the 2012 General Plan Update, Downtown Specific Plan Update, and Climate Action Plan. Approved unanimously.

FUTURE AGENDA

15. FUTURE AGENDA -

The purpose of this item is to identify issues presently known to staff or which members of the City Council wish to place on an upcoming City Council agenda. Council comment on these future agenda items is limited by California Government Code Section 54954.2 to clarifying questions, brief announcements, or requests for factual information in connection with an item when it is discussed.

Staff Recommendation: **None (City Clerk's Office: Zack Beck)**

COUNCIL MEMBERS SUBCOMMITTEE REPORTS AND OTHER REPORTS

Inscoc – Attended the groundbreaking of Palomar Heights.

Morasco – Participated in National Night Out.

Martinez – Attended a League of CA Cities Meeting. Hosted a park cleanup.

Garcia – Attended the groundbreaking of Palomar Heights.

CITY MANAGER'S WEEKLY ACTIVITY REPORT

The most current information from the City Manager regarding Economic Development, Capital Improvement Projects, Public Safety and Community Development. This report is also available on the City's website, www.escondido.org.

- **WEEKLY ACTIVITY REPORT –**

ORAL COMMUNICATIONS

None.

ADJOURNMENT

Mayor McNamara adjourned the meeting at 7:34 p.m.

MAYOR

CITY CLERK

CITY COUNCIL STAFF REPORT

Consent Calendar Item No. 4

August 25, 2021

File No. 0600-10, A-3379

SUBJECT: Approval of Financing Agreement with the CA IBank for Construction of the San Pasqual Undergrounding Project

DEPARTMENT: Utilities Department, Construction and Engineering Division

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2021-120, authorizing Authorized Officers (as such term is defined in Section 3 of Resolution No. 2021-120) to execute, on behalf of the City, an Installment Sale Agreement (a type of Financing Agreement) with the California Infrastructure and Economic Development Bank (“IBank”) for \$25 million in funding for the San Pasqual Undergrounding Project (the “Project”).

FISCAL ANALYSIS:

The FY 2020/21 through 2025/26 Capital Improvement Program lists the total projected cost for the San Pasqual Undergrounding Project as \$56,400,000, with funding sources for the Project (CIP No. 701701) comprised of Customer Fees, Loan Funding, and Reimbursement from the Vista Irrigation District (“VID”). VID is responsible for 50% of the project costs. The most recent cost estimate places construction costs alone for the Project at just over \$54 million, of which \$27 million will be paid by the City.

The IBank loan is provided through IBank’s Infrastructure State Revolving Fund (“ISRF”) Loan Program. ISRF is a direct loan program, and loans are funded with the proceeds of tax-exempt ISRF revenue bonds. The IBank Board of Directors authorized the proposed Agreement on June 23, 2021. The approved loan amount is \$25 million with a term of 30 years at an annual interest rate of 2.2%. In addition to the interest charges on the outstanding principal, there is an annual loan fee of 0.3% of the outstanding principal, bringing the effective interest rate to 2.5% annually. At this rate and term, and assuming that the City of Escondido (the “City”) does not make any principal pre-payments, the total amount repaid over 30 years will be \$35.6 million (\$25 million in principal, \$10.6 million in interest and fees).

The City will make payments under the Agreement solely from revenues of the City’s water system in excess of operation and maintenance costs. Such payments will be on parity with existing water system obligations, including the 2019A and 2019B bond issues, two State Revolving Fund loans, and the existing IBank loan for the Lindley Reservoir Tank Replacement Project. Payments under the Agreement are not an obligation of the General Fund or other City funds other than the Water Fund.

Annual debt service payments on this loan will be approximately \$1.2 million. In FY 2020, the Water Fund debt coverage ratio was 2.05, in excess of the debt coverage required by the Water Fund's bond covenants (1.20). The debt service payments required by the IBank loan would have reduced the Water Fund debt coverage to 1.60 if loan payment had been due at that time. While the new proposed debt will decrease the debt coverage ratio, the ratio will remain well in excess of the required minimum. Rate increases that went into effect in March 2021 increased revenue and will increase the debt coverage ratio in future years. Thus, the actual debt coverage ratio is projected to remain above 1.60, and well above the required minimum of 1.20.

PREVIOUS ACTIONS:

On June 3, 2009, the City Council adopted Resolution No. 2009-77, authorizing a Consulting Agreement with Black & Veatch Corporation in the amount of \$232,710. This agreement was for engineering services to perform a feasibility study of undergrounding a portion of the Escondido Canal between Lake Henshaw and Lake Wohlford within the San Pasqual Indian Reservation. The cost was split equally between the City and VID.

On November 2, 2016, the City Council adopted Resolution No. 2016-156, affirming the Environmental Assessment/Mitigated Negative Declaration for the San Pasqual Undergrounding Project (ENV 15-0016).

On June 13, 2018, the City Council adopted Resolution No. 2018-94, authorizing a Consulting Agreement with Michael Baker International in the amount of \$1,563,297.50 for the design of the San Pasqual Undergrounding Project. The City Council also adopted Resolution No. 2018-95, authorizing a Consulting Agreement with Helix Environmental Planning, Inc. in the amount of \$100,000 for environmental surveys and permitting for the San Pasqual Undergrounding Project.

On May 22, 2019, the City Council adopted Resolution No. 2019-79, authorizing a proposed Agreement among the City, Vista Irrigation District, and the San Pasqual Band of Mission Indians for Conveyance of an Easement necessary for the San Pasqual Undergrounding Project ("Agreement").

On May 26, 2021, the City Council adopted Resolution No. 2021-71, authorizing the Deputy City Manager / Director of Utilities to submit an application to IBank requesting \$25 million in financing (the "Obligation") for the Project, declared the City's intent to reimburse IBank, and approved certain related matters to the financing application.

BACKGROUND:

In 1969, five local Indian Bands, and the United States on their behalf, sued the City and VID, claiming that the City and the District's diversion of San Luis Rey River flows deprived the Bands of adequate water on their reservations located downstream of the Diversion Dam. After nearly five decades of litigation and negotiations, the parties approved the San Luis Rey Indian Water Rights Settlement and Implementing Agreements. The Implementing Agreement stipulates that portions of the Escondido

Canal that cross the San Pasqual Indian Reservation must be replaced with an underground pipeline. The Project must be completed by May 17, 2023. If the project is not completed within the six-year window, the City and VID must pay damages of \$1,000 per day to the San Pasqual Band until the Project is completed.

The Project will remove, relocate, and replace with pipelines approximately 2.5 miles of the Escondido Canal that crosses the San Pasqual Indian Reservation as provided in the Implementing Agreement.

IBank is the State of California's only general purpose financing authority. The Legislature created IBank in 1994 to finance public infrastructure and private development that promote a healthy climate for jobs, contribute to a strong economy, and improve the quality of life in California communities. IBank has broad authority to issue revenue bonds – both tax-exempt and taxable, to provide loans to state and local governments for public infrastructure and economic expansion projects, and to leverage State and Federal funds. It is a self-supporting governmental entity that pays for its operations from service fees and interest earnings on loans and investments. Since 1994, IBank has financed more than \$55 billion in infrastructure and economic development projects.

The benefits of financing through IBank and the ISRF Program include:

- Below-market interest rates
- Non-competitive application process; applications continuously accepted
- Technical assistance
- No matching fund requirement
- No federal overlays
- Closings are tailored to project requirements

Adoption of Resolution No. 2021-120, the action requested of the City Council today, authorizes the Authorized Officers (as such term is defined in Section 3 of Resolution No. 2021-120) to sign the Financing Agreement with IBank for the San Pasqual Undergrounding Project. The interest rate of the loan is anticipated to be 2.5% annually, with a term of 30 years. Resolution No. 2021-71, adopted by the City Council on May 26, 2021, authorized application for this loan and committed the City to repay the loan when a loan agreement was approved by the City Council.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Christopher W. McKinney, Deputy City Manager / Director of Utilities
08/18/21 4:43 p.m.

ATTACHMENTS:

1. Resolution No. 2021-120
2. Resolution No. 2021-120 – Exhibit “A” – IBank Installment Sale Agreement
3. Resolution No. 2021-120 – Exhibit “B” – Government Code Section 5852.1 Disclosure

RESOLUTION NO. 2021-120

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT SALE AGREEMENT WITH THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$25,000,000 AND AUTHORIZING THE EXECUTION OF NECESSARY DOCUMENTS AND CERTIFICATES AND RELATED ACTIONS

WHEREAS, the City Council (the “City Council”) of the City of Escondido (the “City”), pursuant to Resolution No. 2021-71 adopted on May 26, 2021, has determined to finance the acquisition and construction of the Escondido Canal San Pasqual Undergrounding Project (the “Project”); and

WHEREAS, the California Infrastructure and Economic Development Bank (the “IBank”) has agreed to assist the City in financing the Project; and

WHEREAS, in order to accomplish the financing of the Project, the City desires to enter into an Installment Sale Agreement (Exhibit A, the “Installment Sale Agreement”) with the I-Bank substantially in the form presented to this City Council at the meeting at which this Resolution has been adopted, pursuant to which the I-Bank will cause the Project to be acquired, constructed and sold to the City; and

WHEREAS, the City’s obligation to make payments under the Installment Sale Agreement will be payable from net revenues of the City’s water system, consisting of

revenues remaining after payment of operation and maintenance costs, on a parity with outstanding water system debt; and

WHEREAS, in accordance with Government Code Section 5852.1, the City Council has obtained and wishes to disclose the information set forth in Exhibit B hereto;

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

1. That the above recitations are true.
2. That the City Council authorizes the Authorized Officers (as such term is defined in Section 3 of this Resolution) to execute, on behalf of the City, the Installment Sale Agreement with IBank for \$25,000,000 in funding for the Escondido Canal San Pasqual Undergrounding Project.
3. The Installment Sale Agreement, in substantially the form attached hereto and, upon execution as authorized below, made a part hereof as though set forth in full herein, is hereby approved. The Mayor, the City Manager, the Finance Director, the Deputy City Manager / Director of Utilities, the City Clerk, or the designee of any of them (each, an "Authorized Officer"), are each hereby authorized and directed to execute and deliver the Installment Sale Agreement with such changes, insertions and omissions as may be recommended by the City Attorney or Stradling Yocca Carlson & Rauth, a Professional Corporation, bond counsel to the City, and approved by the officers executing the same, said execution being conclusive evidence of such approval.

4. That the City Council hereby authorizes the execution and delivery of the Installment Sale Agreement in an aggregate principal amount not to exceed \$25,000,000. The proceeds of the Installment Sale Agreement will be expended to finance the Project.

5. That the Authorized Officers and all other officers of the City are hereby authorized, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary and advisable in order to consummate the execution and delivery of the Installment Sale Agreement and otherwise to effectuate the purposes of this Resolution, and any such actions previously taken by such officers are hereby ratified and confirmed. The expenditure of the proceeds of the Installment Sale Agreement shall be subject to compliance by the City with all legal and other conditions precedent thereto.

Stradling/City Comments – 7.29.21

INSTALLMENT SALE AGREEMENT

by and between the

THE CITY OF ESCONDIDO,
as Purchaser

and the

**CALIFORNIA INFRASTRUCTURE AND
ECONOMIC DEVELOPMENT BANK (“IBANK”),**
as Seller

[Dated as of Month X, 20XX]

[Agreement No. ISRF XX-XXX]

INSTALLMENT SALE AGREEMENT

THIS INSTALLMENT SALE AGREEMENT, is dated as of [June 1, 2019] (as defined in Section 1.01, the "Agreement"), by and between the CITY OF ESCONDIDO, a California municipal corporation, as purchaser (the "Purchaser"), duly organized and validly existing under the laws of the State of California, and the CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK, as seller ("IBank"), duly organized and validly existing pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act (the "Act," as defined in Section 1.01). IBank and the Purchaser are hereinafter at times collectively referred to as the "Parties" and individually as a "Party." Words and terms with their initial letters capitalized not separately defined shall have the meanings set forth in Section 1.01 of this Agreement.

WITNESSETH:

WHEREAS, on or about May 26, 2021, the Purchaser adopted Resolution No. 2021-71, among other things authorizing the Purchaser's submission of an application to IBank for financing a portion of the Facility, and thereafter adopted [Resolution No. _____,] among other things authorizing the Purchaser's entry into this Agreement and the Purchase of the Facility (as defined in Section 1.01) from IBank, each in substantially the same form as set forth in Exhibit A attached hereto;

WHEREAS, the Purchaser has entered into the San Luis Rey Indian Water Rights Settlement Agreement and related documents (the "Settlement"), all of which became effective on May 17, 2017, between and among the Purchaser, the District, five local Indian Bands and the federal government regarding disputes over rights to the waters of the San Luis Rey River Basin;

WHEREAS, the Purchaser has determined that in order to provide necessary water utility service to its customers, and as required by the Settlement, the Purchaser must underground that the portion of the Escondido Canal that runs through the San Pasqual Reservation and perform associated improvements to the Purchaser's water system;

WHEREAS, the Purchaser will own and will be responsible for the management, design, and construction of the Facility;

WHEREAS, the Purchaser will finance its acquisition of the Facility by entry into this Agreement and by a funding arrangement with the District pursuant to which the District will provide to the City one-half of the Facility Costs;

WHEREAS, the Purchaser's staff issued Proposition 218 notices necessary for the rates and charges increases required to support the Purchaser's water system;

WHEREAS, not having received written protests against the proposed increases from a majority of parcels subject to the revised schedule of rates and charges, the Purchaser's City Council adopted the revised schedule of rates and charges pursuant to the terms of Resolution No. 2017-14RRR, effective March 1, 2018;

WHEREAS, IBank has issued, or intends to issue, tax-exempt Proceeds Bonds, the proceeds of which may be used to provide all or a portion of the Facility Funds;

WHEREAS, IBank may pledge its rights, including the rights to receive payments, under this Agreement to secure bonds that it has issued, or intends to issue, for the benefit of its programs' Secured Bonds, and the Purchaser acknowledges that the issuance or existence of both the Proceeds Bonds and the Secured Bonds impacts its rights and obligations as described herein; and

NOW, THEREFORE, in consideration of the promises and the mutual agreements herein contained, the parties do hereby agree as follows:

ARTICLE I

DEFINITIONS, RULES OF CONSTRUCTION, AND CONDITIONS PRECEDENT

SECTION 1.01. Definitions. Unless the context clearly otherwise requires, the capitalized terms in this Agreement shall have the respective meanings set forth below.

“2002 DWR Loan” means 2002 Department of Water Resources Loan No. SRF00CRX112, in the initial principal amount of \$2,048,125 and [with an outstanding principal balance as of the Effective Date of \$667,887.]

“2002 DWR Loan Documents” means, collectively, any instrument evidencing, securing, governing, or amending the 2002 DWR Loan, including, without limitation, the Funding Agreement Between the State of California Department of Water Resources and the City of Escondido Project Number 3710006-04, as amended by Amendment Number A-1 thereto.

“2009 DPH Loan” means the 2009 Department of Public Health Loan No. AR09FP27, in the initial principal amount of \$2,813,324 and [with an outstanding principal balance as of the Effective Date of \$2,047,259.]

“2009 DPH Loan Documents” means, collectively, any instrument evidencing, securing, governing, or amending the 2009 DPH Loan, including, without limitation, the Funding Agreement Between the State of California Department of Public Health and the City of Escondido Project Number 3710006-004.

“2019 Bonds” means, collectively, the \$20,380,000 Escondido Joint Powers Financing Authority Revenue Bonds (Water System Revenue Refunding Bond), Series 2019A, and the \$30,000,000 Escondido Joint Powers Financing Authority Revenue Bonds (Water System Revenue Refunding Bond), Series 2019B (Taxable), [with an outstanding balance as of the Effective Date of \$28,195,000.]

“2019 Bonds Instruments” means, collectively, any instrument evidencing, securing, governing, or amending the 2019 Bonds, including, without limitation, the 2019 Bonds ISA.

“2019 Bonds ISA” means the Installment Purchase Agreement by and between the Escondido Joint Powers Financing Authority and the Purchaser dated as of November 1, 2019.

“2019 IBank ISA” means that Installment Sale Agreement by and between the Purchaser and IBank dated as of June 1, 2019, Agreement No. ISRF-19-134.

“Act” means the Bergeson-Peace Infrastructure and Economic Development Bank Act, constituting Division 1 of Title 6.7 of the California Government Code (commencing at section 63000 thereof) as now in effect and as it may from time to time hereafter be amended.

“Additional Payments” means the payments made pursuant to Section 2.06.

“Agreement” means this Installment Sale Agreement, between IBank and the Purchaser, as originally entered into and as amended from time to time pursuant to the provisions hereof.

“Amortization Schedule” means that certain amortization schedule attached hereto as Exhibit E.

“Amortization Terms” shall have the meaning set forth in Section 2.03(d).

“Authorized Prepayment Period” has the meaning set forth in Section 2.08.

“Business Day” means any day, Monday through Friday, which is not a legal holiday of the State or the Trustee.

“Certificate of the Purchaser” means a written request or certificate signed by a duly authorized representative of the Purchaser.

“Code” means the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder.

“Contamination” means the presence of hazardous waste, as defined in Health and Safety Code Section 25117, in amounts or concentrations that the State or federal government has determined to be potentially harmful or injurious to human health and safety.

“Criteria” means the “Criteria, Priorities, and Guidelines for the Selection of Projects for Financing under the ISRF Program” dated February 23, 2016, as may thereafter be amended from time to time.

“Current Guidelines” has the meaning set forth in Section 5.07.

“Current Revenues” means revenues that are both received by the Purchaser and utilized for the payment of the Purchase Price under this Agreement within a six month period.

“Debt Service” means, for any Fiscal Year, the sum of interest, and principal due and payable under this Agreement during such Fiscal Year, the IBank Annual Fee for such Fiscal Year and any Parity Debt Service for such Fiscal Year.

“District” means the Vista Irrigation District, a California irrigation district.

“Effective Date” means the date on which this Agreement is last executed, as set forth on the signature page hereto, and is the date this Agreement becomes effective and binding on the Purchaser and IBank, subject to this Agreement’s terms and conditions.

“Enterprise Fund” means the water enterprise fund established by the Purchaser into which all System Revenues are deposited and maintained by the Purchaser pursuant to Section 3.02 and in which IBank has a certain security interest pursuant to the terms of this Agreement. The Purchaser’s Enterprise Fund is composed of the funds received from water treatment, transmission, distribution, and sales services provided to the Purchaser’s customers.

“Existing Debt” means, collectively, the 2002 DWR Loan, the 2009 DPH Loan, THE 2019 BONDS ISA AND the indebtedness evidenced by the 2019 IBank ISA.

“Existing Lien Documents” means, collectively, the 2002 DWR Loan Documents, the 2009 DPH Loan Documents, the 2019 IBank ISA, and/or the 2019 Bonds Instruments.

“Event of Default” means any of the events described in Section 7.01.

“Facility” means those improvements described in Exhibit B hereto.

“Facility Costs” means the costs of the activities set forth in Exhibit B hereto for the construction, acquisition and/or installation of the Facility, all as approved by IBank in its sole and absolute discretion.

“Facility Delivery” has the meaning set forth in Section 2.02.

“Facility Funds” means the moneys provided by IBank to the Purchaser, as agent for IBank, pursuant to this Agreement to purchase and/or construct the Facility as set forth in Section 2.05.

“Facility Funds Reduction” means the reduction of the total Facility Funds amount by all or a portion of the Facility Funds not disbursed previously.

“Facility Funds Reduction Request” means a written request of the Purchaser to reduce the amount of total Facility Funds by all or a portion of the Facility Funds not disbursed previously.

“Fiscal Year” means any twelve month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other twelve month period selected and designated by the Purchaser as its official fiscal year period and approved by IBank.

“IBank Annual Fee” means the fee payable to IBank pursuant to Section 2.06.

“IBank Fiscal Year” means any twelve month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive.

“Independent Accountant” means any certified public accountant or firm of certified public accountants duly licensed or registered or entitled to practice and practicing as such under the laws of the State, appointed by the Purchaser who, or each of whom:

(a) Is in fact independent and not under the direct or indirect control of the Purchaser or IBank;

(b) Does not have any substantial interest, direct or indirect, in the Purchaser, IBank, or the Facility; and

(c) Is not connected with the Purchaser or IBank as an officer or employee of the Purchaser or IBank, but who may be regularly retained to make reports to the Purchaser or IBank.

“Independent Consultant” means any consultant or firm of such consultants judged by the Purchaser to have experience in matters relating to the collection of System Revenues or other experience with respect to the financing of System projects, as appropriate, appointed and paid by the Purchaser who, or each of whom:

(a) Is in fact independent and not under the direct or indirect control of the Purchaser or IBank;

(b) Does not have any substantial interest, direct or indirect, in the Purchaser, the Facility, or IBank; and

(c) Is not connected with the Purchaser or IBank as a member, officer or employee of the Purchaser, but who may be regularly retained to make reports to the Purchaser or IBank.

“Installment Payments” means the principal and interest payments to be made by the Purchaser to IBank in payment of the Purchase Price hereunder.

“Insured Peril” has the meaning set forth in Section 5.10.

“Interest Payment Date” means February 1 and August 1 of every year in which the Purchase Price remains unpaid.

“Investment Property” means any security or obligation, any annuity contract, or any other investment-type property, but does not include any Tax Exempt Obligation unless such obligation is a “specified private activity bond” within the meaning of section 57(a)(5)(C) of the Code.

“IRS” has the meaning set forth in Section 5.07.

“Liquidated Damages Charge” has the meaning set forth in Section 2.06(a)(4).

“Liquidated Damages Period” has the meaning set forth in Section 5.03(f).

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

“Maximum Rate” has the meaning set forth in Section 8.23.

“Net Proceeds” has the meaning set forth in Section 5.10.

“Net Proceeds Ratio” means the quotient of (1) the dividend equal to the outstanding balance of the Purchase Price at the time of calculation, and (2) the divisor equal to the sum of the outstanding balance of the Purchase Price and the outstanding balance of then existing Parity Debt, each determined at the time of calculation.

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

“Nongovernmental Persons” means any person or entity other than any state, or political subdivision of a state, but excludes the United States and its agencies or instrumentalities.

“Operations and Maintenance Costs” means: (1) costs spent or incurred for maintenance and operation of the 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 System in good repair and working order, and including administrative costs of the Purchaser that are charged directly or apportioned to the System, including but not limited to salaries and wages of employees, payments to the Public Employees Retirement System, overhead, insurance, taxes (if any), fees of auditors, accountants, attorneys or engineers and insurance premiums, and including all other reasonable and necessary costs of the Purchaser or charges (other than debt service payments) required to be paid by it to comply with the terms of this Agreement and the Parity Debt Instruments; 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.

“Opinion of Counsel” means a written opinion of counsel of recognized national standing in the field of law relating to municipal bonds, appointed by the Purchaser and approved by IBank, or appointed by IBank, and in all cases paid for by the Purchaser and acceptable to IBank in its sole and absolute discretion.

“Origination Fee” means a payment in the amount of two hundred fifty thousand dollars (\$250,000) that shall be due and payable by the Purchaser on the Effective Date and shall be deducted by IBank from the Facility Funds upon execution of this Agreement.

“Parity Debt” means to the extent outstanding, the obligations associated with the Existing Debt and the Existing Lien Documents, together with any loan, bond, note, advance, installment sale agreement, capital lease or other evidence of indebtedness, payable from and/or secured by a first lien on the System Revenues and/or legally available amounts in the Enterprise Fund, on parity with the Installment Payments and Additional Payments, issued or incurred pursuant to and in accordance with the provisions of Section 2.11.

“Parity Debt Instrument” means, collectively, any instrument evidencing, governing, or securing Parity Debt, including without limitation the indenture relating to such Parity Debt.

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

(1) the interest payable during such period on all outstanding Parity Debt, assuming that all outstanding serial Parity Debt is retired as scheduled and that all outstanding term Parity

Debt is prepaid or paid from sinking fund payments as scheduled (except to the extent that such interest is capitalized);

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

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

provided that, as to any such Parity Debt bearing or comprising interest at other than a fixed rate, the rate of interest used to calculate Parity Debt Service shall be the greater of: (a) the actual interest rate on such Parity Debt on the date of calculation, or if the indebtedness is not yet outstanding, the initial interest rate (if established and binding); (b) if the Parity Debt has been outstanding for at least twelve months, the average rate over the period of the same length as the period of calculation of Parity Debt Service immediately preceding the date of calculation; and (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 Section 2.11 (Permitted Additional Parity Debt), Section 2.16 (Permitted Subordinate Debt), and Section 5.06 (Maintenance of System Revenues; Rate Covenant), 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 Parity Debt has twenty-five percent (25%) or more of the aggregate principal amount of such series or issue due in any one year, Parity Debt Service shall be determined for the period of calculation of determination as if the principal of and interest on such series or issue of such Parity Debt were being paid from the date of incurrence thereof in substantially equal annual amounts over a period of twenty-five (25) years from the date of calculation; and

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

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

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

“Payment Account” means the funds or accounts (or any portions of any funds or accounts), established pursuant to Section 2.03(c) hereof, that will hold monies that the Purchaser expects to use to pay the Purchase Price under this Agreement.

“Phase I Environmental Site Assessment” means an investigation of the environmental condition of the Facility, including all improvements and real property as well as surrounding improvements and real property, to determine the possibility of Contamination, based on visual observation, interviews with knowledgeable persons, and the review of records and databases, in a manner consistent with the current standards and practices employed typically by State Registered Environmental Assessors, or other professionals licensed in the State as engineers or geologists, performing environmental assessments in the same general geographic location as the Facility.

“Phase II Environmental Site Assessment” means the in situ sampling and laboratory analysis of any Contamination discovered in connection with a Phase I Environmental Site Assessment, in a manner consistent with the current standards and practices employed typically by State Registered Environmental Assessors, or other professionals licensed in the State as engineers or geologists, performing environmental assessments in the same general geographic location as the Facility.

“Preliminary Costs” means architectural, engineering, surveying or soil testing costs, reports such as environmental impact reports, Phase I or Phase II Environmental Site Assessments, feasibility studies, rate studies and CEQA reports, and similar costs that are incurred prior to commencement of acquisition, construction, or rehabilitation of a project, but not land acquisition, site preparation or similar costs incident to the commencement of construction.

“Prepayment Agreement” has the meaning set forth in Section 2.08.

“Prepayment Request” means any written request of the Purchaser to prepay all or a portion of the principal component of the Purchase Price.

“Prior Guidelines” has the meaning set forth in Section 5.07.

“Prior Guidelines Service Providers” has the meaning set forth in Section 5.07.

“Prohibited Prepayment Period” has the meaning set forth in Section 2.08.

“Proceeds Bonds” means bonds issued, or to be issued, by IBank the proceeds of which may be used, in whole or part, to provide the Facility Funds.

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

“Purchase Price” means the principal amount plus the interest thereon owed by the Purchaser to IBank under the conditions and terms hereof for the payment of the costs of the Facility, and the incidental costs and expenses related thereto paid by IBank.

“Purchaser Representative” shall have the meaning set forth in Section 8.10.

“Rate Challenge” shall have the meaning set forth in Section 5.27.

“Prohibited Prepayment Period” has the meaning set forth in Section 2.08.

“Reconstruction” has the meaning set forth in Section 5.10.

“Replacement Agreement Covenant” shall have the meaning set forth in Section 5.11.

“Report” means a written document signed by an Independent Consultant or an Independent Accountant, and including:

(a) A statement that the person or firm making or giving such Report has read the pertinent provisions of this Agreement to which such Report relates;

(b) A brief statement as to the nature and scope of the examination or investigation upon which the Report is based; and

(c) A statement that, in the opinion of such person or firm, sufficient examination or investigation was made as is necessary to enable said consultant to express an informed opinion with respect to the subject matter referred to in the Report.

“Reporting Covenants” shall have the meaning set forth in Section 5.03(f).

“Revised Amortization Schedule” shall have the meaning set forth in Section 2.03(f).

“Secured Bonds” means bonds of one or more series issued, or to be issued, by IBank to which certain rights of IBank under this Agreement, including the right to receive the Installment Payments, may be from time to time pledged or assigned directly or indirectly as security for such bonds.

“Senior Debt” means the obligations evidenced by any Senior Debt Instrument and/or any loan, bond, note, advance, installment sale agreement, or other indebtedness or capital lease of the Purchaser, payable from and/or secured by a first lien on System Revenues and/or legally available amounts in the Enterprise Fund, which is senior to the lien established by this Agreement.

“Senior Debt Instruments” means, collectively, any instrument evidencing, governing, or securing Senior Debt, including without limitation any indenture relating to such Senior Debt, as applicable.

“Service Contract” has the meaning set forth in Section 5.07.

“Service Provider” has the meaning set forth in Section 5.07

“State” means the State of California.

“Subordinate Debt” means any loan, bond, note, advance, installment sale agreement, or other indebtedness or capital lease of the Purchaser, payable from and/or secured by a lien on System Revenues and/or legally available amounts in the Enterprise Fund, which is subordinate to the lien established by this Agreement.

“Subordinate Debt Instruments” means, collectively, any instrument evidencing, governing or securing Subordinate Debt, including without limitation any indenture relating to such Subordinate Debt, as applicable.

“Subordinate Debt Service” means for any Fiscal Year, the amounts required to be paid pursuant to any Subordinate Debt Instrument.

“System” means the whole and each and every part of the waterworks system serving the Purchaser, whether owned or operated by the Purchaser 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.

“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: (1) all in lieu charges and groundwater augmentation charges (including investment earnings thereon) collected by or on behalf of the Purchaser; (2) all income, rents, rates, fees, charges, business interruption insurance proceeds or other moneys derived by the Purchaser 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; (3) the earnings on and income derived from the investment of such income, rents, rates, fees, charges, proceeds or other moneys, including Purchaser reserves, but excluding in all cases: (x) customers’ deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the Purchaser; and (y) proceeds of taxes or benefit assessments restricted by law to be used by the Purchaser to pay amounts due on bonds or other obligations hereafter incurred.

“Tax Exempt Obligation” means any obligation the interest on which is excluded from gross income for federal income tax purposes pursuant to section 103 of the Code or section 103 of the Internal Revenue Code of 1954, as amended, and Title XIII of the Tax Reform Act of 1986, as amended, as well as stock in a regulated investment company to the extent at least ninety-five percent (95%) of income to the stockholder is treated as interest that is excludable from gross income under section 103 of the Code.

“Trustee” means the trustee acting in its capacity as such in connection with any Proceeds Bonds or Secured Bonds, or any successor or assignee as therein provided, including IBank.

SECTION 1.02. Rules of Construction.

Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa, and pronouns inferring the masculine gender shall include the feminine gender and vice versa. All references herein to particular articles or sections

are references to articles or sections of this Agreement. The headings, subheadings and Table of Contents herein are solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meanings, construction or effect. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

SECTION 1.03. Conditions Precedent.

IBank shall have no obligation under this Agreement until the following conditions precedent have, in IBank's reasonable discretion, been satisfied fully.

(a) IBank shall have received two (2) copies of this Agreement bearing the Purchaser's original signature and IBank shall have counter-signed this Agreement and provided a copy of this Agreement bearing its signature to the Purchaser.

(b) IBank shall have received a copy of a resolution duly adopted by the Purchaser's governing body approving entry into this Agreement in form and content acceptable to IBank, a copy of which shall be attached hereto as Exhibit A.

(c) IBank shall have received an originally executed copy of an opinion of the Purchaser's legal counsel in form and content substantially similar to the Form of Opinion of Legal Counsel to the Purchaser attached hereto as Exhibit D.

(d) The Purchaser shall have paid to IBank the Origination Fee.

(e) The Purchaser shall have provided evidence satisfactory in the reasonable discretion of IBank that the Purchaser has expended fully its funds, or has immediately available committed funds to expend, for each of the items in Exhibit H, Schedule of Sources and Uses, denoted to be the responsibility of the Purchaser, if any.

(f) The Purchaser shall have provided evidence satisfactory in the reasonable discretion of IBank that the lien of this Agreement on System Revenues and all legally available amounts in the Enterprise Fund is on parity with any lien thereon granted under, or created by, the Existing Lien Documents.

ARTICLE II

TERMS OF SALE

SECTION 2.01. Purchase and Sale.

IBank hereby agrees to sell to the Purchaser, and the Purchaser hereby agrees to purchase from IBank, the Facility, under and subject to the terms of this Agreement. This Agreement constitutes a continuing agreement between the Purchaser and IBank to secure the full and final payment of the Purchase Price, subject to the covenants, agreements, provisions and conditions herein contained.

SECTION 2.02. Design, Acquisition, Construction and Sale of the Facility.

(a) IBank hereby agrees to perform all necessary acts, including but not limited to acquisition, entitlement, permitting, installation, design, remediation and improvement, to construct and deliver the Facility ("Facility Delivery") for the benefit of, and to sell the Facility to, the Purchaser. In order to implement this provision, IBank hereby appoints the Purchaser as its agent for the purpose of Facility Delivery. The Purchaser hereby accepts such appointment and agrees to perform all acts necessary to achieve Facility Delivery, including, but not limited to obtaining necessary funds from the District and entry into necessary or convenient engineering, design and construction contracts and purchase orders. The Purchaser hereby agrees that as such agent it will cause Facility Delivery to be diligently pursued and completed as soon as reasonably possible given the nature of, and inherent challenges in connection with, the construction of the Facility and prevailing market conditions. IBank hereby agrees to sell, and hereby sells, the Facility to the Purchaser. The Purchaser hereby agrees to purchase, and hereby purchases, the Facility from IBank. Notwithstanding the foregoing, it is hereby expressly understood and agreed that IBank shall have no obligations whatsoever for Facility Delivery and shall be, except for providing the Facility Funds, under no liability of any kind or character whatsoever for the payment of any costs or expenses incurred by the Purchaser (whether as agent for IBank or otherwise) for any of the actions associated with the Facility Delivery and that all such costs and expenses shall be paid by the Purchaser, regardless of whether Facility Funds are sufficient to cover all such costs.

(b) The Purchaser represents and warrants that all construction contracts and subcontracts necessary for Facility Delivery have been or will be awarded pursuant to all competitive bidding requirements applicable to the Purchaser for similar construction projects.

(c) The Purchaser represents and warrants that it intends to complete construction of the Facility within thirty-six (36) months of commencement of construction on the Facility.

(d) In the event IBank is served with a stop payment notice in connection with the Facility, the Purchaser shall within thirty (30) days cause such stop payment notice to be discharged or released, whether by payment of the sum requested in such stop payment notice, by procurement of a stop payment notice release bond, or by any other legally available means. IBank shall withhold from the Purchaser amounts sufficient to pay the claim stated in the stop payment notice, and to otherwise comply with applicable law, until such stop payment notice is released and/or discharged to IBank's satisfaction, in its sole and absolute discretion.

SECTION 2.03. Payment of Purchase Price; Term; Interest Rates.

(a) The Purchase Price to be paid by the Purchaser to IBank hereunder is the sum of the principal amount of the Purchaser's obligation hereunder plus interest, subject to prepayment as provided in Section 2.08. Interest shall accrue on the entire principal balance, whether or not disbursed, as set forth in the Amortization Schedule.

(b) For purposes of this Agreement:

(1) The principal amount of the Purchase Price to be paid by the Purchaser to IBank hereunder is twenty-five million dollars (\$25,000,000).

(2) The term of this Agreement commences on the Effective Date and ends on [August 1, 2050], except as sooner terminated as set forth herein or otherwise extended.

(3) The interest rate is two and two tenths percent (2.20%) per annum.

(c) For purposes of compliance with Federal tax laws applicable to IBank's Proceeds Bonds and/or Secured Bonds, the Purchaser hereby establishes a "Payment Account" within the Enterprise Fund and agrees to deposit monies intended for paying such Installment Payments in the Payment Account until the time that such Installment Payments become due and payable whereupon the Purchaser will take steps to pay Installment Payments as provided herein.

(d) The Purchaser shall make Installment Payments of principal and interest as set forth in the Amortization Schedule. IBank shall calculate the Amortization Schedule based on (i) the initial principal amount of the Purchase Price as set forth in Section 2.03(b)(1) hereto, (ii) the term of this Agreement as set forth in Section 2.03(b)(2) hereto, and (iii) the interest rate as set forth in Section 2.03(b)(3) hereto (collectively, the "Amortization Terms"), and shall attach the Amortization Schedule as Exhibit E hereto upon the Effective Date. Interest shall commence to accrue hereunder on [July , 2021], as set forth in the Amortization Schedule. All payments of interest shall be computed on the basis of a 360-day year of 12 30-day months. In the absence of manifest error, the Amortization Schedule shall be final, conclusive, and binding on the Purchaser.

(1) The first principal payment shall be due August 1, 2022, as set forth in the Amortization Schedule.

(2) Interest only payments will be based upon the total principal component of the Purchase Price, including the amounts not disbursed, using an interest rate of two and two tenths percent (2.20%) per annum.

(3) Interest shall accrue on the entire principal balance of Facility Funds, whether or not disbursed, as set forth in the Amortization Schedule. Provided, however, as an offset against interest paid on undisbursed Facility Funds, the Purchaser shall receive payment following the end of each IBank Fiscal Year on any undisbursed portions of the Facility Funds (excepting any undisbursed Facility Funds subject to a Facility Funds Reduction, as set forth in this Agreement) of the lesser of: (i) the actual interest earned by IBank during such IBank Fiscal Year on the undisbursed portions of the Facility Funds, or (ii) the interest that would have accrued during such IBank Fiscal Year on the undisbursed portions of the Facility Funds calculated using the interest rate of this Agreement. Said reimbursement shall be in the form of a check payable to the order of the Purchaser at the address set forth in Section 8.09 of this Agreement on or about the ninetieth (90th) calendar day following the end of the IBank Fiscal Year.

(e) Commencing on the day following the end of the interest only period (if any), the principal component of the Purchase Price shall be fully amortized over the remaining term of this Agreement.

(f) IBank may, in its sole and absolute discretion, revise the Amortization Schedule (a "Revised Amortization Schedule") subsequent to the Effective Date to (i) correct a computational error in the prior Amortization Schedule, (ii) account for any partial prepayment permitted under Section 2.08, or (iii) account for any Facility Funds Reduction permitted under Section 2.08. Any

Revised Amortization Schedule shall be calculated (i) such that IBank will receive the aggregate sum of all principal and interest Installment Payments it would have received had the Amortization Schedule been calculated correctly based on the Amortization Terms and interest commenced to accrue on June 13, 2019, (ii) to account for any partial prepayment, or (iii) to account for any Facility Funds Reduction, as applicable. The Revised Amortization Schedule shall be incorporated herein automatically upon its completion by IBank, and in the absence of manifest error, any such Revised Amortization Schedule will be final, conclusive, and binding on the Purchaser.

(g) The obligation of the Purchaser to pay the Purchase Price by paying the Installment Payments and Additional Payments is, subject to Section 5.10, absolute and unconditional; and until such time as the Purchase Price shall have been paid in full, the Purchaser shall not discontinue or suspend any Installment Payments or Additional Payments required to be paid by it under this Agreement when due, whether or not the Facility or any part thereof is operating or operable, 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 or otherwise and shall not be conditional upon the performance or nonperformance by any party to any agreement for any cause whatsoever.

SECTION 2.04. Payment on Business Days.

Whenever in this Agreement any amount is required to be paid on a day that is not a Business Day, such payment shall be required to be made on the Business Day immediately following such day and no further interest shall accrue.

SECTION 2.05. Disbursement of Facility Funds.

(a) IBank shall disburse Facility Funds solely for the purposes set forth in Exhibit H hereto. The aggregate sum of disbursements for each category set forth in Exhibit H shall not exceed the corresponding amounts set forth in Exhibit H. Upon compliance with disbursement conditions set forth herein and receipt of a written request for disbursement, IBank will disburse a portion of the Facility Funds to the Purchaser for Facility Costs in amounts of at least five thousand dollars (\$5,000), up to a total aggregate amount not to exceed the Facility Funds. All requests for payment shall be accompanied by information and documentation as may be requested by IBank to determine the amount of Facility Funds to be disbursed.

(b) Each disbursement request shall specify one or more of the following for Facility Funds sought in the disbursement request:

(1) The Purchaser previously paid the Facility Costs and is requesting reimbursement; or

(2) The Purchaser will pay the Facility Costs directly upon receipt of funds from IBank.

(c) By submitting to IBank a disbursement request of the type set forth in subparagraph (b)(1), above, the Purchaser represents and warrants that it has previously paid the Facility Costs indicated in such disbursement request. By submitting to IBank a disbursement request of the type

set forth in subparagraph (b)(2), above, the Purchaser represents and warrants that it will pay the Facility Costs indicated in such request directly upon receipt of funds from IBank.

(d) No Facility Funds shall be disbursed unless and until IBank receives documentation, satisfactory to IBank, demonstrating that the Purchaser has incurred costs that constitute both reasonable and necessary Facility Costs and which are consistent with the cost categories, amounts and requirements described in this Agreement.

(e) Unless otherwise consented to in writing by IBank, the Purchaser must both: (1) begin Facility construction no later than six months after the Effective Date; and (2) submit final invoices to IBank for the entire amount of the Facility Funds no later than thirty-five (35) months after the Effective Date. If the Purchaser fails to meet any of these conditions, IBank may, among other legally available remedies, elect to withhold any and all undisbursed Facility Funds pursuant to Section 2.14 herein.

(f) Notwithstanding any contrary provisions of this Agreement or any related documents, under no circumstances will IBank be obligated to make disbursements in excess of the lesser of (i) actual Facility Costs incurred or (ii) the amount of the Facility Funds.

(g) Not more than ninety-five percent (95%) of each invoice payable from Facility Funds designated for construction shall be disbursed until IBank receives a recorded notice of completion for the Facility or other evidence of completion satisfactory to IBank and the Purchaser has met all conditions precedent to final disbursement set forth herein.

SECTION 2.06. Additional Payments.

(a) The Purchaser shall pay Additional Payments to IBank as follows:

(1) A payment of the IBank Annual Fee on August 1st of each year during the term of this Agreement in an amount equal to three tenths of one percent (0.3%) of the outstanding principal component of the remaining Installment Payments as set forth in the Amortization Schedule; and

(2) Amounts in each year as shall be required by IBank for the payment of extraordinary expenses of IBank in connection with an Event of Default, the enforcement of this Agreement or any amendments hereto requested by the Purchaser, including all expenses, fees and costs of accountants, trustees, and attorneys, litigation costs, insurance premiums and all other extraordinary costs of IBank. Extraordinary expenses and extraordinary costs are those expenses and costs related to this Agreement in excess of ordinary and customary expenses and costs incurred as part of the IBank Annual Fee pursuant to this Section 2.06. Such Additional Payments shall be billed by IBank from time to time, together with any appropriate supporting documents for such extraordinary costs or expenses; and

(3) The Purchaser shall deposit the IBank Annual Fee with IBank not later than August 1st of each year and the Purchaser shall pay to IBank the amount billed pursuant to subsection (2) within thirty (30) days from the date of the invoice. Any amounts not promptly paid shall accrue interest at the lesser of twelve percent (12%) per annum or the Maximum Rate.

(4) Unless expressly waived by IBank in writing, in the event the Purchaser fails to cure any Reporting Covenants noncompliance as set forth in Section 5.03(f) or fails to cure any Replacement Agreement Covenant noncompliance within 30 days after receipt by the Purchaser of the replacement agreement from IBank as set forth in Section 5.11 of this Agreement, an amount equal to one quarter of one percent (0.25%) of the outstanding principal component of the Purchase Price, shall automatically be imposed monthly as liquidated damages charged to the Purchaser and not as a penalty (the "Liquidated Damages Charge"), and shall continue to be imposed throughout the Liquidated Damages Period. The Purchaser shall be obligated to pay the Liquidated Damages Charge as Additional Payments. Such Additional Payment shall be reflected in an IBank invoice to the Purchaser. The Purchaser agrees that, under the circumstances existing as of the date of this Agreement, such Liquidated Damages Charge represents a reasonable estimate of the costs and expenses IBank will incur as a result of the Purchaser's noncompliance with the Reporting Covenants and/or the Replacement Agreement Covenant. Nothing herein shall be construed as an express or implied agreement by IBank to forbear on its exercise of any other rights or remedies provided by this Agreement, as a waiver of such rights or remedies, or as a waiver of any default or Event of Default under this Agreement.

SECTION 2.07 *Reserved.*

SECTION 2.08. Limitations on Prepayment and Facility Funds Reductions.

(a) Limitation on Early Prepayment. The Purchaser is not permitted to prepay all or a portion of the outstanding principal component of the Purchase Price during the period commencing with the Effective Date and ending with the date that is ten (10) years after the Effective Date (the "Prohibited Prepayment Period").

(b) Authorized Prepayment Period. At any time, after ten (10) years from the Effective Date (the "Authorized Prepayment Period"), the Purchaser, upon satisfaction of the conditions of this Section 2.08, may prepay all or a portion of the outstanding principal amount of the Purchase Price at a prepayment price of the principal amount of the Purchase Price outstanding, without premium. Further, the Purchaser shall pay to IBank all interest accrued and unpaid on the prepayment amount through the date of prepayment, plus any Additional Payments, plus the *pro rata* portion of the IBank Annual Fee accrued since the last IBank Annual Fee payment.

(c) Facility Funds Reduction. During the Prohibited Prepayment Period the amount of undisbursed Facility Funds will not be reduced and will continue to accrue interest and other charges as set forth in this Agreement. During the Authorized Prepayment Period, upon satisfaction of the conditions of this Section 2.08, the Purchaser may obtain a Facility Funds Reduction. The Purchaser shall pay to IBank all interest accrued and unpaid on the Facility Funds Reduction amount through the date of the Facility Funds Reduction, plus any Additional Payments, plus the *pro rata* portion of the IBank Annual Fee.

(d) Written Request Required. The Purchaser must provide IBank with its Prepayment Request or Facility Funds Reduction Request in writing and at least ninety (90) days prior to the requested prepayment or reduction date. IBank will not accept any prepayment funds from the Purchaser, or implement a Facility Funds Reduction, unless and until all applicable requirements of this Section 2.08 have been met.

(e) Amendment for Partial Prepayment or Facility Funds Reduction. If during the Authorized Prepayment Period the Purchaser prepays a portion of the outstanding principal component of the Purchase Price or makes a Facility Funds Reduction, then IBank and the Purchaser shall enter into an amendment to this Agreement reflecting the terms of the prepayment or Facility Funds Reduction, including a Revised Amortization Schedule, and the Purchaser shall pay to IBank all interest accrued and unpaid on the prepayment amount or Facility Funds Reduction amount through the date of prepayment or Facility Funds Reduction, plus the portion of the outstanding principal component of the Installment Payments approved for prepayment, plus any Additional Payments, plus the *pro rata* portion of the IBank Annual Fee accrued since the last IBank Annual Fee payment. IBank will not accept any prepayment, and any Facility Funds Reduction will not take effect, until the Parties have executed such amendment to this Agreement.

(f) Prepayment Agreement for Full Prepayment. In the event the Purchaser elects to prepay the entire outstanding amount of the Purchase Price as set forth in paragraph 2.08(b), the Parties shall enter into a prepayment agreement (a "Prepayment Agreement") in form and content acceptable to IBank in its sole and absolute discretion. IBank will not accept a full prepayment, and the Purchaser's obligations under this Agreement will not terminate as set forth in Section 8.05 of this Agreement, until the Parties have executed a Prepayment Agreement.

SECTION 2.09. Validity of Pledge and First Lien.

The Purchaser warrants and represents, and agrees, that the pledge of System Revenues and all legally available amounts in the Enterprise Fund constitute a valid pledge of and first position lien on all of the System Revenues and all legally available amounts in the Enterprise Fund on parity with the lien(s) securing the Parity Debt.

SECTION 2.10. Limited Obligation.

The Purchaser's obligation to make Installment Payments is a special obligation of the Purchaser payable solely from System Revenues and legally available amounts in the Enterprise Fund as provided herein and does not constitute a debt of the Purchaser or the State of California or of any political subdivision thereof within the meaning of any constitutional or statutory debt limit or restriction.

SECTION 2.11. Permitted Additional Parity Debt.

(a) The Purchaser may, after the Effective Date, issue or incur Parity Debt in such principal amount as shall be determined by the Purchaser subject to the requirements for additional obligations as set forth in all existing Parity Debt Instruments and the following specific conditions, which are hereby made conditions precedent to the Purchaser's issuance and delivery of such Parity Debt, provided that to the extent that an existing Parity Debt Instrument conflicts with any of the requirements set forth in this Section 2.11, the more restrictive provision shall prevail.

(1) No Event of Default hereunder or under any other instrument secured by System Revenues shall have occurred and be continuing unless such Event of Default shall be cured

by the issuance or incurrence of such proposed Parity Debt, and the Purchaser shall otherwise be in compliance with all covenants set forth in this Agreement; and

(2) Net System Revenues calculated pursuant to generally accepted accounting principles, consistently applied, and excluding the proceeds of any taxes and also excluding any balances in any fund at the beginning of the period of the computation, as shown by the books of the Purchaser for the latest Fiscal Year, or any more recent twelve month period selected by the Purchaser ending not more than sixty (60) days prior to the adoption of the resolution pursuant to which instrument such Parity Debt is issued or incurred, as shown by the books of the Purchaser, plus, at the option of the Purchaser, either or both of the items below designated in subsections (b)(1) and (b)(2), shall have amounted to at least 1.20 times the Maximum Annual Debt Service taking into consideration the maximum annual debt service payable in any Fiscal Year on the proposed Parity Debt, as set forth in the Report of an Independent Accountant or Independent Consultant delivered to IBank; provided, however, that where the proposed Parity Debt is with IBank, no Report of an Independent Accountant or Independent Consultant shall be required.

(b) Either or both of the following allowances may be added to Net System Revenues for the purpose of meeting the condition contained in subsection (a)(2) above:

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

(2) An allowance for increased System Revenues arising from any increase in the charges made for service from the System which has become effective prior to the incurring of such proposed Parity Debt but which, during all or any part of such Fiscal Year or any more recent twelve (12) month period, was not in effect in an amount equal to one hundred percent (100%) of the amount by which System Revenues would have been increased if such increase to charges had been in effect during the whole of such time period and any period prior to the incurring of such proposed Parity Debt, as shown in the Report of an Independent Accountant or Independent Consultant delivered to IBank; provided however, that where the proposed Parity Debt is with IBank, no Report of an Independent Accountant or Independent Consultant shall be required.

(c) The Purchaser shall deliver to IBank, prior to incurring or issuing such proposed Parity Debt, a copy of the proposed Parity Debt Instrument and Certificate of the Purchaser certifying that the conditions precedent to the issuance of such Parity Debt set forth in subsections (a) and (b) above have been satisfied and, as applicable, the Report required by subsections (a) and (b) above has been delivered; provided however, that where the proposed Parity Debt is with IBank, no copy of the proposed Debt Instrument nor Report shall be required and the certification

required by this Section 2.11(d) may be made as part of the Parity Debt Instrument for the new IBank Parity Debt.

(d) Notwithstanding subsections (a)(2), (b), (c), and (d) above, proposed Parity Debt to be issued for the purpose of refunding outstanding Parity Debt may be issued without compliance with subsections (a)(2), (b), (c) and (d) above, so long as such refunding results in lower Parity Debt Service in each Fiscal Year after such refunding and the final maturity date of the refunding Parity Debt is no later than the final maturity date of the refunded Parity Debt. The Purchaser shall deliver to IBank the Parity Debt Instrument for such refunding within 30 days of such Parity Debt issuance.

SECTION 2.12. Purchaser's Obligation for Other Costs to Complete Facility.

The Purchaser acknowledges and agrees that the amount of IBank's obligations under this Agreement is limited to the amount of the Facility Funds. As such, it is the Purchaser's obligation to pay all other costs associated with or needed for completion of the Facility in excess the Facility Funds amount.

SECTION 2.13. Facility Description.

For the purposes of this Agreement, the description of the Facility shall be as set forth in Exhibit B hereto.

SECTION 2.14. Withholding of Facility Funds.

(a) IBank may withhold all or any portion of the Facility Funds in the event that:

(1) The Purchaser has violated any of the material terms, provisions, conditions, commitments, representations, warranties, or covenants of this Agreement, as determined by IBank in its reasonable discretion, or if an Event of Default has occurred; or

(2) The Purchaser is unable to demonstrate, to the satisfaction of IBank in its reasonable discretion, the ability to complete the Facility or to maintain adequate progress toward completion thereof.

(b) In the event that Facility Funds are withheld from the Purchaser, IBank shall notify the Purchaser of the reasons, identify any additional conditions to be met in order to resume disbursements and advise the Purchaser of the time in which to remedy the failure or violation or satisfy the applicable conditions.

(c) If Facility Funds are withheld pursuant to this section, the Purchaser remains obligated to repay the entire amount of the Purchase Price but to the extent applicable, the Purchaser may submit to IBank an Facility Funds Reduction Request pursuant to Section 2.08.

SECTION 2.15. *Reserved.*

SECTION 2.16. Permitted Subordinate Debt.

The Purchaser may issue or incur Subordinate Debt following the Effective Date in such principal amount as shall be determined by the Purchaser subject to the following specific conditions precedent to the issuance or incurrence of such Subordinate Debt.

(a) No Event of Default hereunder, and no default under any other obligation or instrument secured by System Revenues, shall have occurred and be continuing unless such Event of Default shall be cured by the issuance or incurrence of such proposed Subordinate Debt, and the Purchaser shall be in compliance with all covenants of this Agreement and any other instrument securing, evidencing, governing, or relating to other obligations secured by, System Revenues.

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

ARTICLE III

PLEDGE OF REVENUES; APPLICATION OF FUNDS

SECTION 3.01. Pledge of System Revenues.

The Purchaser hereby grants to IBank a lien on System Revenues and all legally available amounts in the Enterprise Fund as security for payment of Installment Payments and Additional Payments. The System Revenues and all legally available amounts in the Enterprise Fund are hereby pledged in their entirety to the payment of Installment Payments and Additional Payments. The System Revenues and all legally available amounts in the Enterprise Fund shall be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Purchaser. Neither the Installment Payments, the Additional Payments nor this Agreement is a debt of IBank, the State or any of its political subdivisions (other than the Purchaser) and neither IBank, the State nor any of its political subdivisions (other than the Purchaser) is liable thereon. Pursuant to Section 5451 of the State Government Code of the State, the pledge of the Purchaser's System Revenues for the repayment of the principal of, premium, if any, and interest components of the Installment Payments constitutes a first lien and security interest which immediately attaches to such System Revenues, and is effective and binding against the Purchaser and its successors and creditors and all others asserting rights therein irrespective of whether those parties have notice of the pledge, irrespective of whether such amounts are or may be deemed to be a fixture and without the need for physical delivery, recordation, filing or further act.

SECTION 3.02. System Revenues to be Deposited in the Enterprise Fund.

In order to carry out its obligation to pay the Installment Payments and Additional Payments, the Purchaser agrees and covenants that it shall maintain the Enterprise Fund as a distinct fund separate and apart from the Purchaser's other funds. All System Revenues received by it shall be deposited when and as received in trust in the Enterprise Fund and shall be applied and used only as and in the order provided herein: First, the Purchaser shall pay all Operations and Maintenance Costs (including amounts reasonably required to be set aside in contingency reserves for Operations and Maintenance Costs the payment of which is not then immediately required) from the Enterprise Fund as they become due and payable, and all remaining money on deposit in the Enterprise Fund shall then be used to pay Section 3.03 amounts. After making all the set asides and payments hereinabove required to be made in each Fiscal Year, the Purchaser may expend in such Fiscal Year any remaining money in the Enterprise Fund for any lawful purpose of the Purchaser. The Purchaser agrees and covenants to maintain the Enterprise Fund so long as any portion of the Purchase Price remains unpaid.

SECTION 3.03. Priority of Payments Made from the Enterprise Fund.

As set forth in Section 3.02, the Purchaser shall first pay from amounts in the Enterprise Fund all Operations and Maintenance Costs as they become due and payable and thereafter shall promptly pay the following amounts in the following order and at the following times:

(a) Installment Payments and Additional Payments.

(1) The Purchaser shall promptly pay to (A) IBank (i) the principal portion of the Installment Payments, together with the IBank Annual Fee, which is due at IBank by August 1st of each year, as set forth on the Amortization Schedule, and (ii) the interest portions of Installment Payments, which are due at IBank by each Interest Payment Date, as set forth in the Amortization Schedule; and (B) the trustee(s) or holder(s) of any Parity Debt, payment of Parity Debt Service as it becomes due and payable, all on a pro rata basis.

(2) The Purchaser shall promptly pay to (A) IBank Additional Payments due pursuant to Section 2.06; and (B) the trustee(s) or holder(s) of any Parity Debt, payments due under the applicable Parity Debt Instrument that do not constitute Parity Debt Service, all on a pro rata basis.

(b) Reserve Accounts.

Any amounts needed to replenish reserve accounts established hereunder or for any Parity Debt, all on a pro rata basis.

(c) Approved Subordinate Debt Payments.

Payment of Subordinate Debt Service as it becomes due and payable on Subordinate Debt pursuant to Subordinate Debt issued or incurred in accordance with Section 2.16 hereof.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

SECTION 4.01. Organization; Authority.

The Purchaser is duly organized and existing as a municipal corporation under the laws of the State and has all necessary power and authority to enter into and perform its duties (including, but not limited to, the authority to set System rates, fees, rates and charges without the approval of any other governing body and to pledge the System Revenues or those certain amounts on deposit in the Enterprise Fund) under this Agreement.

SECTION 4.02. Agreement Valid and Binding.

This Agreement has been duly authorized, executed and delivered by the Purchaser and constitutes the legal, valid and binding obligation of the Purchaser, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally.

SECTION 4.03. No Conflict in Execution of Agreement.

The execution and delivery by the Purchaser of this Agreement and compliance with the provisions hereof will not conflict with or constitute a breach of or default by the Purchaser under any law, administrative regulation, court decree, resolution, charter, by-law, or any agreement to which the Purchaser is subject or by which it is bound or by which its properties may be affected.

SECTION 4.04. No Litigation.

There is no action, suit, proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or threatened against the Purchaser to restrain or enjoin the execution or delivery of this Agreement, or in any way contesting or affecting the validity of this Agreement, or contesting the powers of the Purchaser to enter into or perform its obligations under this Agreement, or that would affect the Purchaser's ability to perform its obligations under this Agreement, including, but not limited to, the pledge of System Revenues and legally available amounts on deposit in the Enterprise Fund.

SECTION 4.05. No Breach or Default.

The Purchaser is not in breach of or in default under any applicable law or administrative regulation of the State or the United States, the Constitution of the State (including article XVI, section 18 thereof), any applicable judgment or decree, any agreement, indenture, bond, note, resolution, agreement or other instrument to which the Purchaser is a party or is otherwise subject which, if not resolved in favor of the Purchaser, would have a material adverse impact on the Purchaser's ability to perform its obligations under this Agreement and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument.

SECTION 4.06. No Consent, Approval or Permission Necessary.

No consent or approval of any trustee or holder of any indebtedness of the Purchaser, and no consent, permission, authorization, order or licenses of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Agreement or the consummation of any transaction contemplated herein, except as have been obtained or made and as are in full force and effect.

SECTION 4.07. Accuracy and Completeness of Information Submitted to IBank. The information relating to the Purchaser and its System submitted by the Purchaser to IBank, including, but not limited to, all information in the application for Facility Funds was true at the time submitted to IBank and, as of the Effective Date, remains true and correct in all material respects; and such information did not and does not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made.

SECTION 4.08. Financial Statements of the Purchaser.

The Purchaser's financial statements that have been furnished to IBank were prepared in conformity with generally accepted accounting principles, consistently applied, and fairly present in all material respects the financial condition of the Purchaser as of the date thereof and the results of its operations for the period covered thereby. There has been no material adverse change in the business, condition (financial or otherwise), or operations of the Purchaser since the date of such financial statements.

SECTION 4.09. Licenses, Permits and Approvals for Completion of Facility.

The Purchaser has obtained, or has applied for and will obtain as soon as practicable, all licenses, permits and approvals from any governmental agency or authority having jurisdiction over the Purchaser required to commence construction of the Facility and for Facility Delivery, and will obtain all licenses, permits, and approvals as required in the future.

SECTION 4.10. Authority to Operate the System.

The Purchaser has obtained or will obtain all licenses, permits, and approvals from any governmental agency or authority having jurisdiction over the Purchaser now required for the operation of the System and will obtain all licenses, permits, and approvals as required in the future.

SECTION 4.11. Valid Title; No Conflict.

(a) The Purchaser, upon completion of the Facility, will have good and valid title to the Facility sufficient to carry out the purposes of this Agreement.

(b) To the best of the Purchaser's knowledge no officer or official of IBank has any material interest in the Facility or in the transactions contemplated by this Agreement.

(c) All applicable local governmental agency, State, and federal government certificates, approvals, permits, and authorizations required in order to complete construction and commence operations of the Facility have been obtained or will be obtained as soon as practicable.

SECTION 4.12. Purchaser's Compliance with Prop 218 Law.

The Purchaser hereby represents and warrants that, to the best of its knowledge, as of the Effective Date, the rates, fees and charges it imposes on its System customers are legal, valid, and comply with the Prop 218 Law. The Purchaser further specifically warrants and represents that (i) the rates, fees and charges it imposes on its System customers do not exceed, in the aggregate, the funds required to operate the System, and (ii) its method of allocating rates, fees and charges among users of the System complies, to the best of its knowledge, with the proportionality requirements of the Prop 218 Law.

SECTION 4.13. No Challenge to Purchaser's Rates, Fees and Charges.

The Purchaser hereby represents and warrants that, to the best of its knowledge after reasonable investigation, as of the Effective Date, there is no action, suit, proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or threatened challenging Purchaser's compliance with the Prop 218 Law as it applies to Purchaser's rates, fees and charges.

SECTION 4.14 Purchaser's Compliance with Conditions Precedent to Parity Debt Set Forth in the Existing Lien Documents.

The Purchaser represents, warrants, and by the execution of this Agreement certifies as of the Effective Date, that the Purchaser has satisfied any and every condition set forth in the Existing Lien Documents precedent to the lien on System Revenues and all legally available amounts in the Enterprise Fund imposed by this Agreement being on parity with any lien on System Revenues and legally available amounts in the Enterprise Fund imposed by the Existing Lien Documents.

SECTION 4.15. Continuing Validity of Representations and Warranties.

Unless the representations and warranties set forth in this Article IV are limited by their express terms to a specific time period or a point in time, the foregoing representations and warranties are true, accurate, and correct as of the Effective Date and shall continue to be true, accurate, and correct throughout the term of this Agreement.

SECTION 4.16. Other Liens; No Lien Senior to IBank Lien.

Except as may otherwise be described herein, as of the Effective Date, there is no other debt or obligation that places a lien on or in any way encumbers the Purchaser's System Revenues and/or legally available amounts in the Enterprise Fund other than the first lien established by Section 3.01 of this Agreement, and, to the extent outstanding, the lien established by the Existing Lien Documents. Further, the Purchaser represents and warrants that the lien on System Revenues and legally available amounts on deposit in the Enterprise Fund established by Section 3.01 of this Agreement is not junior to any lien and is on parity with, to the extent outstanding, the lien on

System Revenues and certain amounts on deposit in the Enterprise Fund established by the Existing Lien Documents.

ARTICLE V

AFFIRMATIVE COVENANTS OF THE PURCHASER

SECTION 5.01. Punctual Payment.

The Purchaser hereby covenants to punctually pay, or cause to be paid, all payments required hereunder when due and in all other respects in strict conformity with the terms of this Agreement, and to faithfully observe and perform all of the conditions, covenants, and requirements of this Agreement.

SECTION 5.02. Payment of Claims.

The Purchaser hereby covenants that, from time to time, it will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies, which, if unpaid, might become liens or charges upon the System and all personal and real property related thereto, or upon the System Revenues or any part thereof, or upon any funds in the hands of IBank, or which might impair the security for the payment of the Installment Payments or Additional Payments; provided, however, that nothing herein contained shall require the Purchaser to make any such payment so long as the Purchaser in good faith shall contest the validity of said claims and shall act promptly to remove any liens or charges arising from said claims, by, among other things, obtaining surety bonds to cause the release of such liens or charges.

SECTION 5.03. Books and Accounts; Financial Statements.

(a) The Purchaser hereby covenants that it will keep proper books of record and accounts in which complete and correct entries shall be made of all transactions relating to the System Revenues. Such books of record and accounts shall at all times during business hours be subject to the inspection of IBank or its designee.

To the extent that any continuing disclosure certificates entered into by the Purchaser in connection with other debt or obligations require the information required in subsections (b) through (e), the Purchaser may submit a copy of the information and materials required by such continuing disclosure certificate instead of providing separate statements setting forth the required information.

(b) The Purchaser shall prepare and file with IBank annually as soon as practicable, but in any event not later than one hundred eighty (180) days after the close of each Fiscal Year, so long as this Agreement has not been discharged by IBank, an audited financial statement of the Purchaser relating to the System Revenues and the Enterprise Fund for the preceding Fiscal Year, prepared by an Independent Accountant under generally accepted accounting procedures, consistently applied; provided, however, that the Purchaser's failure to provide such audited financial statements within the required time period shall not constitute a breach of or a default under this Agreement unless the City fails to deliver such audited financial statements sixty (60) days following the receipt of written notice from IBank informing the Purchaser of its failure to

provide such audited financial statements within one hundred eighty (180) days after the end of the Fiscal Year. The Purchaser will furnish to IBank such reasonable number of copies of such audited financial statements as may be required by IBank for distribution (at the expense of the Purchaser). Alternatively, the Purchaser may furnish electronic copies of such audited financial statements to IBank in portable document format, or other format acceptable to IBank in its sole and absolute discretion.

(c) Simultaneously with the delivery of the annual financial statements, or more frequently following forty-five (45) calendar days' written notice by IBank, as IBank shall determine in its sole and absolute discretion, the Purchaser shall deliver to IBank a Certificate of the Purchaser stating the following:

- (1) The number of System users as of the end of the Fiscal Year;
- (2) Calculation of the coverage ratios described in Section 5.06 and a certification that adopted rates and charges comply with the requirements of that section;
- (3) Notification of the withdrawal of any System user generating four percent (4%) or more of System Revenues since the last reporting date;
- (4) Any significant System facility retirements or expansions planned or undertaken since the last reporting date;
- (5) Notification of any Parity Debt or Subordinate Debt incurred since the last reporting date and certification that there has been no default or noncompliance under any obligation secured by System Revenues;
- (6) Certification that (i) no Event of Default has occurred or is continuing and no other event has occurred or is continuing, which, with the passing of time or the giving of notice or of both, would constitute an Event of Default, or (ii) describing in detail any Event of Default that has occurred and/or any event that has occurred which, with the passing of time or giving or giving of notice, would constitute an Event of Default;
- (7) Certification that the Purchaser is in compliance with the terms of this Agreement, including without limitation the Tax Covenants set forth in Section 5.07 hereof, or if the Purchaser has breached any such covenant, a detailed description of such breach;
- (8) Notification of any other event or circumstance that would materially affect completion of the Facility or the payment of the Purchase Price;
- (9) To the extent the Existing Lien Documents continue to impose a lien on System Revenues and/or legally available amounts in the Enterprise Fund, certification that the Purchaser has complied with, kept, observed, and performed, and continues to comply with, keep, observe, and perform, any and all requirements, conditions, covenants, duties, and terms set forth in the Existing Lien Documents for the lien on System Revenues and/or legally available amounts in the Enterprise Fund created by this Agreement to be on parity with each of the liens on System Revenues and/or legally available amounts in the Enterprise Fund created under the Existing Lien Documents; and

(10) Such other information as may be reasonably requested by IBank.

(d) The Purchaser shall, upon request, furnish to IBank, in a format provided by IBank, information concerning employment and other public benefits connected to the Facility.

(e) The Purchaser agrees to notify IBank, immediately, by telephone promptly confirmed in writing, if any representation made in this Agreement or any representation made in the application for financing to IBank shall at any time so long as this Agreement is outstanding prove untrue or incorrect in any manner that could adversely affect the Purchaser's ability to perform its obligations under this Agreement. Further, the Purchaser agrees to notify IBank, immediately, by telephone promptly confirmed in writing, if there is a stop payment notice, litigation or any other legal proceeding which may materially adversely impact the completion of the Facility. Additionally, the Purchaser agrees to notify IBank, immediately, by telephone promptly confirmed in writing, if the Purchaser breaches any covenant set forth in this Agreement.

(f) The Purchaser's covenants set forth in paragraphs 5.03(b) through (d) hereof are hereinafter referred to as the "Reporting Covenants." In the event the Purchaser fails to comply timely with the Reporting Covenants, starting on the date that is the thirty-first day (31st day) after the applicable due date of any Reporting Covenant and continuing until the date the Purchaser actually cures its noncompliance (the "Liquidated Damages Period"), the Purchaser shall be obligated to pay the Liquidated Damages Charge in accordance with Section 2.06(a)(4) hereof.

SECTION 5.04. Protection of IBank's Security and Rights.

The Purchaser will preserve and protect the security for payment of the Installment Payments, Additional Payments, and the rights of IBank. From and after the Effective Date, the Agreement shall be incontestable by the Purchaser.

SECTION 5.05. Payments of Taxes and Other Charges.

The Purchaser will pay and discharge, or cause to be paid and discharged, all taxes, service charges, assessments and other governmental charges, or charges in lieu thereof, which may hereafter be lawfully imposed upon the Purchaser, the System, or the System Revenues when the same shall become due. Nothing herein contained shall require the Purchaser to make any such payment so long as the Purchaser in good faith shall contest the validity of said taxes, assessments, or charges and shall have adequate funds for the payment thereof. The Purchaser will duly observe and conform to all valid requirements of any governmental authority relative to the System or any part thereof.

SECTION 5.06. Maintenance of System Revenues; Rate Covenant.

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

Debt Service for such Fiscal Year. [please change to match ISRF 19-134, the City's 2019 loan for the Lindley Reservoir]

(b) The Purchaser further covenants that, to the fullest extent permitted by law, it will fix, prescribe, and charge, or cause to be fixed, prescribed, and charged, in each Fiscal Year, such rates, fees, and charges for the use of and for the service furnished by the System to ensure that System Revenues realized are in an amount which the Purchaser reasonably expects will be sufficient to pay the following amounts in the following order or priority:

(1) All Operations and Maintenance Costs estimated by the Purchaser to become due and payable in such Fiscal Year;

(2) The Installment Payments, the IBank Annual Fee, and the principal and interest on any outstanding Parity Debt as they become due and payable during such Fiscal Year, without preference or priority;

(3) All amounts, if any, required to restore the balance of any reserve fund required under this Agreement or any reserve fund or accounts required under any Parity Debt Instrument, for any outstanding Parity Debt, to the full amount of any such reserve requirement; and

(4) All payments required to meet any other obligations of the Purchaser which are charges, liens, or encumbrances upon, or with are otherwise payable from, the System Revenues or the Net System Revenues during such Fiscal Year, including any Additional Payments.

(c) If for any reason Net System Revenues, or System Revenues, as applicable, prove insufficient to meet the numerical thresholds set forth in subsection (a) and to comply with the requirements of subsection (b), the Purchaser first will engage an Independent Consultant to recommend revised rents, rates, fees, charges, savings, or assessments, or any combination thereof, and the Purchaser will, subject to any applicable requirements and restrictions imposed by law, including, but not limited to, the Prop 218 Law, and subject to the good faith determination of the Purchaser that such recommendations, in whole or in part, are in the best interests of the Purchaser, take all actions necessary to increase System Revenues through any combination of increased rents, rates, fees, charges, savings, or assessments and that it will do so not later than one hundred eighty (180) days following the date on which Net System Revenues first fail to meet the requirements of this Section 5.06. The Purchaser may make adjustments from time to time in such rents, rates, fees, and charges and may make such classification thereof as it deems necessary, but shall not reduce the rents, rates, fees, and charges then in effect unless the Net System Revenues from such reduced rents, rates, fees, and charges will at all times be sufficient to meet the requirements of this section. Notwithstanding the foregoing, in lieu of taking the preceding actions with respect to the Purchaser's failure to comply with subsection (a), the Purchaser may within one hundred eighty (180) days following the date Net System Revenues first fail to meet the requirements of subsection (a) either establish and fund a rate stabilization fund, or increase monies held in an existing rate stabilization fund, in an amount sufficient to satisfy the requirements of subsection (a). If the Purchaser elects to proceed accordingly, it shall provide to IBank within such one hundred eighty (180) day period evidence satisfactory to IBank in its reasonable discretion

that the amounts held in such rate stabilization fund are sufficient to satisfy the requirements of subsection (a).

(d) The Purchaser will have in effect at all times rules and regulations requiring each landowner or water user located on any land served by the System to pay the rates, fees, and charges applicable to the System services provided to such land and providing for the billing thereof and for a due date and delinquency date for each bill. In each case where any such bill remains unpaid in whole or in part after it become delinquent, the Purchaser shall take any actions reasonably necessary to collect any such unpaid bill, and the Purchaser may discontinue providing System services to any customer with an unpaid bill or prohibit groundwater extractions in accordance with the Purchaser's rules and regulations governing such situations of delinquency.

SECTION 5.07. Tax Covenants.

The Purchaser recognizes that the Facility Funds may be derived from the proceeds of, or payments made hereunder may be pledged to secure, bonds issued or to be issued by IBank, the interest on which is excluded from gross income for federal income tax purposes under Section 103 of the Code. In order to maintain the tax-exempt status of, and perform its obligations with respect to, the Proceeds Bonds and Secured Bonds, the Purchaser will not take any action, or fail to take any action, if such action or failure to take such action would adversely affect the exclusion from gross income of the interest on the Proceeds Bonds or Secured Bonds under the Code, and the Purchaser specifically agrees to comply with all terms and conditions contained herein and to provide annual certification of its compliance with the tax covenants set forth in this Section 5.07. The Purchaser will not directly or indirectly use or make any use of the Facility Funds or any other funds of the Purchaser, or take or omit to take any action, if such use or action would cause the Proceeds Bonds or Secured Bonds to be "arbitrage bonds" subject to federal income taxation by reason of section 148 of the Code. In addition, the Purchaser covenants and agrees that it, and/or any party related to it, will not acquire Proceeds Bonds or Secured Bonds in an amount related to the amount of the Facility Funds. The provisions of this Section 5.07 shall survive the discharge of the Purchaser's obligations hereunder and shall apply to the Trustee or any other successor or assignee described in Section 8.02.

(a) Eligible Uses of Facility Funds. Unless otherwise agreed to by IBank, Facility Funds shall be used exclusively to pay or reimburse the Purchaser for capital expenditures paid with respect to the Facility that meet the requirements of subsection (b) of this Section 5.07.

(b) Allocation of Facility Funds to Expenditures. On May 26, 2021, the Purchaser adopted a resolution stating its official intent to be reimbursed from the proceeds of a borrowing to finance costs of the Facility (the "Reimbursement Resolution"). Absent written agreement by IBank, all expenditures of Facility Funds will be used to pay or reimburse the Purchaser for capital expenditures with respect to the Facility that are either:

(1) costs that are Preliminary Costs incurred with respect to the Facility prior to the start of construction and in an aggregate amount not exceeding twenty percent 20% of the Facility Funds;

(2) costs paid by the Purchaser no earlier than the date which is sixty (60) days prior to the date of the adoption of the Reimbursement Resolution; or

(3) costs paid by the Purchaser on or after the Effective Date.

In addition, Facility Funds shall be allocated to paying or reimbursing the Purchaser for capital expenditures no later than eighteen months after the later of the date the expenditure was paid or the date the Facility is placed in service, but in the case of costs described in clause (2), above, such allocations must be made in all events no later than three years after the cost was paid.

(c) Prohibited Uses of Facility Funds. The Purchaser will not loan any of the Facility Funds to any other person or entity. The Purchaser will not use Facility Funds directly or indirectly to make principal, interest, or premium payments with respect to any bond, note, certificate of participation or other obligation of the Purchaser or any person or entity that is a related party to the Purchaser within the meaning of Treasury Regulation Section 1.150-1(b).

(d) Expectations Regarding Facility Funds and Facility; No Change in Use. The Purchaser reasonably expects and consistent with this Section 5.07 hereof to use all Facility Funds and all of the Facility for the entire stated term to maturity of this Agreement. The Purchaser does not expect that the Facility or any part thereof will be sold or otherwise disposed of so long as the Purchaser's obligations under this Agreement are not discharged. Absent written agreement by IBank, the Purchaser hereby agrees that it will use all Facility Funds and all of the Facility as set forth in this Section 5.07.

(e) Funds for Making Installment Payments. All amounts used to fund the Payment Account will be deemed to have been made from the Purchaser's funds by using a last-in, first-out accounting method, and amounts in the Payment Account will be treated as used to pay the Installment Payments by using a first-in, first-out accounting method. The Purchaser agrees that the amounts used to pay Installment Payments shall be both received by the Purchaser and utilized for the payment of Installment Payments within a ninety (90) day period. The Payment Account will be used primarily to achieve a proper matching of revenues and Installment Payments within each year; a matching of revenues means that revenue and Installment Payments come in and go out at approximately the same level and the Payment Account is cleared out to a very low balance at least one time during the year. Current Revenues in the Payment Account shall be invested without regard to yield so long as the Purchaser complies with this section.

(f) Nongovernmental Use of Facility Funds and Facility. The Purchaser understands that the Facility Funds and the Facility are subject to certain restrictions on the use of the Facility Funds or the Facility by any Nongovernmental Person, other than use as a member of the general public. For this purpose a Nongovernmental Person will be treated as "using" Facility Funds to the extent the Nongovernmental Person:

(1) borrows Facility Funds;

(2) acquires an ownership or lease interest with respect to any portion of the Facility;

(3) uses any portion of the Facility (e.g., as a service provider, operator, or manager), except pursuant to a contract that meets the requirements of subsection (g) of this Section 5.07; or

(4) in the case of a Facility that provides water, electricity, or natural gas, acquires such output from the Facility (except pursuant to generally applicable and uniformly applied rates that are available to the general public).

The Purchaser hereby represents and covenants that it will not allow more than five percent (5%) of the Facility Funds or more than five percent (5%) of the Facility to be used directly or indirectly by any Nongovernmental Person, other than as a member of the general public.

(g) Management Contracts. The Purchaser understands that an arrangement with any person or organization (other than a state or local governmental unit) which provides for such person or organization to manage, operate, maintain or provide services with respect to the Facility (a "Service Contract") can give rise to use by a Nongovernmental Person that is subject to the limitations of Section 5.07(f) of this Agreement. However, as of the Effective Date the Internal Revenue Service ("IRS") has issued two sets of guidelines that describe situations in which the IRS would rule that a Service Contract will not be treated as giving rise to a Nongovernmental Person's use of the Facility: (i) the guidelines set forth in Revenue Procedure 97-13, as amended by Revenue Procedure 2001-39, and as amplified by Notice 2014-67 (the "Prior Guidelines"); and (ii) the guidelines set forth in Revenue Procedure 2017-13 (the "Current Guidelines"). The Purchaser may apply the Prior Guidelines to any Service Contract entered into before August 18, 2017 that is not modified materially or extended on or after that date (other than pursuant to a renewal option as defined in Treasury Regulation Section 1.141-1(b)). The Purchaser may apply the Current Guidelines to Service Contracts entered into at any time.

Commencing with the Effective Date, at least thirty (30) days prior to the execution of any modification to, extension or renewal of, or new operations and maintenance agreement relating to the Facility the Purchaser shall (i) ensure that any such instrument meets the requirements for qualified management contracts under the Code, and (ii) provide IBank a copy of any such instrument together with an explanation of the basis for its conclusion that such instrument meets the requirements for qualified management contracts under the Code; provided, however, that the Purchaser is not obligated to provide to IBank contracts for services that are solely incidental to the primary governmental function, or functions, of the Facility (e.g., contracts for janitorial services, landscaping services, office equipment repair, escalator repair, elevator repair, auditing services, legal services, or similar services).

(1) Current Guidelines. Service Contracts that relate to the use or operation of the Facility by "service providers," as that term is used in the Current Guidelines (the "Service Providers"), will satisfy the Current Guidelines if the requirements of each of the following subsections is satisfied:

(i) The compensation of the Service Provider under the contract must be reasonable for the services rendered.

(ii) The contract must not provide to the Service Provider a share of net profits from the operation of the Facility. Compensation to the Service Provider will not be treated as providing a share of net profits if no element of the compensation takes into account, or is contingent upon, either the Facility's net profits or both the Facility's revenues and expenses for any fiscal period. For this purpose, the elements of the compensation are the eligibility for, the amount of, and the timing of the payment of the compensation. Further, solely for purposes of determining whether the amount of the compensation meets the requirements of this Section 5.07(g)(1)(ii), any reimbursements of actual and direct expenses paid by the Service Provider to unrelated parties are disregarded as compensation. Incentive compensation will not be treated as providing a share of net profits if the eligibility for the incentive compensation is determined by the Service Provider's performance in meeting one or more standards that measure quality of services, performance, or productivity, and the amount and the timing of the payment of the compensation meet the requirements of this section 5.07(g)(1)(ii).

(iii) The contract must not, in substance, impose upon the Service Provider the burden of bearing any share of net losses from the operation of the Facility. An arrangement will not be treated as requiring the Service Provider to bear a share of net losses if: (A) The determination of the amount of the Service Provider's compensation and the amount of any expenses to be paid by the Service Provider (and not reimbursed), separately and collectively, do not take into account either the Facility's net losses or both the Facility's revenues and expenses for any fiscal period, and (B) the timing of the payment of compensation is not contingent upon the Facility's net losses. For example, a Service Provider whose compensation is reduced by a stated dollar amount (or one of multiple stated dollar amounts) for failure to keep the Facility's expenses below a specified target (or one of multiple specified targets) will not be treated as bearing a share of net losses as a result of this reduction.

(iv) Without regard to whether the Service Provider pays expenses with respect to the operation of the Facility without reimbursement by the qualified user (e.g., the Purchaser), compensation for services will not be treated as providing a share of net profits or requiring the Service Provider to bear a share of net losses under sections 5.02(2) and 5.02(3) of the Current Guidelines if the compensation for services is: (A) based solely on a capitation fee, a periodic fixed fee, or a per-unit fee; (B) incentive compensation described in the last sentence of section 5.02(2) of the Current Guidelines; or (C) a combination of these types of compensation.

(v) Deferral due to insufficient net cash flows from the operation of the Facility of the payment of compensation that otherwise meets the requirements of sections 5.02(2) and 5.02(3) of the Current Guidelines will not cause the deferred compensation to be treated as contingent upon net profits or net losses under sections 5.02(2) and 5.02(3) of the Current Guidelines if the contract includes requirements that: (A) the compensation is payable at least annually; (B) the qualified user is subject to reasonable consequences for late payment, such as reasonable interest rate charges or late payment fees; and (C) the qualified user will pay such deferred compensation (with interest or late payment fees) no later than the end of five years after the original due date of the payment.

(vi) The term of the contract, including all renewal options, must not be greater than the lesser of 30 years or 80 percent of the reasonably expected useful life of the Facility. For this purpose, economic life is determined in the same manner as under section 147(b)

of the Code as of the beginning of the term of the contract. A contract that is materially modified with respect to any matters relevant to section 5 of the Current Guidelines is retested under section 5 of the Current Guidelines as a new contract as of the date of the material modification.

(vii) The qualified user must exercise a significant degree of control over the Facility. Service Contract provides such control if it requires the qualified user to approve:

(A) The annual budget of the Facility;

(B) Capital expenditures with respect to the Facility (for this purpose, a qualified user may show approval of capital expenditures for the Facility by approving an annual budget for capital expenditures described by functional purpose and specific maximum amounts);

(C) each disposition of property that is part of the Facility;

(D) rates charged for use of the Facility (for this purpose, a qualified user may show approval of rates charged for use of the managed property by either expressly approving such rates (or the methodology for setting such rates) or by including in the Service Contract a requirement that the Service Provider charge rates that are reasonable and customary as specifically determined by an independent third party); and

(E) the general nature and type of use of the Facility (for example, the type of services).

(viii) The qualified user bears the risk of loss upon damage or destruction of the Facility (for example, upon force majeure). A qualified user does not fail to meet this risk of loss requirement as a result of insuring against risk of loss through a third party or imposing upon the Service Provider a penalty for failure to operate the Facility in accordance with the standards set forth in the Service Contract.

(ix) The Service Provider must agree that it is not entitled to and will not take any tax position that is inconsistent with being a Service Provider to the qualified user with respect to the Facility.

(x) The Service Provider must not have a role or relationship with the qualified user (e.g., the Purchaser) that, in effect, substantially limits the ability of the qualified user to exercise its rights, including cancellation rights, under the Service Contract, based on all the facts and circumstances. Accordingly:

(A) Not more than 20 percent of the voting power of the governing body of the qualified user (or IBank) in the aggregate may be vested in the Service Provider and its directors, officers, shareholders, partners, members and employees.

(B) The governing body of the qualified user does not include the chief executive officer of the Service Provider or the chairperson (or equivalent executive) of the Service Provider's governing body.

(C) The chief executive officer of the Service Provider is not the chief executive officer of the qualified user or any related person (within the meaning of Treasury Regulation 1.150-1(e)) to the qualified user.

For purposes of this section 5.07(g)(1)(x), the phrase Service Provider includes related persons (within the meaning of Treasury Regulation 1.150-1(e)) and the phrase “chief executive officer” includes a person with equivalent management responsibilities.

(xi) the Service Provider’s use of the Facility that is functionally related to and subordinate to the performance of its services under a Service Contract for the Facility that meets the conditions of Section 5 of the Current Guidelines does not result in private business use of the Facility.

(2) Prior Guidelines. Service Contracts that relate to the use or operation of the Facility by a “service provider,” as that term is used in the Prior Guidelines (the “Prior Guideline Service Providers”), will satisfy the Prior Guidelines if, among other ways of satisfying the Prior Guidelines, the requirements of each of the following requirements is satisfied:

(i) The compensation of the Prior Guidelines Service Provider under the contract must be reasonable for the services rendered.

(ii) The contract must not provide for any compensation for services based, in whole or in part, on a share of net profits from the operation of the Facility. Generally, compensation is not based on a share of net profits if such compensation is based on a “capitation fee” or a “per-unit fee.” Under the Prior Guidelines, “capitation fee” means a fixed periodic amount for each person for whom the Prior Guidelines Service Provider assumes the responsibility to provide all needed services for a specified period (so long as the quantity and type of services actually provided to covered persons varies substantially). Under the Prior Guidelines, a “per-unit fee” means a fee based on a unit of service provided (e.g., a stated dollar amount for each specified medical procedure performed). Further, compensation based on a percentage of gross revenues or a percentage of expenses (but not both) will generally not be considered as based on a share of net profits.

(iii) A productivity reward for services in any annual period during the term of the contract generally also does not cause the compensation to be based on a share of net profits of the financed facility if (a) the eligibility for the productivity award is based on the quality of the services provided under the management contract, rather than increases in revenues or decreases in expenses of the facility; and (b) the amount of the productivity award is a stated dollar amount, a periodic fixed fee, or a tiered system of stated dollar amounts or periodic fixed fees based solely on the level of performance achieved with respect to the applicable measure.

(iv) A Service Contract providing for a compensation arrangement that satisfies any one of the following paragraphs will meet the Prior Guidelines:

(A) All of the compensation for services is based on a stated amount; periodic fixed fee; a capitation fee; a per-unit fee; or a combination of the preceding. The compensation for services also may include a percentage of gross revenues, adjusted gross revenues, or expenses of the facility (but not both revenues and expenses). The term of the

contract, including all renewal options, does not exceed five years. Such contract need not be terminable by the Purchaser prior to the end of the term. For purposes of this subsection 5.07(g)(2)(iv)(A), a tiered productivity award as described in subsection 5.07(g)(2)(iii) will be treated as a stated amount or a periodic fixed fee, as appropriate.

(B) For a contract with a term, including renewal options, that is not longer than (i) the lesser of 10 years or 80 percent of the reasonably expected useful life of the financed property, or (ii) the lesser of 15 years or 80 percent of the reasonably expected useful life of the financed property, at least 80 percent (in the case of a contract with a term described in (i) hereof) or at least 95 percent (in the case of a contract with a term described in (ii) hereof) is based on a periodic fixed fee. For purposes of this paragraph, a fee does not fail to qualify as a periodic fixed fee as a result of a one-time incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense (but not both) is reached if that award is equal to a single, stated dollar amount.

(v) The Prior Guidelines Service Provider may not have a role or relationship with the qualified user (or the Purchaser) that, in effect, substantially limits the ability of the qualified user to exercise its rights, including cancellation rights, under the Service Contract. Accordingly, not more than 20 percent of the voting power of the governing body of the qualified user (or the Purchaser) in the aggregate may be vested in the Prior Guidelines Service Provider and its directors, officers, shareholders and employees. Furthermore, the group of persons belonging to both the governing board of the qualified user (or the Purchaser) and the Prior Guidelines Service Provider may not include the chief executive officers of the qualified user (or the Purchaser) and the Prior Guidelines Service Provider, or their respective governing bodies. Finally, neither the qualified user nor the Purchaser may be members of the same "controlled group" (within the meaning of Treasury Regulations § 1.150-1(f)) or related person as the Prior Guidelines Service Provider.

(h) No Other Replacement Proceeds. The Purchaser is not using any Facility Funds and hereby agrees that it will not use any Facility Funds to replace funds of the Purchaser which are or will be used to acquire Investment Property reasonably expected to produce a yield that is materially higher than the yield on the Installment Payments under this Agreement.

(i) Federal Guarantee. The Purchaser will not directly or indirectly use or permit the use of any Facility Funds or take or omit to take any action that would cause the Proceeds Bonds or Secured Bonds to be obligations that are "federally guaranteed" within the meaning of section 149(b) of the Code. In furtherance of this covenant, the Purchaser will not allow the payment of principal or interest under this Agreement to be guaranteed (directly or indirectly) in whole or in part by the United States or any agency or instrumentality thereof.

(j) No Hedge Bonds. The Purchaser reasonably expects that more than eighty-five percent (85%) of the Facility Funds will be expended for the purposes of this Agreement within three years of the Effective Date.

SECTION 5.08. Maintenance and Operation of System.

The Purchaser hereby covenants that, so long as any portion of the Purchase Price is unpaid, it will at its own cost and expense maintain, preserve, keep, and operate the System, and every portion thereof, in good condition, repair and working order as necessary to operate the System for its intended purpose in compliance with all laws, rules, regulations, codes, and ordinances, subject only to normal wear and tear and that it will from time to time make or cause to be made all necessary and proper repairs, replacements, and renewals necessary to maintain the System in such a condition. IBank will have no responsibility or obligation for any of these matters. The Purchaser further covenants that it will operate the System in an efficient and economical manner, and will pay all Operations and Maintenance Costs as they become due and payable.

SECTION 5.09. Assumption of Obligations.

The obligations of the Purchaser under this Agreement may not be assumed by another entity except in connection with a transfer of the entire System by the Purchaser and only upon prior written approval of IBank and receipt by IBank of:

- (a) an Opinion of Counsel experienced in matters relating to the tax-exempt status of interest on any obligations secured by this Agreement, and approved by IBank, to the effect that such transfer would not cause interest on the obligations to be included in gross income for federal income tax purposes;
- (b) a Report signed by an Independent Consultant or Independent Accountant concluding that such transfer would not materially adversely affect the security for the Installment Payments, Additional Payments, or the rights of IBank; and
- (c) evidence satisfactory to IBank that the entity assuming the Purchaser's obligation hereunder is eligible pursuant to the Act.

SECTION 5.10. Damage, Destruction, Title Defect and Condemnation; Use of Net Proceeds.

(a) If prior to the termination of the term hereof (i) the System or any portion thereof is damaged or destroyed (each of which is hereinafter called "Damaged Improvements") by a peril covered by a policy of insurance described in Section 5.22 hereof (an "Insured Peril"); or (ii) title to, or the right to possession, use, or occupancy, whether permanent or temporary, of, the System or any portion thereof or the estate of the Purchaser in the System or any portion thereof is defective or shall be taken under the exercise of the power of eminent domain by any governmental body or by any person or firm or corporation acting under governmental authority, then the Purchaser and IBank will cause the net proceeds of any loss or claim paid by an insurer under an insurance policy, or condemnation award, resulting from any damage or destruction to any portion of the System, or taking of the System, (the "Net Proceeds") to be transferred to IBank and applied as follows:

- (1) Net Proceeds Exceeding Costs. Within one hundred twenty (120) days of the date of said Insured Peril, the Purchaser shall obtain written estimate(s) of the (i) cost of the repair, replacement, and reconstruction of the Damaged Improvements (collectively referred to herein as the "Reconstruction"), and (ii) Net Proceeds available to pay such costs. Copies of such

estimate(s) shall be provided to IBank. If the one hundred twenty (120) day period is insufficient to obtain said estimates, the period may be reasonably extended by the Purchaser upon the approval of IBank, in its reasonable discretion. If the Net Proceeds (not including proceeds of any policy of title insurance or condemnation award received by IBank in respect of the System) exceed the estimated costs of Reconstruction, the Damaged Improvements shall be repaired, replaced, and reconstructed to the same or better quality as existed before the damage occurred. The Purchaser shall commence and manage the Reconstruction and shall complete the Reconstruction as soon as reasonably possible after the occurrence of such damage. An amount equal to the Net Proceeds remaining after the Reconstruction has been completed multiplied by the Net Proceeds Ratio shall be transferred to IBank for the payment of unpaid Purchase Price and Additional Payments. Net Proceeds remaining after payment of the amount specified in the previous sentence shall be transferred to the Purchaser.

(2) Costs Exceeding Net Proceeds. If the estimated costs of Reconstruction exceed the Net Proceeds (not including proceeds of any policy of title insurance or condemnation award received by IBank in respect of the System), the Purchaser, in its sole discretion, may elect to budget and appropriate to the Reconstruction the amount of such excess, and to manage the Reconstruction as set forth in Section 5.10(a)(5). The Purchaser shall exercise this election by written notice thereof delivered to IBank within thirty (30) days after the Purchaser obtains the written estimate(s).

(3) Net Proceeds Sufficient to Prepay. If the Purchaser does not exercise the election to reconstruct pursuant to the above subsection and Net Proceeds are at least sufficient to prepay all unpaid amounts of the Purchase Price and any due and owing Additional Payments, plus the outstanding balance of then existing Parity Debt, Net Proceeds equal to the unpaid amounts of the Purchase Price and any due and owing Additional Payments shall be transferred to IBank to prepay such Purchase Price and any due and owing Additional Payments. The Purchaser shall be entitled to the amount of proceeds remaining after such prepayment.

(4) Net Proceeds Insufficient to Prepay. If the Purchaser does not exercise the election to reconstruct pursuant to Section 5.10(a)(2) and the sum of Net Proceeds multiplied by the Net Proceeds Ratio are insufficient to prepay the unpaid Purchase Price hereunder, the Purchaser, in its sole discretion, may elect to budget and appropriate funds to cause the full prepayment of the Purchase Price and due and owing Additional Payments, and the sum of Net Proceeds multiplied by the Net Proceeds Ratio, together with such funds, shall be transferred to IBank with directions to apply the proceeds to the prepayment of the Purchase Price and due and owing Additional Payments; provided, that if the Purchaser elects not to appropriate funds for such prepayment, the Purchaser shall apply all Net Proceeds (not including proceeds of any policy of title insurance or condemnation award received by IBank in respect of the System) to the Reconstruction. If the Purchaser, in its sole discretion, elects to budget or appropriate funds for the full prepayment of the unpaid Purchase Price and due and owing Additional Payments, the Purchaser shall transfer such funds to IBank for the full prepayment of Purchase Price and due and owing Additional Payments.

(5) Management of Reconstruction. If the System or any part thereof becomes Damaged Improvements, the Purchaser shall promptly cause, manage, and supervise the Reconstruction.

(b) The proceeds of any policy of title insurance or condemnation award received by IBank in respect of the System shall be applied to prepay the Purchase Price in an amount equal to the sum of such proceeds multiplied by the Net Proceeds Ratio.

SECTION 5.11. Entry into Replacement Agreement.

The Purchaser acknowledges that IBank intends to issue, has issued, or may issue, Secured Bonds or Proceeds Bonds subsequent to the Effective Date of this Agreement, and that one requirement of the Secured Bonds and/or Proceeds Bonds will be the re-entry by the Purchaser into an agreement to replace this Agreement. So long as the terms of the replacement agreement are substantially identical to the term of this Agreement, the Purchaser hereby covenants and agrees to execute the replacement agreement and any related documents and to provide required certifications in a timely manner. The Purchaser understands and acknowledges that time is of the essence with respect to entry into such replacement agreement as such timing is mandated by Federal tax laws applicable to IBank's Proceeds Bonds and/or Secured Bonds. The Purchaser's covenant set forth in this Section 5.11 is hereinafter referred to as the "Replacement Agreement Covenant."

SECTION 5.12. Further Assurances.

The Purchaser will adopt, make, execute, and deliver any and all such further resolutions, instruments, and assurances as may be reasonably required by IBank as necessary or proper to carry out the intention or to facilitate the performance of this Agreement and for the better assuring and confirming unto IBank of the rights, remedies, and benefits provided in this Agreement.

SECTION 5.13. Agreement to Complete Facility Delivery.

(a) The Purchaser agrees that it will perform all acts necessary to complete Facility Delivery, and construct, acquire, improve or install other facilities and real and personal property deemed by the Purchaser necessary for the operation of Facility. The Purchaser may supplement or amend the Facility description with written approval from IBank from time to time, provided that no such supplement or amendment shall (1) cause the Facility or any portion thereof to fail to constitute an eligible project under the Act, or (2) in any way affect the tax-exempt status of any Proceeds Bonds or Secured Bonds.

(b) At any time, upon request of IBank, the Purchaser agrees to make available to IBank for review and copying all then current plans and specifications for the Facility. The Purchaser may identify any proprietary information in such plans and specifications and, to the extent legally permissible, IBank agrees to keep such information confidential. However, for the avoidance of doubt, and not by limitation of the foregoing, IBank may disclose any such confidential information in connection with any Proceeds Bonds or Secured Bonds or in the event IBank is served with a subpoena, a valid discovery request, a notice to appear and produce documents, or a valid California Public Records Act request, seeking, or that could be construed reasonably as seeking, such confidential information.

(c) As soon as the Facility is completed, the Purchaser shall evidence such completion by providing a certificate to IBank stating that (i) construction of the Facility has been completed substantially in accordance with the final plans and specifications therefor and all labor, services,

materials, and supplies used in construction have been paid for, and (ii) all other facilities necessary in connection with the Facility have been constructed, acquired, and installed in accordance with the final plans and specifications therefor, and all costs and expenses incurred in connection therewith have been paid. Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights of the Purchaser against third parties for the payment of any amount not then due and payable which exist at the date of such certificate or which may subsequently exist.

(d) The Purchaser shall notify IBank forthwith upon the filing of a stop payment notice in connection with the Facility, the tender of a claim against any payment or performance bond related to the Facility, the recordation of a mechanics lien against Facility, the filing of litigation in connection with the Facility, the issuance of a mandatory or prohibitory injunction related to the Facility, or any other legal proceeding which may impact the completion of the Facility.

SECTION 5.14. Collection of Rates, Fees and Charges.

The Purchaser will have in effect at all times rules and regulations requiring each user of the System to pay the rates, fees, and charges applicable to the services provided by the System to each user. The Purchaser will not permit any part of the System or any facility thereof to be used or taken advantage of free of charge by any corporation, firm, or person, or by any public agency (including the United States of America, the State, and any city, county, district, political subdivision, public corporation, or agency of any thereof); provided, that the Purchaser may without charge use the services provided by the System.

SECTION 5.15. The Purchaser's General Responsibility.

The Purchaser is solely responsible for Facility Delivery and the construction, operation, and maintenance of the Facility. Any review or approval of plans, specifications, bid documents, or other construction documents by IBank is solely for the purpose of proper administration of Facility Funds by IBank and shall not be deemed to relieve or restrict the Purchaser's responsibility or result in any duty, obligation, or responsibility on the part of IBank or the officers and agents thereof.

SECTION 5.16. The Purchaser's Assurances and Commitments.

(a) Compliance with Laws, Regulations and the Criteria.

The Purchaser shall at all times comply, and require its direct contractors, and their subcontractors, to comply with all State prevailing wage laws, all applicable federal and State laws, rules and regulations, the Criteria (except to the extent the express provisions of this Agreement conflict with the Criteria), and all local ordinances applicable to the Facility. This specifically includes, but is not limited to environmental, procurement and safety laws, rules, regulations and ordinances. The Purchaser acknowledges and agrees that under no circumstances would its failure to act in accordance with the provisions of this subsection (a) result in any duty, obligation or responsibility on the part of IBank or the officers and agents thereof.

(b) Facility Construction Activities.

The Purchaser shall ensure that adequate supervision and inspection of Facility construction activities are maintained. IBank, either by itself or through its designee, reserves the right to conduct an audit of the Purchaser's construction expenditures during construction and for up to three years following receipt by IBank of notice of completion or other evidence of completion satisfactory to IBank. IBank, at its discretion, may require the Purchaser to conduct an interim and/or a final audit at the Purchaser's expense, such audit to be conducted by and a Report prepared by an Independent Accountant.

SECTION 5.17. Facility Access.

The Purchaser shall ensure that IBank or its designee have suitable access to the Facility site at all reasonable times so long as the Purchase Price remains unpaid, and at any time in the event of an IRS audit directly or indirectly related to the Facility, and shall include provisions ensuring such access in all contracts and subcontracts relating to the Facility.

SECTION 5.18. Operation and Maintenance of the Facility.

The Purchaser agrees to commence operation of the Facility upon the completion thereof. The Purchaser covenants and agrees that it will, at its own cost and expense, operate and maintain the Facility, and every portion thereof, in accordance with all governmental laws, ordinances, approvals, rules, codes, regulations, and requirements including, without limitation, such zoning, sanitary, pollution and safety ordinances and laws, and such rules and regulations thereunder as may be binding upon the Purchaser. The Purchaser further covenants and agrees that it will, at its own cost and expense, maintain, preserve, keep, and operate the Facility and will maintain, keep, preserve, and operate the same, now or hereafter at any time constituting part of the Facility, in good repair, working order and condition as necessary to operate the Facility for its intended purposes, subject only to normal wear and tear, and that it will from time to time make or cause to be made all needful and proper replacements, repairs, renewals, and improvements, in each case to the extent necessary so that the efficiency and value of the Facility shall not be impaired. IBank shall have no responsibility or obligation for any of these matters or for the making of additions or improvements to the Facility.

SECTION 5.19. Performance and Payment Bonds.

(a) The Purchaser shall require that the direct contractor(s) for the Facility certify under penalty of perjury, and provide the Purchaser with a copy of such certification, which shall be available for IBank's inspection, if requested, that, in connection with the construction of the Facility, it has obtained a bond or bonds by one or more authorized surety companies satisfactory to the Purchaser; such surety companies must be authorized to do business in California, be an admitted surety insurer, and have an agent for service of process in California.

(b) Said bonds shall be in the following amounts and for the following purposes: (i) a performance bond(s) in an amount not less than one hundred percent (100%) of the total amount of the construction agreement(s) for the Facility, guaranteeing the faithful performance of the terms of the Facility construction agreement(s), including the maintenance of the work required under the Facility construction agreement(s) for a period of one year from the date of the Purchaser's final acceptance, and the prompt correction of any defective work or labor done, or

defective materials furnished, pursuant to the Facility construction agreement(s) and (ii) a payment bond(s) in an amount not less than one hundred percent (100%) of the total amount of the Facility construction agreement(s), securing payment to the subcontractors and to persons renting equipment or furnishing labor or materials to such subcontractors or to the Purchaser's direct contractors, or to any other claimant as defined in Civil Code Section 8004, under the Facility construction agreement(s).

SECTION 5.20. Continuing Disclosure.

If requested by IBank, the Purchaser hereby covenants and agrees to furnish certain financial and operating data pertaining to the Purchaser that may be required to either: (i) enable IBank to issue any, or perform its obligations under existing, Proceeds Bonds or Secured Bonds; or (ii) enable any underwriter of any Proceeds Bonds or Secured Bonds to comply with Rule 15c-12(b)(5) of the Securities and Exchange Commission.

SECTION 5.21. Notice of Purchaser Event of Default.

The Purchaser covenants that it will deliver to IBank, immediately after the Purchaser shall have obtained knowledge of the occurrence of an Event of Default or a failure as described in Section 7.01, the written statement of an authorized officer of the Purchaser setting forth the details of such Event of Default or failure, and the action which the Purchaser proposes to take with respect thereto.

SECTION 5.22. Maintenance of Insurance.

(a) The Purchaser will procure and maintain or cause to be procured and maintained insurance on the System with responsible insurers, in such amounts and against such risks (including damage to or destruction of the System) as are usually covered in connection with systems similar to the System; provided, however, that such insurance shall be in an amount at least equal to the full replacement value of the Facility. Such insurance may be subject to a deductible clause of not to exceed one hundred thousand dollars (\$100,000).

(b) The Purchaser shall procure and maintain, or cause to be procured and maintained a standard commercial general liability insurance policy in protection of the Purchaser, the IBank and their directors, officers and employees and, when requested by the IBank, the Trustee, indemnifying and defending such parties against direct or contingent loss or liability for damages for personal injury, death or property damage related to the possession, operation or use of the Facility with a minimum combined single limit of one million dollars (\$1,000,000) for personal injury or death of one or more persons, and for property damage, in each accident or event (subject to a deductible clause of not to exceed one hundred thousand dollars (\$100,000) or such greater amount as may be covered by any self-insurance or self-funding method or plan permitted by this Section). IBank shall be named as an additional insured, and when requested by IBank the Trustee shall also be named as an additional insured.

(c) The Purchaser will cause to be procured and maintained a standard, commercially reasonable, commercial general liability policy of the direct contractor(s) for the Facility with a minimum combined single limit of one million dollars (\$1,000,000) for personal injury or death of

one or more persons, and for property damage, in each accident or event (subject to a deductible clause of not to exceed one hundred thousand dollars (\$100,000)). The Purchaser and IBank shall be named as an additional insured under such insurance policy. The Purchaser shall also cause to be procured and maintained a standard, commercially reasonable, worker's compensation insurance policy of the direct contractor(s) for the Facility in an amount equal to at least the required statutory minimum. The Purchaser and IBank shall be named as an additional insured under such insurance policy.

(d) The Purchaser will cause to be procured and maintained by its direct contractor(s) a builder's risk insurance policy with coverages equal to the amount of the fixed price construction contract for the Facility.

(e) The Purchaser shall on the Effective Date, and annually on each anniversary of the Effective Date thereafter, provide a Certificate of the Purchaser to IBank certifying that the insurance required under this Section 5.22 is in effect, together with copies of the declarations pages for each policy required hereunder and each additional insured endorsement required hereunder.

SECTION 5.23. Facility Construction.

(a) The Facility is described in Exhibit B and the Purchaser shall make no changes thereto or the operation thereof without the prior written consent of IBank, which consent shall be granted or denied in IBank's reasonable discretion. Further, IBank may condition any such consent upon receipt of an Opinion of Counsel to the effect that any such changes will not affect the qualification of the Facility for tax exempt financing under the Code.

(b) The Purchaser shall not enter into a contract for the construction of the Facility unless it is in the form of a fixed price construction contract; provided, however, that this provision shall not apply to contracts in an amount below that required to be bid publicly under State law.

(c) Included within the Facility Funds are construction contingency funds in the amount of two million nine hundred fifty five thousand dollars (\$2,955,000). Absent IBank's express prior written consent, which consent shall be granted or denied in IBank's sole and absolute discretion, construction contingency funds shall be used solely for the purpose of paying any reasonably unforeseen increased costs in connection with the construction of the Facility. It is expressly understood that the Purchaser shall have no obligation to replenish or otherwise restore the contingency funds to their original amount as they are used to cover reasonably unforeseen increased Facility construction costs. All such increased costs shall be documented by a change order (or change orders) executed pursuant to the fixed price construction contract between the Purchaser and the direct contractor(s) for the Facility.

(d) The Purchaser has pre-qualified all direct contractors bidding on the Facility by using its internally-required contractor pre-qualification questionnaire, which questionnaire substantially meets the intent of the model pre-qualification questionnaire approved by the State Department of Industrial Relations pursuant to Public Contract Code Section 20101.

SECTION 5.24. Compliance with Contracts.

The Purchaser will comply with, keep, observe, and perform all agreements, conditions, covenants, and terms, express or implied, required to be performed by it contained in all contracts for the use of the System, and all other contracts affecting or involving the System to the extent that the Purchaser is a party thereto.

SECTION 5.25. *Reserved.*

SECTION 5.26 Maintenance of Lien Parity Conditions.

To the extent the Parity Debt Instruments continue to impose a lien on System Revenues and/or legally available amounts in the Enterprise Fund, the Purchaser will at all times comply with, keep, observe, and perform all requirements, conditions, covenants, duties, and terms for the lien on System Revenues and legally available amounts in the Enterprise Fund created by this Agreement to be on parity with the lien on System Revenues and legally available amounts in the Enterprise Fund created by the Parity Debt Instruments, including, but not limited to, satisfying any debt service coverage and reserve requirements.

SECTION 5.27 Covenant to Comply with Prop 218 Law.

The Purchaser shall at all times ensure that the rates, fees and charges imposed on its customers comply with the Prop 218 Law. In the event any party (or parties) institutes litigation or an administrative proceeding challenging the Purchaser's rates and charges or any other aspect of its compliance with Prop 218 Law (collectively, a "Rate Challenge"), the Purchaser shall as soon as practicable, but no later than 30 days after the Purchaser becomes aware of the Rate Challenge, provide IBank with written notice of such Rate Challenge. Further, the Purchaser will expeditiously take steps to (i) diligently defend against the Rate Challenge; or (ii) conform its rates or other practices in a manner that fully addresses the deficiencies underlying the Rate Challenge. The Purchaser shall provide IBank with a second written notice indicating its chosen course of action as soon as practicable.

ARTICLE VI

NEGATIVE COVENANTS OF THE PURCHASER

SECTION 6.01. Limitation on Additional Obligations; No Senior Debt.

The Purchaser hereby covenants that, until the Purchase Price has been paid in full and this Agreement has been discharged pursuant to Section 8.05, the Purchaser shall not after the date of this Agreement issue any Senior Debt and shall not issue any bonds, notes, or other obligations, enter into any agreement or otherwise incur any loans, advances, or obligations, which are in any case secured by a lien on all or any part of System Revenues or on those legally available amounts on deposit in the Enterprise Fund that is on parity with the lien established hereunder for the security for the payment of the Installment Payments and Additional Payments, excepting only Parity Debt meeting the requirements of Section 2.11 herein. The Purchaser may issue or incur Subordinate Debt upon compliance with the requirements of Section 2.16 herein.

SECTION 6.02. Disposition of Property.

The Purchaser hereby covenants that it will not authorize or effect the disposition of real or personal property constituting more than ten percent (10%) of the value of the System unless the Purchaser first obtains, and provides a copy to IBank, of: (i) a Report of an Independent Consultant concluding that such disposition will not substantially adversely affect the security for the payment of the Installment Payments and Additional Payments; and (ii) an Opinion of Counsel concluding that such disposition will not cause the interest on any Secured Bonds or Proceeds Bonds to no longer be excluded from federal gross income. The Purchaser hereby covenants that it will not dispose of any portion of the Facility while the Purchase Price is unpaid except for property that is not operating or is worn out, and for the dedication of public streets and public and private utility easements.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

SECTION 7.01. Events of Default and Acceleration.

(a) Each of the following events shall constitute an Event of Default hereunder:

(1) Failure by the Purchaser to pay any Installment Payment or interest or prepayment premium (if any) or any Additional Payment pursuant to Section 3.03(a) when and as the same shall become due and payable;

(2) Failure by the Purchaser to observe and perform any of the covenants, agreements or conditions on its part contained in this Agreement, other than as referred to in the preceding subsection (1), or if any representation or warranty fails to be true and correct in all material respects, for a period of sixty (60) days after written notice has been given to the Purchaser by IBank, or to the Purchaser and IBank, specifying such failure and requesting that such failure be remedied; provided, however, that if the failure stated in such notice can be corrected, but not within such sixty (60) day period, IBank may consent to an extension of such time if corrective action is instituted by the Purchaser within such sixty (60) day period and diligently pursued until such failure is corrected;

(3) The filing by the Purchaser 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 Purchaser, 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 Purchaser or of the whole or any substantial part of its property;

(4) Any representation or other written statement made by the Purchaser contained in this Agreement, the application for financing or in any instrument furnished in compliance with or in reference thereto shall prove to have been incorrect in any material respect;

(5) An unexcused failure by the Purchaser to pay amounts due under any bond, note, installment sale agreement, capital lease, or other agreement or instrument to which it is a party relating to the borrowing of money, if such unpaid amount shall exceed fifty thousand dollars (\$50,000); or

(6) The occurrence of an event of default with respect to any Parity Instrument or any Subordinate Debt Instrument which causes all principal of such Parity Debt or Subordinate Debt to become due and payable immediately.

(b) If an Event of Default has occurred and is continuing, IBank may (i) declare the principal of the Purchase Price, together with the accrued interest on all unpaid installments thereof, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything in this Agreement to the contrary notwithstanding, and (ii) exercise any other remedies available to IBank in law or at equity. Immediately upon becoming aware of the occurrence of an Event of Default, IBank shall give notice of such Event of Default to the Purchaser by telephone, telecopier, facsimile or other telecommunication device, promptly confirmed in writing. This provision, however, is subject to the condition that if, at any time after the principal of the Purchase Price 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 Purchaser shall deposit with IBank a sum sufficient to pay all installments of principal of the Purchase Price due prior to such declaration and all accrued interest thereon, with interest on such overdue Installment Payments at the rate of the lesser of twelve percent (12%) per annum or the maximum rate permitted by law, and the reasonable expenses of IBank (including but not limited to attorney's fees and costs), and any and all other defaults known to IBank (other than in the payment of principal of and interest on the Purchase Price due and payable solely by reason of such declaration), including the payment of Additional Payments due and owing, shall have been made good or cured to the satisfaction of IBank or provision deemed by IBank to be adequate shall have been made therefor, then, and in every such case, IBank may, by written notice to the Purchaser, 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 7.02. Remedies.

Upon the occurrence of an Event of Default IBank shall have the following rights, in addition to its rights under Section 7.01:

(a) By mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the Purchaser or any member, officer, or employee thereof, and to compel the Purchaser or any such member, officer, or employee to perform and carry out its or his duties under 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 which are unlawful or violate the rights of IBank; or

(c) By suit in equity to require the Purchaser and its members, officers, and employees to account as the trustee of an express trust.

SECTION 7.03. Application of Funds upon Default.

All amounts received by IBank pursuant to any right given or action taken by IBank under provisions of this Agreement, or otherwise held by IBank upon the occurrence of an Event of Default, shall be applied by IBank in the following order:

(a) First, to the payment of the costs and expenses of IBank, including reasonable compensation to their agents and attorneys, including IBank employees, as set forth in Section 2.06; and

(b) Second, to the payment of the whole amount of Installment Payments then due and unpaid, with interest on overdue Installment Payments at the rate of the lesser of twelve percent (12%) per annum or the maximum rate permitted by law; provided, however, that in the event such amounts shall be insufficient to pay in full the amount of such Installment Payments, then such amounts shall be applied in the following order of priority:

(1) First, to the payment of all installments of interest on the Purchase Price then due and unpaid, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full;

(2) Second, to the payment of principal of all installments of the Purchase Price then due and unpaid, other than principal having come due and payable solely by reason of acceleration pursuant to Section 7.01, on a pro rata basis in the event that the available amounts are insufficient to pay all such principal in full;

(3) Third, to the payment of principal of the Purchase Price then due and unpaid and having come due and payable solely by reason of acceleration pursuant to Section 7.01, on a pro rata basis in the event that the available amounts are insufficient to pay all such principal in full; and

(c) Third, to the payment to IBank of other Additional Payments as described in Section 2.06.

SECTION 7.04. No Waiver.

Nothing in this Article VII or in any other provision of this Agreement shall affect or impair the obligation of the Purchaser, which is absolute and unconditional, to pay from Net System Revenues and other amounts pledged hereunder, all payments due hereunder, or affect or impair the right of action, which is also absolute and unconditional, of IBank to institute suit to enforce such payment by virtue of the contract embodied in this Agreement.

A waiver of any default by IBank shall not affect any subsequent default or impair any rights or remedies on the subsequent default. No delay or omission of IBank 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 IBank by this Article VII may be enforced and exercised from time to time and as often as shall be deemed expedient by IBank.

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

SECTION 7.05. Remedies Not Exclusive.

No remedy herein conferred upon or reserved to IBank is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by law.

ARTICLE

VIII

MISCELLANEOUS

SECTION 8.01. California Law; Venue.

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State. Any action or proceeding arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, unless otherwise expressly agreed to by IBank in its sole and absolute discretion.

SECTION 8.02. Assignment of IBank's Rights.

The Purchaser hereby agrees and acknowledges that IBank's rights, including but not limited to the right to receive Installment Payments and Additional Payments under this Agreement may, in IBank's sole and absolute discretion, be assigned by IBank to the Trustee or another party for the purpose of securing the payment of any bonds, notes, or other obligations issued by IBank and secured by this Agreement and the Installment Payments and Additional Payments, without the need for consent by the Purchaser. Accordingly, the Purchaser agrees to make all payments due hereunder to the Trustee when so directed by IBank, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach hereof or otherwise) that the Purchaser may have from time to time against IBank. The Purchaser agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements, which IBank or the Trustee may request, in their sole and absolute discretion, in connection with any such assignment by IBank.

SECTION 8.03. Third Party Beneficiaries.

The Trustee is hereby expressly designated as a third party beneficiary hereunder for the purpose of enforcing any of the rights hereunder assigned to said Trustee and for the purpose of said Trustee enforcing its own rights. Nothing in this Agreement, expressed or implied, is intended to give to any person other than IBank, the Purchaser, and the Trustee, any right, remedy, or claim under or by reason of this Agreement. All covenants, stipulations, promises, or agreements contained in this Agreement by and on behalf of the Purchaser shall be for the sole and exclusive benefit of IBank, the Trustee, and their permitted assigns.

SECTION 8.04. Successor Entities.

Whenever in this Agreement either the Purchaser or IBank is named or referred to, such reference shall be deemed to include the permitted successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the Purchaser or IBank shall bind and inure to the benefit of the respective permitted successors and assigns thereof, whether so expressed or not. The Trustee will be IBank's initial assignee.

SECTION 8.05. Discharge of Agreement.

Upon the Purchaser's payment of the outstanding principal of, outstanding interest on, and prepayment premium (if any) on the Purchase Price, together with all Additional Payments, pursuant to this Agreement, then all obligations of IBank under this Agreement, all obligations of the Purchaser under this Agreement with respect to the Purchase Price, and, at the written election of the Purchaser, the pledge of and lien upon the System Revenues and all legally available amounts in the Enterprise Fund provided for in this Agreement, shall cease and terminate, excepting only the obligations of the Purchaser pursuant to the tax covenants herein, including but not limited to Section 5.07, indemnification obligations, including but not limited to Section 8.14, and the choice of law and venue provisions under Section 8.01. Notice of such election shall be filed with IBank.

SECTION 8.06. Amendment.

No term or provision of this Agreement may be waived or otherwise modified except by a written agreement signed by the Parties. The Parties acknowledge and agree that the previous sentence shall be interpreted, enforced, and adhered to strictly, notwithstanding any legal doctrine, rule, statute, or case law that may permit oral modification of this Agreement, or that may find under certain circumstances the portion of this Section 8.06 requiring all modifications to this Agreement be in writing is waived orally or by the Parties' conduct. To the greatest extent permissible under the law, the Parties hereby agree to waive any legal doctrine, rule, statute, or case law that permits, or could be construed to permit, modification of this Agreement by means other than a writing signed by both Parties.

SECTION 8.07. Waiver of Personal Liability.

No member, officer, agent, or employee of the Purchaser shall be individually or personally liable for the payment of the principal of, premium, if any, or the interest under this Agreement; but nothing herein contained shall relieve any such member, officer, agent, or employee from the performance of any official duty provided by law.

SECTION 8.08. Arm's Length Transaction.

The Purchaser acknowledges and agrees that IBank is acting solely as seller under this Agreement and not an advisor to the Purchaser, including that: (i) the transaction contemplated by this Agreement is an arm's-length commercial transaction, (ii) in connection therewith and with the financing discussions, undertakings and procedures leading up to the consummation of such transaction, IBank is and has been acting solely as a principal and is not acting as the agent or fiduciary of or in any way advising the Purchaser, including, without limitation, a "Municipal

Advisor” as such term is defined in Section 15B of the Securities and Exchange Act of 1934, as amended, and the related final rules, (iii) IBank has not provided any advice or assumed an advisory or fiduciary responsibility in favor of the Purchaser with respect to the financing contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether IBank, or any party related to IBank, has provided other services, or advised, or is currently providing other services, or advising, the Purchaser on other matters) and IBank has no obligation to the Purchaser with respect to the financing contemplated hereby except the obligations expressly set forth in this Agreement, (iv) IBank has financial and other interests that differ from those of the Purchaser, and (v) the Purchaser has consulted its own legal, financial and other advisors to the extent it has deemed appropriate.

SECTION 8.09. Notices.

All written notices to be given under this Agreement 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, except that notices from the Purchaser to IBank shall be given by registered mail, or by telecommunication confirmed in writing. Notice shall be effective forty-eight (48) hours after deposit in the United States mail, postage prepaid or, in the case of any notice to IBank, or in the case of personal delivery to any person, upon actual receipt at the address set forth below:

If to IBank:

California Infrastructure and Economic Development Bank
Attn: Loan Servicing Manager, Agreement Number ISRF [21-
XXX]
P.O. Box 2830
Sacramento, CA 95812-2830

For overnight mail or personal delivery only:

California Infrastructure and Economic Development Bank
Attn: Loan Servicing Manager, Agreement Number ISRF [21-
XXX]
1325 J Street, 13th Floor
Sacramento, CA 95814

With a copy to the General Counsel of IBank at the same address.

If to the Purchaser:

City of Escondido
201 N. Broadway
Escondido, CA 92025-2790
Attn.: Director of Utilities

Or to such other address as may be designated in writing by the Purchaser.

SECTION 8.10. Contact Persons.

(a) The Executive Director of IBank or such other person as designated in writing by IBank shall manage this Agreement for IBank and shall have authority to make determinations and findings with respect to each controversy arising under or in connection with the interpretation, performance, or payment for work performed under this Agreement.

(b) The Purchaser's contact person shall be its Director of Utilities, or such other person as may be designated in writing by the Purchaser (the "Purchaser Representative"). The Purchaser's Director of Utilities shall be the Purchaser Representative for the administration of this Agreement and shall have full authority to act on behalf of the Purchaser and may designate in writing another person or persons authorized to request disbursement of Facility Funds. All communications given to the Purchaser's Director of Utilities shall be as binding as if given to the Purchaser.

SECTION 8.11. Partial Invalidity.

The illegality, unenforceability, or invalidity of any provision of this Agreement with regard to any Party or circumstance shall not render that provision illegal, unenforceable, or invalid with regard to any other Party or circumstance. All provisions of this Agreement, in all other respects, shall remain legal, enforceable, and valid to the fullest extent permitted by law. If any provision of this Agreement is held to be illegal, unenforceable, or invalid by a court of competent jurisdiction, then such provision shall be deemed severed from this Agreement and this Agreement shall be construed and enforced as if such illegal, unenforceable, or invalid provision had never been part hereof.

SECTION 8.12. Binding Effect.

This Agreement shall inure to the benefit of and shall be binding upon IBank and the Purchaser and their respective successors and assigns.

SECTION 8.13. Entire Agreement.

Except as expressly stated herein, this Agreement, together with the exhibits and attachments hereto, constitutes the entire agreement among the Parties. Except as expressly stated herein, there are no understandings, agreements, representations or warranties, express or implied, not specified herein or therein regarding this Agreement or the Facility financed hereunder. Any terms and conditions of any purchase order or other document submitted by the Purchaser in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on IBank and will not apply to this Agreement.

SECTION 8.14. Indemnification.

The Purchaser shall, to the fullest extent permitted by law, indemnify, protect, hold harmless, save and keep harmless IBank and its members, directors, officers, attorneys, advisors, employees, and agents (collectively, the "Indemnified Parties") from and against any and all liability, obligations, losses, claims, demands, damages, actions, causes of action, liens, stop payment notices, or costs whatsoever, regardless of the cause thereof, and expenses in connection

therewith, including, without limitation, counsel fees and expenses as incurred, penalties and interest (collectively, a "Claim"), arising out of, related to or as the result of entering into this Agreement, and the acquisition, construction, operation, use, condition, or possession of the Facility and any portion thereof, including without limitation:

(a) any accident in connection with the operation, use, condition, or possession of the Facility resulting in damage to property or injury to or death to any person including, without limitation, any claim alleging latent and other defects, whether or not discoverable by the Purchaser or IBank;

(b) patent, trademark or copyright infringement, or similar claims as a consequence of the operation, use, occupancy, or maintenance of the Facility;

(c) strict liability in tort as a consequence of the operation, use, occupancy, or maintenance of the Facility;

(d) any Claim based upon any environmental law or regulation relating to the Facility;

(e) any Claim of any nature directly arising from or related to the Facility, which Claim is based upon the operation of the Facility from and after the Effective Date;

(f) the existence, placement, delivery, storage, or release of hazardous materials on or from the Facility or contamination of property, arising therefrom;

(g) either (a) the application of the Facility Funds, or other amounts subject to the Purchaser's control treated as "gross proceeds" of the Proceeds Bonds or Secured Bonds in such manner that any portion of the Proceeds Bonds or Secured Bonds becomes an "arbitrage bond" within the meaning of Code sections 103(b)(2) and 148, with the result that interest on the Proceeds Bonds or Secured Bonds is or becomes subject to federal income taxation of the holder of the Proceeds Bonds or Secured Bonds; or (b) if as a result of any act, failure to act, or use of the proceeds of any portion of the Facility Funds or the Facility, or any misrepresentation or inaccuracy in any of the representations, warranties, or covenants contained in this Agreement or the enactment of any federal legislation or the promulgation of any federal rule or regulation after the date of this Agreement, all or any portion of the interest on any portion of the Proceeds Bonds or Secured Bonds becomes subject to federal income taxation;

(h) the consummation or carrying out of any of the transactions contemplated by this Agreement or any related document; and

(i) information provided by the Purchaser which is used in connection with the Proceeds Bonds or the Secured Bonds.

The indemnification arising under this Section 8.14 shall continue in full force and effect notwithstanding the full payment of all obligations hereunder and shall survive the termination of this Agreement for any reason. Any party seeking indemnity hereunder shall promptly give notice to the Purchaser of any Claim or liability hereby indemnified against upon learning of any circumstances giving rise to any such Claim or liability. The Purchaser's obligation to indemnify,

defend, protect, hold harmless, save, and keep harmless the Indemnified Parties as provided in this Section 8.14 shall arise immediately upon any Claim covered under this Section 8.14 being asserted against an Indemnified Party, whether orally, in writing, or in any court or administrative action or proceeding.

SECTION 8.15. Expectations.

The undersigned is an authorized representative of the Purchaser acting for and on behalf of the Purchaser in executing this Agreement. To the best of the knowledge and belief of the undersigned, there are no other facts, estimates or circumstances that would materially change the expectations as set forth herein, and said expectations are reasonable.

SECTION 8.16. Section Headings.

All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision hereof.

SECTION 8.17. Time of the Essence.

Subject to the remainder of this Section 8.17, time is of the essence with respect to this Agreement and the performance of each obligation contained in this Agreement. Whenever the time for performance of any obligation under this Agreement, or if under this Agreement a Party must act by a particular time or date, or if an act is effective only if done by a particular time or date, and the last date for performance of such obligation or the doing or effectiveness of such act falls on a Saturday, Sunday, or legal holiday in the State, the time for performance of such obligation or the doing or effectiveness of such act shall be extended to the next day that is not a Saturday, Sunday, or a legal holiday in the State. The first day shall be excluded and the last day shall be included when computing the time in which an obligation is to be performed or an act is to be done under this Agreement. Unless otherwise provided herein all time periods shall end at 5:00 p.m. California time.

SECTION 8.18. Form of Documents.

The form and substance of all documents and instruments to be delivered to IBank under the terms of this Agreement, if any, shall be at all times subject to IBank's approval, in its reasonable discretion. No document or instrument delivered to IBank, or to be delivered to IBank, or which is subject to the approval of IBank, shall be amended, modified, superseded, or terminated in any respect whatsoever without IBank's prior written approval.

SECTION 8.19. Waiver of Consequential Damages.

To the fullest extent permitted by law, the Purchaser shall not assert, and hereby waives, any claim against IBank on any theory of liability for special, indirect, consequential, or punitive damages (as opposed to direct actual damages) arising from, or in connection with, this Agreement.

SECTION 8.20. Nondiscrimination.

(a) During the performance of this Agreement, the Purchaser shall ensure that any direct contractor and its subcontractors constructing the Facility shall not deny the contracts' benefits to any person on the basis of race, color, religion, ancestry, national origin, ethnic group identification, marital status, gender, sex, sexual orientation, age, medical condition, physical handicap or disability, mental disability, political affiliation, or position in a labor dispute, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, religion, national origin, ethnic group identification, ancestry, physical handicap or disability, mental disability, medical condition, marital status, age, gender, sex, sexual orientation, political affiliation, or position in a labor dispute. The Purchaser shall ensure that any direct contractor and its subcontractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

(b) The Purchaser shall ensure that any direct contractor and its subcontractors constructing the Facility shall comply with the applicable provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0 et seq.) the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any regulations promulgated thereunder.

(c) The Purchaser shall ensure that any direct contractor and its subcontractors constructing the Facility shall not knowingly give preferential treatment of any kind whatsoever in connection with any business transaction related to the construction or operation of the Facility to any of its affiliates or to any business enterprise in which the Purchaser has any financial interest, but in such business transactions shall deal at all times with such affiliates and enterprises on the same basis as though dealing with any other parties.

(d) The Purchaser shall ensure that any direct contractor and its subcontractors constructing the Facility shall, with respect to the Facility, give written notice of their obligations under this section to labor organizations representing employees of the Purchaser and any contractor or subcontractor performing work on the Facility which have a collective bargaining or other contract with the Purchaser, such contractor or subcontractor.

(e) The Purchaser shall ensure that any direct contractor and its subcontractors constructing the Facility shall include the provisions of this section in all subcontracts to perform work with respect to the Facility.

SECTION 8.21. Execution in Counterparts.

This Agreement shall become enforceable upon its execution and delivery. This Agreement may be executed and entered into in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

SECTION 8.22. Disclaimer of Warranties.

IBank makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability, or fitness for any particular purpose or fitness for the use

contemplated by the Purchaser for the Facility, or any item thereof, or any other representation or warranty with respect to the Facility or any item thereof.

SECTION 8.23. Usury Savings.

Nothing herein shall be construed as entitling IBank to charge, receive, or collect interest in a sum greater than the maximum interest rate permitted to be charged by IBank to the Purchaser under applicable law (the "Maximum Rate"). The Parties intend that this Agreement shall comply with applicable law and that the rate or rates of interest charged hereunder shall not exceed the Maximum Rate. If the occurrence of any circumstance, event or contingency should cause such interest to exceed interest at the Maximum Rate, any such excess amount shall be applied to the reduction of the unpaid principal component of the Installment Payments. As used herein, the term "applicable law" shall mean the law in effect as of the date hereof; provided, however, that in the event there is a change in the law which results in a different permissible rate of interest, then this Agreement shall be governed by such new law as of its effective date.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their respective officers on the dates set forth below.

CALIFORNIA INFRASTRUCTURE AND
ECONOMIC DEVELOPMENT BANK, as Seller

By _____

Clint Kellum
Chief Deputy Executive Director

Date _____

CITY OF ESCONDIDO, as Purchaser

By _____

[Christopher W. McKinney]
[Deputy City Manager/Director of Utilities]

Date _____

EXHIBIT A

APPROVING RESOLUTIONS OF THE PURCHASER

[To be Attached to Executed Agreement]

EXHIBIT B

DESCRIPTION OF FACILITY

Description of the Facility

Generally, the Facility will remove, relocate, and replace with an underground pipeline most or all of that portion of the Escondido Canal and its appurtenant structures, facilities, and rights-of way that currently occupy land within the San Pasqual Reservation, located five miles northeast of Escondido. The Facility involves reclamation of the land occupied by the replaced canal by means of demolition, debris removal, grading, and reestablishment of drainage, as well as any associated mitigation of environmental impacts that may be required. The Facility also includes all necessary equipping, installation, design, engineering, construction, construction contingency, demolition, removal, resurfacing, restoration, landscaping, permitting, construction management, project administration, and general project development activities. More specifically, Facility elements include:

- Construction of a new desilting basin and associated access road on the San Pasqual Reservation along the existing Escondido Canal alignment where the canal first enters the Reservation.
- Replacement of about 2,000 feet of existing canal with a buried 60-inch pipeline within the existing Escondido Canal right of ways.
- Removal of approximately two miles of the existing Escondido Canal that will be dewatered when the Facility is complete.
- Replacement of two miles of existing canal with a buried 60-inch pipeline within new alignments crossing the San Pasqual Reservation, private lands, and public right of ways on Lake Wohlford Road.
- The reclamation of the land formerly occupied by the canal by means of demolition, debris removal, grading, and reestablishment of drainage, as well as any associated mitigation of environmental impacts that may be required.
- Other components necessary or desirable in connection with an infrastructure project of this type and that are consistent with the applicable requirements of the IBank Act and the Criteria

EXHIBIT C

CONDITIONS PRECEDENT TO DISBURSEMENT

A. Conditions Precedent to Initial Disbursement

No Facility Funds shall be disbursed pursuant to this Agreement until and unless the Purchaser has submitted the following to IBank:

- (1) Insurance Certificate of the Purchaser required by Section 5.22.

B. Conditions Precedent to Disbursement for Construction Costs

No Facility Funds shall be disbursed for construction costs for the Facility until and unless the Purchaser has submitted the following to IBank:

- (1) A copy of the Purchaser's direct contractor(s)' builder's risk, commercial general liability, and worker's compensation insurance policies satisfying the requirements of Section 5.22, unless specifically waived by IBank;

- (2) A copy of the Purchaser's direct contractor's payment and performance bonds satisfying the requirements set forth in Section 5.19 of this Agreement; and

- (3) A copy of the executed direct contract(s) for the Facility between the Purchaser and its direct contractor(s), including any exhibits, attachments, or change orders, if and when applicable.

C. Conditions Precedent to Final Disbursement

The final disbursement of Facility Funds shall not be made until the Purchaser has provided the following to IBank:

- (1) Recorded notice of completion for the Facility or other evidence of completion satisfactory to IBank;

- (2) Lien waivers for the Facility, or evidence of the passage of the applicable statutory time periods for filing mechanics and other similar liens; and

- (3) Certification by the Purchaser that the Facility has been completed according to its approved final plans and specifications, that the completed Facility is consistent with the definition of Facility in this Agreement and is acceptable to IBank.

EXHIBIT D

FORM OF OPINION OF LEGAL COUNSEL TO PURCHASER

Attorney letterhead

To be signed and dated as of the Effective Date

City of Escondido
201 N. Broadway
Escondido, CA 92025-2790

California Infrastructure and Economic Development Bank
1325 J St. 13th Floor
Sacramento, CA 95814

RE: Installment Sale Agreement, By and Among the City Escondido and the California Infrastructure and Economic Development Bank (“IBank”), dated as of [July X, 2021].

Ladies and Gentlemen:

In my capacity as legal counsel to the City Escondido (the “City”) and in connection with the above described financing agreement (the “Financing Agreement”), I have examined the laws pertaining to the City; copies of the Financing Agreement; the City’s Resolutions No. 2021-71 and [No. 2021-XX] (the “Resolutions”); the documents related to the 2002 DWR Loan, the 2009 DPH Loan, and the 2019 Bonds (each as defined in the Financing Agreement and collectively, the “Existing Financing Documents”); the City’s System (as defined in the Financing Agreement) rate and fee structure; and such other information and documents as I considered necessary to render this opinion.

Based upon the foregoing, it is my opinion that:

(i) the City is a municipal corporation and a general law city duly organized and validly existing pursuant to the laws of the State of California;

(ii) the Resolutions and other actions of the City approving and authorizing the execution and delivery of the Financing Agreement were duly adopted at meetings of the governing body of the City which were called and held pursuant to law, in accordance with all public notice required by law and at which a quorum was present and acting throughout and such approval and authority is continuing and in full force and effect as of the date hereof;

(iii) the City has the full right and lawful authority to execute and deliver the Financing Agreement and the Financing Agreement has been duly authorized and executed on behalf of the City

and the Financing Agreement is the legal, valid and binding obligations of the City enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, moratorium, or similar laws, or by legal or equitable principles relating to or limiting creditors' rights generally;

(iv) to the best of my knowledge, after due inquiry, the execution and delivery of the Financing Agreement and compliance with the provisions thereof, under the circumstances contemplated thereby, does not and will not, in any material respect, conflict with or constitute on the part of the City a breach of or default under any agreement or other instrument to which the District is a party, including, but not limited to, the Existing Financing Documents, or by which it is bound or any existing law, regulation, court order or consent decree to which the City is subject;

(v) The City's obligations under the Financing Agreement constitute permitted parity obligations under the Existing Financing Documents, and based on my independent review, and in conjunction with information the City provided me related to the City's existing debt service and revenues, and the payments required under the Financing Agreement, the parity debt conditions set forth in the Existing Financing Documents have been satisfied as of the date of this letter.

(vi) the rates, fees and charges the City imposes on its System customers are legal, valid and comply with California Constitution article XIID, the statues implementing it, and the published California Appellate Court and Supreme Court decisions interpreting it;

(vii) to the best of my knowledge, after due inquiry, there is no action, suit, proceeding, inquiry or investigation before or by any court or public body pending or threatened against or affecting the City: (1) challenging or questioning the transactions contemplated by the Financing Agreement or any other agreement, document or certificate related to such transactions; (2) challenging or questioning the creation, organization, existence or powers of the City; (3) seeking to enjoin or restrain the execution of the Financing Agreement or the construction of the Facility (as defined in the Financing Agreement) or the collection of any of the revenues used for making payments under the Financing Agreement; (4) in any way questioning or affecting any authority for the execution of the Financing Agreement or the validity or enforceability of the Financing Agreement; or (6) in any way questioning or affecting any other agreement or instrument relating to the Financing Agreement to which the City is a party.

Sincerely,

[Insert attorney name]
City Attorney, **[Identity of Purchaser]**

EXHIBIT E

AMORTIZATION SCHEDULE

[TO BE INSERTED PRIOR TO EXECUTION]

EXHIBIT F

Reserved

EXHIBIT G

Reserved

EXHIBIT H

SCHEDULE OF SOURCES AND USES

Project Uses	Project Sources			Total
	IBank	City of Escondido	Vista Irrigation District	
San Pasqual Undergrounding Project + Contingency	\$24,750,000	\$1,356,954	\$26,106,954	\$52,213,908
Origination Fee	\$250,000			\$250,000
Total	\$25,000,000	\$1,356,954	\$15,351,100	\$52,463,908

EXHIBIT I

Reserved

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS, RULES OF CONSTRUCTION, AND CONDITIONS	
PRECEDENT	2
SECTION 1.01. Definitions.....	2
SECTION 1.02. Rules of Construction.....	10
SECTION 1.03. Conditions Precedent to Effectiveness.....	11
ARTICLE II TERMS OF SALE.....	11
SECTION 2.01. Purchase and Sale.....	11
SECTION 2.02. Design, Acquisition, Construction and Sale of the Facility.	12
SECTION 2.03. Payment of Purchase Price; Term; Interest Rates.	12
SECTION 2.04. Payment on Business Days.	14
SECTION 2.05. Disbursement of Facility Funds.	14
SECTION 2.06. Additional Payments.	15
SECTION 2.07. Reserved.....	16
SECTION 2.08. Limitations on Prepayment and Facility Funds Reductions.	16
SECTION 2.09. Validity of Pledge and First Lien.....	17
SECTION 2.10. Limited Obligation.....	18
SECTION 2.11. Permitted Additional Parity Debt.....	18
SECTION 2.12. Purchaser’s Obligation for Other Costs to Complete Facility.	19
SECTION 2.13. Facility Description.....	20
SECTION 2.14. Withholding of Facility Funds.	19
SECTION 2.15. Reserved.....	20
SECTION 2.16. Permitted Subordinate Debt.....	20
ARTICLE III PLEDGE OF REVENUES; APPLICATION OF FUNDS.....	20
SECTION 3.01. Pledge of System Revenues.	20
SECTION 3.02. Sytem Revenues to be Deposited in the Enterprise Fund.	21
SECTION 3.03. Priority of Payments Made from the Enterprise Fund.	21
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE PURCHASER.....	22
SECTION 4.01. Organization; Authority.	22
SECTION 4.02. Agreement Valid and Binding.	22
SECTION 4.03. No Conflict in Execution of Agreement.	22
SECTION 4.04. No Litigation.	22
SECTION 4.05. No Breach or Default.	22
SECTION 4.06. No Consent, Approval or Permission Necessary.	23
SECTION 4.07. Accuracy and Completeness of Information Submitted to IBank.	23
SECTION 4.08. Financial Statements of the Purchaser.	24
SECTION 4.09. Licenses, Permits and Approvals for Completion of the Facility	23
SECTION 4.10. Authority to Operate the System.....	23
SECTION 4.11. Valid Title; No Conflict.	23
SECTION 4.12. Purchaser’s Compliance with Prop 218 Law.....	234
SECTION 4.13. No Challenge to Purchaser’s Rates, Fees and Charges.....	23

TABLE OF CONTENTS

	Page
SECTION 4.14. Purchaser’s Compliance with Conditions Precedent to Parity Debt Set Forth in the Existing Lien Documents.	23
SECTION 4.15. Continuing Validity of Representations and Warranties.	23
SECTION 4.16. Other Liens; No Lien Senior to IBank Lien.	23
 ARTICLE V AFFIRMATIVE COVENANTS OF THE PURCHASER	 25
SECTION 5.01. Punctual Payment.	25
SECTION 5.02. Payment of Claims.	25
SECTION 5.03. Books and Accounts; Financial Statements.	25
SECTION 5.04. Protection of IBank’s Security and Rights.	27
SECTION 5.05. Payments of Taxes and Other Charges.	27
SECTION 5.06. Maintenance of System Revenues; Rate Covenant.	27
SECTION 5.07. Tax Covenants.	30
SECTION 5.08. Maintenance and Operation of System.	29
SECTION 5.09. Assumption of Obligations.	36
SECTION 5.10. Damage, Destruction, Title Defect and Condemnation; Use of Net Proceeds.	36
SECTION 5.11. Entry into Replacement Agreement.	39
SECTION 5.12. Further Assurances.	39
SECTION 5.13. Agreement to Complete Facility Delivery	39
SECTION 5.14. Collection of Rates, Fees and Charges.	39
SECTION 5.15. The Purchaser’s General Responsibility.	39
SECTION 5.16. The Purchaser’s Assurances and Commitments.	39
SECTION 5.17. Facility Access.	401
SECTION 5.18. Operation and Maintenance of the Facility.	40
SECTION 5.19. Performance and Payment Bonds.	40
SECTION 5.20. Continuing Disclosure.	41
SECTION 5.21. Notice of Purchaser Event of Default.	41
SECTION 5.22. Maintenance of Insurance.	41
SECTION 5.23. Facility Construction.	42
SECTION 5.24. Compliance with Contracts.	43
SECTION 5.25. Reserved.	43
SECTION 5.26. Maintenance of Lien Parity Conditions.	43
SECTION 5.27. Covenant to Comply with Prop 218 Law.	43
 ARTICLE VI NEGATIVE COVENANTS OF THE PURCHASER	 43
SECTION 6.01. Limitation on Additional Obligations; No Senior Debt	43
SECTION 6.02. Disposition of Property.	44
 ARTICLE VII EVENTS OF DEFAULT AND REMEDIES	 44
SECTION 7.01. Events of Default and Acceleration.	44
SECTION 7.02. Remedies.	46
SECTION 7.03. Application of Funds upon Default.	47

TABLE OF CONTENTS

	Page
SECTION 7.04. No Waiver.....	46
SECTION 7.05. Remedies Not Exclusive.....	47
ARTICLE V MISCELLANEOUS.....	48
SECTION 8.01. California Law; Venue.....	47
SECTION 8.02. Assignment of IBank’s Rights.....	47
SECTION 8.03. Third Party Beneficiaries.....	47
SECTION 8.04. Successor Entities.....	49
SECTION 8.05. Discharge of Agreement.....	49
SECTION 8.06. Amendment.....	49
SECTION 8.07. Waiver of Personal Liability.....	50
SECTION 8.08. Arm’s Length Transaction.....	48
SECTION 8.09. Notices.....	49
SECTION 8.10. Contact Persons.....	51
SECTION 8.11. Partial Invalidity.....	51
SECTION 8.12. Binding Effect.....	50
SECTION 8.13. Entire Agreement.....	52
SECTION 8.14. Indemnification.....	52
SECTION 8.15. Expectations.....	53
SECTION 8.16. Section Headings.....	53
SECTION 8.17. Time of the Essence.....	53
SECTION 8.18. Form of Documents.....	54
SECTION 8.19. Waiver of Consequential Damages.....	54
SECTION 8.20. Nondiscrimination.....	54
SECTION 8.21. Execution in Counterparts.....	53
SECTION 8.22. Disclaimer of Warranties.....	55
SECTION 8.23. Usury Savings.....	55
EXHIBIT A APPROVING RESOLUTION OF THE PURCHASER.....	A-1
EXHIBIT B DESCRIPTION OF FACILITY.....	B-1
EXHIBIT C CONDITIONS PRECEDENT TO DISBURSEMENT.....	C-1
EXHIBIT D FORM OF OPINION OF LEGAL COUNSEL TO PURCHASER.....	D-1
EXHIBIT E AMORTIZATION SCHEDULE.....	E-1
EXHIBIT F RESERVED.....	F-1
EXHIBIT G RESERVED.....	G-1
EXHIBIT H SCHEDULE OF SOURCES AND USES.....	H-1
EXHIBIT I RESERVED.....	G-1

EXHIBIT B

GOVERNMENT CODE SECTION 5852.1 DISCLOSURE

The following information consists of estimates that have been provided by the I-Bank and has been represented by such party to have been provided in good faith:

- (A) True Interest Cost of the Installment Sale Agreement: 2.20%
- (B) Finance Charge of the Installment Sale Agreement (sum of all fees/charges paid to third parties): \$1,533,911.59
- (C) Net Proceeds of the Installment Sale Agreement to be Received (net of finance charges, reserves and capitalized interest, if any): \$24,750,000
- (D) Total Payment Amount through Maturity of the Installment Sale Agreement: \$35,607,596.61

The foregoing constitute good faith estimates only. The principal amount of the Installment Sale Agreement, the true interest cost of the Installment Sale Agreement, 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 date of the sale of the Installment Sale Agreement being different than the date assumed for purposes of such estimates; (b) the actual principal amount of Installment Sale Agreement sold being different from the estimated amount used for purposes of such estimates; (c) the actual amortization of the Installment Sale Agreement being different than the amortization assumed for purposes of such estimates; (d) the actual market interest rates at the time of sale of the Installment Sale Agreement 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 date of sale of the Installment Sale Agreement and the actual principal amount of the Installment Sale Agreement will be determined by the City based on a variety of factors. The actual interest rates borne by the Installment Sale Agreement will depend on market interest rates at the time of sale thereof. The actual amortization of the Installment Sale Agreement will also depend, in part, on market interest rates at the time of sale thereof. Market interest rates are affected by economic and other factors beyond the control of the City.

CITY COUNCIL STAFF REPORT

Consent Item No. 5

August 25, 2021

File No. 0600-10, A-3366

SUBJECT: Hale Avenue Resource Recovery Facility (HARRF) Influent Pump Station Screenings Conveyance System Project Bid Award

DEPARTMENT: Utilities Department, Construction and Engineering Division

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2021-98, authorizing the Mayor to execute a Public Improvement Agreement in the amount of \$766,000 with Cora Constructors, Inc., the lowest responsive and responsible bidder, for construction of the Hale Avenue Resource Recovery Facility (HARRF) Influent Pump Station Screenings Conveyance System Project ("Project").

FISCAL ANALYSIS:

Funds for this project are available in the Wastewater Capital Improvement Project ("CIP") No. 800289.

PREVIOUS ACTION:

None

BACKGROUND:

The HARRF Influent Pump Station ("IPS") lifts incoming untreated sewage to the headworks of the wastewater treatment plant, from where the untreated sewage can flow by gravity through the other treatment processes. The IPS also screens large solids and other debris out of the untreated wastewater, preventing these materials from entering the first, or primary, stage of treatment. These large solids and other collected debris are then transported from the Influent Pump Station screens via a single screw conveyor. Over the past several years, build-up of rags, grease and debris on the screw conveyor have resulted in regular flooding of the Influent Pump Station deck area.

This Project will allow the existing wastewater screens to operate more efficiently by:

- installing a system that will convey all materials collected by the screens to the existing grinders, washers and compactors ("GWC");
- constructing modifications to the existing HARRF Influent Pump Station screens;
- relocating GWC drain lines;
- removing, reusing, and demolishing abandoned odor control equipment and relocating odor control piping;
- installing fall protection;

- installing a roll-up door in the GWC building;
- removing existing concrete; and
- installing two aluminum hatches, checker plate panels, and various size trench drains.

The Engineer's estimate for this project was \$376,000. Competitive bids were opened by the City Clerk on June 17, 2021, with the following results:

1)	Cora Constructors, Inc., Palm Desert, CA	\$766,000
2)	G.S.E. Construction Company, Inc., Livermore, CA	\$815,100
3)	J.C.I. Construction, Inc., Sun Valley, CA	\$857,000
4)	J.R. Filanc Construction Company, Inc., Escondido, CA	\$865,000
5)	Tharsos, Inc., La Mesa, CA	\$909,000
6)	Ahrens Mechanical, San Diego, CA	\$991,500
7)	Rice Lake Contracting Corp., Deerwood, MN	\$1,015,000
8)	J.F. Shea Construction, Inc., Walnut, CA	\$1,116,575
9)	ABHE & Svoboda, Inc., Jordan, MN	\$1,376,000

Staff thoroughly reviewed the low bid submitted by Cora Constructors, Inc., and has determined that they are the lowest responsive and responsible bidder.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Christopher McKinney, Deputy City Manager/Director of Utilities
08/18/21 4:43 p.m.

Angela Morrow, Deputy Director of Utilities/Construction & Engineering
08/18/21 5:44 p.m.

ATTACHMENTS:

1. Resolution No. 2021-98
2. Resolution No. 2021-98 – Exhibit "A": Bid Award HARRF Influent Pump Station Screenings Conveyance System Project

RESOLUTION NO. 2021-98

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING THE MAYOR TO EXECUTE,
ON BEHALF OF THE CITY, A PUBLIC
IMPROVEMENT AGREEMENT WITH CORA
CONSTRUCTORS, INC., FOR THE
CONSTRUCTION OF THE HARRF INFLUENT
PUMP STATION SCREENINGS
CONVEYANCE SYSTEM PROJECT

WHEREAS, the Escondido City Council authorized an invitation for bids for the construction of the HARRF Influent Pump Station Screenings Conveyance System Project (the "Project"); and

WHEREAS, the Project will construct modifications to the existing HARRF Influent Pump Station screens; install a system that will convey materials collected by the screens to the existing grinders, washers, and compactors ("GWC"); relocate GWC drain lines; remove, reuse, and demolish abandoned odor control and relocate associated odor control piping; install fall protection; install a roll-up door in the GWC building; remove existing concrete; install two aluminum hatches, checker plate panels, and various size trench drains; and

WHEREAS, the City of Escondido ("City") opened sealed bids for the Project on July 8, 2021; and

WHEREAS, City staff thoroughly reviewed the low bid submitted by Cora Constructors, Inc., and have determined that it is the lowest responsive and responsible bidder; and

WHEREAS, the Deputy City Manager / Director of Utilities has determined Cora Constructors, Inc., to be the lowest responsive and responsible bidder and recommends awarding the bid in the amount of \$766,000 to Cora Constructors, Inc.; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to award this contract to Cora Constructors, Inc.

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

1. That the above recitations are true.
2. That the Mayor and City Council accepts the recommendation of the Deputy City Manager / Director of Utilities.
3. That the Mayor is authorized to execute, on behalf of the City, a Public Improvement Agreement with Cora Constructors, Inc. in substantially the same format as Exhibit "A" which is attached hereto and incorporated by this reference, subject to final approval as to form by the City Attorney.



CITY OF ESCONDIDO
PUBLIC IMPROVEMENT AGREEMENT

This Public Improvement Agreement ("Agreement") is made and entered into as of this ____ day of _____, 2021 ("Effective Date"),

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

And: CORA CONSTRUCTORS, INC.
a California corporation
75140 St. Charles Place, Suite A
Palm Desert, CA 92211
Attn: Lynne Cazeault
760-674-3201
("CONTRACTOR").

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

WHEREAS, the Parties desire to enter into this Agreement for the performance of work relating to the HARRF Influent Pump Station Screenings Conveyance System project ("Project"), occurring on property located at 1521 S. Hale Avenue, Escondido, CA 92029 and having assessor's parcel number (APN) 235-051-01 ("Property"), as further described herein.

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

1. Project Documents. The Notice Inviting Sealed Bids/Notice to Contractors, Instructions to Bidders, Bid Form, Designation of Subcontractors, Workers' Compensation Certificate, Change Orders, Shop Drawing Transmittals, Information Required of CONTRACTOR, Non-collusion Affidavit, Insurance Certificates, Guarantees, General Conditions, Supplementary General Conditions, Special Conditions, Plans, Drawings, Specifications, the Agreement, and

all modifications, addenda, and amendments thereto ("Project Documents") are incorporated herein by this reference as if fully set forth herein. The Project Documents are complementary, and what is called for by any one shall be as binding as if called for by all.

2. Description and Performance of Work. CONTRACTOR shall furnish all work described in Project Documents, which are incorporated herein by this reference ("Work"). All Work to be performed and materials to be furnished shall be completed in a good workmanlike manner, free from defects, in strict accordance with the plans, drawings, specifications, and requirements set forth in the Project Documents and all provisions of this Agreement.
3. Compensation. In exchange for CONTRACTOR's completion of the Work, the CITY shall pay, and CONTRACTOR shall accept in full, an amount not to exceed the sum of \$766,000 ("Contract Price"). CONTRACTOR shall be compensated only for performance of the Work described in this Agreement. No compensation shall be provided for any other work or services without the CITY's prior written consent.
4. Term and Time of Performance. CONTRACTOR shall commence work within 48 hours from the CITY's notice to proceed. CONTRACTOR shall diligently perform and complete the Work with professional quality and technical accuracy within 304 calendar days from the Notice to Proceed ("Completion Date"). Extension of terms or time of performance shall be subject to the CITY's sole discretion.
5. Time Is of the Essence. If the Work is not completed by the Completion Date, it is understood that the CITY will suffer damage. It being impractical and infeasible to determine the amount of actual damage, in accordance with Government Code section 53069.85, the Parties agree that CONTRACTOR shall pay to the CITY as fixed and liquidated damages, and not as a penalty, the sum of \$1,200 per day for each calendar day of delay until the Work is completed and accepted ("Liquidated Damages Amount"). The Liquidated Damages Amount shall be deducted from any payments due to, or that become due to, CONTRACTOR. CONTRACTOR and CONTRACTOR'S surety shall be liable for the Liquidated Damages Amount.
6. Insurance Requirements.
 - a. CONTRACTOR shall procure and maintain, at its own cost, during the entire term of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Work, and the results of such Work, by CONTRACTOR, its agents, representatives, employees, or subcontractors. Insurance coverage shall be at least as broad as the following:
 - (1) *Commercial General Liability.* Insurance Services Office ("ISO") Form CG 0001 11188 covering Commercial General Liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury (including emotional distress), sickness, disease, or death of any person other than the CONTRACTOR's employees, and personal and advertising injury, and damages because of injury or destruction of tangible property, including loss of use resulting there from, with limits no less than \$3,000,000 combined single limit coverage per occurrence for bodily injury and property damage; or, if a general aggregate limit is applicable, either: (i) the general aggregate limit shall specifically apply to the project identified in the bid specifications or to the location of such project which is the subject of these bid specifications with coverage to be no less than \$3,000,000, or

- (ii) the general aggregate shall be at least \$3,000,000 combined single limit coverage per occurrence for bodily injury and property damage.
- (2) *Automobile Liability.* ISO Form CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired (Code 8) and non-owned autos (Code 9), including damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under CONTRACTOR's control and engaged in the Work, with limits no less than \$3,000,000 combined single limit per accident for bodily injury and property damage.
 - (3) *Workers' Compensation.* Workers' Compensation as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.
 - (4) *Fire Insurance.* Before the commencement of the Work, the CONTRACTOR shall procure, maintain, and cause to be maintained at the CONTRACTOR's expense, fire insurance on all Work subject to loss or damage by fire and the entire structure on which the Work of this Agreement is to be done to the insurable value thereof. The amount of fire insurance shall be subject to approval by the CITY and shall be sufficient to protect the Work against loss or damage in full until the Work is completed and accepted by the CITY. Should the Work being constructed be damaged by fire or other causes during construction, it shall be replaced in accordance with the requirements of the drawings and specifications without additional expense to the CITY.
 - (5) *Builder's Risk/"All Risk" Insurance.* The CONTRACTOR, during the progress of the Work and until final acceptance of the Work by CITY, shall maintain Builder's Risk/"All Risk," course-of-construction insurance satisfactory to CITY issued on a completed value basis of all WORK pursuant to this Agreement. Coverage is to provide extended coverage and insurance against vandalism, theft, malicious mischief, perils of fire, sprinkler leakage, civil authority, sonic boom, earthquake, collapse, flood, wind, lightning, smoke, riot, debris removal (including demolition), and reasonable compensation for the Engineer's services and expenses required as a result of such insured loss upon the Work, including completed Work and Work in progress to the full insurable value thereof. Such insurance shall include the CITY and the City Engineer as an additional named insured and any other person with an insurable interest designated.
 - (6) If CONTRACTOR maintains broader coverage and/or higher limits than the minimums otherwise required by this Agreement, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by CONTRACTOR.
- b. Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:
- (1) *Compliance with General Condition Requirements.* Insurance coverage shall comply with and meet all requirements set forth in Article 5.2 of General Conditions

- (2) *Acceptability of Insurers.* Insurance coverage must be provided by an insurer authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A-:VII, or as approved by the CITY.
- (3) *Additional Insured Status.* Both the Commercial General Liability and the Automobile Liability policies must name the CITY (including its officials, officers, agents, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page. The Commercial General Liability additional insured endorsement shall be at least as broad as ISO Form CG 20 10 11 85, or if not available, through the addition of *both* CG 20 10, CG 20 26, CG 20 33, or CG 20 38, *and* CG 20 37 if a later edition is used. The Automobile Liability additional insured endorsement shall be at least as broad as ISO Form CA 20 01.
- (4) *Primary Coverage.* CONTRACTOR's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the CITY, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, officers, agents, employees, or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (5) *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the CITY.
- (6) *Subcontractors.* If applicable, CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated within this Agreement, and CONTRACTOR shall ensure that the CITY (including its officials, officers, agents, employees, and volunteers) is an additional insured on any insurance required from a subcontractor.
- (7) *Waiver of Subrogation.* CONTRACTOR hereby grants to the CITY a waiver of any right to subrogation that any insurer of CONTRACTOR may acquire against the CITY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this subsection shall apply regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer. Any Workers' Compensation policy required by this Agreement shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the CONTRACTOR, its agents, representatives, employees and subcontractors.
- (8) *Self-Insurance.* CONTRACTOR may, with the CITY's prior written consent, fulfill some or all of the insurance requirements contained in this Agreement under a plan of self-insurance. CONTRACTOR shall only be permitted to utilize such self-insurance if, in the opinion of the CITY, CONTRACTOR's (i) net worth and (ii) reserves for payment of claims of liability against CONTRACTOR are sufficient to adequately compensate for the lack of other insurance coverage required by this Agreement. CONTRACTOR's utilization of self-insurance shall not in any way limit the liabilities assumed by CONTRACTOR pursuant to this Agreement.
- (9) *Self-Insured Retentions.* Self-insured retentions must be declared to and approved by the CITY.

- c. *Verification of Coverage.* At the time CONTRACTOR executes this Agreement, CONTRACTOR shall provide the CITY with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting the insurance coverage required by this Agreement), which shall meet all requirements under this Agreement. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Agreement, at any time.
- d. *Special Risks or Circumstances.* The CITY reserves the right, at any point during the term of this Agreement, to modify the insurance requirements in this Agreement, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- e. *No Limitation of Obligations.* The insurance requirements within this Agreement, including the types and limits of insurance coverage CONTRACTOR must maintain, and any approval of such insurance by the CITY, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONTRACTOR pursuant to this Agreement, including but not limited to any provisions within this Agreement concerning indemnification.
- f. *Compliance.* Failure to comply with any of the insurance requirements in this Agreement, including but not limited to a lapse in any required insurance coverage during the term of this Agreement, shall be a material breach of this Agreement. Compliance by CONTRACTOR with the requirement to carry insurance and furnish certificates, policies, Additional Insured Endorsement and Declarations Page evidencing the same shall not relieve the CONTRACTOR from liability assumed under any provision of this Agreement, including, without limitation, the obligation to defend and indemnify the CITY and the City Engineer. In the event that CONTRACTOR fails to comply with any insurance requirement set forth in this Agreement, in addition to any other remedies the CITY may have, the CITY may, at its sole option, (i) immediately terminate this Agreement; or (ii) order CONTRACTOR to stop Work under this Agreement and/or withhold any payment that becomes due to CONTRACTOR until CONTRACTOR demonstrates compliance with the insurance requirements in this Agreement.

7. Indemnification, Duty to Defend, and Hold Harmless.

- a. CONTRACTOR (including CONTRACTOR's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "Claims"), of every nature caused by, arising out of, or in connection with CONTRACTOR's (including CONTRACTOR's agents, employees, and subcontractors, if any) Work pursuant to this Agreement or its failure to comply with any of its obligations contained herein, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY.

- b. CONTRACTOR (including CONTRACTOR's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all Claims caused by, arising under, or resulting from any violation, or claim of violation, of the San Diego Municipal Storm Water Permit (Order No. R9-2013-0001, as amended) of the California Regional Water Quality Control Board, Region 9, San Diego, that the CITY might suffer, incur, or become subject to by reason of, or occurring as a result of, or allegedly caused by, any Work performed pursuant to this Agreement.
- c. All terms and provisions within this Section 7 shall survive the termination of this Agreement.

8. Bonds.

- a. CONTRACTOR shall furnish and deliver to the CITY, simultaneously with the execution of this Agreement, the following surety bonds:
 - (1) *Faithful Performance Bond.* CONTRACTOR shall furnish to the CITY a surety bond in an amount equal to the Contract Price as security for faithful performance of this Agreement.
 - (2) *Labor and Materials Bond.* CONTRACTOR shall furnish to the CITY a surety bond in an amount equal to the Contract Price as security for payment to persons performing labor and furnishing materials in connection with the Project.
- b. All bonds furnished to the CITY pursuant to this Agreement shall be in the form set forth herein and approved by the City Attorney.
- c. All bonds shall be executed by sureties that are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- d. If the surety on any bond furnished by the CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Work is located, the CONTRACTOR shall, within seven days thereafter, substitute another bond and surety, which must be acceptable to the CITY. No portion of the Work shall be performed without bonds, in a form and issued by a surety acceptable to the City. If one or more of such bonds shall, at any time, not be in full force and effect, CONTRACTOR shall immediately cease performance of the Work until CONTRACTOR is in full compliance with the bonding requirements of this Agreement and California law. All delays and costs incurred or resulting from such occurrence shall be to the exclusive account of CONTRACTOR. Failure of the CONTRACTOR to promptly cure any failure to have the necessary bonds in full force and effect shall be grounds for immediate termination of this Agreement.

- e. All bonds shall be obtained from surety companies that are duly licensed or authorized in the State of California. Such surety companies shall also meet any additional requirements and qualifications as may be provided in the Supplementary General Conditions.
9. Substitution of Securities. This Agreement is subject to California Public Contract Code section 22300, which permits the substitution of securities for any monies withheld by the CITY to ensure performance of this Agreement. At the request and expense of the CONTRACTOR, securities equivalent to the amount withheld shall be deposited with the CITY, or with a state- or federally-chartered bank in this state as the escrow agent, who shall then pay those moneys to CONTRACTOR. Upon satisfactory completion and acceptance of the Work, such securities shall be returned to the CONTRACTOR.
10. Contractor Default. In the event CONTRACTOR, for a period of 10 calendar days after receipt of written demand from the CITY to do so ("Cure Period"), fails to furnish tools, equipment, or labor in the necessary quantity or quality required by this Agreement, or fails to prosecute the Work and all parts thereof in a diligent and workmanlike manner, or after commencing to do so within the Cure Period, fails to continue to do so, then the CITY in its sole discretion may exclude the CONTRACTOR from the Property, or any portion thereof, and take exclusive possession of the Property or any portion thereof, together with all material and equipment thereon, and may complete the Work or any portion of the Work, either by (i) furnishing the necessary tools, equipment, labor, or materials; or (ii) letting the unfinished portion of the work, or any portion thereof, to another contractor; or (iii) demanding the surety hire another contractor; or (iv) any combination of such methods. The CITY's procuring of the completion of the Work, or the portion of the Work taken over by the CITY, shall be a charge against the CONTRACTOR and may be deducted from any money due or to become due to CONTRACTOR from the CITY, or the CONTRACTOR shall pay the CITY the amount of such charge, or the portion thereof unsatisfied. The sureties provided for under this Agreement shall become liable for payment if CONTRACTOR fails to pay in full any such cost incurred by the CITY. The permissible charges for any such procurement of the completion of the Work include actual costs and fees incurred to third party individuals and entities (including but not limited to consultants, attorneys, inspectors, and designers) and actual costs incurred by the CITY for the increased dedication of time of the CITY's employees to the Project.
11. Other Legal Requirements Incorporated. Each and every provision of law and clause required by law to be inserted in this Agreement or its attachments shall be deemed to be inserted herein, and this Agreement shall be read and enforced as though such law or clause were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either Party, the Agreement shall forthwith be physically amended to make such insertion or correction, without further changes to the remainder of the Agreement.
12. Merger Clause. This Agreement, together with its attachments or other documents described or incorporated herein, if any, constitutes the entire agreement and understanding of the CITY and CONTRACTOR concerning the subject of this Agreement and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. In the event of any conflict between the provisions of this Agreement and any of its attachments or related documents, if any, the provisions of this Agreement shall prevail.

13. Attorney's Fees and Costs. In any action to enforce the terms and conditions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs.
14. Independent Contractor. CONTRACTOR is an independent contractor, and no agency or employment relationship is created by the execution of this Agreement.
15. Amendment. This Agreement shall not be amended except in a writing signed by the CITY and CONTRACTOR, and pursuant to action of the Escondido City Council.
16. Anti-Waiver Clause. None of the provisions of this Agreement shall be waived by the CITY because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived by the CITY, in whole or in part.
17. Severability. This Agreement shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision of this Agreement shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Agreement.
18. Governing Law. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Venue for any action arising from this Agreement shall be conducted only in the state or federal courts of San Diego County, California.
19. Counterparts. This Agreement may be executed on separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement by electronic means, including an attachment to an email, shall be effective as delivery of an executed original. The Agreement on file with the City is the copy of the Agreement that shall take precedence if any differences exist between or among copies or counterparts of the Agreement.
20. Provisions Cumulative. The foregoing provisions are cumulative to, in addition to, and not in limitation of any other rights or remedies available to the CITY.
21. Business License. CONTRACTOR shall obtain a City of Escondido Business License prior to execution of this Agreement and shall maintain such Business License throughout the term of this Agreement.
22. Compliance with Laws, Permits, and Licenses. CONTRACTOR shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements in effect during the term of this Agreement. This shall include, but shall not be limited to, all California Labor Code laws regarding payment of prevailing wages and all OSHA regulations. CONTRACTOR shall obtain any and all permits, licenses, and other authorizations necessary to perform the work under this Agreement. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONTRACTOR to comply with this section.
23. Prevailing Wages and Department of Industrial Relations Compliance. Pursuant to California Labor Code section 1770 et seq., CONTRACTOR agrees that a prevailing rate and scale of wages, in accordance with applicable laws, shall be paid in performing this Agreement.

CONTRACTOR shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements pertaining to the payment of prevailing wages, including but not limited to the keeping of certified payroll records, overtime pay, employment of apprentices, and workers' compensation coverage, as further set forth in the General Conditions. CONTRACTOR shall file the required workers' compensation certificate before commencing work under this Agreement. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. CONTRACTOR shall post all job site notices required by regulation. CONTRACTOR, as well as any subcontractors, shall be registered pursuant to California Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal (subject to the requirements of Public Contract Code section 4104), or engage in the performance of any public works contract subject to the requirements of Division 2, Part 7, Chapter 1 of the California Labor Code. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of CONTRACTOR to comply with this section.

24. Immigration Reform and Control Act of 1986. CONTRACTOR shall keep itself informed of and shall comply with the Immigration Reform and Control Act of 1986 ("IRCA"). CONTRACTOR represents and warrants that all of its employees and the employees of any subcontractor retained by CONTRACTOR who perform any portion of the Work under this Agreement are and will be authorized to perform the Work in full compliance with the IRCA. CONTRACTOR affirms that as a licensed contractor and employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will perform the Work. CONTRACTOR agrees to comply with the IRCA before commencing any portion of the Work, and continuously throughout the performance of the Work and the term of this Agreement.
25. Effective Date. Unless a different date is provided in this Agreement, the effective date of this Agreement shall be the latest date of execution set forth by the names of the signatories below.

(SIGNATURE PAGE FOLLOWS)

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

CITY OF ESCONDIDO

Date: _____

Sean McGlynn, City Manager

CORA CONSTRUCTORS, INC.

Date: _____

Signature

Name & Title (please print)

Contractor's License No.

Tax ID/Social Security No.

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
Michael R. McGuinness, City Attorney

BY: _____

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



Bond No.: _____

Premium: _____

FAITHFUL PERFORMANCE BOND

KNOW ALL BY THESE PRESENTS,

WHEREAS, The City Council of the City of Escondido, State of California, and Cora Constructors, Inc., a California corporation ("Principal"), have entered into that certain Public Improvement Agreement dated _____ ("Agreement," hereby referred to and made a part hereof), whereby Principal has agreed to install and complete certain designated public improvements associated with the HARRF Influent Pump Station Screenings Conveyance System Project.

WHEREAS, the Principal is required under the terms of the Agreement to furnish a bond for the faithful performance of the Agreement.

NOW, THEREFORE, we, the Principal and _____, a _____ organized and existing under the laws of the State of California and authorized to act as a surety in the State of California ("Surety"), are held and firmly bound unto the City of Escondido, a California municipal corporation ("City") in the penal sum of seven hundred sixty six thousand dollars and zero cents (\$766,000), lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

THE CONDITION of this obligation is such that if the Principal, or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and provisions in the Agreement and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents, and employees, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any manner affect its obligations on this bond, and the Surety hereby waives notice of any such change, extension of time, alteration, or addition to the terms of the Agreement or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, as of this _____ day of _____, 20__.

Name of Principal

By: _____
Signature of Person Signing on Behalf of Principal

Address of Principal

Name of Person Signing on Behalf of Principal

Title of Person Signing on Behalf of Principal

Name of Surety

By: _____
Signature of Person Signing on Behalf of Surety

Address of Surety

Name of Person Signing on Behalf of Surety

Title of Person Signing on Behalf of Surety

(ACKNOWLEDGMENTS OF EXECUTION BY PRINCIPALS AND SURETY MUST BE ATTACHED.)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, City Attorney

BY: _____



Bond No.: _____
Premium: _____

LABOR AND MATERIALS BOND

KNOW ALL BY THESE PRESENTS,

WHEREAS, The City Council of the City of Escondido, State of California, and Cora Constructors, Inc., a California corporation ("Principal"), have entered into a that certain Public Improvement Agreement dated _____ ("Agreement," hereby referred to and made a part hereof), whereby Principal has agreed to install and complete certain designated public improvements associated with the HARRF Influent Pump Station Screenings Conveyance System Project.

WHEREAS, under the terms of the Agreement, the Principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Escondido, a California municipal corporation ("City"), to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code.

NOW, THEREFORE, the Principal and _____, a _____ organized and existing under the laws of the State of California and authorized to act as a surety in the State of California ("Surety"), are held firmly bound unto the City and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the Agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of seventy hundred sixty six thousand dollars and zero cents (\$766,000), lawful money of the United States of America, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

If the condition of this bond is fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement or to the work to be performed thereunder or the

specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, as of this _____ day of _____, 20__.

Name of Principal

By: _____
Signature of Person Signing on Behalf of Principal

Address of Principal

Name of Person Signing on Behalf of Principal

Title of Person Signing on Behalf of Principal

Name of Surety

By: _____
Signature of Person Signing on Behalf of Surety

Address of Surety

Name of Person Signing on Behalf of Surety

Title of Person Signing on Behalf of Surety

(ACKNOWLEDGMENTS OF EXECUTION BY PRINCIPALS AND SURETY MUST BE ATTACHED.)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, City Attorney

BY: _____

CITY OF ESCONDIDO BUSINESS LICENSE

In accordance with Municipal Code Section 16, the successful bidder is required to obtain a City of Escondido Business License prior to execution of contract.

The following information must be submitted to the City Clerk prior to execution of contract:

City of Escondido Business License No. _____

Expiration Date _____

Name of Licensee _____

WORKERS' COMPENSATION INSURANCE CERTIFICATE

If self-insured for Workers' Compensation, the Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, Sections 1860 and 1861, and I will comply with such provisions before commencing the performance of the work of the contract.

Date: _____

Signature

Name & Title (please print)

CITY COUNCIL STAFF REPORT

Consent Item No. 6

August 25, 2021

File No. 0600-10, A-3363

SUBJECT: First Amendment to the Reimbursement Agreement to Add Evaluation of the Mountain House Project Zone into the Proposed Community Facilities District for the Del Prado Project

DEPARTMENT: Engineering Services Department

RECOMMENDATION:

It is requested that the City Council adopt Resolution No. 2021-115, authorizing the Mayor to execute a First Amendment to the Reimbursement Agreement with CWC Escondido 113, LLC to add the Mountain House Project Zone into the evaluation of a request to form a Community Facilities District (“CFD”) for the Del Prado Project.

FISCAL ANALYSIS:

The Developer reimburses all costs, including staff time and consultant costs.

PREVIOUS ACTION:

On May 12, 2021, the City Council authorized the Mayor to execute, on behalf of the City, a Reimbursement Agreement to evaluate a formation of a Facilities CFD for the Del Prado Project.

On May 26, 2021, the City Council approved the first Final Map for the Del Prado Project, Tract SUB15-0022. On May 11, 2016, the City Council approved two Tentative Maps, SUB15-022 and SUB15-0023, approving the entitlements for the Del Prado project.

On December 14, 2005, the City Council approved a Final Map for the Mountain House Project, Tract 683-J. The development stalled during the great recession and three lots were subsequently sold and are not a part of this request.

BACKGROUND:

The City and CWC Escondido 113, LLC (“Developer”), entered into a Reimbursement Agreement to evaluate the formation of a Facilities CFD to finance infrastructure costs associated with the Del Prado Project. The Developer has agreed that upon formation of a Facilities CFD, the project would be annexed into the Citywide Services CFD 2020-1. The Developer has now requested an amendment to the Reimbursement Agreement to evaluate inclusion of a second subdivision, Mountain House, formerly known as Highpoint, into the Facilities CFD, under the same terms as the initial Reimbursement Agreement. If approved, each project would have its own special tax rate zone as required to support the costs funded through the Facilities CFD for that project.

The revised Attachment "1" outlines the Developer's proposal to finance development impact, water, and sewer fees through the formation of a CFD. The Developer's consultant estimates that approximately \$3.8-million in costs could be financed using a CFD with a resulting effective tax rate of 1.76% for the Del Prado and 1.37% for the Mountain House Project. These assumptions and analysis used by the developer's consultant will need to be confirmed by expert consultants hired by the City.

The same consultant team who the City proposed in the initial Reimbursement Agreement will evaluate the Developer's revised proposal with all costs to be reimbursed by the Developer. The consultants will evaluate the proposal for conformance with the City's Statement of Goals and Policies for Establishment of Community Facilities Districts. The First Amendment to the Reimbursement Agreement with CWC Escondido 113, LLC to Evaluate the Formation of a Community Facilities District for the Del Prado and Mountain House Projects increases the deposit and reimbursement agreement by \$28,710.00 to allow for the additional costs of the Mountain House Project.

This action allows staff to engage consultants, at the Developer's expense, to begin the process of evaluating the revised request for CFD formation and report back to City Council for direction in the next few months.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Julie Procopio, Director of Engineering Services
08/19/21 9:18 a.m.

ATTACHMENTS:

1. Attachment "1" – CWC Escondido 113, LLC Proposed City of Escondido CFD (Del Prado & Mountain House) Bond Sizing and Total Tax Rate Analysis
2. Resolution No. 2021-115
3. Resolution No. 2021-115 – Exhibit "A" Reimbursement Agreement First Amendment

Exhibit 1
 CalWest Communities
 Eclipse & Mountain House
 Proposed City of Escondido CFD No. 2021-1
 Bond Sizing and Total Tax Rate Analysis
 July 29, 2021

PRELIMINARY DRAFT
SUBJECT TO CHANGE

I. Home Prices and Combined Tax Rates:

LAND USE INFORMATION					TOTAL TAX RATE ANALYSIS						CFD ANALYSIS
Plan No	Proposed City of Escondido Sq. Ft. Category	Home Size (Sq. Ft.)	No. Units	Estimated Base Home Price	FY 20-21 Ad Valorem Tax Rate	Other Fixed Charges and Assess.	FY 21-22 City of Escondido Services CFD	Proposed City of Escondido Facilities CFD No. 2021-1	Total Tax per Unit	Total Tax Rate	Total Proposed City of Escondido Facilities CFD Special Taxes
(a)		(a)	(a)	(a)	(b)	(c)	(d)	(e)			
ZONE 1 - ECLIPSE											
1	< 1,200	1,140	20	\$ 494,900	\$ 5,719	\$ 32	\$ 740	\$ 2,229	\$ 8,720	1.76%	\$ 44,588
2	1,201 - 1,400	1,290	28	514,900	5,950	32	740	2,351	9,073	1.76%	65,819
3	> 1,400	1,568	34	554,900	6,412	32	740	2,593	9,777	1.76%	88,169
4	> 1,400	1,534	31	559,900	6,470	32	740	2,593	9,835	1.76%	80,390
	<i>Sub-total / Wtd. Avg.</i>	<u>1,414</u>	<u>113</u>	<u>\$ 535,741</u>	<u>\$ 6,191</u>	<u>\$ 32</u>	<u>\$ 740</u>	<u>\$ 2,469</u>	<u>\$ 9,431</u>	<u>1.76%</u>	<u>\$ 278,965</u>
ZONE 2 - MOUNTAIN HOUSE											
	<i>Average</i>	<u>3,200</u>	<u>36</u>	<u>\$ 1,100,000</u>	<u>\$ 12,712</u>	<u>\$ 32</u>	<u>\$ 547</u>	<u>\$ 1,757</u>	<u>\$ 15,048</u>	<u>1.37%</u>	<u>\$ 63,267</u>
	<i>Sub-total / Wtd. Avg.</i>	<u>3,200</u>	<u>36</u>	<u>\$ 1,100,000</u>	<u>\$ 12,712</u>	<u>\$ 32</u>	<u>\$ 547</u>	<u>\$ 1,757</u>	<u>\$ 15,048</u>	<u>1.37%</u>	<u>\$ 63,267</u>
	TOTAL		149								\$ 342,233

PROPOSED CITY OF ESCONDIDO FACILITIES CFD (ECLIPSE & MOUNTAIN HOUSE)			
Total Annual Special Taxes for Bonding (Annual CFD Revenues less \$30,000 annual administration/ 110% Coverage)		\$ 283,848	
II. CFD Bond Sizing & Construction Proceeds:		TOTAL	
Bond Amount (4.50% Interest, 30 Year Term, 29 Year Amortization)		\$ 4,545,000	
Underwriter Discount (2.00%)		\$ (90,900)	
Reserve Fund (Annual Debt Service)		(283,848)	
Capitalized Interest (6 mos)		(102,263)	
Incidental Costs (Estimate)		(253,000)	
Total Net Construction Proceeds		\$ 3,814,989	
Per Unit		\$ 25,604	
III. Allocation of Net Construction Proceeds (f):			
ZONE 1 - ECLIPSE	81.51% of the Special Tax Revenue/Bond Proceeds	Per Unit	Total
City of Escondido DIF (100% of \$16,503 per unit - ESTIMATED CFD eligible DIF)		\$ 16,503	\$ 1,864,849
City of Escondido Water & Sewer Fees (100% of \$11,010 per unit)		11,010	1,244,130
Total Net Construction Proceeds (113 Units)		\$ 27,513	\$ 3,108,979
ZONE 2 - MOUNTAIN HOUSE	18.49% of the Special Tax Revenue/Bond Proceeds	Per Unit	Total
City of Escondido DIF (100% of \$19,478 per unit - ESTIMATED CFD eligible DIF)		\$ 19,478	\$ 701,223
Total Net Construction Proceeds (36 Units)		\$ 19,478	\$ 701,223
UNALLOCATED SURPLUS		\$ 32	\$ 4,787
TOTAL NET CONSTRUCTION PROCEEDS		\$ 25,604	\$ 3,814,989

IV. Footnotes:

- (a) Product mix & pricing provided by CalWest on 6/30/21.
- (b) Includes 1.00% plus the following:
 - A tax of 0.03600% is charged for fiscal year 2020-21 by Palomar Pomerado Health to all parcels to pay debt service for outstanding bonds.
 - A tax of 0.03982% is charged for fiscal year 2020-21 by the Escondido Union School District to all parcels to pay debt service for outstanding bonds.
 - A tax of 0.03219% is charged for fiscal year 2020-21 by the Escondido Union High School District to all parcels to pay debt service for outstanding bonds.
 - A tax of 0.02106% is charged for fiscal year 2020-21 by the Palomar Community College District to all parcels to pay debt service for outstanding bonds.
 - A tax of 0.02304% is charged for fiscal year 2020-21 by the City of Escondido to all parcels to pay debt service for outstanding bonds for public safety improvements.
 - A tax of 0.00350% is charged for fiscal year 2020-21 by the Metropolitan Water District to all parcels to pay debt service for outstanding bonds.
- (c) Includes the following:
 - Metropolitan Water District levies an assessment of \$11.50 per acre, or \$11.50 per parcel, if less than an acre.
 - County of San Diego levies an assessment of \$2.28 per parcel for mosquito surveillance services.
 - County of San Diego levies an assessment of \$8.36 per parcel for vector control services.
 - San Diego County Water Authority levies an assessment of \$10.00 per acre, or \$10.00 per parcel, if less than an acre.
- (d) Represents the fiscal year 2021-22 special tax rate for City of Escondido Services CFD No. 2020-1 to finance Citywide public safety, maintenance and administrative expenses for services provided by the City. This special tax escalates by the greater of 2% or an index.
- (e) Represents the ESTIMATED special tax rates for PROPOSED City of Escondido CFD No. 2021-1 to finance City DIF and water and wastewater fees.
- (f) Please refer to Exhibit 2 for additional details.

Exhibit 2
CalWest Communities
Del Prado & Mountain House
Proposed City of Escondido CFD
Preliminary Facilities List

City of Escondido Impact Fees*	ZONE 1			ZONE 2		
	Per Unit	No. Units	Total	Per Unit	No. Units	Total
Traffic Local Fee	\$ 2,054	113	\$ 232,134	\$ 4,110	36	\$ 147,945
Regional Traffic Fee	2,583	113	291,896	2,533	36	91,193
Public Facilities Fee	4,873	113	550,597	4,873	36	175,411
Park Fee	6,533	113	738,240	6,849	36	246,575
Drainage Fees	460	113	51,982	1,114	36	40,098
Total City of Escondido Fees:	\$ 16,503		\$ 1,864,849	\$ 19,478		\$ 701,223
City of Escondido Water & Sewer Fees *	Per Unit/Meter	No. Units/Meters	Total			
Wastewater Connection Fee	\$ 7,500	113	\$ 847,500			
Water Connection Fee	3,510	113	396,630			
Total Escondido Water Utilities Department Fees:	\$ 11,010		\$ 1,244,130			
	Per Unit	No. Units	Total	Per Unit	No. Units	Total
TOTAL AUTHORIZED FEES	\$ 27,513	113	\$ 3,108,979	\$ 19,478	36	\$ 701,223

*Represents the ESTIMATED CFD eligible impact fees and water/sewer fees per the 8/25/20 Residential Fee Guide.

RESOLUTION NO. 2021-115

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY A FIRST AMENDMENT TO THE REIMBURSEMENT AGREEMENT WITH CWC ESCONDIDO 113, LLC TO ADD EVALUATION OF THE MOUNTAIN HOUSE PROJECT ZONE INTO THE PROPOSED COMMUNITY FACILITIES DISTRICT FOR THE DEL PRADO PROJECT

WHEREAS, the City Council of the City of Escondido (“City”) has previously authorized a reimbursement agreement and deposit account to evaluate the formation of a Facilities Community Facilities District to fund development costs associated with the Del Prado Project; and

WHEREAS, CWC Escondido 113, LLC (“Developer”), has requested that the City of Escondido add evaluation of the Mountain House project into the proposed Community Facilities District (“CFD”) to finance facilities associated with the Mountain House Project; and

WHEREAS, the Developer has volunteered and agreed to annex each project into the Citywide Services CFD in consideration for this request; and

WHEREAS, this reimbursement agreement allows staff to engage consultants, at the Developer’s expense, to begin the process of evaluating the request for CFD formation.

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

1. That the above recitations are true.
2. That the Mayor is authorized to execute, on behalf of the City, a First Amendment to the Reimbursement Agreement to add evaluation of the Mountain House Project Zone into the Proposed Community Facilities District in a form substantially similar to Exhibit "A" and approved by the City Attorney.
3. This Resolution shall take effect immediately upon its adoption.



CITY OF ESCONDIDO
FIRST AMENDMENT TO DEPOSIT ACCOUNT AND REIMBURSEMENT AGREEMENT

This First Amendment to Deposit Account and Reimbursement Agreement ("First Amendment") is made and entered into as of this ____ day of _____, 2021 ("Effective Date"), by and between the City of Escondido, a California municipal corporation (the "City") and CWC Escondido 113, LLC, a Delaware limited liability company ("Developer"). (The City and Developer each may be referred to herein as a "Party" and collectively as the "Parties.")

WHEREAS, the Parties entered into that certain Deposit Account and Reimbursement Agreement dated May 13, 2021, to establish a deposit account into which Developer will provide the advancement of funds to pay for the City's costs incurred in connection with certain CFD Activities, as defined and further described therein ("Agreement");

WHEREAS, Developer desires to include an additional project, the Mountain House development project, a project consisting of 36 residential lots known as Tract No. 683-J and having the following assessor's parcel numbers (APNs): 187-090-3800, 187-090-3900, 187-090-4100, 187-090-4000, 187-090-4200, 187-090-4400, 187-090-4500, 187-090-4800, 187-090-4900, 187-090-5000, 187-090-5400, 187-090-5300, 187-090-5100, 187-090-4600, 187-090-4700, 187-091-1500, 187-091-1400, 187-091-1300, 187-091-1600, 187-091-1800, 187-091-1700, 187-091-1900, 187-091-2000, 187-091-2200, 187-091-2600, 187-091-2300, 187-091-2400, 187-091-2500, 187-091-2900, 187-091-3000, 187-091-3100, 187-091-3200, 187-091-2800, 187-091-2700, 187-091-3300, and 187-091-3400 ("Mountain House Project") as a separate zone of the CFD described in the Agreement;

WHEREAS, the Parties acknowledge that the Mountain House Project and the Project described in the Agreement will both voluntarily annex into the CityWide Services CFD (CFD 2020-1) at the time of formation of the CFD described in the Agreement; and

WHEREAS, the Parties desire to amend the Agreement to (i) modify Section 3(b) (Total Estimated Costs) to revise the amount of the Total Estimated Costs to account for the inclusion of costs associated with the Mountain House Project; (ii) modify Paragraph 6.6(E) of Section 6 (Pre-Construction Phase) of the Agreement; and (iii) modify Paragraph 13.2 of Section 13 (Schedule of Values) of the Agreement.

NOW, THEREFORE, it is mutually agreed as follows:

1. **Section 3(b) (Total Estimated Costs)** of the Agreement shall be deleted in its entirety and replaced with the following:
 - b. *Total Estimated Costs.* Developer shall provide deposits estimated to amount to a total of \$294,195.00, of which \$171,187.50 shall account for bond proceedings. The City shall place all deposits into the Deposit Account.
2. All other terms of the Agreement not referenced in this First Amendment shall remain unchanged and in full force and effect. In the event of a conflict between a provision of the Agreement and this First Amendment, this First Amendment shall prevail.
3. This First Amendment and the Agreement, together with any attachments or other documents described or incorporated therein, if any, constitute the entire agreement and understanding of the Parties, and there are no other terms or conditions, written or oral, controlling this matter.
4. This First Amendment may be executed on separate counterparts that, upon completion, may be assembled into and shall be construed as one document. Delivery of an executed signature page of this First Amendment by electronic means, including an attachment to an email, shall be effective as delivery of an executed original.
5. Unless a different date is provided in this First Amendment, the effective date of this First Amendment shall be the latest date of execution set forth by the names of the signatories below.

IN WITNESS WHEREOF, this First Amendment is executed by the parties or their duly authorized representatives as of the Effective Date:

CITY OF ESCONDIDO

Date: _____


Paul McNamara, Mayor

CWC ESCONDIDO 113, LLC, a Delaware limited liability company

By: CWC ESCON 113 MGMT LP, a California limited partnership
Its: Managing Member

By: CW PROJ MGMT LLC, a California limited liability company
Its: General Partner

Date: 8.5.21



Robert H. Thorne, Chief Executive Officer

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
MICHAEL R. MCGUINNESS, City Attorney

By: _____
Kurt G. Whitman, Senior Deputy City Attorney

EXHIBIT A

Legal Description of Property

REAL PROPERTY IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

LOTS 692 THROUGH 696, 698 THROUGH 705, 707 THROUGH 716 AND 718 THROUGH 730, INCLUSIVE, LOT "A" AND LOTS "CC", "DD", "EE", AND "FF" OF HIGH POINT COUNTRY MANOR TRACT NO. 683-J, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 15276, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MARCH 2, 2006, AND AS AMENDED BY CERTIFICATES OF CORRECTION RECORDED FEBRUARY 26, 2007 AS INSTRUMENT NO. 2007-126939 AND JUNE 25, 2008 AS INSTRUMENT NO 2008-342018 BOTH OF OFFICIAL RECORDS.

EXCEPTING THEREFROM ALL URANIUM, THORIUM, OR ANY OTHER MATERIAL WHICH IS OR MAY BE DETERMINED TO BE PECULIARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIALS, WHERE OR NOT OF COMMERCIAL VALUE, TOGETHER WITH THE RIGHT OF THE UNITED STATES THROUGH ITS AUTHORIZED AGENTS OR REPRESENTATIVE AT ANY TIME TO ENTER UPON THE LAND AND PROSPECT FOR, MINE, AND REMOVE THE SAME.

EXCEPTING FROM LOT A, THAT PORTION CONVEYED TO VALLECITORS WATER DISTRICT BY THE DEED RECORDED AUGUST 29, 2007 AS INSTRUMENT NO. 2007-575035 OF OFFICIAL RECORDS.

CITY COUNCIL STAFF REPORT

Consent Item No. 7

August 25, 2021

File No. 0600-95

SUBJECT: Notice of Completion for Cranston Self-Storage and Residential Subdivision (SUB15-0031; Tract 900) located at 2319 Cranston Drive

DEPARTMENT: Engineering Services Department

RECOMMENDATION:

It is requested that City Council adopt Resolution No. 2021-127 to approve and accept the Public Improvements and authorize staff to file a Notice of Completion (“NOC”) for the Escondido Tract 900; SUB15-0031 Cranston Self-Storage and Residential Subdivision (“Project”).

FISCAL ANALYSIS:

The Developer in accordance with the adopted fee schedule pays for the cost of inspection and plan review.

PREVIOUS ACTION:

On January 11, 2006, the City Council approved the Project, a five (5) Lot Subdivision (1 commercial lot and four (4) single-family residential lots), along with a Grading Exemption and a Master and Precise Development Plan for a 71,285 SF self-storage facility as Resolution No. 2006-09. The Project was renamed Tract SUB 15-0031 when a Modification to the Master and Precise Development Plans and an Extension of Time were recommended for approval by Planning Commission on September 13, 2016, through Resolution No. 6075, and approved by the City Council on October 12, 2016, as Ordinance No. 2016-14, and Resolution No. 2016-143. The final map was approved by City Council on September 19, 2018.

BACKGROUND:

Escondido Tract 900 consists of a 1.82-acre commercial lot and four (4) single-family residential lots on 1.38-acres. The Project includes the installation of storm drain improvements, sidewalk, curb and gutter.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Julie Procopio, Director of Engineering Services

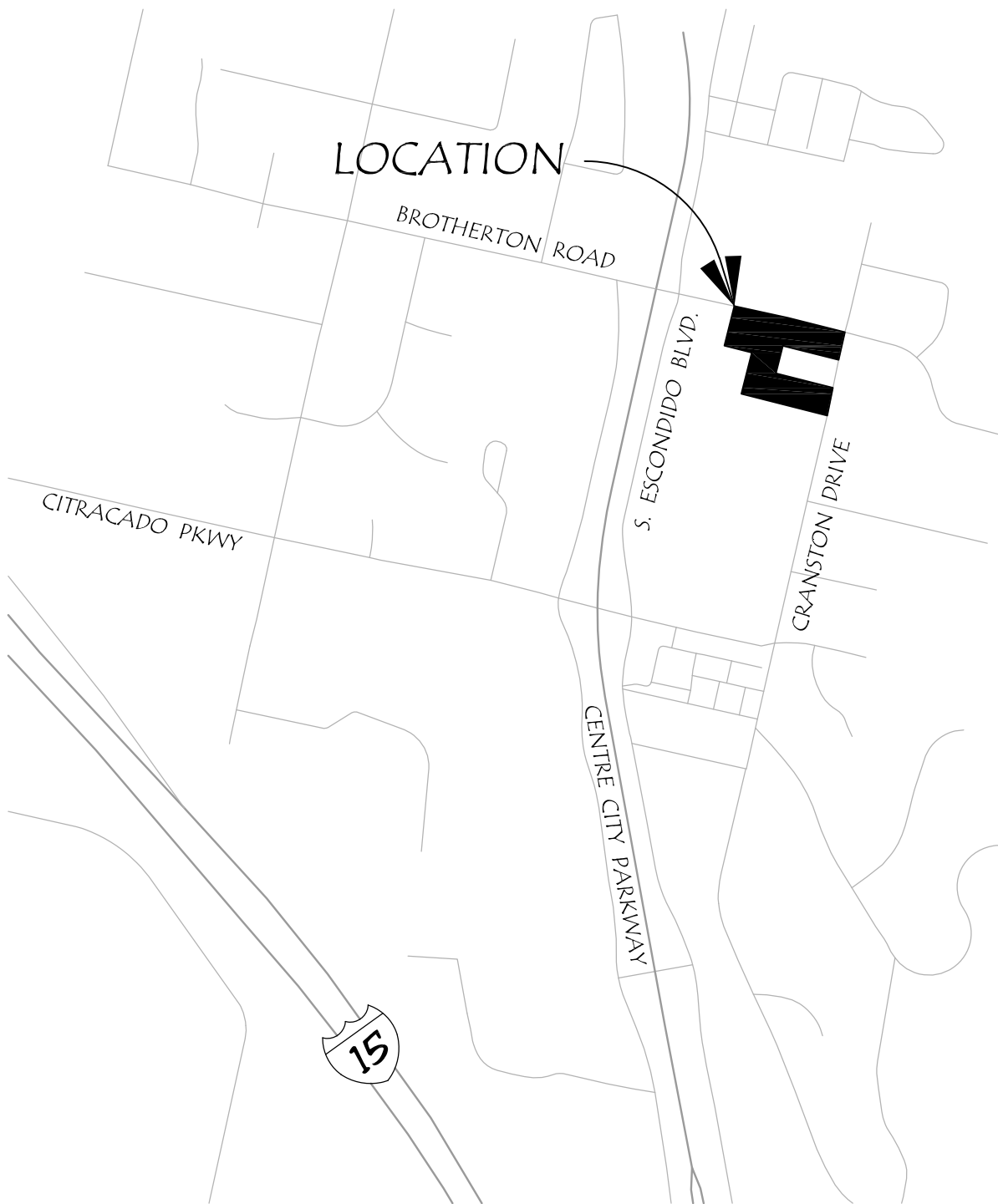
08/19/21 9:18 a.m.

Notice of Competition for SUB13-0010; Tract 900 Self-Storage
August 25, 2021
Page 2

ATTACHMENTS:

1. Attachment 1 - Vicinity Map – SUB15-0031
2. Resolution No. 2021-127

CRANSTON SELF STORAGE SUB15-0031



NOTICE OF COMPLETION
CITY COUNCIL MEETING 08-25-2021



RESOLUTION NO. 2021-127

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AUTHORIZING THE CITY ENGINEER, ON BEHALF OF THE CITY, TO FILE A NOTICE OF COMPLETION FOR THE CRANSTON SELF STORAGE AND RESIDENTIAL SUBDIVISION (SUB15-0031)

WHEREAS, on January 11, 2006, the City Council adopted Resolution No. 2006-09, for a five-lot subdivision map (1 commercial lot and 4 single-family residential lots) along with a Grading Exemption and a Master and Precise Development Plan for a 71,285 SF self-storage facility; and

WHEREAS, the final map was approved by City Council on September 19, 2018; and

WHEREAS, the construction for the Project was completed by Brandywine Homes, Inc.; and

WHEREAS, the City of Escondido (“City”) staff and the City Engineer deem the filing of the Notice of Completion (“NOC”) to be valid and recommends approval; and

WHEREAS, this City Council desires at this time and deems it to be in the best public interest to approve the filing of the NOC.

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

1. That the above recitations are true.
2. That the City Council accepts the recommendations of the City Engineer.

3. That the City Council hereby approves the request to file a NOC for the Cranston Self Storage and Rental Subdivision (SUB 15-0031).

CITY COUNCIL STAFF REPORT

Consent Item No. 8

August 25, 2021

File No. 0480-70

SUBJECT: Fiscal Year 2020 Urban Area Security Initiative Grant and Budget Adjustment

DEPARTMENT: Police Department

RECOMMENDATION:

It is requested that the City Council authorize the Escondido Police Department to accept a FY 2020 Urban Area Security Initiative (“UASI”) Grant in the amount of \$70,481; authorize the Chief of Police or his designee to execute grant documents on behalf of the City of Escondido (“City”); and approve budget adjustments needed to spend grant funds (see Attachment “1”).

PREVIOUS ACTION:

On May 20, 2020, the City Council authorized the Police Department to accept \$258,236 in funds from a FY 2019 UASI Grant.

BACKGROUND:

The Escondido Police and Fire Departments received a FY 2020 UASI Grant in the amount of \$70,481. UASI funds support regional efforts to prevent, mitigate, respond to, and recover from acts of terrorism or disaster. The awarding agency approved funding for the following:

Computer Aided Dispatch (CAD) Project

- CAD to CAD Information Sharing Technology: \$50,000
 - The intent of the Next Generation Regional Interoperability Program “NGRCIP” or “CAD2CAD” is to enhance fire and emergency services to achieve improved interoperability through the real time sharing of resource status, locations, requests for service (mutual or automatic aid) and other mission critical information. A regional next-generation CAD-to-CAD solution will promote further efficiency among the member agencies and continue to provide improved customer service to the communities they serve by increasing situational awareness and decreasing processing, reflex and response times.

Police and Fire Training

- Police Department Training: \$8,182
 - California Narcotics Canine training;
 - Police canines along with their handlers are trained in the detection of narcotics

- Dark Web Conference;
 - Investigators are trained to understand and investigate criminal activity on the Dark Web to raise awareness of what types of activities are on the Dark Web
 - Southern California Gang Conference, and
 - Gang Investigators are trained in the detection of gang activity including drug cartels, human trafficking, and other criminal activities
 - Western States Canine Association Conference
 - Police Canines and their handlers are trained on a multitude of activities needed to assist Police Departments.
- Fire Department Training: \$12,299
 - Confined Space Rescue Technician;
 - Rescue Systems 1, and
 - CFED Conference

The FY 2020 Urban Area Security Initiative (UASI) Grant funds would enhance regional critical communication and augment safety-training opportunities.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Edward Varso, Chief of Police

08/18/21 6:10 p.m.

ATTACHMENTS:

1. Attachment "1" – Budget Adjustment



CITY OF ESCONDIDO

BUDGET ADJUSTMENT REQUEST

Date of Request: 08/16/2021

Department: Police Department

Division: Administration

Project/Budget Manager: Lisa Rodelo 4905
 Name Extension

Council Date (if applicable): 8/25/2021
 (attach copy of staff report)

For Finance Use Only	
Log #	_____
Fiscal Year	_____
_____	Budget Balances
_____	General Fund Accts
_____	Revenue
_____	Interfund Transfers
_____	Fund Balance

Project/Account Description	Account Number	Amount of Increase	Amount of Decrease
Revenue	4128-451-New Project Number	\$70,481	
Police Grants	451-New Project Number	\$70,481	

Explanation of Request:

A budget adjustment is needed to spend FY 2020 Urban Area Security Initiative (UASI) funds.

APPROVALS

Department Head	DocuSigned by: <i>Edward Varso</i> _____	8/17/2021	City Manager	_____	Date
Finance	DocuSigned by: <i>Jodi Coco</i> _____	8/17/2021	City Clerk	_____	Date

Distribution (after approval): Original: Finance

ORDINANCE NO. 2021-08

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, APPROVING AN AMENDMENT TO THE DOWNTOWN SPECIFIC PLAN TO ADDRESS GROUND-FLOOR RETAIL REQUIREMENTS AND ADOPTING AN ADDENDUM TO AN ADOPTED EIR PREPARED FOR THE PROJECT.

WHEREAS, in recent years, there have been considerable discussions throughout the State of California regarding the housing shortage, which is associated with rising housing costs and lack of affordable housing options; and

WHEREAS, land use controls provided in the Escondido General Plan and the Zoning Code influence housing production in the City in several ways. The permitted and conditionally permitted uses in each zoning district guide new development and provide both developers and the public with an understanding of how vacant and underutilized land will develop in the future. This includes the density of development that will occur within a particular land use designation or zoning district; and

WHEREAS, Government Code section 65583(c)(3), requires that cities and counties address, and where feasible, remove the constraints to housing production and conservation; and

WHEREAS, ground-floor restrictions on residential uses is construed as a constraint to housing development because the ground-floor requirement has effectively delayed the turn-over recycling of properties, and the build-out of dwelling units in the Downtown Specific Plan; and

WHEREAS, pursuant to CEQA and the CEQA Guidelines (Title 14 of California Code of Regulations, Section 15000 et. seq.), the City is the Lead Agency for the Project,

A COMPLETE COPY OF THIS ORDINANCE IS ON FILE IN THE OFFICE OF THE CITY CLERK FOR YOUR REVIEW.



FUTURE CITY COUNCIL AGENDA ITEMS

Updated August 19, 2021

AGENDA ITEMS AND CITY COUNCIL MEETING DATES ARE SUBJECT TO CHANGE.
CHECK WITH THE CITY CLERK'S OFFICE AT (760) 839-4617

September 1, 2021

5:00 p.m.

PROCLAMATION

Emergency Preparedness Month
(J. Murdock)

PRESENTATION

San Diego County Water Authority Member Agency Briefings
(SDCWA Team)

CONSENT CALENDAR

Final Map Escondido Tract 848 Located 383 Idaho Avenue
(J. Procopio)

It is requested that the City Council approve Final Map for Escondido Tract 848, a 9-lot single-family Residential Subdivision located at 383 Idaho Avenue.

PUBLIC HEARINGS

CURRENT BUSINESS

Middle Income Housing
(A. Finestone)

Staff has received multiple inquiries from developers and financing authorities in recent months related to the purchase of existing multi-family projects for use as income-restricted housing for moderate income individuals (those making between 80% and 120% of the area median income). City staff is seeking direction from the City Council on what factors the City should be considering when reviewing and making recommendations on these proposals.

FUTURE AGENDA ITEMS

September 8, 2021 NO MEETING (Labor Day)

**September 15, 2021
5:00 p.m.**

PROCLAMATION

2021 Pollution Prevention Week
(C. McKinney)

PRESENTATION

Air Pollution Control District Overview & Hot Spots Program
(APCD Team)

Tree Canopy Discussion
(J. Goulart)

CONSENT CALENDAR

JEPA & Budget Adjustment to Receive \$1,980,000 from San Diego County for Park Improvements
(J. Goulart)

It is requested that the City Council adopt Resolution No. 2021-113 authorizing the Director of Public Works to execute a Joint Exercise of Powers Agreement (JEPA) and Budget Adjustment to receive \$1,980,000 in County funding for improvements at Escondido parks.

Award of Contract for the Grand Avenue Vision Project Phase 1
(J. Procopio)

It is requested that the City Council adopt Resolution No. 2021-126 authorizing the Mayor to execute a Public Improvement Agreement (PIA) for the Grand Avenue Vision Project Phase I (Project).

PUBLIC HEARINGS

CURRENT BUSINESS

League of California Cities Resolutions
(Z. Beck)

FUTURE AGENDA ITEMS

September 22, 2021 NO MEETING (League of CA Cities)



August 25, 2021

CITY MANAGER'S WEEKLY ACTIVITY REPORT

- Please refer to the City's website at <https://www.escondido.org/latest-news-from-the-city-managers-office.aspx>