



CITY OF MORRO BAY

CITY COUNCIL

AGENDA

The City of Morro Bay provides essential public services and infrastructure to maintain a safe, clean and healthy place for residents and visitors to live, work and play.

Regular Meeting – Tuesday, January 14, 2020
Veterans Memorial Hall - 5:30 P.M.
209 Surf St., Morro Bay, CA

ESTABLISH QUORUM AND CALL TO ORDER
MOMENT OF SILENCE
PLEDGE OF ALLEGIANCE
RECOGNITION
CLOSED SESSION REPORT
MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS
CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS
PRESENTATIONS – NONE

PUBLIC COMMENT PERIOD

Members of the audience wishing to address the Council on City business matters not on the agenda may do so at this time. For those desiring to speak on items on the agenda, but unable to stay for the item, may also address the Council at this time.

Public comment is an opportunity for members of the public to provide input to the governing body. To increase the effectiveness of the Public Comment Period, the City respectfully requests the following guidelines and expectations be followed:

- Those desiring to speak are asked to complete a speaker slip, which are located at the entrance, and submit it to the City Clerk. However, speaker slips are not required to provide public comment.
- When recognized by the Mayor, please come forward to the podium to speak. Though not required, it is helpful if you state your name, city of residence and whether you represent a business or group. Unless otherwise established by the Mayor, comments are to be limited to three minutes.
- All remarks should be addressed to Council, as a whole, and not to any individual member thereof.
- The Council respectfully requests that you refrain from making slanderous, profane or personal remarks against any elected official, commission and/or staff.
- Please refrain from public displays or outbursts such as unsolicited applause, comments or cheering.
- Any disruptive activities that substantially interfere with the ability of the City Council to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.
- Your participation in City Council meetings is welcome and your courtesy will be appreciated.
- The Council in turn agrees to abide by its best practices of civility and civil discourse according to Resolution No. 07-19.

A. CONSENT AGENDA

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion. The public will also be provided an opportunity to comment on consent agenda items.

- A-1 APPROVAL OF MINUTES FOR THE OCTOBER 22, 2019, CITY COUNCIL MEETING;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-2 APPROVAL OF MINUTES FOR THE NOVEMBER 6, 2019, CITY COUNCIL SPECIAL
MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-3 ADOPTION OF RESOLUTION NO. 01-20 ESTABLISHING THE 2020 CITY COUNCIL
MEETING CALENDAR AND BUDGET DEVELOPMENT SCHEDULE;
(ADMINISTRATION)

RECOMMENDATION Staff recommends the City Council review the proposed Council meeting calendar and adopt Resolution No. 01-20 approving the 2020 City Council Meeting Calendar and Budget Development Schedule.

- A-4 APPOINTMENT OF MAYOR PRO TEMPORE AND APPOINTMENT OF
REPRESENTATIVES ON DISCRETIONARY BOARDS, COUNCIL LIAISON
ASSIGNMENTS AND COUNCIL SUB-COMMITTEES; (MAYOR)

RECOMMENDATION: Appoint Council Member Dawn Addis as Mayor Pro Tempore as well as appoint representatives to serve on the various County or Regional Discretionary Boards, Council Liaison Assignments and Sub-Committees for calendar year 2020 as shown on the attached appointment list.

- A-5 ADOPTION OF ORDINANCE NO. 627 CONCERNING TOBACCO, VAPING AND
SECONDHAND SMOKE, INCLUDING THROUGH A TOBACCO RETAILER
LICENSING PROGRAM, A PROHIBITION ON THE SALE OF E-CIGARETTES
(VAPING PRODUCTS), AND ENHANCING THE CITY'S CURRENT SECONDHAND
SMOKING REGULATIONS BY A SMOKEFREE POLICY FOR MULTI-UNIT HOUSING;
(CITY ATTORNEY)

RECOMMENDATION: Staff recommends Council consider adopting, by second reading and by title only with further reading waived, Ordinance No. 627, entitled "An Ordinance of the City Council of the City of Morro Bay, California, Adding Chapter 5.54 (Tobacco, Electronic Cigarettes and Vaping) to Title 5 (Business Tax Certificates and Regulations), and amending Chapter 9.24 (Secondhand Smoking Regulations) of Title 9 (Public Peace, Morals and Welfare), of the Morro Bay Municipal Code, to regulate the sale of tobacco and vaping products and update and expand the City's Secondhand Smoking Regulations."

- A-6 ADOPTION OF RESOLUTION NO. 02-20 AUTHORIZING THE CITY OF MORRO BAY TO ENTER INTO A 2019/2020 SURRENDERED AND ABANDONED VESSEL EXCHANGE GRANT CONTRACT WITH THE STATE OF CALIFORNIA DIVISION OF BOATING AND WATERWAYS IN THE AMOUNT OF \$20,000.00 FOR REMOVAL OF ABANDONED/SURRENDERED VESSELS AND HAZARDS TO NAVIGATION; (HARBOR)

RECOMMENDATION Staff recommends the City Council adopt Resolution No. 02-20, authorizing the Harbor Director to execute the attached 2019/2020 Surrendered and Abandoned Vessel Exchange (SAVE) Grant Contract Agreement #C19S0602 with the California Division of Boating and Waterways (DBW) for \$20,000.00 for the funding of removal of abandoned/surrendered vessels and hazards to navigation.

- A-7 AUTHORIZATION FOR ATTENDANCE AT THE C-MANC ANNUAL WASHINGTON, D.C., "WASHINGTON WEEK" MEETINGS; (HARBOR)

RECOMMENDATION: Staff recommends the City Council authorize a two-person delegation (the Mayor and Harbor Director) to attend the California Marine Affairs and Navigation Conference (C-MANC) 2020 "Washington Week" meetings in Washington, D.C. slated for March 2-4, 2020 and to represent the City's interests in the nation's capital.

B. PUBLIC HEARINGS

- B-1 PUBLIC HEARING FOR AND CONSIDERATION OF MORRO BAY GARBAGE SERVICES BASE-YEAR RATE ADJUSTMENT APPLICATION AND ADOPTION OF RESOLUTION NO. 03-20; (PUBLIC WORKS)

RECOMMENDATION: Staff recommends the City Council hold a public hearing, consider all evidence and testimony presented and adopt Resolution No. 03-20 increasing solid waste rates as outlined in the Fiscal Impact section of this report; provided, that there is not a majority protest against such increase.

C. BUSINESS ITEMS

- C-1 Adoption of Resolution 04-20 Approving Financing of the Water Reclamation Facility Project with Proceeds from the United States Environmental Protection Agency under the Water Infrastructure Finance and Innovation Act (WIFIA) (PUBLIC WORKS/SPECIAL COUNSEL/FINANCE)

RECOMMENDATION: Staff recommends City Council adopt Resolution 04-20 approving proceedings to finance the new Water Reclamation Facility (WRF) Project from the proceeds of two installment sale agreements between the City and the Morro Bay Public Facilities Corporation, as each agreement is assigned to the United States Environmental Protection Agency (USEPA) and related documentation. Specifically, City Council approval of Resolution 4-20 authorizes the following items:

1. Approves the Wastewater System Project Installment Sale Agreement, consents to Assignment to USEPA, and approves the Wastewater Pledged Collateral pursuant to Section 4.5(a) of the Wastewater Installment Sale Agreement.
2. Approves the Water System Project Installment Sale Agreement, consents to Assignment to USEPA, and approves the Water Pledged Collateral pursuant to Section 4.5(a) of the Water Installment Sale Agreement.
3. Approves of the WIFIA Credit Agreement for the Wastewater System Project and the WIFIA Credit Agreement Water System Project.

- C-2 AUTHORIZATION FOR THE CITY MANAGER SIGN A NON-BINDING MEMORANDUM OF UNDERSTANDING (MOU), BETWEEN THE CAYUCOS SANITARY DISTRICT, TRUST FOR PUBLIC LANDS, CHEVRON AND THE CITY OF MORRO BAY, FOR CONSERVATION OF LOTS 6SW AND 6NW, MORE COMMONLY KNOWN AS “DOG BEACH”; (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Council authorize the City Manager to sign a non-binding MOU between the City of Morro Bay, Cayucos Sanitary District, Trust for Public Lands and Chevron for conservation and City ownership of Lots 6SW and 6NW (Dog Beach), as shown on Attachment A of the MOU.

- C-3 2019 AND 2020 CITY GOALS AND ACTION ITEMS STATUS UPDATE; (CITY MANAGER)

RECOMMENDATION: Receive status update from the City Manager regarding the 2019 and 2020 City Council Goals and action items.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, January 28, 2020 at 5:30 p.m.** at the Veteran’s Memorial Hall located at 209 Surf Street, Morro Bay, California.

THIS AGENDA IS SUBJECT TO AMENDMENT UP TO 72 HOURS PRIOR TO THE DATE AND TIME SET FOR THE MEETING. PLEASE REFER TO THE AGENDA POSTED AT CITY HALL FOR ANY REVISIONS OR CALL THE CLERK’S OFFICE AT 805-772-6205 FOR FURTHER INFORMATION.

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL LOCATED AT 595 HARBOR STREET; MORRO BAY, CALIFORNIA DURING NORMAL BUSINESS HOURS.

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN A CITY MEETING, PLEASE CONTACT THE CITY CLERK’S OFFICE AT LEAST 24 HOURS PRIOR TO THE MEETING TO INSURE REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – OCTOBER 22, 2019
VETERAN'S MEMORIAL HALL – 5:30 P.M.

AGENDA NO: A-1
MEETING DATE: January 14, 2020

PRESENT:	John Headding Dawn Addis Jeff Heller Robert Davis Marlys McPherson	Mayor Council Member Council Member Council Member Council Member
STAFF:	Chris Neumeyer Dana Swanson Jennifer Callaway Rob Livick Scot Graham Steve Knuckles Jody Cox Eric Endersby Eric Casares	City Attorney City Clerk Finance Director Public Works Director Community Development Director Fire Chief Police Chief Harbor Director WRF Program Manager
ABSENT:	Scott Collins	City Manager

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 5:30 p.m., with all members present.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION – None

CLOSED SESSION REPORT – City Attorney Neumeyer stated no reportable action was taken by the City Council in accordance with the Brown Act.

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/QNE12M9NWLo?t=103>

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

<https://youtu.be/QNE12M9NWLo?t=1004>

PRESENTATIONS - None

PUBLIC COMMENT

<https://youtu.be/QNE12M9NWLo?t=1489>

Wendy Wendt, First 5 SLO, spoke regarding the importance of raising awareness and increasing the availability of quality childcare in San Luis Obispo County.

Erica Crawford, Morro Bay Chamber of Commerce, announced upcoming events.

Rich Raub, Morro Bay, suggested relocating the basketball court at Del Mar Park to an area near the playground equipment.

Gary Freiberg, Pacific Street Cottages, addressed the proposed 3% tax on vacation rentals and suggested the decision be postponed until owners have an opportunity to review the marketing plan to insure there's an appropriate return on investment.

Meredith Bates, Morro Bay, spoke in support of Item C-2.

Linda Winters, Morro Bay, commented on an event held at the Morro Bay Natural History Museum showcasing bone and skeleton collections.

Jeff Bacon, Morro Bay, shared that his proposal for high school seniors to do self-portraits throughout the County had been approved.

David Nelson, Morro Bay, asked to see a plan reviewed by peers that explains how 80% clean water will come from the proposed sewer plant.

Dan Sedley, Morro Bay, stated his appreciation for the Short-term Vacation Rental Forum recently held and that he participated in the referendum petition checking process during which 894 signatures were validated.

Betty Winhotz, Morro Bay, expressed concern regarding the proposed water reclamation facility and conveyance system.

Mary Ann Britton, Morro Bay, spoke as a vacation rental owner, stating her opposition to vacation rentals being added to the TBID (Item C-4).

Melanie Williams-Mahan, Morro Bay, stated her concern about the water reclamation facility project and potential effect on the estuary.

Terri Frank, Morro Bay, spoke as a vacation rental owner regarding Item C-4 and suggested an assessment of 1 – 1 ½ percent, not 3 percent as proposed.

Dawn Feuerberg, Morro Bay, urged the Council to consider the Grover Beach approach and adopt a vacation rental ordinance that distinguishes between hosted and non-hosted properties.

Sumanta Paul, Pharmacist and owner of Morro Bay Drug & Gift, located at 600 Morro Bay Blvd., #B, provided the business spot.

Mayor Headding closed public comment.

The Council and staff responded to issues raised during public comment.

A. CONSENT AGENDA
<https://youtu.be/QNE12M9NWLo?t=4267>

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion. The public will also be provided an opportunity to comment on consent agenda items.

A-1 APPROVAL OF MINUTES FOR THE SEPTEMBER 10, 2019, CITY COUNCIL MEETING;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FOR THE OCTOBER 9, 2019, CITY COUNCIL SPECIAL
CLOSED SESSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-3 CONSIDERATION OF APPROVAL OF THE CLOISTERS LANDSCAPE MASTER PLAN;
(PUBLIC WORKS)

RECOMMENDATION: Staff recommends the City Council approve The Cloisters Landscape Master Plan as the first phase in The Cloisters Park and landscape improvements.

- A-4 ADOPTION OF RESOLUTION NO. 86-19 TO AUTHORIZE SUBMITTAL OF GRANT APPLICATION FOR HOUSING AND COMMUNITY DEVELOPMENT SB 2 PLANNING GRANT PROGRAM FUNDS AND AUTHORIZE EXECUTION OF RELATED DOCUMENTS BY COMMUNITY DEVELOPMENT DIRECTOR; (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 86-19 authorizing staff to submit a grant application for the amount of \$160,000 for State of California Housing and Community Development (HCD) SB 2 Planning Grant Program (PGP) Funds to support the acceleration of the production of housing in the City of Morro Bay and authorizing execution of related documents as specified.

- A-5 ADOPTION OF RESOLUTION NO. 87-19 AUTHORIZING THE MAYOR TO EXECUTE AMENDMENT #2 TO THE MASTER LEASE AGREEMENT AT LEASE SITE 82-85/82W-85W (DOUG REDICAN/725 EMBARCADERO, LLC, LOCATED AT 725 EMBARCADERO AND OPERATING AS ROSE'S LANDING); (HARBOR)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 87-19 authorizing the Mayor to execute Amendment #2 at Lease Site 82-85/82W-85W, for leaseholder contribution to the future Centennial Parkway Concept Plan Project.

- A-6 APPROVAL OF PUBLIC WORKS ADVISORY BOARD MEMBER'S REQUEST FOR AN EXCUSED ABSENCE; (CITY CLERK)

RECOMMENDATION: Staff recommends the City Council consider and approve the request submitted by Public Works Advisory Board (PWAB) Member, John Erwin, to excuse his absence from the October 2019, Regular Public Works Advisory Board meeting.

Mayor Headding opened public comment for the Consent Agenda.

Dawn Beattie, Morro Bay, spoke in favor of approving Item A-3, Cloisters Landscape Master Plan, and suggested medians be the priority maintenance item.

The public comment period was closed.

Council Member Davis pulled Item A-3.

MOTION: Council Member McPherson moved approval of Items A-1, A-2, A-4, A-5 and A-6 on the Consent Agenda. The motion was seconded by Council Member Davis and carried 5-0 by roll call vote.

- A-3 CONSIDERATION OF APPROVAL OF THE CLOISTERS LANDSCAPE MASTER PLAN;
(PUBLIC WORKS)
<https://youtu.be/ONE12M9NWLo?t=4485>

Staff responded to questions by Council and confirmed projects would be authorized and approved through the capital budget process.

MOTION: Council Member Davis moved approval of Item A-3. The motion was seconded by Council Member McPherson and carried 5-0 by roll call vote.

B. PUBLIC HEARINGS

- B-1 INTRODUCTION OF ORDINANCE NO. 625 REPEALING AND REENACTING MULTIPLE CHAPTERS OF TITLE 14 (BUILDINGS AND CONSTRUCTION) OF THE CITY OF MORRO BAY MUNICIPAL CODE, SO AS TO INCORPORATE THE 2019 CALIFORNIA BUILDING STANDARDS CODE, AS ADOPTED BY THE STATE OF CALIFORNIA, AND LOCAL MODIFICATIONS THERETO AS WELL AS AMENDMENT OF FRONTAGE IMPROVEMENTS; (COMMUNITY DEVELOPMENT)
<https://youtu.be/ONE12M9NWLo?t=4819>

Community Development Director Graham provided the report and responded to Council questions.

Mayor Headding opened the Public Hearing.

Mayor Headding opened Public Comment; seeing none, the public comment period was closed.

The Public Hearing was closed.

MOTION: Council Member Davis moved to introduce for first reading by title only, and with further reading waived, Ordinance No. 625, "An Ordinance of the City Council of the City of Morro Bay, California, repealing, amending and reenacting Chapters 14.01 – 14.12 and 14.44 of Title 14 (Buildings and Construction) of the Morro Bay Municipal Code, thereby adopting by reference and amending the 2019 California Building (Volumes 1 and 2), Residential, Electrical, Mechanical, Plumbing, Energy, Historical Building, Fire, Existing Building, Green Building, Administrative, and Reference Standards Codes, the 2018 International Property Maintenance Code, the 1997 Uniform Code for the Abatement of Dangerous Buildings, and amending regulation of Frontage Improvements." The motion was seconded by Council Member McPherson.

Following comments, the motion carried 5-0 by roll call vote.

- B-2 PUBLIC HEARING AND ADOPTION OF RESOLUTION NO. 88-19, WHICH RESCINDS RESOLUTION 31-19 AND AMENDS AND ADOPTS THE FY 2019/20 MASTER FEE SCHEDULE; (FINANCE)
<https://youtu.be/ONE12M9NWLo?t=5841>

Finance Director Callaway provided the report, including the following suggested changes, and responded to Council questions.

- Page 145 - Business License renewal fee is \$15 per license not \$25.
- Page 147 – Staff recommended deferring changes to Building Division valuation fees for projects from \$3,001 to \$300,000 and \$300,001 and up to allow for further consideration of a reasonable calculation on larger development projects. This item will be brought back at a future meeting.

- Page 157 – fees were rounded to the closest dollar figure.
- Page 189 – Processing fee was a duplicate of that found on page 186 and removed, with clarification on page 186 that fee includes all public space rentals.

Mayor Headding opened the Public Hearing.

Mayor Headding opened Public Comment.

Patricia Newton, President of Morro Bay Art Association, asked the Council to consider the affect fee increases have on events like Art in the Park and hoped the Council will adjust permit fees and make fair decisions.

Erica Crawford, Morro Bay Chamber of Commerce, read a letter submitted as agenda correspondence on behalf of the Chamber of Commerce Government Affairs Committee and recommended the Council defer a decision regarding building valuation fees.

The Public Hearing was closed.

MOTION: Council Member Davis moved to adopt Resolution No. 88-19, as amended tonight by staff, which updates the City Master Fee Schedule for Fiscal Year (FY) 2019/20. The motion was seconded by Council Member McPherson for discussion.

The Council expressed appreciation for input received from the Chamber of Commerce and reasonable solutions offered by staff.

Following discussion, the motion carried 5-0 by roll call vote.

The Council discussed desired components of a Partnership Policy to be brought back for approval at a future meeting.

The Council directed staff to bring back the partnership policy as an all-inclusive document that clarifies who qualifies and how reduced rental fees would be applied for an event or program that provides significant return on investment to the City.

C. BUSINESS ITEMS

C-1 REVIEW WRF CAPITAL PROJECT QUARTERLY UPDATE REPORT AND PROVIDE DIRECTION AS DEEMED APPROPRIATE, IF ANY; (PUBLIC WORKS) <https://youtu.be/QNE12M9NWLo?t=7654>

Public Works Director Livick and Water Reclamation Facility Program Manager Casares provided the report and responded to Council questions.

The public comment period for Item C-1 was opened; seeing none, the public comment period for Item C-1 was closed.

As a receive and file item, no formal action was taken by the City Council.

The Council took a brief recess at 8:14 p.m. The meeting reconvened at 8:21 p.m. with all members present.

- C-2 REVIEW PUBLIC SAFETY POWER SHUT-OFF (PSPS) PREPARATION AND ADOPT RESOLUTION NO. 89-19 CITY OF MORRO BAY EMERGENCY MANAGEMENT PLAN ADDING ANNEX K ELECTRICAL POWER SHUT-OFF CONTINUITY OF OPERATIONS AND ADOPT RESOLUTION NO. 90-19 APPROVING A BUDGET ADJUSTMENT NOT TO EXCEED \$36,000 FROM GENERAL FUND EMERGENCY RESERVES TO A NEW CAPITAL PROJECT FOR PSPS PREPARATION; (FIRE)
<https://youtu.be/QNE12M9NWLo?t=9917>

Fire Chief Knuckles provided the report and responded to Council inquires.

The public comment period for Item C-2 was opened; seeing none, the public comment period for Item C-2 was closed.

MOTION: Council Member Davis moved to adopt Resolution No. 89-19, accepting the revised City of Morro Bay Emergency Management Plan, adding Annex K Electrical Power Shut-Off Continuity of Operations Plan; and adopt Resolution No. 90-19 approving a budget adjustment not to exceed \$36,000 from General Fund emergency reserves to a new PSPS capital project to assist staff maintaining critical City functions during an electrical power shut-off. The motion was seconded by Council Member McPherson and carried 5-0 by roll call vote.

- C-3 ADOPTION OF RESOLUTION NO. 90-19 APPROVING FY 2019/20 BUDGET ADJUSTMENT FOR EMPLOYEE LUMP SUM AND EQUITY PAYMENTS PER NEGOTIATED MEMORANDA OF UNDERSTANDING AND UNREPRESENTED CONFIDENTIAL AND MANAGEMENT BENEFITS RESOLUTIONS, AND AUTHORIZING ONE-TIME LUMP SUM PAYMENTS TO ALL QUALIFYING FULL-TIME EMPLOYEES; (FINANCE/CITY CLERK/HUMAN RESOURCES MANAGER)
<https://youtu.be/QNE12M9NWLo?t=12458>

Finance Director Callaway provided the report and responded to Council inquires.

The public comment period for Item C-3 was opened; seeing none, the public comment period for Item C-3 was closed.

MOTION: Mayor Headding moved to adopt Resolution No. 90-19 approving FY 2019/20 budget adjustment for employee lump sum and equity payments per negotiated Memoranda of Understanding and unrepresented Confidential and Management Benefits Resolutions, and authorizing one-time lump sum payments to all qualifying full-time employees. The motion was seconded by Council Member McPherson and carried 5-0 by roll call vote.

- C-4 ACCEPT PUBLIC TESTIMONY REGARDING THE INCLUSION OF VACATION RENTALS (VR'S) IN THE EXISTING 3% TOURISM BUSINESS IMPROVEMENT DISTRICT (TBID) ANNUAL ASSESSMENT AND CONTINUATION OF THE EXISTING TBID ASSESSMENT FOR FISCAL YEAR 2019/20; (CITY MANAGER/TOURISM MANAGER)
<https://youtu.be/QNE12M9NWLo?t=13498>

Mayor Headding introduced the item, noting public testimony was received during the general Public Comment period at the beginning of the meeting.

The public comment period for Item C-4 was opened; seeing none, the public comment period for Item C-4 was closed.

No formal action was taken by the City Council.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS
<https://youtu.be/QNE12M9NWLo?t=13649>

Council Member Addis asked whether an agenda item was needed for the Mayor to write a letter on the City's behalf regarding PSPS to express the City's needs and concerns. It was agreed that, based on existing City Policy, it was within the Mayor's authority to do so.

Council Member Heller asked that staff come back with suggestions on how to change management structure of major city events so they fall under the City. Following discussion, it was agreed the concerns raised could be addressed through discussion of the Partnership Policy on November 12.

E. ADJOURNMENT

The meeting adjourned at 9:29 p.m.

Recorded by:

Dana Swanson
City Clerk

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MINUTES - MORRO BAY CITY COUNCIL
SPECIAL MEETING – NOVEMBER 6, 2019
VETERANS MEMORIAL HALL
209 SURF STREET – 5:30 P.M.

AGENDA NO: A-2
MEETING DATE: January 14, 2020

PRESENT	John Headding Dawn Addis Jeff Heller Marlys McPherson	Mayor Council Member Council Member Council Member
ABSENT	Robert Davis	Council Member
STAFF	Scott Collins Dana Swanson Jennifer Callaway Rob Livick	City Manager City Clerk Finance Director Public Works Director

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding established a quorum and called the meeting to order at 5:30 p.m. with all but Council Member Davis present.

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT FOR ITEMS ON THE AGENDA

<https://youtu.be/x6Ou52EsDP4?t=71>

Mayor Headding opened public comment.

Patricia Newton, Morro Bay Arts Center, shared information about the programs offered and asked the Council to approve its grant application.

Joe Whitaker, Diversity Coalition, respectfully asks the Council to approve its grant application.

Rhonda Crowfit, President of the Board for By the Sea Productions, stated the financial support requested would help fund the summer production of Orient Express.

Tim Waag requested grant funding for HomeShare SLO.

Brad Spahr, SCORE, requested continued financial support to help small businesses and business start-ups.

Richard Sadowski, Ecologistics / HomeFronts, provided support letters for Council review and requested financial support.

Mike Manchak, Economic Vitality Corporation, requested continued financial support in the amount of \$5,000.

Carole Truesdale, Morro Bay, spoke to Item II, recommending the contract amendment be placed on hold until other matters were resolved.

Terry Simons, Morro Bay, spoke regarding Item II, urging the Council to hold the line and reduce project costs moving forward.

David Nelson, Morro Bay, urged the City to relocate the proposed water reclamation facility.

Barry Branin, Morro Bay, expressed concerns about the water reclamation facility project.

Cynthia Hawley, Morro Bay, provided a list of concerns regarding the water reclamation facility project.

Merilee, Kitchen Manager for Senior Nutrition, thanked the City for past support and shared that in the past three months, 3,600 meals were served to homebound and dining room guests.

Melanie Williams Mahan, Morro Bay, urged the Council to not approve the contract amendment with Carollo Engineers.

Linda Donnelly, Morro Bay, opposed approval of the contract amendment being considered in Item II.

Dan Sedley, Morro Bay, opposed the contract amendment with Carollo Engineers.

Mayor Headding closed public comment.

I. COUNCIL REVIEW AND RECOMMENDATION ON AWARD OF COMMUNITY GRANTS
<https://youtu.be/x6Ou52EsDP4?t=2639>

Finance Director Callaway provided the report and responded to Council inquiries.

Mayor re-opened public comment; seeing none, the public comment period was closed.

Following discussion, there was Council consensus to use Economic Development and Housing In-lieu funds, as recommended by staff, for a total of \$11,000.

MOTION: Council Member Heller moved the Council stick to the \$16,500 budget for General Fund requests. The motion was seconded by Council Member McPherson and carried 4-0-1 by roll call vote with Council Member Davis absent.

Following discussion, there was consensus a reduction of 15.3% across the board would bring the total award from the General Fund to \$16,500, which was the budgeted amount.

MOTION: Mayor Headding moved to approve the General Fund requested amount for all organizations, minus 15.3% of the ask for all organizations, out of the General Fund budgeted amount. The motion was seconded by Council Member Addis and carried 4-0-1 by roll call vote with Council Member Davis absent.

MOTION: Mayor Headding moved to fund EVC and small business mentoring through Economic Development fund, as recommended, and fund Affordable Shared Housing Solutions for San Luis Obispo from the Housing in-lieu Fund. The motion was seconded by Council Member Addis and carried 4-0-1 by roll call vote with Council Member Davis absent.

The Council took a brief recess at 6:43 p.m. The meeting reconvened at 6:51 p.m. with all but Council Member Davis present.

Mayor Headding announced Council Member Addis's appointed liaison position on the EVC board is an ex-officio position with no voting rights.

II. APPROVAL OF AMENDMENT NO. 2 TO THE WATER RECLAMATION FACILITY PROGRAM MANAGEMENT CONTRACT AND AUTHORIZATION FOR THE PUBLIC WORKS DIRECTOR TO SIGN THE AGREEMENT

<https://youtu.be/x6Ou52EsDP4?t=4542>

Public Works Director Livick provided the report and responded to Council inquiries.

Mayor Headding re-opened public comment.

Terry Simons, Morro Bay, expressed concern about the proposed contract amendment.

Linda Donnelly, Morro Bay, requested project information be made available on the City website in a timely manner.

Mimi Goldberg, Morro Bay, asked about future plans for the existing wastewater treatment location.

Melanie Williams Mahan, Morro Bay, was concerned questions raised had not been answered.

Mayor Headding closed public comment.

MOTION: Mayor Headding moved to approve, and authorize the Public Works Director to sign, Amendment No. 2 (Attachment 1) to the existing agreement with Carollo Engineers, Inc., dated April 11, 2018, for continued program management of the Water Reclamation Facility Project in an increased amount of \$2,381,968. and that there be a critical review of the public outreach dollars done as a future agenda item to bring back a report on how to reduce that. The motion was seconded by Council Member McPherson and carried 3-1-1 by roll call vote with Council Member Heller opposed and Council Member Davis absent.

III. APPROVAL OF MEMORANDUM OF AGREEMENT (MOA) WITH SAN LUIS OBISPO COUNTY FOR ANIMAL SHELTER PROJECT

<https://youtu.be/x6Ou52EsDP4?t=8678>

City Manager Collins provided the report and, along with San Luis Obispo County Public Works staff, Jeff Werst, responded to Council inquiries.

Mayor Headding opened public comment.

Terry Simons, Morro Bay, stated the previous animal shelter was poorly constructed and the urged caution regarding construction for the new water reclamation facility.

Mimi Goldberg, Morro Bay, spoke in support of the agreement.

Mayor Headding closed public comment.

MOTION: Council Member McPherson moved to review and approve the MOA with the County of San Luis Obispo for the City's share of the Animal Services project.

The motion was seconded by Council Member Addis and carried 3-1-1 by roll call vote with Council Member Heller opposed and Council Member Davis absent.

ADJOURNMENT

The meeting adjourned at 8:15 p.m.

Recorded by:

Dana Swanson
City Clerk



AGENDA NO: A-3

MEETING DATE: January 14, 2020

Staff Report

TO: Honorable Mayor and City Council **DATE:** January 7, 2020
FROM: Scott Collins, City Manager
SUBJECT: Adoption of Resolution No. 01-20 Establishing the 2020 City Council Meeting Calendar and Budget Development Schedule

RECOMMENDATION

Staff recommends the City Council review the proposed Council meeting calendar and adopt Resolution No. 01-20 approving the 2020 City Council Meeting Calendar and Budget Development Schedule.

ALTERNATIVES

The Council may alter the proposed meeting calendar and schedule.

FISCAL IMPACT

None

BACKGROUND

Strategic Planning Framework and Budget Process

In order to provide an orderly process for strategic planning that includes budget forecasting, conducting broad public engagement to establish City goals and annual objectives, and tying the objectives to the annual budget process, on October 9, 2018, the City Council adopted Resolution No. 83-18 updating the City's Strategic Planning and Budgeting Framework ("SPF").

The City's SPF states the City:

- Will annually produce a 10-year budget forecast
- In years following a presidential election, the Council will review and update the City's 4-year Goals.
- Every other Jan/Feb following an election, the new Council will approve 2-year fiscal year objectives forming a fiscal year work plan for the City.
- Each year the City Council approves a 1-year budget that is tied to the fiscal year work plan.

This approach allows City Council to make considerable efforts to not only link strategic objectives with the budget, but also establish a long-term fiscal sustainability plan with the 10-year budget forecast. As a result, the budget process is informed by community and Council goals and consideration of the City's long-term financial position. This is critical as the City seeks to address its long-term budget challenges and economic development opportunities and revenue sources.

Prepared By: SC

Dept Review: _____

City Manager Review:

City Attorney Review: CFN

Strategic Planning and Budget Calendar

Over the past several years, City Council has adopted an annual calendar that incorporates the strategic planning and budget discussions in a methodical way to link those efforts. Adoption of a calendar by resolution informed the community of the planned dates for important work on the City's goals and objectives, adoption of the budget, and more.

With regard to the budget process, the calendar provides several budget study sessions to provide City Council with an overall financial picture for the City and allow for review of each department's proposed budgets and consideration of adjustments, as necessary, to balance the budget. Council then has two regular meetings in June to formally consider and adopt the annual budget prior to year-end.

2020 Meeting Calendar

A Council meeting schedule which includes proposed regular meetings, as well as proposed special meetings and study sessions (known as of the date of this report) is provided for in Exhibit A to Resolution No. 01-20.

DISCUSSION

Strategic Goals/Objectives

In 2019, the City Council held two community forums to review proposed goals, and initiatives that support those goals, for 2019 and 2020. Following public comment and input on the Goals and related action items at those meetings, and after reviewing public input gathered online through Polco, on May 14, 2019, the City Council approved four City Goals for 2019 and 2020, and 26 action items to help achieve those goals, which are listed below and are provided in greater detail under business Item C-4, later in the meeting.

- 1) Achieve fiscal and economic sustainability
- 2) Improve public infrastructure
- 3) Improve communication and community engagement
- 4) Address affordable housing issues and complete updates to the City's major land use plans (General Plan, Local Coastal Program, and Zoning Code)

Budget Calendar

Exhibit B includes the FY20/21 Budget calendar which lays out the projected schedule for the staff development, public briefing, Citizens Finance Advisory Committee consideration, Council modification, and eventual Council approval of the FY20/21 City Budget. Staff is recommending that Council hold their study session meetings on back-to-back days in May, leaving an optional meeting date open for two weeks later in case there are unanswered questions and the Council requires further deliberation. Council would reserve the two regularly scheduled Council meeting dates in June to formally adopt the FY20/21 Budget.

CONCLUSION

The City's Strategic Planning Framework, along with the schedules for Council meetings, goal setting and budget development, lay out the process for thoughtful, disciplined, open, transparent and responsive conduct of the People's business.

Staff recommends Council adopt Resolution No. 01-20 that includes the City Council's Meeting Calendar, as well as Budget Development Schedule for calendar year 2020.

ATTACHMENTS

1. Resolution No. 01-20 with Exhibits A and B
2. Strategic Planning Policy Resolution No. 83-18

RESOLUTION NO. 01-20

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
ADOPTING THE 2020 CITY COUNCIL MEETING CALENDAR
AND BUDGET DEVELOPMENT SCHEDULE**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the City Council adopts an annual calendar providing for the orderly course of business and to provide transparency and accountability to the public; and

WHEREAS, in accordance with the Strategic Planning Framework Policy established by Resolution No. 83-18, the City Council adopts a schedule for the development of goals and two-year objectives, advisory board work plans, and the annual budget; and

WHEREAS, in accordance with the Strategic Planning Framework Policy, in 2019 the City Council held two community forums and accepted public input prior to approval of four City Goals and 24 action items to help achieve those goals in 2019 – 2020.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, the 2020 City Council Meeting Calendar is adopted, as set forth in Exhibit A, and the Budget Development schedule is adopted, as set forth in Exhibit B.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on this 14th day of January 2020 on the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

2020 Meeting Calendar

January 14

Special Meeting (Advisory Body
Interviews)

Regular Meeting

January 15

Closed Session @ TBD

January 28

Regular Meeting

February 11

Regular Meeting

February 25

Budget Forecast Study Session
Regular Meeting

March 10

Regular Meeting

March 24

Regular Meeting

April 14

Regular Meeting

April 28

Regular Meeting

May 12

Budget Study Session #1
Regular Meeting

May 13

Budget Study Session #2

May 26

Budget Study Session #3 (if needed)
Regular Meeting

June 9

Regular Meeting

June 23

Regular Meeting

July 14

Regular Meeting

July 28

BREAK

August 11

Regular Meeting

August 25

Regular Meeting

September 8

Regular Meeting

September 22

Regular Meeting

October 13

Regular Meeting

October 27

Regular Meeting

November 10

Regular Meeting

November 24

BREAK

December 8

Regular Meeting

December 22

BREAK

Goals, Work Plan and Budget Development Schedules

Budget Calendar

- Feb 18 Mid-Year Budget Presentation to CFAC
- Feb 25 10-Year Forecast Study Session to Council
- Feb 25 Mid-year Budget Presentation to Council
- Feb 28 Finance provides labor numbers / outline to Departments
- Mar 20 Departments develop internal budgets
- Mar 17 CFAC Budget Update
- Mar 25 Department budgets due to Finance
- Mar 30-Apr 3 Budget Team Meetings
- Apr 6-10 City Manager / Executive Team Budget Meetings
- Apr 13-17 City Manager / Finance finalize draft budget letter
- Apr 15 Draft Proposed Budget Presentation to CFAC
- Apr 22 City Manager delivers draft proposed budget to Council
- May 12 FY 2017-18 3rd Quarter Report (if needed)
- May 12 Budget Study Session #1
- May 13 Budget Study Session #2
- May 26 Budget Study Session #3 (if required)
- Jun 9 Budget Approved at Council Meeting
- Jun 23 Backup date for Budget Approval

Legend

- Council Meetings
- Council Study Sessions
- Joint or Advisory Board Meetings
- Internal Staff Actions

RESOLUTION NO. 83-18

**RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MORRO BAY, CALIFORNIA,
RESCINDING RESOLUTION NO. 72-15 AND
ESTABLISHING THE STRATEGIC PLANNING FRAMEWORK POLICY**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, at the August 11, 2015, City of Morro Bay regular City Council meeting, the Council unanimously approved the Strategic Planning and Budgeting Framework concept presented and directed staff to develop a Strategic Planning Framework policy to be adopted at a future meeting; and

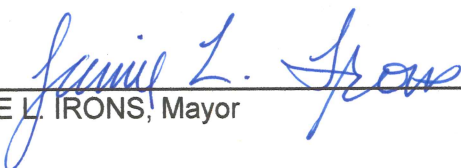
WHEREAS, in accordance with City Council direction, staff prepared a Strategic Planning Framework procedure, which was adopted by City Council via Resolution No. 72-15; and

WHEREAS, it is recommended that City Council revise the Strategic Planning Framework, to include a component for community outreach, to ensure broad public engagement in the development of the City's goals and objectives.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Morro Bay, hereby rescinds Resolution No. 72-15 and establishes the Strategic Planning Framework Policy as defined in the attached Exhibit A.

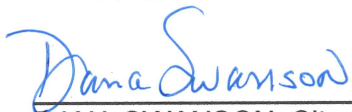
PASSED AND ADOPTED by the City Council of the City of Morro Bay, at a regular meeting thereof held on the 9th day of October 2018, by the following vote:

AYES: Irons, Davis, Headding, Makowetski, McPherson
NOES: None
ABSENT: None



JAMIE L. IRONS, Mayor

ATTEST:



DANA SWANSON, City Clerk



WHITE PAPER

Strategic Planning Framework

Revised October 9, 2018

I. PURPOSE

The purpose of this paper is to describe the City of Morro Bay Strategic Planning framework. This framework, to be adopted by the City Council, provides direction on annual, biennial and quadrennial planning and budgeting tasks and processes the City will follow.

II. OVERVIEW

The City has many plans, including a General Plan (GP), Local Coastal Plan (LCP), Economic Development Strategic Plan (EDSP - under development in 2015/16), Parking Management Plan and other particular plans. Those plans are essential to provide long-term guidance for the City. And, in particular, the GP/LCP provides strategic direction not only in land-use but in many other areas.

However, the City also needs a regular process to set more general goals, and to identify specific, measurable objectives to reach those goals. This process must also ensure those objectives are considered in the annual budgeting process.

This Strategic Planning Framework does that. In general, the City Council will set / refine broad goals every four years. Every two years the Council will identify specific objectives associated with each goal for staff to complete. Every year during the budget process, those objectives will be budgeted against.

In addition to this Strategic Planning Framework, the City is developing fresh Vision, Values and Mission statements that should inform all of our planning efforts, and goal / objective setting in particular.

III. DEFINITIONS

The following definitions are important to understand the City's Strategic Planning Process:

- **City Mission Statement** – The Mission Statement is a Council-approved statement that describes the basic / essential tasks the City must provide, and a statement toward the purpose of executing these tasks. The mission statement is focused on the purpose of the City Government, not the broader community. The City mission statement might begin something like: "The City of Morro Bay provides Public Safety, Recreation, and other key municipal services in order to"
- **Community Vision and Values Statements.** Community vision and values are also Council-approved, semi-permanent statements, developed with significant community

input, that describe what we want our community to be (Vision) and what ideals our community considers of essential importance (values).

- **City Core Tasks.** Core tasks are functions that we should always be doing well and they should be addressed in our City mission statement. A core task might be: "Maintain City Infrastructure", or "Provide Public Safety".
- **City Goals.** Goals are broad projects we want to accomplish over a long-term (4-6 year) period, usually because they are big enough and broad enough they can't be accomplished in a year or two. An example of a goal is: "Improve Streets".
- **City Objectives.** Biennial objectives are specific, discreet, medium-term (1-2 year) projects that support a more general goal, are feasible and achievable if appropriately resourced, and can be directly budgeted against. An example of an Objective related to the Goal "Improve Streets" could be: "Repave 10% of streets in FY16/17 and FY 17/18".

IV. PROCESS

Following is a written description of the City's Strategic Planning Framework depicted below in figure 1.

- The process begins in December of each election year with the seating of a new Council.
- The new Council begins a planning process to set biennial budget objectives for the upcoming two budget years.
- Following elections, the City will advertise in December upcoming community outreach and engagement opportunities.
- This objective-setting planning process normally occurs in January and February with two-year objectives set by the last Council meeting in February.
- In years following an election, in January through mid-February, staff will provide numerous opportunities for the community to engage in the process and to provide input in a number of ways, including community forum(s).
- In years following an election, City Council will host a public retreat in late-February/early March to review community input gathered through the outreach opportunities and develop goals (following Presidential elections as described below) and objectives (following a non-Presidential election). Council will formally adopt the goals/objectives typically by late March/early April.
- Council-approved objectives are then used by staff and Council to develop the annual budget in March – May of each year.
- Every four years (Presidential election years) the new Council also reviews and updates the City's Goals. The City should work to ensure goals are items in which real improvement is needed and achievable. Generally, goals should not be "maintain," but should be "improve." Any new Council could, of course, resolve to deviate from this Strategic Planning Framework and modify City goals outside of the specified four-year window. However, for organizational efficiency and community stability, the City should strive to keep goals for at least four years, using biennial objective setting and annual budgeting to affect change and adjust priorities.



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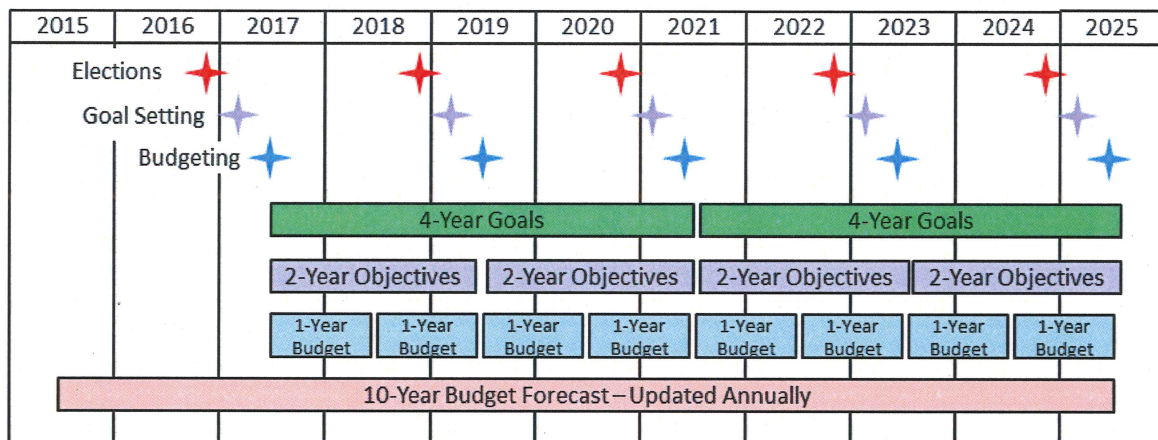
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- On a semi-annual basis, normally in the fall of each year, staff updates the Council on the status of the two-year budget objectives in an Annual Goals Update report and special Council Meeting.
- In March – May each year, the staff and Council develop a 1-year budget for the upcoming fiscal year: July 1 to June 30 of the following year. The two 1-year budgets every 2-year goal/objective period provide the Council ample opportunity to reallocate resources to achieve, or “weight” specific City Goals and Objectives.
- This entire process is underpinned and informed by a continuing 10-year budget forecast process that is updated annually in Jan – Feb. Every other year the 10-year forecast is updated by an external professional consultant. In the off years it is updated internally by staff.

Transition Plan for the Morro Bay *Strategic Planning and Budgeting Framework*



Elections – Nov of even years, new Council seated in early January



Biennial Planning – Every other year in Jan and Feb Council updates 2-year objectives. every 4th year Council also updates 4-year goals.



Annual Budgeting – Every year in May and Jun Council updates approves a 1-year budget.

Overview. Beginning in December 2016 the City of Morro Bay executes a 4-2-1 Strategic Planning and Budgeting process.

- Following each election, the new council meets in Jan / Feb to establish 2-year objectives supporting each existing City Goal.
- Every four years this process begins in December and includes renewal of the City’s goals.
- The staff then uses the new objectives to inform creation of the City’s annual budget.
- The entire process is underpinned by a 10-year budget forecast that is professionally (externally) updated every other year and internally updated every year.

Figure 1 – Strategic Planning and Budgeting Framework

V. SUMMARY

This Strategic Planning and Budgeting Framework is intended to complement the City’s broader and more specific plans, including the General Plan, Local Coastal Plan, Economic Development Strategic Plan and other land-use and issue-specific plans.

The above mentioned plans coupled with this Goals and Objectives process should serve, taken as a whole, as the City's strategic plan. Following full implementation of the ongoing GP/LCP rewrites in 2017, and 10-year Economic Development Strategic Plan in 2016, the City could consider if an additional, formal, 10-year strategic plan is required.

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AGENDA NO: A-4

MEETING DATE: January 14, 2020

Council Report

TO: City Council

DATE: January 7, 2020

FROM: John Headding, Mayor

SUBJECT: Appointment of Mayor Pro Tempore and Appointment of Representatives on Discretionary Boards, Council Liaison Assignments and Council Sub-Committees

RECOMMENDATION

Appoint Council Member Dawn Addis as Mayor Pro Tempore as well as appoint representatives to serve on the various County or Regional Discretionary Boards, Council Liaison Assignments and Sub-Committees for calendar year 2020 as shown on the attached appointment list.

DISCUSSION

The City Council Policies and Procedures Section 3.2 (Appointment of Mayor Pro Tempore) states:

"The appointment of the Mayor Pro Tempore shall be for a one-year term and shall be made at the first meeting in January. For appointment as Mayor Pro Tempore, a Council Member must be on the Council at least one year. Of those who have been on the Council for at least one year, the Council Member who has not yet held the position shall be appointed Mayor Pro Tempore. If there are two Council Members who have not yet held the position, then the Council Member receiving the highest number of votes in the most recent election shall be appointed Mayor Pro Tempore. If all have held the position, then the Council Member who has held it the least number of times shall be appointed Mayor Pro Tempore. If all Council Members have held it for the same number of years, then the Council Member for whom it has been the longest period of time since holding the position shall be appointed Mayor Pro Tempore."

The City Council Policies and Procedures Section 6.1 ("County or Regional Representation") states:

"Annually the Mayor shall make appointments to a variety of County and/or regional committees and boards. One member of the Council shall serve as a voting representative and one member shall serve as alternate. To the best of their ability, Voting Delegates shall reflect the majority view of the Council as a whole, rather than their own personal opinions."

Prepared By: JHeadding/DS

Dept Review: _____

City Manager Review: SC

City Attorney Review: CFN

Consistent with Council Policies and Procedures Section 6.1, the Mayor may seek input from City Council regarding appointments to County and/or Regional Boards, but ultimately, the Mayor is responsible for the appointment of these positions. Attached for your review is a list of the proposed City Council Discretionary Appointments.

The City Council Policies and Procedures Section 6.2.1 (“Council Liaison Assignments”) states:

“The City Council shall assign a Council liaison to each of the following advisory bodies: Recreation & Parks Commission, Harbor Advisory Board, Public Works Advisory Board, the Citizens Finance Advisory Committee, the Planning Commission and Tourism Business Improvement District Advisory Board. Council liaisons will also be appointed to the special purpose advisory bodies.

The purpose of the liaison assignment is to facilitate communication between the City Council and the advisory body. The liaison also helps to increase the Council’s familiarity with the membership, programs and issues of the advisory body. In fulfilling their liaison assignment, members should either attend advisory body meetings or watch the meeting broadcasts and maintain communication with the advisory body on a regular basis.

Council Members should be sensitive to the fact they are not participating members of the advisory body, but are there rather to create a linkage between the City Council and the advisory body. In interacting with advisory bodies, Council Members are to reflect the views of the Council as a body. Being an advisory body liaison bestows no special right with respect to advisory body business.”

The City Council Policies and Procedures Section 3.13 (“Council Sub-Committees”) states:

“From time to time it may be desirable for the City Council may vote to appoint a sub-committee of the whole to address a particular issue. That is especially the case if the issue requires additional work or research. Per the Brown Act, sub-committees must consist of less than a quorum of the body and serve for a limited purpose and time. Therefore, the City Council sub-committees may consist of two members. Sub-committees shall report back to the full Council for discussion before any formal action can be taken on the pertinent issue. Establishing a subcommittee requires the body to define the purpose, parameters, and duration of the sub-committee. The City Clerk will keep the list of sub-committees and defined description as a record with Council liaison assignments for review annually.”

Attached for your review is the list of board appointments, liaison assignments and previously established Council sub-committees. Thank you for the cooperative work on these assignments.

ATTACHMENT

1. Proposed City Council Discretionary Appointments, Liaison Assignments and Council Sub-Committees for 2020.

CITY COUNCIL DISCRETIONARY APPOINTMENTS (2020)

INTEGRATED WASTE MANAGEMENT AUTHORITY (meets the 2nd Wednesday of every other odd numbered month; 130pm; Board of Supervisors Chambers, SLO Government Center)

Jeff Heller	Designee
Dawn Addis	Alternate

COUNTY WATER RESOURCES ADVISORY COMMITTEE (meets the 1st Wednesday of the month; 1:30-3:30pm; City County Library Room, 995 Palm, SLO)

Marlys McPherson	Delegate
City Manager (or their designee)	Alternate

SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY (SLORTA) &

SAN LUIS OBISPO AREA COORDINATING COUNCIL (SLOCOG) (RTA meets the 1st Wednesday of every other odd numbered month; 8:30am; Board of Supervisors Chambers, SLO County Government Center) (COG meets the 1st Wednesday of every other odd numbered month; at conclusion of RTA meeting; Board of Supervisors Chambers, SLO County Government Center)

Red Davis	Delegate
John Headding	Alternate

CMC CITIZENS' ADVISORY COMMITTEE (1-year term) (meets the 3rd Friday of every other month; 1-2pm; at CMC)

Council to appoint Citizen	Member

AIR POLLUTION CONTROL DISTRICT (meets the 4th Wednesday of every other odd numbered month; 9am; Board of Supervisors Chambers, SLO County Government Center)

John Headding	Member
Red Davis	Alternate

COMMUNITY ACTION PARTNERSHIP OF SAN LUIS OBISPO COUNTY, INC.

(formerly EOC) - (3-year term) (meets the 3rd Thursday of every month; 5pm; CAPSLO Board Room, 1030 Southwood, SLO). Morro Bay rotated off the Board in 2014. Los Osos CSD is the coastal city representative for 2017-19. The next opportunity to cycle back in, at CAPSLO's request, will be in 2020.

ECONOMIC VITALITY CORPORATION (meets the 3rd Wednesday of every month; 4-5:30pm; Cannon & Assoc, 1050 Southwood, SLO)

Jeff Heller	Liaison
John Headding	Alternate

NATIONAL ESTUARY PROGRAM (Executive Committee meets quarterly; 2nd Wednesday of the month in February, May, August and November; 4-6pm)

Jeff Heller	Member
Marlys McPherson	Alternate

CITY SELECTION COMMITTEE (as needed)

John Headding (Mayor)	Member
Mayor Pro Tem	Alternate

LEGISLATIVE DELEGATE (as needed)

John Headding (Mayor)	Member
Mayor Pro Tem	Alternate

SAN LUIS OBISPO COUNTY HOUSING TRUST FUND

City Manager or designee (Community Development)	Member

HOMELESS SERVICES OVERSIGHT COMMITTEE (meets the 3rd Wednesday of odd numbered months; 1-3pm; SLO Vets Building Lounge Room, 801 Grand, SLO)

Red Davis

Member

Marlys McPherson

Alternate

CITY COUNCIL LIAISON ASSIGNMENTS (2020)

PLANNING COMMISSION (meets 1st and 3rd Tuesday of every month; 6:00pm; Vets Hall)

John Headding

Liaison

HARBOR ADVISORY BOARD (meets the 1st Thursday of the month, except January, July and December; 5:30pm; Vets Hall)

Marlys McPherson

Liaison

RECREATION AND PARKS COMMISSION (meets the 3rd Thursday of the month in odd-numbered months; 6:00pm; Vets Hall)

Jeff Heller

Liaison

PUBLIC WORKS ADVISORY BOARD (meets the 3rd Wednesday of the month except July, November and December; 5:30pm; Vets Hall)

Jeff Heller

Liaison

MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT BOARD (meets the 3rd Thursday of the month except July, November and December; 9:00am; Vets Hall) AND SAN LUIS OBISPO COUNTY TOURISM MARKETING DISTRICT ADVISORY COMMITTEE (meets semi-annually on the first Thursday of May and December at Embassy Suites, 333 Madonna Rd., SLO)

Red Davis

Liaison

CITIZENS OVERSIGHT / FINANCE COMMITTEE (meets the 3rd Tuesday of the month except March, July and August; 3:00pm; Vets Hall)

Marlys McPherson

Liaison

CITY COUNCIL SUB-COMMITTEES (2020)

COUNCIL SUBCOMMITTEE ON EMPLOYEE GRIEVANCES (meets as needed)

John Headding

Member

Dawn Addis

Member

WATER RECLAMATION FACILITY / JPA SUB-COMMITTEE

John Headding

Member

Marlys McPherson

Member

MORRO BAY POWER PLANT

Marlys McPherson

Member

John Headding

Member

AQUARIUM

Dawn Addis	Member
John Headding	Member

CHEVRON PROPERTY

Red Davis	Member
John Headding	Member

U.S. COAST GUARD

Marlys McPherson	Member
Dawn Addis	Member

ESTERO BAY ALLIANCE OF CARE ("EBAC")

Marlys McPherson	Member
Red Davis	Member

CANNABIS REGULATIONS

Red Davis	Member
Marlys McPherson	Member

VACATION RENTAL POLICY UPDATE

John Headding	Member
Marlys McPherson	Member

VACATION RENTAL POLICY COMMUNITY INPUT

Jeff Heller	Member
Marlys McPherson	Member

HARBOR LEASE POLICY REVIEW

Marlys McPherson	Member
Red Davis	Member

BOEM INTERAGENCY TASK FORCE MEMBER ON WIND ENERGY

John Headding	Member
Red Davis	Member

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AGENDA NO: A-5

MEETING DATE: January 14, 2020

Staff Report

TO: Honorable Mayor and City Council

DATE: January 7, 2020

FROM: Chris F. Neumeyer, City Attorney

SUBJECT: Adoption of Ordinance No. 627 concerning Tobacco, Vaping and Secondhand Smoke, including through a Tobacco Retailer Licensing Program, a Prohibition on the Sale of E-Cigarettes (Vaping Products), and Enhancing the City's Current Secondhand Smoking Regulations by a Smokefree Policy for Multi-unit Housing

RECOMMENDATION

Staff recommends Council consider adopting, by second reading and by title only with further reading waived, Ordinance No. 627, entitled "An Ordinance of the City Council of the City of Morro Bay, California, Adding Chapter 5.54 (Tobacco, Electronic Cigarettes and Vaping) to Title 5 (Business Tax Certificates and Regulations), and amending Chapter 9.24 (Secondhand Smoking Regulations) of Title 9 (Public Peace, Morals and Welfare), of the Morro Bay Municipal Code, to regulate the sale of tobacco and vaping products and update and expand the City's Secondhand Smoking Regulations."

ALTERNATIVES

No alternatives are being recommended.

FISCAL IMPACT

The tobacco retailer's license program (added in Chapter 5.54) will create additional administrative costs, and the new regulations may create additional enforcement costs. Chapter 5.54 provides for the recovery of administrative and enforcement costs related to the tobacco retailer's license program through the assessment of a license fee. The tobacco regulations may have an impact on the local economy in a way that would affect City finances, but the nature and extent of such effects are currently unknown.

BACKGROUND/DISCUSSION

Ordinance No. 627 was introduced for a first reading at the November 12, 2019 regular City Council meeting (when changes were made on the floor), and again at the December 10, 2019 regular City Council meeting (when further changes were made on the floor). Ordinance No. 627 is now proposed for adoption through a second reading, and if adopted will:

1. Ban the sale of e-cigarettes and e-cigarette paraphernalia.

Prepared By: DS/HG Dept Review: _____
City Manager Review: SC City Attorney Review: CFN

2. Implement regulations recommended by the American Lung Association, including:
 - a. Multi-unit residences (e.g., apartments and condominium) (does not include single-family homes and mobile home parks)
 - i. Prohibiting smoking in both the units and common areas of apartment and condo complexes, senior and assisted living facilities, and long-term health care facilities, except in designated smoking areas.
 - ii. Requires that all new and renewed leases for occupancy of a unit in a multi-unit residence shall prohibit smoking.
 - iii. Requires landlords of multiunit housing to provide written notice of new restrictions to tenants and to also post “no smoking” signs.
 - b. Creating a tobacco retailer’s license program aimed at providing the City with a mechanism for punishing violations of local, state, and federal tobacco laws by tobacco retailers.
 - c. Prohibiting the sale of tobacco products by retail establishments that contain a pharmacy.
 - d. Prohibiting the sale of (a) single cigars that cost less than five dollars, (b) any number of cigars fewer than the number contained in the manufacturer’s original consumer packaging designed for retail sale to a consumer, and (c) any package of cigars containing fewer than five cigars.

Amendments made by the Council on the floor include the following:

- Section 5.54.020 reflects an effective date, for the ban on sales of vaping products and certain cigars, of July 15, 2020.
- Removal of the previously proposed ban on flavored tobacco products (former Section 5.54.020(C) which is now deleted).
- Section 5.54.010 includes modified definition of “electronic cigarette” so that the exclusion of cannabis from the ban means cannabis without Vitamin E acetate, and Vitamin E acetate has been defined in the same section as well as stated below.
 - *“Vitamin E acetate,” also known as α -Tocopheryl acetate, means a synthetic form of vitamin E and/or an oil derived from vitamin E, and known to be used as an additive for vaping products.*

The effective date of the prohibition on smoking in multi-unit residences is set by the ordinance as March 15, 2020. The prohibition on the sale of vaping products and certain cigars is set by the ordinance as July 15, 2020. The requirement for a tobacco retailer license will commence on January 1, 2021. These extended dates are provided to allow for reasonable time for adjustment by retailers, landlords and tenants to the new regulations, as well as for further administrative requirements (e.g., licenses forms and fee setting) to be completed by the City. Please refer to the related staff report for the November 12, 2019 Council meeting for further details concerning

Ordinance No. 627.

CONCLUSION

Staff recommends that the City Council consider adopting Ordinance No. 627 by second reading and by title only.

ATTACHMENT

1. Ordinance No. 627

ORDINANCE NO. 627

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, ADDING CHAPTER 5.54 (TOBACCO, ELECTRONIC CIGARETTES AND VAPING) TO TITLE 5 (BUSINESS TAX CERTIFICATES AND REGULATIONS), AND AMENDING CHAPTER 9.24 (SECONDHAND SMOKING REGULATIONS) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE), OF THE MORRO BAY MUNICIPAL CODE, TO REGULATE THE SALE OF TOBACCO AND VAPING PRODUCTS AND UPDATE AND EXPAND THE CITY'S SECONDHAND SMOKING REGULATIONS

WHEREAS, the City of Morro Bay ("City") is empowered to enact legislation to protect the health, safety, and welfare of the public; and

WHEREAS, there are currently serious public health concerns about the immediate and long-term harm caused by vaping/e-cigarette use ("vaping"); and

WHEREAS, approximately 1,300 cases of vaping-related lung illnesses have been reported in hospitals, health clinics, and emergency rooms nationwide, with at least 26 confirmed vaping-related deaths; and

WHEREAS, the U.S. Surgeon General and the California Department of Public Health (CDPH) have issued health advisories to educate the public about the imminent health risk posed by vaping any product; and

WHEREAS, teen use of vaping products has grown rapidly in recent years, with a February 2019 National Institutes of Health report finding that over 17.6% of 8th graders, 32.3% of 10th graders, and 37.3% of 12th graders reported trying vaping last year nationwide; and

WHEREAS, according to a 2017-2018 California Healthy Kids Survey (CHKS) of Morro Bay High School 9th and 11th graders conducted in 2018, 18% of 9th graders and 22% of 11th graders had used vaping products at least once in the past month, and over 60% of students surveyed thought it was fairly easy or very easy for high school students to obtain vaping products; and

WHEREAS, vaping products, particularly the flavored variety, are popular among younger users, and the packaging and advertising of vaping products by vaping companies are often attractive to younger users; and

WHEREAS, there are over 15,000 vaping flavors available on the market, including youth-orientated flavors such as bubble gum, cotton candy, and fruit punch, among others; and

WHEREAS, in addition to vaping products, several other tobacco products are flavored in ways that make them attractive to minors, thus increasing the risk that minors will use, and potentially become addicted to, these products; and

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WHEREAS, the Federal Family Smoking Prevention and Tobacco Control Act prohibits the sale of cigarettes with a characterizing flavor – other than tobacco and menthol – but does not apply to cigars, e-cigarettes, or other non-cigarette tobacco products; and

WHEREAS, the Tobacco Products Scientific Advisory Committee (TPSAC) issued a report on menthol cigarettes, concluding that they have “an adverse impact on public health in the United States” and that “[t]here are no public health benefits of menthol compared to non-menthol cigarettes.” The report recommended to the FDA that “[r]emoval of menthol cigarettes from the marketplace would benefit public health in the United States;” and

WHEREAS, in July 2013, the Food and Drug Administration published an independent report that concluded that “menthol use is likely associated with increased smoking initiation by youth and young adults,” “menthol in cigarettes is likely associated with greater addiction,” and “that menthol cigarettes pose a public health risk above that seen with nonmenthol cigarettes;” and

WHEREAS, through the sale of tobacco products, pharmacies, and business establishments containing pharmacies, convey tacit approval of the purchase and use of tobacco products. This approval sends a mixed message to consumers who generally patronize pharmacies for health care services; and

WHEREAS, tobacco products are often sold individually to make them less expensive, and more enticing to youth. Establishing policies to ensure minimum packaging, or a minimum unit in which cigars can be sold in, will increase the purchase price and help protect youth from the health dangers of smoking little cigars and cigarillos; and

WHEREAS, secondhand smoke has been shown to be extremely hazardous to the health and safety of those who are exposed to it; and

WHEREAS, the City’s existing secondhand smoke regulations focus on limiting or eliminating secondhand smoke in public areas; and

WHEREAS, these regulations have not completely eliminated the risks posed by secondhand smoke to the community; and

WHEREAS, the City desires to amend its regulations to make them more comprehensive and effective at protecting the community from the harmful effects of secondhand smoking.

THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA DOES HEREBY FIND AND ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 5.54 (TOBACCO, ELECTRONIC CIGARETTES AND VAPING) IS HEREBY ADDED TO TITLE 5 OF THE MORRO BAY MUNICIPAL CODE, TO READ AS FOLLOWS:

“Chapter 5.54 – TOBACCO, ELECTRONIC CIGARETTES AND VAPING

5.54.010 – Definitions.

The following words and phrases, as used in this chapter, shall have the following meanings:

“Characterizing flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice.

“Cigar” means (1) any roll of tobacco wrapped entirely or in part in tobacco or in any substance containing tobacco; or (2) any paper or wrapper that contains tobacco and is designed for smoking or ingestion of tobacco products. “Cigar” includes, but is not limited to, tobacco products known or labeled as “cigar,” “cigarillo,” “tiparillo,” “little cigar,” “blunt wrap,” or “cigar wrap.”

“Electronic cigarette,” (i.e., e-cigarettes) for purposes of solely this Chapter 5.54, means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances (excluding cannabis that contains no Vitamin E acetate), including any component, part or accessory of such a device, whether or not sold separately. Includes any such device, whether manufactured, distributed, marketed or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

“Electronic cigarette paraphernalia” means an item that is marketed as or can be used as a component part of an electronic cigarette.

“Flavored tobacco product” means any tobacco product that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacture of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

“Hearing officer” means the person or persons designated by the city manager to serve in this capacity. Compensation of a hearing officer shall not depend on any particular outcome of any hearings the hearing officer is involved with concerning this Chapter 5.54.

“Licensing agent” means a person or persons designated by the city manager to serve in this capacity.

“Person” means any natural person, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

“Pharmacy” means a retail establishment in which the profession of pharmacy by a pharmacist licensed by the State of California in accordance with the Business and Professions Code is practiced and where prescriptions are offered for sale. A pharmacy may also offer other retail goods in addition to prescription pharmaceuticals. “Pharmacy” includes any retail

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establishment that contains a pharmacy, even if the pharmacy is not the sole or primary business of the retail establishment.

“Proprietor” means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share, ultimate control over the day-to-day operations of a business.

“Tobacco product paraphernalia” includes cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco or products prepared from tobacco.

“Tobacco product” means any product containing, made from, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, electronic cigarettes or any other preparation of tobacco including Indian cigarettes called “bidis.” “Tobacco product” includes electronic cigarette paraphernalia and tobacco product paraphernalia. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes and is marketed and sold solely for such an approved purpose.

“Tobacco retailer” means any person who sells, offers for sale, or does or offers to exchange for any form of consideration tobacco, or any tobacco product; “tobacco retailing” shall mean the doing of any of these things.

“Vaping” is a term that commonly refers to the use of an electronic cigarette.

“Vitamin E acetate,” also known as α -Tocopheryl acetate, means a synthetic form of vitamin E and/or an oil derived from vitamin E, and known to be used as an additive for vaping products.

5.54.020 – Prohibition on sale of certain tobacco products.

It is unlawful to sell, offer to sell, or exchange or offer to exchange for consideration any of the following products in the City of Morro Bay (commencing July 15, 2020):

- A. Electronic cigarettes.
- B. Electronic cigarette paraphernalia.
- C. Cigars meeting any of the following criteria:
 - 1. Any single cigar, whether or not packaged for individual sale, unless the retail price exceeds \$5.00; or
 - 2. Any number of cigars fewer than the number contained in the manufacturer’s original consumer packaging designed for retail sale to a consumer; or

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3. Any package of cigars containing fewer than five cigars.

5.54.030 – Requirement for tobacco retailer license.

- A. Beginning on January 1, 2021, it shall be unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer's license pursuant to this chapter for each location at which that activity is to occur.
- B. Licenses are valid for one year and each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license prior to its expiration.
- C. The conference of a tobacco retailer license does not confer any new rights under any other law and does not exempt any business that otherwise would be subject to the smoking related provisions within the Morro Bay Municipal Code and Labor Code Section 6404.5.

5.54.040 – Retailer limitations.

- A. No license will be issued to authorize tobacco retailing at other than a fixed location. Itinerant tobacco retailing and tobacco retailing from vehicles are prohibited.
- B. No license will be issued to authorize tobacco retailing at any location that is licensed under state law to serve alcoholic beverages for consumption on the premises (e.g., an "on-sale" license issued by the California Department of Alcoholic Beverage Control); tobacco retailing in bars and restaurants serving alcoholic beverages is prohibited.
- C. No license will be issued to authorize tobacco retailing in a pharmacy and no pharmacy shall engage in tobacco retailing at any time.

5.54.050 – License application procedure.

- A. Application for a tobacco retailer's license shall be submitted to the licensing agent in the name of each proprietor/person proposing to conduct retail tobacco sales and shall be signed by such person or an authorized agent thereof. All applications shall be submitted on a form supplied by the licensing agent and shall contain the following information:
 1. The name, address, and telephone number of the applicant.
 2. The business name, address, and telephone number of each location for which a tobacco retailer's license is sought.
 3. Such other information as the licensing agent deems necessary for enforcement of this chapter.

4. Whether or not any proprietor has previously been issued a license pursuant to this chapter that is, or was at any time, suspended or revoked and, if so, the dates of the suspension period or the date of revocation.

- B A licensed tobacco retailer shall inform the city in writing of any change in the information submitted on an application for a tobacco retailer's license within ten business days of a change.

5.54.060 – Issuance of license.

Upon the receipt of an application for a tobacco retailer's license, the licensing agent shall issue a license unless substantial evidence in the record demonstrates one of the following bases for denial:

- A. The application is incomplete or inaccurate; or
- B. The application seeks authorization for tobacco retailing at a location prohibited by section 5.54.040; or
- C. The application seeks authorization for tobacco retailing by a person or at a location for which a suspension is in effect pursuant to Section 5.54.120 of this chapter.

5.54.070 – Display of license.

Each licensee shall prominently display the license in a public place at each location where tobacco retailing occurs.

5.54.080 – Fees for license.

The fee for a tobacco retailer's license shall be established by resolution of the city council. The fee shall be calculated so as to recover the total cost, but no more than the total cost, of license administration and enforcement, including, but not limited to, issuing the license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violation, and prosecution of violators. The fee for tobacco retailer's license shall be paid to the licensing agent.

5.54.090 – Licenses nontransferable.

A tobacco retailer's license is not transferable to a new location or to another person. For example, if a proprietor to whom a license has been issued changes business location, that proprietor must apply for a new license prior to acting as a tobacco retailer at the new location; or, if the business is sold, the new owner must apply for a license for that location before acting as a tobacco retailer.

5.54.100 – Noncompliance with tobacco-related laws - License violation.

It shall be a violation of a tobacco retailer's license for a licensee or his or her agents or employees to violate any local, states or federal tobacco-related law.

5.54.110 – License compliance monitoring.

Compliance with this chapter shall be monitored by City law enforcement agents. At least four compliance checks of each tobacco retailer shall be conducted during each twelve-month period. The cost of compliance monitoring shall be incorporated into the license fee.

5.54.120 – Suspension or revocation of license.

- A. In addition to any other penalty authorized by law, a tobacco retailer's license may be suspended or revoked if the city finds, after notice to the licensee consistent with Section 1.03.120 of this Code, and reasonable opportunity to be heard, that the licensee or his or her agents or employees has violated the conditions of the license imposed pursuant to this chapter, or that the information contained in the application, including supplemental information, if any, is false in any material respect, as follows:
 - 1. Upon a finding by the city of a first license violation within any five-year period, the license shall be suspended for thirty days.
 - 2. Upon a finding by the city of a second license violation within any five-year period, the license shall be suspended for ninety days.
 - 3. Upon a finding by the city of a third license violation within any five-year period, the license shall be suspended for one year.
 - 4. Upon a finding by the city of a fourth license violation within any five-year period, the license shall be revoked.
- B. During a period of license suspension, the tobacco retailer shall remove all tobacco products from public view at the retail location.
- C. The suspension or revocation of a tobacco retailer's license shall become effective on the date specified in the notice of suspension or revocation issued by the city, which shall not be sooner than the 11th business day following the date of the city's decision to suspend or revoke the license.

5.54.130 – Appeal of suspension or revocation.

A decision of the city to suspend or revoke a license is appealable to a hearing officer and must be filed with the city clerk no later than ten business days following the date of the city's decision to suspend or revoke the license. Appeal procedures shall follow those contained in Sections 1.03.080-090 of this Code except when in conflict with this Chapter 5.54. An appeal shall stay all proceedings in furtherance of the appealed action. Following appeal, the decision of the hearing officer may be appealed to the city manager or his or her designee by filing a notice of appeal with the city clerk no later than ten business days following the date of the decision of the hearing officer. A decision of the city manager or his or her designee shall be the final decision of the city.

5.54.140 – Administrative fine – Penalties - Enforcement.

- A. Any violation of the provisions of this chapter by any person is a misdemeanor and is punishable as provided in Chapter 1.16 of this code. Any violation of the provisions of this chapter by any person is also subject to administrative fines as provided in Chapter 1.03 of this code.
- B. Each day that a person acts as a tobacco retailer without a valid tobacco retailer's license shall constitute a separate violation of this chapter.
- C. Violations of this chapter are hereby declared to be public nuisances.
- D. In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the city attorney, including but not limited to administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.
- E. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity."

SECTION 2. CHAPTER 9.24 (SECONDHAND SMOKING REGULATIONS) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE MORRO BAY MUNICIPAL CODE IS HEREBY AMENDED TO READ AS FOLLOWS (NEW TEXT IN *BOLD ITALICS* AND DELETED TEXT IN ~~STRIKETHROUGH~~):

“9.24.020 – Purpose.

This chapter is enacted with the specific intent to:

- A. Prohibit smoking in certain ~~public~~ places not preempted by California Labor Code Section 6404.5, which provides further smoking regulations;
- B. Protect the public health, safety and general welfare by prohibiting smoking in certain public places under circumstances where other persons will be exposed to secondhand smoke;
- C. Ensure a cleaner and more hygienic environment for the city, its residents, and its natural resources, including its creeks and streams and beaches;
- D. Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including residents and visitors, particularly children, to breathe smoke-free air, recognizing the threat to public health and the environment which smoking causes;
- E. Designate the enforcing agency for this chapter and for Labor Code Section 6404.5.

9.24.020 – Definitions.

The following words and phrases, as used in this chapter or in any other applicable law regulating smoking, shall have the following meanings:

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“Business” means any sole proprietorship, partnership, joint venture, corporation, association or other entity formed for profit-making purposes or that has an employee.

“Cannabis” means all parts of the plant cannabis sativa linnaeus, cannabis indica, or cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

“City beach” means the sandy area on either side of the mean high tide line from Atascadero Road all the way up to, but not including the parking lot at the Rock. City beach shall also include the area of the Sand Spit that is owned by the city.

“City T-piers” means the municipal piers located North of Beach Street and at Tidelands Park.

“Code compliance officer” means the city code compliance officer or duly authorized designee of the city code compliance officer.

“Common area” means every enclosed area and every unenclosed area of a multi-unit residence that residents of more than one unit are entitled to enter or use, including, without limitation, halls, pathways, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, grassy or landscaped areas, restrooms, laundry rooms, cooking areas, and eating areas.

~~“Dining area” means any area available to or customarily used by the general public that is designed, established or regularly used for consuming food or drink.~~

“Electronic cigarette” means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances (including but not limited to cannabis), including any component, part or accessory of such a device, whether or not sold separately. Includes any such device, whether manufactured, distributed, marketed or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

“Employee” means any person who is employed or retained as an independent contractor by any employer as defined in this section; or any person who volunteers his or her services for an employer, association, nonprofit or volunteer entity.

“Employer” means any person, partnership, corporation, association, nonprofit or other entity that employs or retains the service of one or more persons, or supervises volunteers.

“Enclosed” means any covered or partially covered space having more than fifty percent of its perimeter area walled in or otherwise closed to the outside such as, for example, a

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covered porch with more than two walls; or any space open to the sky (hereinafter “uncovered”) having more than seventy-five percent of its perimeter area walled in or otherwise closed to the outside such as, for example, a courtyard.

“Landlord” means any person or agent of a person who owns, manages, or is otherwise legally responsible for a unit in a multi-unit residence, except that “landlord” does not include a tenant who sublets a unit.

“Multi-unit residence” means a new or existing property containing two or more units, including, but not limited to, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities. Multi-unit residences do not include the following:

- 1. A hotel or motel;***
- 2. A mobile home park;***
- 3. A single-family home; and***
- 4. A single-family home with a detached or attached accessory dwelling unit or second unit.***

“Nonprofit entity” means any entity that meets the requirements of California Corporations Code Section 5003 as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives of the entity and not to private gain. A public agency is not a nonprofit entity within the meaning of this section.

“Place of employment” means any area under the legal or de facto control of an employer, business or nonprofit entity that an employee or the general public may have cause to enter in the normal course of operations, but regardless of the hours of operation, including, for example, indoor and outdoor work areas, vehicles used in employment or for business purposes, taxis, employee lounges, conference and banquet rooms, bingo and gaming facilities, long-term health facilities, warehouses and private residences that are used as childcare or healthcare facilities subject to licensing requirements.

“Playground” means any park or recreational area designed in part to be used by children, that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds, or on city property.

“Premises” means a lot or contiguous lots and any improvements thereon such as is usually described in a deed, deed of trust or mortgage, and includes legally separate but contiguous pieces of land that are owned by the same person or are under common control.

“Present” means within a reasonable distance.

“Public place” means any public or private place open to the general public regardless of any fee or age requirement, including, for example, streets, sidewalks, parking lots, parking garages, plazas, bars, restaurants, clubs, stores, stadiums, parks, playgrounds, city beaches, T-Piers, taxis and buses. For the purposes of the provisions of this chapter, a “public place” does not mean a private residence except for residences used as an adult or child care, health care, board and care, or community foster care facility as such terms are defined by the state Health and Safety Code.

“Reasonable distance” means the greatest distance practicable that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of twenty feet.

“Recreational area” means any public or private area open to the public for recreational purposes whether or not any fee for admission is charged, including without limitation, parks, trails, gardens, sporting facilities, stadiums, beaches, T-piers and playgrounds.

“Restaurant” means any coffee shop, cafeteria, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria, eating establishment, **vending cart**, boardinghouse or guest house or similar establishment which gives or offers for sale food to the public.

“Secondhand smoke” means smoke that is generated either from the burning end of a lighted tobacco, weed, cannabis or plant product, or from an electronic cigarette; or, smoke that is exhaled by a smoker, after inhaling or ingesting a lit tobacco, weed, cannabis or plant product, or after use of an electronic cigarette.

“Service area” means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place or make a transaction whether or not such service includes the exchange of money, including, for example, ATMs, bank teller windows, telephones, ticket lines, bus stops, taxi stands and takeout counters.

“Smoke or smoking” means the carrying or holding of a lighted pipe, cigar, cigarette, or any other lighted smoking product or equipment used to burn any tobacco products, weed, plant, cannabis, or any other combustible substance. Smoking includes emitting or exhaling the fumes of any pipe, cigar, cigarette, or any other lighted smoking equipment, including an electronic cigarette, used for burning any tobacco product, weed, plant, cannabis, or any other combustible substance.

“Sports arena” means an outdoor or nonenclosed sports pavilion, stadium, swimming pool, roller rink, or other similar place where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness sports events, including the concession stand areas thereof.

“Unenclosed area” means any area which is not enclosed.

“Unit” means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio.”

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9.24.030 – Secondhand smoke generally.

- A. For all purposes within the jurisdiction of the city, the nonconsensual exposure to secondhand smoke and the uninvited presence of secondhand smoke on property in violation of this chapter shall constitute a nuisance, as is further described by Title 8 of the Morro Bay Municipal Code.
- B. For all purposes within the jurisdiction of the city, no person shall cause secondhand smoke to ~~unreasonably~~ interfere with the reasonable use and enjoyment of another person's private residence."

9.24.040 – Public and other places where smoking shall be prohibited.

Except as otherwise provided by this chapter or by state or federal law, smoking shall be prohibited everywhere in the city, including but not limited to:

- A. All public places;
- B. Residences used as child care, health care, board and care, or community foster care facility as such terms are defined by state Health and Safety Code;
- C. Places of employment, except outdoor construction sites;
- D. Enclosed and unenclosed places of hotels, businesses, restaurants, bars and other public accommodations; ~~and~~
- E. Any means of public transit including associated waiting areas, and service areas, enclosed or not-;

F. Units in multi-unit residences; and

G. Common areas of multi-unit residences.

The prohibitions stated in subsections (F) and (G) of this Section shall become effective on March 15, 2020.

9.24.050 – Reasonable distance.

Smoking in unenclosed areas shall be prohibited within a reasonable distance ~~of~~ **(at least twenty feet)** from any entrance, opening, crack or vent into an enclosed area where smoking is prohibited, except while actively passing on the way to another destination and so long as smoke does not enter any enclosed area in which smoking is prohibited.

9.24.060 – Places where smoking may be permitted.

Except where prohibited by local, state or federal law, smoking may be permitted in the following locations within the city notwithstanding Section 9.24.040:

- A. Private **residences other than multi-unit residences**. ~~Residential and Multifamily Properties~~. This chapter does not preclude private regulation of smoking on private residential and multifamily properties.
- B. Designated **smoking areas** ~~unenclosed areas (“smokers’ outposts”)~~ provided that all of the following conditions are met:
 - 1. The area is located a reasonable distance away from any doorway or opening into an enclosed area and any access way to a public place;
 - 2. The area has a clearly marked perimeter;
 - 3. The area is posted with one or more conspicuously displayed sign(s) identifying the area as a designated ~~outdoor~~ smoking area pursuant to Section 9.24.060**090** of this code;
 - 4. Smoke is not permitted to enter adjacent areas in which smoking is prohibited by this chapter, other law or by the owner, lessee or licensee of the adjacent property;
 - 5. Appropriate ash can(s) are placed in the smoking area and are maintained regularly by the owner, operator or manager of the smoking area; and
 - 6. No consistent complaints of secondhand smoke are filed with the city.
- C. Smoking areas at public events which have been approved as part of the special event permit or temporary use permit issued by the city.
- D. Inside a private automobile when no minor child is present, except for as prohibited by state law.

9.24.070 – Modifications of designated **smoking areas** ~~smokers’ outposts~~.

The city reserves the right to prohibit or require modifications to a **designated smoking area** ~~smoker’s outpost~~ at a certain location if it undermines the purposes of this chapter, **or violates the requirements of Section 9.24.060(B) of this code**.

9.24.080 – Allowing, aiding or abetting smoking.

- A. No person, employer, business, **landlord** or nonprofit entity shall knowingly permit smoking in an area under his, her or its legal or de facto control in which smoking is prohibited by this chapter or other law.
- B. ~~Except as provided in Section 9.24.050 of this code, no~~ **No** person, employer, business, **landlord** or nonprofit entity shall allow the placement or maintenance of a receptacle for smoking waste in an area under his, her or its legal or de facto control in which smoking is prohibited by this chapter or other law, provided however, that a receptacle may be placed at the entry to a nonsmoking area, along with a “No

Smoking” sign, in order to encourage any smokers in violation of this chapter to immediately extinguish and properly dispose of smoking materials.

- C. No person shall intimidate, threaten, effect a reprisal or retaliate against another person who seeks to attain compliance with one or more of this chapter’s provisions.

9.24.085 – Required lease terms for all new and existing units in multi-unit residences.

- A. Every lease or other agreement (collectively, “lease”) for the occupancy of a unit in a multi-unit residence, entered into, renewed, or continued month-to-month, effective on or after March 15, 2020, shall include the following:**

- 1. A clause stating that smoking is prohibited in the unit, including exclusive-use areas such as balconies, porches, or patios.**
- 2. A clause providing that it is a material breach of the lease for the tenant, or any other person subject to the control of the tenant or present by invitation or permission of the tenant, including sublessees, to (i) smoke in any common area of the property other than a designated smoking area, (ii) smoke in the unit, or (iii) violate any law regulating smoking anywhere on the property.**
- 3. A clear description of all areas on the property and in the immediate vicinity of the property where smoking is allowed or prohibited.**
- 4. A clause expressly conveying third-party beneficiary status to all occupants of the multi-unit residence as to the smoking provisions of the lease. Such a clause shall provide that any tenant of the multi-unit residence may sue another tenant/owner to enforce the smoking provisions of the lease but that no tenant shall have the right to evict another tenant for a breach of the smoking provisions of the lease.**

- B. Whether or not a landlord complies with subsection (A), above, the clauses required by that subsection shall be implied and incorporated by law into every lease to which subsection (A) applies that is entered into, renewed, or continued month-to-month on or after March 15, 2020.**

- C. This chapter shall not create additional liability for a landlord to any person for a tenant’s breach of any smoking provision in a lease for the occupancy of a unit in a multi-unit residence if the landlord has fully complied with this section.**

- D. Failure to enforce any smoking provision required by this chapter shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.**

9.24.086 – Notice requirements for landlords and unit owners.

- A. *On or before March 15, 2020, every landlord shall provide to the occupants of each unit of a multi-unit residence a written notice of the requirements prohibiting smoking in units and common areas as stated in Section 9.24.040 of this code.*
- B. *Beginning on March 15, 2020, every seller of a unit in a multi-unit residence shall provide prospective buyers with a written notice clearly stating that:*
 - 1. *Smoking is prohibited in units, including any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio; and*
 - 2. *Smoking is prohibited in all common areas, except for specifically designated smoking areas.*

9.24.090 – Signs.

Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provision of this chapter.

- A. “No Smoking” or “Smoke Free” signs, with letters of not less than one inch in height or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) or any alternative signage approved by the ~~public services~~ **community development** director must be conspicuously posted **at each entrance to any place in which smoking is prohibited by this chapter** by the person, employer, business or nonprofit entity who or which has legal or de facto control of such place ~~at each entrance to a public place in which smoking is prohibited by this chapter or any other place where the public services director reasonably determines that smoking in violation of this chapter has occurred, or is likely to occur.~~
- B. Within designated smoking areas, one or more conspicuously displayed sign(s) shall be posted identifying the area as a **designated smoking area** ~~smokers’ outpost~~ pursuant to Section 9.24.060 of this code as follows: signs with arrows directing the public to the smoking area may be allowed; signs shall be no smaller than three inches high and eight inches long with a pictorial representation of a burning cigarette; signs shall contain “Designated Smoking Area” and shall be posted prominently between five feet and seven feet above the floor or ground; and all signs are subject to approval by the ~~public services~~ **community development** director.
- C. Every hotel and motel shall have signs posted conspicuously in the registration and lobby areas which state that nonsmoking rooms are maintained and may be available; rooms designated as being nonsmoking shall have signs announcing such restriction conspicuously placed inside the room.
- D. No person shall alter, deface, obscure, remove or destroy a sign or placard that this chapter authorizes.

9.24.100 - Disposal of smoking waste.

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No person shall dispose of any cigarette, cigar or tobacco, or any part of a cigarette or cigar, in any place where smoking is prohibited under this chapter, except in a designated waste disposal container.

9.24.110 - Fires on city beaches.

No person shall build, light or maintain any fire on any city beach except in designated containers or areas approved by the city.

9.24.120 - Enforcement and penalties.

- A. Any violation of the provisions of this chapter is punishable as a misdemeanor or an infraction, at the discretion of the city prosecutor, pursuant to Chapter 1.16 of the Morro Bay City Code; and, any violation of the provisions of this chapter is subject to administrative citation, at the discretion of the city, pursuant to Chapter 1.03 of the Morro Bay City Code.
- B. Punishment under this section shall not preclude punishment pursuant to Health and Safety Code Section 13002, Penal Code Section 374.4, or any other law proscribing the act of littering. Nothing in this section shall preclude any person from seeking any other remedies, penalties or procedures provided by law.
- C. Any violation of this chapter shall be deemed a public nuisance which may be abated in accordance with the procedures set forth in Chapter 8.14 of the Morro Bay City Code. All costs to abate such public nuisance, including attorneys' fees and court costs, shall be paid by the person causing the nuisance, including the property owner where the nuisance is occurring.
- D. The remedies described in this section are not mutually exclusive. Pursuit of any one remedy shall not preclude city from availing itself of any or all available administrative, civil, or criminal remedies, at law or equity.
- E. Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued.

9.24.130 - Public education—Purposes of chapter.

The code compliance officer, in conjunction and coordination with the county health officer of the county of San Luis Obispo and, where feasible, appropriate health or safety oriented community-based organizations and coalitions, shall engage in a continuing program to explain and clarify the purposes of the provisions of the chapter to citizens affected by it, and to guide business owners, operators and managers in their compliance with it.

9.24.140 - Governmental cooperation.

The city manager shall request all governmental and educational agencies which maintain an office within the city to establish local operating procedures to cooperate and comply with this chapter.

9.24.150 - Other laws.

The provisions of this chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. Further, it is not the intent of the provisions of this chapter to regulate smoking where such regulation has been preempted by the state.”

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 4. CEQA. The City Council finds that this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(3) and 15061(b)(3) of the CEQA Guidelines.

SECTION 5. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after its passage.

SECTION 6. CERTIFICATION. The City Clerk shall certify to the adoption of this ordinance, and shall cause the same to be posted and codified in the manner required by law.

INTRODUCED at a regular meeting of the City Council held on the 10th day of December 2019, by motion of Mayor Heading and seconded by Council Member Addis.

PASSED AND ADOPTED on the ____ day of _____ 2020, by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADING, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

01181.0001/622722.1

Ordinance No. 627
Page 17 of 18

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO)
CITY OF MORRO BAY)

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Ordinance Number 627 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the ____ day of _____, 2020, and that it was so adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this ____ day of _____, _____.

DANA SWANSON, City Clerk

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AGENDA NO: A-6

MEETING DATE: January 14, 2020

Staff Report

TO: Honorable Mayor and City Council

DATE: January 2, 2020

FROM: Eric Endersby, Harbor Director

SUBJECT: Adoption of Resolution No. 02-20 Authorizing the City of Morro Bay to Enter into a 2019/2020 Surrendered and Abandoned Vessel Exchange Grant Contract with the State of California Division of Boating and Waterways in the Amount of \$20,000.00 for Removal of Abandoned/Surrendered Vessels and Hazards to Navigation

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 02-20, authorizing the Harbor Director to execute the attached 2019/2020 Surrendered and Abandoned Vessel Exchange (SAVE) Grant Contract Agreement #C19S0602 with the California Division of Boating and Waterways (DBW) for \$20,000.00 for the funding of removal of abandoned/surrendered vessels and hazards to navigation.

ALTERNATIVES

There are no alternatives being offered.

FISCAL IMPACT

Approval of this \$20,000.00 grant agreement will provide funding for demolition and removal of abandoned or surrendered vessels and hazards to navigation. The City is required to provide a 10% funding match, or \$2,000.00, which will come from existing budgeted funds, primarily in the form of staff time.

BACKGROUND

The Vessel Turn-In Program (VTIP) was established by DBW from enabling Legislation in 2009. It provides a funding mechanism for local agencies to identify vessels in danger of being abandoned (generally older vessels at or beyond their useful life and falling into dereliction) and accepting ownership of those vessels from willing owners for demolition prior to them being abandoned and becoming a hazard to navigation or the environment. The City has accepted three prior grants from DBW under the VTIP program.

The Abandoned Water Abatement Fund (AWAF) was established in 1997 and provides funds to public agencies to remove, store, and dispose of abandoned, wrecked, or derelict vessels or other submerged objects from navigable waterways which pose a hazard to navigation or the environment. To date, the Harbor Department has received and expended over \$92,500 in seven separate AWAF fund grants.

Today, the two grants are combined to create a single grant, entitled "Surrendered and Abandoned Vessel Exchange" (SAVE), which will allow the City the ability to utilize the funds as deemed

Prepared By: LS

Dept Review: EE

City Manager Review: SC

City Attorney Review: CFN

necessary for both AWAF and VTIP grant purposes.

The Harbor Department was most recently approved for a \$16,100.00 SAVE grant from DBW in 2018. Those funds are now completely exhausted.

DISCUSSION:

As stewards of the harbor and ocean environment, these grants enable the Harbor Department to continue to accept surrendered vessels for demolition prior to them becoming abandoned and posing hazards to navigation or the environment.

In addition, the Harbor Department identifies vessels in danger of abandonment and prioritizes removal of them by working with willing owners, as well as identifying and prioritizing vessels in probable need of future abatement. Demolition projects are put out to bid as-necessary, and as many vessels as possible within the scope of the grant agreement will be removed.

Currently, we have three vessels ready to be removed and demolished, and several more potential vessels identified.

CONCLUSION

Staff recommend that the City Council adopt Resolution No. 02-20 accepting a \$20,000.00 SAVE grant from DBW for demolition and removal of abandoned/surrendered vessels and hazards to navigation.

ATTACHMENTS

1. Resolution 02-20
2. SAVE Grant Contract Agreement #C19S0602

RESOLUTION NO. 02-20

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
AUTHORIZING THE CITY OF MORRO BAY TO ENTER
INTO A 2019/2020 SURRENDERED AND ABANDONED VESSEL EXCHANGE
CONTRACT WITH THE DIVISION OF BOATING AND WATERWAYS**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, City of Morro Bay (City) applied for a Surrendered and Abandoned Vessel Exchange (SAVE) Grant from State of California Division of Boating and Waterways in the Amount of \$20,000.00; and

WHEREAS, DBW awarded the City of Morro Bay a SAVE grant in the amount of \$20,000, which will allow the City the ability to utilize the funds as deemed necessary for removal of abandoned and surrendered vessels and hazards to navigation; and

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

1. The City is hereby authorized to enter into SAVE Contract Agreement #C19S0602 in the amount of \$20,000 for removal of abandoned/surrendered vessels and hazards to navigation.
2. Harbor Director Eric Endersby is hereby authorized to act as the City's agent in regard to all aspects of the grant contract agreement, including but not limited to execution of the above referenced Contract Agreement on behalf of the City of Morro Bay.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14th day of January 2020 on the following vote:

AYES:

NOES:

ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

State of California – Natural Resources Agency
DEPARTMENT OF PARKS AND RECREATION
DIVISION OF BOATING AND WATERWAYS
GRANT AGREEMENT - CERTIFICATE OF FUNDING

GRANTEE: City of Morro Bay Harbor Department
GRANT TITLE: SURRENDERED AND ABANDONED VESSEL EXCHANGE (SAVE-19)
GRANT AMOUNT: \$20,000.00
GRANT NUMBER: C19S0602
GRANT TERM: Effective: Date Fully Executed* through September 30, 2021
FULLY EXECUTED: To be advised

The Grantee agrees to the terms and conditions of this Agreement which includes Exhibit A, B, C, D, E, F and G, hereinafter referred to as Agreement, and the State of California, acting through its Director of the Department of Parks and Recreation, and pursuant to the State of California agrees to fund the total State grant amount indicated below. The GRANTEE agrees to complete the tasks identified in the STATEMENT OF NEED AND BUDGET SPREADSHEET, as defined in Exhibit G of the Agreement and herein referred to as SCOPE OF WORK.

The General and Special Provisions attached are made a part of and incorporated into the Agreement.

Grantee: City of Morro Bay Harbor Department	Agency: Department of Parks and Recreation Division of Boating and Waterways
	ATTN: Ron Kent
Address: 1275 Embarcadero, Morro Bay, CA 93422	Address: One Capitol Mall, Suite 500 Sacramento, CA 95814
Authorized Signature:	Authorized Signature:
Printed Name:	Printed Name: Keren Dill
Title of Authorized Representative:	Title: Staff Services Manager II
Date:	Date:

**CERTIFICATE OF FUNDING
(FOR STATE USE ONLY)**

GRANTEE: City of Morro Bay Harbor Department

GRANT TITLE: FY 2019/20 Surrendered and Abandoned Vessel Exchange (SAVE)

GRANT AMOUNT: \$20,000.00

GRANT NUMBER: C19S0602

GRANT TERM: Effective: Date Fully Executed* through September 30, 2021

FULLY EXECUTED: To be advised

CONTRACT NO C19S0602	AMENDMENT NO	SUPPLIER ID 0000038374		PROJECT NO 3790OTHER
AMOUNT ENCUMBERED BY THIS DOCUMENT \$20,000.00	FUND DESCRIPTION Abandoned Watercraft Abatement Fund (SAVE-19)		AGENCY BILLING CODE NO 053706	
REPORTING STRUCTURE 37900709	Approp. Ref. Fund 3790-101-0577	CHAPTER 23	STATUTE 2019	FISCAL YEAR 2019/20
BUSINESS UNIT 3790	INDEX N/A	PROGRAM 2855023	ACTIVITY CODE 69990	ACCOUNT 5432000
T.B.A. NO	<i>I hereby certify upon my own personal knowledge that the budgeted funds are available for this encumbrance.</i>			
B.R.NO	ACCOUNTING OFFICER'S SIGNATURE		DATE	

STATE OF CALIFORNIA

Department of Parks and Recreation, Division of Boating and Waterways
One Capitol Mall, Suite 500
Sacramento, CA 95814

EXHIBIT A
SURRENDERED AND ABANDONED VESSELS EXCHANGE (SAVE)
FISCAL YEAR 2019/20
AUTHORIZED GRANT REPRESENTATIVES

The services shall be performed in the jurisdiction of: City of Morro Bay Harbor Department

State Agency: Division of Boating and Waterways	Grantee (Agency Name): City of Morro Bay Harbor Department
Name: Ron Kent	Grantee Representative*: Lori Stilts
Title: Program Administrator	Title: Grants Administrator
Address: One Capitol Mall, Suite 500 Sacramento, CA 95814	Address: 1275 Embarcadero, Morro Bay, CA 93422
Phone: (916) 327-1825	Phone: (805) 772-6254 x 256
Fax:	Fax: (805) 772-6258
Email: ron.kent@parks.ca.gov	Email: lstilts@morrobayca.gov

* Grantee representative information may only be changed by giving 30 days written notice to DBW.

EXHIBIT B

Surrendered and Abandoned Vessels Exchange (SAVE) Grant Program

1. NEEDS AND OBJECTIVES OF DBW

- a. Pursuant to its authority under Harbors and Navigation Code section 525, the Division of Boating and Waterways (DBW) wishes to contract with Grantee for the removal and disposal of abandoned, wrecked or dismantled vessels, or parts thereof, or any other partially submerged objects (hereinafter “eligible water hazards”) which pose a substantial hazard to navigation within Grantee’s jurisdiction as listed on the Questionnaire, found in Exhibit A.
- b. Pursuant to its authority under Harbors and Navigation Code Section 525, the Division of Boating and Waterways (DBW) wishes to contract with Grantee for the removal and disposal of surrendered vessels, or parts thereof, which are in danger of being abandoned and has a likelihood of causing environmental degradation or becoming a hazard to navigation within Grantee’s jurisdiction as specified according to the Grantee’s Work Plan, found in Exhibit A.

2. WATER HAZARDS ELIGIBLE FOR REMOVAL AND DISPOSAL

The funds provided under this Agreement shall be used for the combined purposes of Surrendered and Abandoned Vessels Exchange (SAVE) as follows:

- a. **Abatement, removal, storage and/or disposal of eligible Marine Debris.** For purposes of this Agreement, “abandoned” is defined in Harbors and Navigation Code section 522(a):

“Any hulk, derelict, wreck, or parts of any ship, vessel, or other watercraft sunk, beached, or allowed to remain in an unseaworthy or dilapidated condition upon publicly owned submerged lands, salt marsh, or tidelands within the corporate limits of any municipal corporation or other public corporation or entity having jurisdiction or control over those lands, without its consent expressed by resolution of its legislative body, for a period longer than 30 days without a watchman or other person being maintained upon or near and in charge of the property, is abandoned property”.

Harbors and Navigation Code, Section 525 (1)(A):

“...the Abandoned Watercraft Abatement Fund, which is hereby created as a special fund. Moneys in the fund shall be used exclusively, upon appropriation by the Legislature, for grants to be awarded by the department to local agencies for the abatement, removal, storage, and disposal as public nuisances of any abandoned property as described in Section 522 or for the disposal of surrendered vessels as defined in Section 526.1, wrecked or dismantled vessels, or parts thereof, or any other partially submerged objects that pose a substantial hazard to navigation, from navigable waterways or adjacent public property or private property with the landowner’s consent.

Harbors and Navigation Code, Section 550 (B):

“ “Marine Debris” is a vessel or part of a vessel, including a derelict, wreck, hulk, or part of any ship or other watercraft or dilapidated vessel. That is unseaworthy and not reasonably fir or capable of being made fit to be used as a means of transportation by water.”

- b. The funds provided under this Agreement shall not be utilized for abatement,

removal, storage, or disposal of commercial vessels. Commercial vessels include those vessels for which the most recent registration or documentation was commercial, even though that registration or documentation may have lapsed.

- c. If Grantee is reimbursed for the costs related to the abatement, removal, storage, and/or disposal of an eligible water hazard by the registered or legal owner or other person or entity known to have an interest in the water hazard, then the water hazard shall no longer be eligible for funding under this Agreement. Grantee shall notify DBW in writing of such reimbursement and shall return all funds disbursed by DBW to Grantee with respect to such water hazard immediately.
- d. **Abatement, removal, storage and disposal of eligible surrendered vessels.** For purposes of this Agreement, "surrendered" is defined in Harbors and Navigation Code section 526.1(a):
- e. "'surrendered vessel' means a recreational vessel that the verified titleholder has willingly surrendered to a willing agency under both of the following conditions:
 - (1) The public agency has determined in its sole discretion that the vessel is in danger of being abandoned, and therefore has a likelihood of causing environmental degradation or becoming a hazard to navigation.
 - (2) The decision to accept a vessel is based solely on the potential of the vessel to likely be abandoned and cause environmental degradation or become a hazard to navigation."
- f. The funds provided under this Agreement shall not be utilized for surrender, abatement, removal, storage, or disposal of commercial vessels. Commercial vessels include those vessels for which the most recent registration or documentation was commercial, even though that registration or documentation may have lapsed.
- g. If Grantee is reimbursed for the costs related to the removal, storage, and/or disposal of a surrendered vessel by the registered or legal owner or other person or entity known to have an interest in the vessel, then the vessel shall no longer be eligible for funding under this Agreement. Grantee shall notify DBW in writing of such reimbursement and shall return all funds disbursed by DBW to Grantee with respect to such vessel immediately.

3. RIGHT OF INSPECTION

Grantee shall allow DBW and other state agency representatives, at any reasonable time, to inspect any site where Grantee or its subcontractors are performing work under this Agreement.

4. ANNUAL MEETING

Grantee's representative or alternate shall participate in an annual one-day video or phone conference conducted by DBW during the term of this agreement. Should the Grantee or representative be unable to attend the meeting and cannot provide a substitute from the agency, the Grantee must forward a letter to DBW stating the reason why they cannot attend. DBW must grant approval in writing in order for the Grantee not to be in breach of this Agreement for failure to attend.

5. ACTIVITY/NON ACTIVITY: REPORTING REQUIREMENTS

- a. Grantee shall provide quarterly reports to DBW describing the status of existing

issues known, pending, or in progress.

- b. Lack of quarterly reporting and/or removal activity within any twelve month period during the term of this agreement is subject to possible revocation of grant.

6. HAZARDOUS MATERIALS

Grantee shall be responsible for securing any necessary or prudent studies, permits, or authorizations associated with treatment, removal, storage, or any other handling of hazardous substances including, but not limited to, toxic waste, petroleum waste, asbestos, and similar substances, prior to the removal of any vessel and water hazard pursuant to this Agreement.

Grantee shall be responsible for the proper and lawful handling, abatement, removal, storage, and/or disposal of any hazardous substances encountered in the execution of this Agreement.

7. TITLES AND LIENS

- a. **Abandoned vessels:** Grantee shall comply with all relevant provisions of the Harbors and Navigation Code regarding notices, hearings and liens in the performance of this Agreement. Grantee (in conjunction with local law enforcement) shall conduct a title search for all vessels presumed to be abandoned, as provided by Harbors and Navigation Code section 526.
- b. **Surrendered vessels:** Grantee shall comply with all relevant provisions of Harbors and Navigation Code section 526.1 in the performance of this Agreement, requiring that a surrendered vessel be that of the "verified titleholder."

8. MEDIA

Grantee agrees to acknowledge DBW's financial support whenever work funded by this Agreement is publicized in any news media, brochures, or other type of promotional material.

9. MEDIA MATERIALS RELEASE

Grantee agrees to irrevocably grant to California State Parks, Division of Boating and Waterways, its employees, officers, agents, and assigns (hereinafter referred to as "DBW"), the non-exclusive, royalty-free, perpetual and worldwide right and permission to use, reproduce, publish, copy, distribute, alter, license, adapt, and display the photographs, motion pictures, caption information, and/or written quotes (hereinafter referred to collectively as "Photographs"), that the Grantee has submitted to DBW for art, editorial, advertising, marketing, trade, broadcast, print, educational programs, or any other lawful purpose whatsoever, in any and all media. In connection with the foregoing license, the Grantee agrees not to use, reproduce, adapt, or display the Photographs, or allow others to do so, in a manner that tends to subject DBW or its AWAFF, VTIP and/or SAVE programs to ridicule, disparagement, mockery, satire, or that could tarnish the image of the DBW's AWAFF, VTIP, and/or SAVE programs. Grantee hereby releases and discharges DBW from any and all claims and demands arising out of or in connection with the use of the Photographs, including without limitations, any and all claims for libel, defamation, invasion of privacy, and/or publicity rights. DBW assumes no responsibility for lost or damaged Photographs or for the use of same. DBW may sell, assign, license, or transfer all rights granted to it hereunder.

Grantee also grants DBW and its licensees the unrestricted right to use and disclose its name in connection with use of the Photographs. The Grantee understands that it will not be

paid for any use or right granted herein.

The Grantee understands and agrees that the Photographs may be used in whole or in part, at any time. The license granted herein to DBW includes the right and permission to conduct or have conducted such alterations to the Photographs as DBW deems necessary. Grantee releases and discharges DBW and agrees to indemnify and hold DBW harmless from any liability by virtue of any blurring, distortion, alteration, optical illusion or use in composite form, loss or damage, whether intentional or otherwise, that may occur in the use of the Photographs. The Grantee waives any right to inspect or approve any finished product, advertising or other copy that may be used in connection therewith or the use to which it may be applied.

The Grantee declares and avows that the Photographs it is submitting to DBW are its own original work in all respects. The Grantee is the sole and exclusive owner of the Photographs; they are free, clear, and unencumbered. No part of them is taken from or based on any other work; no part infringes the copyright or any other right of any person; and the reproduction, publication, exhibition, or any other use by DBW of the Photographs in any form whatever will not in any way, directly or indirectly, infringe on the rights of any person. The Grantee agrees to indemnify and hold DBW harmless from and against any and all loss, damage, costs, charges, legal fees, recoveries, judgments, amounts paid in settlement, penalties, and expenses that may be obtained against, imposed on, or suffered by DBW by reason of (1) any violation or infringement of any proprietary right or copyright; or (2) any libelous or unlawful matter contained in the Photographs. Grantee also agrees to indemnify and hold DBW harmless for any such amounts arising from its breach of any covenant, representation, or warranty of this agreement.

10. PERMITS AND DOCUMENTATION

Prior to the removal of any abandoned vessel, eligible water hazard, or surrendered vessel, the Grantee shall obtain all necessary permits, authorizations, and documentation necessitated by any applicable provision of law.

11. SECURING OF BIDS

Grantee shall comply with any applicable laws and regulations governing the competitive bidding process when awarding subcontracts to marine salvage companies under this Agreement.

12. SUBCONTRACTORS

Grantee agrees that it shall guarantee and shall be responsible for ensuring that any and all of its contractors and subcontractors holds a valid business license and carries general commercial liability insurance coverage sufficient to fully insure against any and all risks of hazardous activities associated with the work to be performed under this Agreement; and Grantee agrees that if any of Grantee's contractors or subcontractors fail to fulfill any of these requirements, that Grantee itself carries general commercial liability insurance coverage sufficient to fully insure against any and all risks of hazardous activities associated with the work to be performed under this Agreement, whether performed by the Grantee, Grantee's contractor(s), or Grantee's subcontractor(s). Grantee shall provide DBW with a certificate of insurance from any contractor(s) and subcontractor(s) prior to the commencement of any work under this Agreement.

13. TRAFFIC CONTROL AND TRAFFIC SAFETY

The Grantee shall provide for adequate traffic control and safety measures at any site where

Grantee and its subcontractors will perform any work under this Agreement.

14. AIR OR WATER POLLUTION VIOLATION

Grantee warrants that it is not (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to any cease and desist order not subject to review issued pursuant to Water Code section 13301 for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

15. ENTIRE AGREEMENT

This Agreement consists of the terms of this Agreement and all attachments, which are expressly incorporated herein. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required.

16. APPROVAL OF AGREEMENT AND AMENDMENTS

This Agreement and any variation thereto is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Commencement of performance prior to approval of this Agreement will be at the Grantee's own risk.

17. DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PARTICIPATION REQUIREMENT

There are no Disabled Veteran Business Enterprise participation requirements with this agreement.

18. AUTHORITY TO CONTRACT

Grantee must provide DBW with evidence of its authority to enter into this Agreement. Grantee may provide a delegation of contracting authority from its local governing body that by law has authority to contract. Alternatively, Grantee shall provide DBW with a resolution, order, motion, or ordinance of its local governing body that by law has authority to contract, authorizing execution of this Agreement.

19. COMPLIANCE WITH LAW AND REGULATIONS

Grantee and its subcontractor(s) shall comply with all applicable laws and regulations of the State of California for all work to be performed under this Agreement. By signing this Agreement, Grantee certifies its compliance and the compliance of all subcontractors with: (a) applicable provisions of the California Environmental Quality Act; (b) Nondiscrimination Program requirements of Government Code section 12990 (a-f) and Title 2, California Code of Regulations, section 8103 (and section 8113 in contracts over \$5,000) along with section 7285 et. seq. of the Fair Employment and Housing Act; (c) Drug-Free Workplace requirement of Government Code section 8350 et seq.; (d) National Labor Relations Board Certification of Public Contract Code section 10296; (e) Workers' Compensation requirement of Labor Code section 3700; and (f) Americans with Disabilities Act regulations issued pursuant to 42 U.S.C. section 12101 et seq.

20. INDEPENDENT CONTRACTOR

Grantee and its employees are independent contractors and shall not be considered officers or employees of DBW or agents of the State of California.

21. INSURANCE REQUIREMENTS

The abatement, removal, storage, and /or disposal of vessels under this Agreement is a hazardous activity. Grantee therefore must maintain commercial general liability insurance in an amount and of a type acceptable to DBW and to the Department of General Services/ Office of Risk and Insurance Management (ORIM).

1. **GENERAL PROVISIONS APPLYING TO ALL POLICIES**

a. Coverage Term

Coverage needs to be in force for the complete term of the Agreement. If insurance expires during the term of the grant, a new certificate must be received by the Division at least ten (10) days prior to the expiration of this insurance. Any new insurance must still comply with the original terms of the grant.

b. Policy cancellation or termination & notice of non-renewal

Insurance policies shall contain a provision stating coverage will not be cancelled without 30 days prior written notice to the Division. In the event Grantee fails to keep in effect at all times the specified insurance coverage, the Division may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.

c. Deductible

Grantee is responsible for any deductible or self-insured retention contained within their insurance program.

d. Primary clause

Any required insurance contained in this Agreement shall be primary, and not excess or contributory, to any other insurance carried by the State.

e. Insurance carrier required rating

All insurance companies must carry a rating acceptable to ORIM. If the Grantee is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required by DBW or ORIM.

f. Endorsements

Any required endorsements requested by the Division must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.

g. Inadequate Insurance

Inadequate or lack of insurance does not negate the Grantee's obligations under the Agreement.

h. Use of Subcontractors

In the case of Grantee's utilization of subcontractors to complete the contracted scope of work, Grantee shall include all subcontractors as insured's under Grantee's insurance or supply evidence of subcontractor's insurance to the State when requested equal to policies, coverages, and

limits required of Grantee.

2. **INSURANCE REQUIREMENTS**

a. Commercial General Liability

The Grantee shall maintain general liability on an occurrence form with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined with a \$2,000,000 annual policy aggregate. The policy shall include coverage for liabilities arising out of premises, operations, independent subcontractors, products, completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Grantee's limit of liability. The policy must include:

"The State of California, its officers, agents, employees and servants as additional insureds, but only with respect to work performed under the contract."

This **endorsement** must be supplied under form acceptable to the Office of Risk and Insurance Management.

In the case of Grantee's utilization of subcontractors to complete the contracted scope of work, Grantee shall include all subcontractors as insured's under Grantee's insurance or supply evidence of insurance to the State equal to policies, coverages and limits required of Grantee.

b. Automobile Liability

The Grantee shall maintain motor vehicle liability with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles.

c. Watercraft Liability

The Grantee shall maintain watercraft liability insurance with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of the maintenance and use of any watercraft (owned, hired or non-owned). The policy must include:

"The State of California, its officers, agents, employees and servants as additional insureds, but only with respect to work performed that is connected with or related to the activities contemplated in this Agreement."

This **endorsement** must be supplied under form acceptable to the Office of Risk and Insurance Management.

d. Workers Compensation and Employers Liability

The Grantee shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Agreement. Employer's liability limits of \$1,000,000 are required. The insurer waives any right of recovery the insurer may have against the State because of payments the insurer makes for injury or damage arising out of the work done under contract with the State. A Waiver of Subrogation or Right to Recover endorsement in favor of the

State must be attached to certificate.

If applicable, Grantee shall provide coverage for all its employees for any injuries or claims under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations, or statutes applicable to maritime employees. By signing this contract, Grantee acknowledges compliance with these regulations.

e. Environmental/Pollution Liability

Grantee shall maintain Pollution Liability for limits not less than \$1,000,000 occurrence covering the Grantee's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred arising out of the work or services to be performed under this contract. The policy must include:

"The State of California, its officers, agents, employees and servants as additional insureds, but only with respect to work performed under the contract."

This **endorsement** must be supplied under form acceptable to the Office of Risk and Insurance Management.

Coverage shall be provided for both work performed on site and during transportation as well as proper disposal of hazardous materials.

3. **Self-Insurance**

If the Grantee is self-insured for a portion or all of its insurance, the Grantee shall provide evidence of self-insurance when requested by DBW. Review of financial information including a letter of credit may be required. The Division reserves the right to request financial information.

4. **Statement of Insurance Coverage:**

Grantee certifies and agrees that they have all required insurance coverages as stated in the grant agreement, which will be in effect for the entire term of the agreement.

Approver initials :

Date:

Name:

Title:

22. **TERMINATION**

- a. DBW may terminate this Agreement for any reason upon thirty (30) days written notice to Grantee.
- b. If the Grantee fails to keep the required insurance in effect at all times during the term of this agreement, DBW may, in addition to other remedies it may have, terminate this agreement upon two days written notice.
- c. DBW may, by two-day written notice to Grantee and without any prejudice to its other remedies, terminate this agreement because of failure of Grantee to fulfill any of the requirements of this agreement.
- d. Upon receipt of any notice terminating this Agreement, Grantee shall immediately

discontinue all removal and disposal activities affected, unless the notice directs otherwise. In such event, DBW shall pay Grantee only for removal and disposal activities completed prior to the termination date.

- e. Upon termination of this agreement, Grantee shall promptly return all advanced funds. At DBW's sole discretion, DBW may offer an opportunity to cure any breach prior to terminating for default.

23. ASSIGNMENT

This Agreement is not assignable by the Grantee, either in whole or in part, without the consent of the State in the form of a formal written amendment.

24. MATCHING 10% REQUIREMENT

- a. Section 525(C) of the Harbors and Navigation Code states, "A grant awarded by the department pursuant to subparagraph (A) shall be matched by a 10-percent contribution from the local agency receiving the grant."
- b. The 10-percent contribution is in addition to funds awarded in the grant and may be made by cash and/or in-kind contributions which may include personnel hours (net hourly rate only with no benefits included) excessive removal and/or storage fees, and other expenses with advance DBW approval.
- c. If using personnel hours for in-kind match, only net, raw hours will be accepted and verification of in-kind contribution is required with reimbursement request(s). The statement of in-kind hours must include:
 - a. Activity date
 - b. Vessel/issue name or description
 - c. Personnel name
 - d. Description of service provided
 - e. Number of hours provided by each person
 - f. Hourly rate and total value

Use the [form](#) provided on DBW's website at www.dbw.ca.gov under Grants & Loans, or the online grant system, OLGA, available on DBW's website.

- e. The burden of proof in complying with the 10-percent contribution requirement is the responsibility of the grantee. Grant funds will not be disbursed until the grantee has provided DBW with acceptable documentation that it complied with the 10-percent contribution requirement for each disbursement.

25. BUDGET DETAIL AND PAYMENT PROVISIONS

- a. **Covered Expenses and Reimbursement Claims Processes**
 - 1. DBW will reimburse the Grantee for the following expenditures provided by Grantee's service providers, contractors and/or subcontractors, within the scope of the SAVE program for AWAF issues associated with:
 - i. Raising of submerged vessels and associated hazardous materials
 - ii. Removal of Recreational Vessels and associated hazardous materials from navigable waterways or adjacent shorelines
 - iii. Removal and disposal of hazardous materials from Recreational Vessels
 - iv. Towing

- v. Storage:
 - 1) Without lien sale: 60 days maximum
 - 2) With lien sale: 90 days maximum with justification
 - 3) If stored onsite at Grantee's facility, 50% of the normal rate of charge to the public will be reimbursed, and fee schedule is required for verification.
 - vi. Lien sale expenses: fees charged by lien sale service companies, postage, DMV fees, and advertising costs
 - vii. Public notice advertising
 - viii. Vessel appraisal
 - ix. Salvage and demolition
2. DBW will reimburse the Grantee for the following expenditures provided by Grantee's Service providers, contractors and/or subcontractors, within the scope of the SAVE program for VTIP issues:
- i. Disposal of Surrendered Recreational Vessels
 - ii. Removal and Disposal of hazardous materials from Recreational Vessels
 - iii. Towing of Recreational Vessels from Agency to disposal site
3. Navigational hazard removal and destruction may be considered with advanced written approval from DBW. Inquire in advance of completing work with documentation, photos, and narrative as to why the item is a navigational hazard
4. Other items directly related to SAVE activities that could create long-term cost efficiencies of vessel removal, disposal and turn-in may be considered for reimbursement with pre-approval in writing from DBW.
- b. **Reimbursement claim forms:**
- Forms are available on DBW's website under the Grants & Loans tab under the appropriate link for SAVE, AWAF and/or VTIP (until further notice, use the SAVE, AWAF or VTIP reimbursement forms as needed for each specific type of removal): Grantee must sign and date each reimbursement claim form in blue ink and submit with the following documents to DBW:
- c. Invoices from service providers, contractors and/or subcontractors to Grantee:
Invoices must contain the following:
- 1. Name and address of Grantee
 - 2. Contract or invoice number
 - 3. Description of service performed
 - 4. Date the service was performed
 - 5. Location of each service
 - 6. Vessel name, CF# or HIN# if available; otherwise, description of vessel
 - 7. Signature confirming the claim is accurate and true under penalty of perjury
- d. **Proof of payment for all invoices.**
- The following acceptable forms of proof are:
- 1. Cancelled check (with bank's cancelled stamp on back of check copy)
 - 2. Credit card statement with charge and payment posted, along with copy of

- charge slip
3. Invoices from service provider showing zero balance
 4. Proof of Accounting Clearing House (ACH) or electronic transfer showing date, amount and transaction confirmation number.
- e. **10% in-kind match contribution statement:**
1. If Grantee is matching the 10% requirement with in-kind services, complete the following form located on DBW's website and submit with each claim: <http://www.dbw.ca.gov/PDF/Funding/DPR265.pdf>
 2. Net, hourly rates only will be accepted. Grantee must include verification of net rates with first claim and each time rates are changed.
- f. **Photos of vessels (Required)**
- with CF numbers visible if available
- g. **(VTIP ONLY) Statement of Vessel Release of Interest and Ownership:**
- To be completed and signed by owner(s).** Grantee may provide their own release form to vessel owners for completion. A sample of this release form is located on our website:
- http://www.dbw.ca.gov/PDF/Funding/SAMPLE_Release_of_Interest_and_Liability_Form.pdf
- NOTE: (VTIP ONLY) Vessel ownership verification is required; however, it is not required that boat owners bring their registration up to date in order to surrender their vessel through the VTIP.**
- h. Reimbursement claims and support documents (as indicated above) are to be submitted to DBW at:
- Division of Boating and Waterways**
One Capitol Mall, Suite 500
Sacramento, CA 95814
Attention: SAVE Unit
- i. Submission of fraudulent invoices or other claim documentation is a breach of this Agreement, which shall result in forfeiture of all funds advanced and provided under this Agreement.
- j. All requests for payment must be submitted to DBW no later than 30 days after the expiration date of the agreement. DBW is not obligated to make payment on any reimbursement request(s) received or for any services completed after this date.
- Refer to "Fully Executed" letter for additional reimbursement request requirements.**

26. BUDGET CONTINGENCY CLAUSE

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program; this Agreement shall be of no further force and effect. In this event, DBW shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Agreement and Grantee shall not be obligated to perform any provisions of this Agreement.

- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, DBW shall have the option to either cancel this Agreement with no liability occurring to DBW, or offer an agreement amendment to Grantee to reflect the reduced amount.

27. INDEMNIFICATION

Grantee shall be responsible for, and DPR shall not be answerable or accountable in any manner for, any loss or expense by reason of any damage or injury to person or property, or both, arising out of or related in any way to activities carried out by Grantee, its agents, officers, contractors, subcontractors and/or employees, under this Agreement Grantee shall protect, hold harmless, indemnify and defend DPR, its agents, officers, and/or employees against any and all actions, claims, and damages to persons or property, penalties, obligations and liabilities that may be asserted or claimed by any person, firm, association, entity, corporation, political subdivision, or other organization or person arising out of or in connection with Grantee or Grantee's contractor's or subcontractor's activities hereunder, whether or not there is concurrent passive negligence on the part of DPR, its agents, officers, and/or employees.

28. FUNDS ASSIST

a. PROCESS

The Funds Assist process has been developed by DBW as a method for grantees with excessive, unused funds to assist other participating SAVE agencies in need. Funds Assist is a voluntary action (by both agencies) until within three (3) months of the expiration date of the grant at which time it will become a required action of those agencies with remaining grant balances, at DBW's discretion.

The Funds Assist process works as follows:

- 1) An introduction is made by DBW between the agency with excessive funds (Agency A) and the agency in need (Agency B).
- 2) A deadline shall be imposed by DBW for the work to be completed by Agency B.
- 3) Agency B pays for all contractor invoices, as is required with the SAVE grant.
- 4) The 10% required match is the obligation of Agency B and may be met with cash, in-kind services, or a combination of both.
- 5) To obtain reimbursement, Agency B will required to supply the following to Agency A:
 - a. A Tax Identification Form (W-9)
 - b. All requirements/documents apply as outlined in this agreement under #26
 - c. A statement on Agency B's letterhead invoicing Agency A for the total reimbursement request.
 - d. Copies of completed forms and support documents to DBW for pre-approval.
- 6) Agency A completes the following actions:
 - a. Upon approval by DBW, pay Agency B the invoiced amount within 30 days and record as a pass-through grant (or use your accounting method preference).
 - b. Complete DBW's AWAFF and/or VTIP Reimbursement Claim Form and attach all supporting documents as listed in item b, c & d above, including the verification of payment to Agency B i.e., cancelled check or statement

from Agency B of payment received.

- c. Email the documents to the DBW program administrator for review. Once reviewed and approved, send finalized claim forms to DBW for payment processing.

DBW will act as a courtesy liaison between the agencies to ensure (as much as possible) that documents are correctly processed.

b. **INDEMNIFICATION**

Grantee and sub grantee (hereafter known as Agency A and Agency B) shall be responsible for, and DPR shall not be answerable or accountable in any manner for, any loss or expense by reason of any damage or injury to person or property, or both, arising out of or related in any way to activities carried out by Agency A and B, its agents, officers, contractors, subcontractors and/or employees, under this Agreement Agency A and B shall protect, hold harmless, indemnify and defend DPR, its agents, officers, and/or employees against any and all actions, claims, and damages to persons or property, penalties, obligations and liabilities that may be asserted or claimed by any person, firm, association, entity, corporation, political subdivision, or other organization or person arising out of or in connection with Agency A and B's contractor's or subcontractor's activities hereunder, whether or not there is concurrent passive negligence on the part of DPR, its agents, officers, and/or employees.

If Agency B is a recipient of a current SAVE grant, as depleted or with insufficient funds for removal project, and receives assistance through the Funds Assist process, all provisions of the SAVE grant applies.

Approver initials: _____ Date: _____

Name: _____

Title: _____

29. 90-DAY RETURN OF GRANT DOCUMENTS TO DBW

Grant agreements issued to the awarded agency must be completed and returned within 90 days of the date of issuance according to the instructions issued by DBW with the grant agreement. If extenuating circumstances prevent the ability of the agency to meet this deadline, approval from DBW must be obtained in writing. DBW retains the right to determine approval or denial of extensions.

30. ANTI-CORRUPTION

SAVE grantees are required to report to DBW any written, suggested, or verbally implied cases whereby a contractor, subcontractor or other service provider increases their fee(s) due to the existence of a Grantee's SAVE grant, or inquires about the amount/balance of a SAVE grant in order to increase their fee(s), for possible investigation of price gouging. A two year history of charges applied to work of all known SAVE grant work by that contractor will be required by DBW for review.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL:

This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Grantee may not commence performance until such approval has been obtained.

2. EFFECTIVE DATE:

Effective date means either the start date or the approval date by the Department of General Services (DGS), whichever is later. In cases where DGS approval is not required, this Agreement is of no force or effect until the date of the last DBW signature. No work shall commence until the effective date.

3. AMENDMENT:

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

4. ASSIGNMENT:

This Agreement is not assignable by the Grantee, either in whole or in part, without the consent of the State in the form of a formal written amendment.

5. AUDIT:

Grantee agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. **Grantee agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated.** Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Grantee agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

6. INDEMNIFICATION:

Grantee agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the subcontractor or Grantee in the performance of this Agreement.

7. DISPUTES:

Grantee shall continue with the responsibilities under this Agreement during any dispute.

8. TERMINATION FOR CAUSE:

The State may terminate this Agreement and be relieved of any payments should the Grantee fail to perform the requirements of this Agreement at the time and in the manner

herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Grantee under this Agreement and the balance, if any, shall be paid to the Grantee upon demand.

9. RECYCLING CERTIFICATION:

The Grantee shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE:

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

Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES:

The GRANTEE CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS:

Time is of the essence in this Agreement.

13. COMPENSATION:

The consideration to be paid Grantee, as provided herein, shall be in compensation for all of Grantee's expenses incurred in the performance hereof, as outlined in Exhibit B, item #1.

14. GOVERNING LAW:

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS:

The Grantee by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Grantee shall comply with the requirements of the Government Codes Sections set out below.

- a. The Government Code Chapter on Antitrust claims contains the following definitions:
 - 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
 - 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
- b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
- c. . If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
- d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT:

For any Agreement in excess of \$100,000, the Grantee acknowledges in accordance with Public Contract Code 7110, that:

- a. The Grantee recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The Grantee, to the best of its knowledge is fully complying with the earnings

assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION:

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS:

If this Agreement includes services in excess of \$200,000, the Grantee shall give priority consideration in filling vacancies in positions funded by the agreement to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a. If for this Agreement Grantee made a commitment to achieve small business participation, then Grantee must within 60 days of receiving final payment under this Agreement (or within such other time period as may be specified elsewhere in this Agreement) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b. If for this Agreement Grantee made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Grantee must within 60 days of receiving final payment under this Agreement (or within such other time period as may be specified elsewhere in this Agreement) certify in a report to the awarding department: (1) the total amount the prime Grantee received under the Agreement; (2) the name and address of the DVBE(s) that participated in the performance of the Agreement; (3) the amount each DVBE received from the prime Grantee; (4) that all payments under the Agreement have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this agreement involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

EXHIBIT D

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Grantee to the clause(s) listed below. This certification is made under the laws of the State of California.

Grantee Agency Name (Printed)		Federal ID Number
City of Morro Bay Harbor Department		95-2308629
By (Authorized Signature)		
Printed Name and Title of Person Signing		
,		
Date Executed	Executed in the County of	
	San Luis Obispo	

GRANTEE CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE:

Grantee has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS:

Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the proposed Agreement will:
 - 1) receive a copy of the company's drug-free workplace policy statement; and,
 - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Grantee may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Grantee has made false certification, or violated the certification by failing to

carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

Grantee certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Grantee within the immediately preceding two-year period because of Grantee's failure to comply with an order of a Federal court, which orders Grantee to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT:

Grantee hereby certifies that Grantee will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Grantee agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the agreement equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its agreement with the State.

Failure to make a good faith effort may be cause for non-renewal of a state agreement for legal services, and may be taken into account when determining the award of future contracts/agreements with the State for legal services.

5. EXPATRIATE CORPORATIONS:

Grantee hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

- a. All Grantees contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The Grantee further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- b. The Grantee agrees to cooperate fully in providing reasonable access to the Grantee's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the Grantee's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS:

For contracts over \$100,000 executed or amended after January 1, 2007, the Grantee certifies that Grantee is in compliance with Public Contract Code section 10295.3.

EXHIBIT E

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST:

Grantee needs to be aware of the following provisions regarding current or former state employees. If Grantee has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (PCC 10410):

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (PCC 10411):

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Grantee violates any provisions of above paragraphs, such action by Grantee shall render this Agreement void. (PCC 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION:

Grantee needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Grantee affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT:

Grantee assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. GRANTEE NAME CHANGE:

An amendment is required to change the Grantee's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment. Any changes of the Grantee's representative shall be notified to DBW within 30 days written notice on Grantee's letterhead.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

- a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the Grantee is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
- b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate Grantee performing within the state not be subject to the franchise tax.
- c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION:

A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION:

Under the State laws, the Grantee shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204:

This form must be completed by all Grantees that are not another state agency or other governmental entity.

EXHIBIT F

Bid/Proposal Attachment regarding the Darfur Contracting Act of 2008

Effective January 1, 2009, all Invitations for Bids (IFB) or Requests for Proposals (RFP) for goods or services must address the requirements of the Darfur Contracting Act of 2008 (Act). (Public Contract Code sections 10475, et seq.; Stats. 2008, Ch. 272). The Act was passed by the California Legislature and signed into law by the Governor to preclude State agencies generally from contracting with “scrutinized” companies that do business in the African nation of Sudan (of which the Darfur region is a part), for the reasons described in Public Contract Code section 10475.

A scrutinized company is a company doing business in Sudan as defined in Public Contract Code section 10476. Scrutinized companies are ineligible to, and cannot, bid on or submit a proposal for a contract with a State agency for goods or services. (Public Contract Code section 10477(a)).

Therefore, Public Contract Code section 10478 (a) requires a company that currently has (or within the previous three years has had) business activities or other operations outside of the United States to certify that it is not a “scrutinized” company when it submits a bid or proposal to a State agency. (See # 1 on the sample Attachment).

A scrutinized company may still, however, submit a bid or proposal for a contract with a State agency for goods or services if the company first obtains permission from the Department of General Services (DGS) according to the criteria set forth in Public Contract Code section 10477(b). (See # 2 on the sample Attachment).

The following sample Attachment may be included in an IFB or RFP to satisfy the Act’s certification requirements of bidders and proposers.

EXHIBIT F – DARFUR CONTRACTING ACT

Pursuant to Public Contract Code section 10478, if a bidder or proposer currently or within the previous three years has had business activities or other operations outside of the United States, it must certify that it is not a “scrutinized” company as defined in Public Contract Code section 10476.

Therefore, to be eligible to submit a bid or proposal, please complete only one of the following three paragraphs (via initials for Paragraph # 1 or Paragraph # 2, or via initials and certification for Paragraph # 3: YOUR BID OR PROPOSAL WILL BE DISQUALIFIED UNLESS YOUR BID OR PROPOSAL INCLUDES THIS FORM WITH EITHER PARAGRAPH #1 OR #2 INITIALED OR PARAGRAPH #3 INITIALED AND CERTIFIED.

1. _____ We do not currently have, or we have not had within the previous three years, business activities or other operations outside of the United States.

OR

2. _____ We are a scrutinized company as defined in Public Contract Code section 10476, but we have received written permission from the Department of General Services (DGS) to submit a bid or proposal pursuant to Public Contract Code section 10477(b). A copy of the written permission from DGS is included with our bid or proposal.

OR

3. _____ We currently have, or we have had within the previous three years, business activities or other operations outside of the United States, but we certify below that we are not a scrutinized company as defined in Public Contract Code section 10476.

CERTIFICATION For # 3.

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective proposer/bidder to the clause listed above in # 3. This certification is made under the laws of the State of California.

Grantee Agency Name (Printed)		Federal ID Number
City of Morro Bay Harbor Department		95-2308629
By (Authorized Signature)		
Printed Name and Title of Person Signing		
,		
Date Executed	Executed in the County of	
	San Luis Obispo	

YOUR BID OR PROPOSAL WILL BE DISQUALIFIED UNLESS YOUR BID OR PROPOSAL INCLUDES THIS FORM WITH EITHER PARAGRAPH #1 OR #2 INITIALED OR PARAGRAPH #3 INITIALED AND CERTIFIED

General**1 Applicant Information**

- a. Applicant Name City of Morro Bay Harbor Department
- b. Organizational Unit
- c. Address 1275 Embarcadero
- d. Address 2
- e. City Morro Bay State CA Zip 93422
- f. Federal ID Number 95-2308629 Reference No.
- g. Agency Type
- ☒ City ☐ County
- ☐ Federally or State Recognized Native American Tribe ☐ District

2 Project Information

- a. Project Name Surrendered and Abandoned Vessel Exchange (SAVE) Fiscal Year 2019/2020
- b. Is implementing agency same as Applicant ☒ Yes ☐ No
- c. Implementing Agency Name
- d. Project Start Date Oct-01-2019 End Date Sep-30-2021
- e. Amount of Funds Requested \$20,000.00 Project Cost \$22,000.00

3 Contacts

a. Project Administrator

Name	Lori Stilts				
Title	Grants Administrator				
Mailing Address	1275 Embarcadero				
City	Morro Bay	State	CA	Zip	93442
Telephone	(805) 772-6254 - 256			Fax	(805) 772-6258 - 256
E-mail Address	lstilts@morrobayca.gov				

b. Authorized Representative

Name	Eric Endersby				
Title	Director				
Mailing Address	1275 Embarcadero				
City	Morro Bay	State	CA	Zip	93442
Telephone	(805) 772-6254			Fax	(805) 772-6258
E-mail Address	eendersby@morrobayca.gov				

1. Agency Type and Area of Responsibility (AOR)

The City of Morro Bay Harbor Department (CMBHD) is an executive-level department of the City of Morro Bay charged and entrusted with management of the City approximate 3,300 acres of State-owned and granted waterfront with submerged tidelands. This area was granted first to the County of San Luis Obispo by the State Legislature in 1947 by amendment of Section 1 of Chapter 1076 of the Statutes of 1947, and then conveyed to the City of Morro Bay upon its incorporation in 1964, to be operated as an enterprise zone for the establishment, improvement and conduction of a harbor.

Morro Bay, the only all-weather harbor of safe refuge between Monterey and Santa Barbara, is a recreational and commercial port with roughly 350 recreational vessels, 60-70 commercial fishing vessels, six sport fishing charter vessels, four heavy service vessels, 15,000-18,000 annual trailer boat launches and hundreds of transient yachts calling port annually. In addition, Coast Guard Station Morro Bay with two motor lifeboats and the California Department of Fish and Wildlife patrol vessel BLUEFIN call Morro Bay home.

In addition to management of the City's waterfront, bay and beaches, the department operates a harbor patrol whose patrol area included Morro Bay proper, and in mutual aid to other agencies in the ocean areas of Estero Bay from Point Estero to Point Buchon. The Morro Bay Harbor Patrol's duties include general patrol and law enforcement, search and rescue, courtesy and emergency towing, firefighting, animal and environmental/pollution response, and general water and beach safety and education.

2. Statement of Need

The CMBHD is requesting funding for participation in the Surrendered and Abandoned Vessel Exchange program which has successfully combined the AWAFF and VTIP granting into one funding opportunity.

Morro Bay is home port to approximately 500 vessels, a percentage of which exceed their useful life each year and fall into dereliction. Since vessels are not like motor vehicles in the sense that it's not a simple matter to dispose of them, many owners have expressed an interest to us in turning in their vessels for demolition due to both the financial inability to continue ownership or to dispose of them on their own. In addition, the vessels that slowly fall into dereliction, often become abandoned and left as hazard.

Our department currently has two vessels ready for destruction, having been through the lien process, "Pattycake" and "Papucha". The vessel "Hobgoblin" is currently in the lien process. The vessel Rogue is a wood boat with an absentee owner that is currently under watch for possible threat to sink. There are five additional vessels the "Otter", "Outrageous", "Windchime", "Manu Kai" and "Windtree" that may become either VTIP or AWAFF candidates. All vessels having either financial or deterioration issues.

The CMBHD is requesting \$20,000.00 in SAVE grant funds to for these vessels over the next two years.

a. List of ADV's/VTIP vessels

List of current Abandon Derelict Vessels (ADV)/VTIP vessels and estimate of cost to remove them.

ADV / VTIP	Estimated Cost
Hobgoblin, CF 5530 FW, 33'	2,150
Pattycake, CF 3797 KK, 22'	2,000
Papucha, CA 6848 GB, 27'	2,250
Otter, CF 6739 CJ, Otter 24'	2,000
Rogue, CF 2537 BC, 32'	2,150
Outrageous, CF 4425 EB, 25'	2,000

EXHIBIT G - Grant Application: Letter of Intent, Scope of Work and Work Plan

Windchime, CF 9049 FJ, 30'	2,200
Windtree, CF 3412 JE, 31'	2,250
Manu Kai, CF 5036 SV, 38'	3,000
TOTAL	20,000

1. California State Senate Districts

Select one or more of the California State Senate Districts where the proposed project activities will occur. Copy and Paste the URL (http://www.legislature.ca.gov/legislators_and_districts/districts/districts.html) in your browser to determine the State Senate district(s).

☐ State Senate 01	☐ State Senate 02	☐ State Senate 03	☐ State Senate 04	☐ State Senate 05
☐ State Senate 06	☐ State Senate 07	☐ State Senate 08	☐ State Senate 09	☐ State Senate 10
☐ State Senate 11	☐ State Senate 12	☐ State Senate 13	☐ State Senate 14	☐ State Senate 15
☐ State Senate 16	☒ State Senate 17	☐ State Senate 18	☐ State Senate 19	☐ State Senate 20
☐ State Senate 21	☐ State Senate 22	☐ State Senate 23	☐ State Senate 24	☐ State Senate 25
☐ State Senate 26	☐ State Senate 27	☐ State Senate 28	☐ State Senate 29	☐ State Senate 30
☐ State Senate 31	☐ State Senate 32	☐ State Senate 33	☐ State Senate 34	☐ State Senate 35
☐ State Senate 36	☐ State Senate 37	☐ State Senate 38	☐ State Senate 39	☐ State Senate 40

2. California State Assembly Districts

Select one or more of the California State Assembly Districts where the proposed project activities will occur. Copy and Paste the URL (http://www.legislature.ca.gov/legislators_and_districts/districts/districts.html) in your browser to determine the State Assembly district(s).

☐ State Assembly 01	☐ State Assembly 02	☐ State Assembly 03	☐ State Assembly 04
☐ State Assembly 05	☐ State Assembly 06	☐ State Assembly 07	☐ State Assembly 08
☐ State Assembly 09	☐ State Assembly 10	☐ State Assembly 11	☐ State Assembly 12
☐ State Assembly 13	☐ State Assembly 14	☐ State Assembly 15	☐ State Assembly 16
☐ State Assembly 17	☐ State Assembly 18	☐ State Assembly 19	☐ State Assembly 20
☐ State Assembly 21	☐ State Assembly 22	☐ State Assembly 23	☐ State Assembly 24
☐ State Assembly 25	☐ State Assembly 26	☐ State Assembly 27	☐ State Assembly 28
☐ State Assembly 29	☐ State Assembly 30	☐ State Assembly 31	☐ State Assembly 32
☐ State Assembly 33	☐ State Assembly 34	☒ State Assembly 35	☐ State Assembly 36
☐ State Assembly 37	☐ State Assembly 38	☐ State Assembly 39	☐ State Assembly 40
☐ State Assembly 41	☐ State Assembly 42	☐ State Assembly 43	☐ State Assembly 44
☐ State Assembly 45	☐ State Assembly 46	☐ State Assembly 47	☐ State Assembly 48
☐ State Assembly 49	☐ State Assembly 50	☐ State Assembly 51	☐ State Assembly 52
☐ State Assembly 53	☐ State Assembly 54	☐ State Assembly 55	☐ State Assembly 56
☐ State Assembly 57	☐ State Assembly 58	☐ State Assembly 59	☐ State Assembly 60
☐ State Assembly 61	☐ State Assembly 62	☐ State Assembly 63	☐ State Assembly 64
☐ State Assembly 65	☐ State Assembly 66	☐ State Assembly 67	☐ State Assembly 68
☐ State Assembly 69	☐ State Assembly 70	☐ State Assembly 71	☐ State Assembly 72
☐ State Assembly 73	☐ State Assembly 74	☐ State Assembly 75	☐ State Assembly 76
☐ State Assembly 77	☐ State Assembly 78	☐ State Assembly 79	☐ State Assembly 80

3. California Congressional Districts

Select one or more of the California Congressional Districts where the proposed project activities will occur. Copy and Paste the URL (<https://www.govtrack.us/congress/members/CA>) in your browser to determine the Congressional district(s).

☐ Congressional District 1	☐ Congressional District 2	☐ Congressional District 3
☐ Congressional District 4	☐ Congressional District 5	☐ Congressional District 6
☐ Congressional District 7	☐ Congressional District 8	☐ Congressional District 9
☐ Congressional District 10	☐ Congressional District 11	☐ Congressional District 12
☐ Congressional District 13	☐ Congressional District 14	☐ Congressional District 15
☐ Congressional District 16	☐ Congressional District 17	☐ Congressional District 18
☐ Congressional District 19	☐ Congressional District 20	☐ Congressional District 21

EXHIBIT G - Grant Application: Letter of Intent, Scope of Work and Work Plan

☐ Congressional District 22	☐ Congressional District 23	☒ Congressional District 24
☐ Congressional District 25	☐ Congressional District 26	☐ Congressional District 27
☐ Congressional District 28	☐ Congressional District 29	☐ Congressional District 30
☐ Congressional District 31	☐ Congressional District 32	☐ Congressional District 33
☐ Congressional District 34	☐ Congressional District 35	☐ Congressional District 36
☐ Congressional District 37	☐ Congressional District 38	☐ Congressional District 39
☐ Congressional District 40	☐ Congressional District 41	☐ Congressional District 42
☐ Congressional District 43	☐ Congressional District 44	☐ Congressional District 45
☐ Congressional District 46	☐ Congressional District 47	☐ Congressional District 48
☐ Congressional District 49	☐ Congressional District 50	☐ Congressional District 51
☐ Congressional District 52	☐ Congressional District 53	

4. County

Select one or more of the California Counties where the proposed project activities will occur.

☐ Alameda	☐ Alpine	☐ Amador	☐ Butte	☐ Calaveras	☐ Colusa
☐ Contra Costa	☐ Del Norte	☐ El Dorado	☐ Fresno	☐ Glenn	☐ Humboldt
☐ Imperial	☐ Inyo	☐ Kern	☐ Kings	☐ Lake	☐ Lassen
☐ Los Angeles	☐ Madera	☐ Marin	☐ Mariposa	☐ Mendocino	☐ Merced
☐ Modoc	☐ Mono	☐ Monterey	☐ Napa	☐ Nevada	☐ Orange
☐ Placer	☐ Plumas	☐ Riverside	☐ Sacramento	☐ San Benito	☐ San Bernardino
☐ San Diego	☐ San Francisco	☐ San Joaquin	☒ San Luis Obispo	☐ San Mateo	☐ Santa Barbara
☐ Santa Clara	☐ Santa Cruz	☐ Shasta	☐ Sierra	☐ Siskiyou	☐ Solano
☐ Sonoma	☐ Stanislaus	☐ Sutter	☐ Tehama	☐ Trinity	☐ Tulare
☐ Tuolumne	☐ Ventura	☐ Yolo	☐ Yuba		

1. Legal authority to remove abandoned vessels

As the primary uniformed public safety agency on Morro Bay waters, the Morro Bay Harbor Patrol is authorized to and tasked with enforcement of Morro Bay Municipal Code Chapter 15, Morro Bay Harbor Department Rules and Regulations and State of California Harbor and Navigation Code. The authority is codified in Morro Bay Municipal Code 15.04.080 and Penal Section 836.5

Abandoned vessels are removed specifically under California Harbors and Navigation Code Sections 500-526 and 551.

2. Agency Experience

CMBHD began participation in the AWAFF program in 2008, and since then have efficiently executed six AWAFF grants three VTIP grants, and two SAVE grants to disposed of derelict and abandoned vessels. For vessels that are not trailer-able, they are dragged by heavy equipment up our public launch ramp during the off-season and low-use times. All vessels are disposed of legally with heavy equipment contractors under a competitive bid process, using Best Management Practices and with the oversight of Harbor Patrol Officers. Materials, parts and metals are recycled to the fullest extent possible.

3 a. Adjudication Procedures - Identifying ADV's

Abandoned and derelict vessels (ADV's) with registered owners are generally identified when they become chronically delinquent in their tie-up fees with the City, or are brought to the City's attention by local marina operators as chronically delinquent in their private marina fees. ADV's with no identification that are unseaworthy hulks, derelicts or wrecks are identified by Harbor Patrol during their normal course of duties managing the boating activity in the bay.

3 b. Adjudication Procedures - Removal Process

Vessels with chronically delinquent City fees they are impounded under Morro Bay Municipal Code Section 15.56. Thereafter, applicable H&N Code Sections 500-509, as outlined below, are followed. In most instances this results in a lien sale process through a commercial lien service, with generally no buyers due to the condition of the vessels and amount of tie-up and other fees owed. Once the lien process is concluded and if there are no buyers, these vessels are scheduled for demolition.

For vessels in private marinas subject to the VTIP portion of SAVE, we require the private marina operator to follow the Boater's Lien Law to gain ownership of the vessels before turning them in to the City.

For unidentifiable and unseaworthy hulks, derelict or wrecks, H&N Sections 522-524 and/or 551 are followed.

3 c. Adjudication Procedures - Lien proceedings

H&N Section 503 is followed for vessels with a value of more than \$1,500, and H&N Section 504 is followed for vessels with a value of \$1,500 or less. In all instances, a commercial lien service (Marine Lien) is utilized to carry-out and conduct the process, except for the final step of the actual lien sale day, where the City conducts the actual sale.

3 d. Adjudication Procedures - Destruction of Vessels

After all H&N Codes have been followed and vessel ownership is obtained, the City contracts with contractors known, qualified and insured to conduct vessel demolition services. In some instances, this is done by way of bidding, depending on the number and scale of vessels in need of demolition, and in some instances contractors are directly employed. In all instances, City services procedures are followed.

Prior to demolition, vessels are stripped of all hazardous materials, fuel and oil in tanks, engine oil, engine coolant and batteries and holding tanks and bilges are emptied. Depending on the scale of removal needed, this can be done with City personnel, or by way of a services contract with a private operator. All hazardous materials and other

materials are properly and legally disposed-of.

In all phases, environmental best management practices are employed by both the City and contractor to ensure the potential for environmental damage is eliminated or minimized. In general, the State Lands Commission's "Best Management Practices for Removal of Marine Debris" guidance document is followed.

For demolition, whether one vessel is being demolished or several, times of the year are chosen when the public launch ramp is little used, which is generally in the winter when recreational rockfish season is closed and there is little to no ramp activity for several months. This is done to minimize impacts on the launch ramp-using public, and to minimize safety issues with the public.

Morro Bay does not have a boatyard capable of removing derelict vessels for demolition, and therefore the work is done at the public boat ramp area in an out-of-the-way location. Vessels slated for demolition are towed to the ramp by the Harbor Patrol where the contractor rigs and readies the vessels for towing up the ramp. Before removal from the water, the water area entirely around the vessel is surrounded by both containment and oil-absorbing boom in the unlikely event a petroleum or other release occurs. Once vessels are pulled up the ramp, they are placed in a flat area where heavy equipment can disassemble them, sort and haul the debris away. Oil absorbent materials are strategically-placed to enable catching of any petroleum-based products that may escape the work area. Once completed, the area is swept to remove any loose debris or material.

4 a. Vessel Registration

Does your agency regularly check vessels in your AOR for current registrations? ☒ Yes ☐ No

4 b. Agency prevention efforts of abandoned vessels

At the beginning of each year Harbor Patrol Officers give a concerted effort to remind boat owners of registration laws. Flyers are hung at all docks, piers and launch ramp gangways (see flyer attached) plus, notice statements are attached in billing envelopes. Warnings are placed on all vessels without current stickers. In 2018, there were 24 warnings issued for expired registration. Following the warnings, 5 Notice to Appear citations for Vehicle Code 9850 were written to those who were still not compliant as of March 2018. By March of 2019, only 3 vessels out of the entire harbor were found expired and Notice to Appear cites were written plus one impound under H&N 523 (7).

Preventions efforts:

Identification and monitoring of at-risk vessels by Harbor Patrol on a daily basis, and close collaboration with waterfront leaseholders who manage slips and marinas in Morro Bay.

Education and outreach to all and especially at-risk vessels owners.

Enforcement of local and State laws, rules and regulations pertaining to such vessels such as registration and operational requirements, pollution discharge issues and applicable permit requirements.

Citation of offenders and aggressive delinquent fee collection, impoundment and liens as a deterrent. Working with US Coast Guard Marine Safety Detachment Personnel.

Markers for at-risk vessels:

What is the vessel's general outward appearance and does it appear properly maintained?

Does the vessel regularly or ever get underway?

Does the vessel require regular assistance such as towing, pumping, or other measures?

Does the vessel get periodically hauled-out?

Is the vessel owner's slip or mooring account current?

Is the vessel's registration current?

What is the history of the vessel and/or vessel's owner?

Identified vessels/owners and contact or dealings with them are documented in Harbor Patrol daily logs. Should issues arise and/or be resolved, documentation via letters and/or citations are employed.

From initial contact, CMBHD works with vessel owners to attempt to resolve the issues first through outreach, education and assistance, including identification of potential resources. Then to documentation of continued issues and eventually enforcement should the issues continue

3. Application Questionnaire

1. Does your agency have an active local enforcement program tasked with addressing abandoned vessels in your jurisdiction? ☒ Yes ☐ No

If yes, explain in detail. If no, elaborate on your agency's efforts to create a program or if you utilize enforcement services from another agency and how. Please refer to 4b - Agency prevention efforts of abandoned vessels.

2. Does your agency have a submerged navigational hazard abatement plan (SNHAP)? This may include: 1) An established internal process outlining procedures to prevent, mitigate and process abandoned vessels; 2) Bylaws, regulations, or ordinances that help prevent or mitigate abandoned vessels. ☒ Yes ☐ No

If Yes, provide plan documentation. Upload Submerged Navigational Hazard Abatement Plan (SNHAP) documents here.

SNHAP Documentation Title	Attachment
Submerged Navigational Hazard Abatement Plan	22550_0_SNHAP.pdf

If No, explain your agency's efforts to create a SNHAP and anticipated date of effect.

3. List by name and size the bodies of water or waterways in your agency's area of responsibility. If you wish to add maps or photos, please click on the BLUE arrow below to upload.

Name	Size	Attachment
Map of Body of Water		22555_0_Morro Bay 3300 acres.pdf

4. To provide additional information, please click on the Blue Arrow to add an attachment

1. Outreach / Advertising plan for implementing and / or increase the Vessel Turn-In Program

1. Turn-in vessels will be accepted on a first-come, first-serve basis, with additional priority being placed on those vessels that in the opinion of Harbor Department staff, pose the greatest environmental and/or navigational hazards to Morro Bay waters. Vessels will be accepted in the point that VTIP funding allows, and the City is prepared to provide the 10% in-kind funding match.
2. Vessel owners must show proof of ownership confirmable with DMV records. Owners will be required to sign their vessel title over to the City of Morro Bay, complete the Release of Liability form, and sign the City's vessel turn-in agreement.
3. Vessels will be accepted during normal business hours Monday through Friday.
4. The public will be notified of the program via the City of Morro Bay website, Facebook, launch ramp and T-pier kiosk, and flyers placed in pertinent local businesses and the Harbor Department office.
5. The City of Morro Bay has demonstrated ample ability to dispose of various sizes and types of vessels over the years through participation in the Abandoned Watercraft Abatement Fund grant program, and our own lien sale and demolition program. A competitive bid process is used, open to qualified vendors. Vessels will be disposed of in an environmentally sound and legal manner per the bid process as the individual bidders propose.

Attachments:

[Registration Enforcement](#)
[Vessels](#)

2. Administrative Information

1. Please state if you will accept surrendered vessels only within Area of Responsibility (AOR) or if you will accept outside Area of Responsibility requests
☐ Within AOR ☒ Within and Outside AOR
2. Identify schedule for accepting surrendered vessels
☒ Daily ☐ Weekly ☐ Monthly ☐ As Needed
3. Location where vessels will be accepted
☒ Agency Office ☐ Local Landfill ☐ Pickup by Agency or Salvager ☐ As Needed
4. Storage area: Does your agency have a storage area for surrendered vessels pending destruction? ☒ Yes ☐ No
If Yes, identify the type of storage area
☒ Water ☒ Land

1. Applicant Certification

Per Harbors and Navigation Code 525 (C) "A grant awarded by the department pursuant to subparagraph (A) shall be matched by a 10% contribution from the local agency receiving the grant." This matching fund may be rendered in cash, or through in-kind contributions which must be verified, and are at the discretion of DBW. These contributions may include (but are not limited to) the following: administrative costs, personnel hours, removal, and/or storage.

Grant monies WILL NOT be reimbursed by DBW unless 10% of each reimbursement claim is met.

- a. ☒ Under penalty of perjury, I certify that I have examined this application and the document(s), proposal(s), and statement(s) submitted in conjunction herewith, and that to the best of my information and belief, the information contained herein is true, accurate, correct, and complete.
- b. ☒ I certify that I am the person authorized to submit this application on behalf of the applicant.

Prepared by: Name: Lori Stilts Date: 04/30/2019

Reviewed by: Name: Eric Endersby Date: 04/30/2019

Approving Officer: Name: Eric Endersby Date: 04/30/2019



AGENDA NO: A-7

MEETING DATE: January 14, 2020

Staff Report

TO: Honorable Mayor and City Council

DATE: January 2, 2020

FROM: Eric Endersby, Harbor Director

SUBJECT: Authorization for Attendance at the C-MANC Annual Washington, D.C.,
"Washington Week" Meetings

RECOMMENDATION

Staff recommends the City Council authorize a two-person delegation (the Mayor and Harbor Director) to attend the California Marine Affairs and Navigation Conference (C-MANC) 2020 "Washington Week" meetings in Washington, D.C. slated for March 2-4, 2020 and to represent the City's interests in the nation's capital.

ALTERNATIVES

Do not approve authorization for the "Washington Week" C-MANC delegation.

FISCAL IMPACT

The total hard costs for airfare, hotel, and monetary contribution to the Golden State Reception for the "Washington Week" meetings are estimated at \$7,000-\$8,000 for two persons, not including approximately \$2,000 in staff time in preparatory meeting attendance, grant preparation, and travel/meeting logistics. Staff expenses will be assumed by the Harbor Fund. Last year's actual costs for the two-person C-MANC delegation, including the Golden State Reception contribution, were approximately \$7,800.

As it did last year, the Harbor Department will be applying for a grant for up to \$8,000 from the Central Coast Joint Cable Fisheries Liaison Committee which, if granted, will be used for reimbursement of actual travel, attendance and associated costs of attendance for the two-person C-MANC delegation. If we are not successful in obtaining the grant, however, staff will come back to Council for a budget adjustment and/or change in itinerary, as those funds are not currently budgeted.

BACKGROUND/DISCUSSION

The City of Morro Bay is a long-standing member of C-MANC, and for over 25 years has sent representatives to the "Washington Week" meetings to remind Congress and various high-level agency representatives of the importance of dredging projects, commercial fishing and other coastal-related legislation and issues in California and nationwide. This year like last, we are proposing authorization for a two-person delegation, as this team has proven effective in strategically attending meetings and making contacts focused on the many and various C-MANC-related meetings and issues. In addition, if necessary, the Mayor could attend meetings related to the City's Water Reclamation Facility project and Federal project funding, although no such meetings are anticipated at this time. The Mayor also would be available to represent the City's interests in the nation's capital while present for the C-MANC conference as time permits.

Prepared By: EE

Dept Review: EE

City Manager Review: SC

City Attorney Review: CFN

The annual "Washington Week" proceedings are the City's most effective way for face-to-face meetings with our representatives and others to stress the critical need to fund navigational and entrance dredging and other Federal priorities of the City. In addition to the C-MANC group meetings and forums with such entities as Office of Management and Budget, Environmental Protection Agency, U.S. Fish and Wildlife, Council on Environmental Quality, Army Corps of Engineers, U.S. Coast Guard, Department of Transportation, National Oceanic and Atmospheric Administration and Congressional members, additional one-on-one meetings with the Morro Bay delegation are scheduled with key Congressional representatives, regulators and agencies. In recent years the Morro Bay delegation has met with the Director of the Bureau of Ocean Energy Management supporting offshore wind energy development off our coast.

C-MANC members also host the "Golden State Reception," attended by over 200 elected and appointed Washington officials, for a "meet and greet" gathering, where agencies can meet with representatives and staffers of various levels to discuss their issues and concerns in a less formal setting.

For the current Federal fiscal year, C-MANC, the City of Morro Bay and the Army Corps were successful in securing \$2.75M in the President's budget for annual harbor entrance dredging, although we requested \$3.0M to ensure our needs are fully met. Despite this slight shortfall, because our efforts working with the Corps at all levels, the Corps' dredge ship *YAQUINA* will be here again this spring to dredge our entrance and nearby areas. In addition, visiting our legislators during "Washington Week" will provide an opportunity for our delegation to press our legislators directly for additional Corps work plan "plus-up" funding should it be made available.

In fact, Congressman Carbajal has recently made a funding increase request of the Assistant Secretary of the Army and Director of the Office of Management and Budget for Morro Bay's dredging needs (see attachment), which request reflects our input provided the Army Corps and our Congressional representatives.

It is anticipated that the Mayor will also hold meetings with U.S. Environmental Protection Agency (EPA) staff to discuss any potential remaining components of the Water Infrastructure Finance and Innovation Act (WIFIA) loan, and discuss this project and other salient projects like Offshore Wind development with Congressman Carbajal, U.S. Senator Feinstein and U.S. Senator Harris' staff.

CONCLUSION

It is critically important for the California C-MANC delegation to maintain its many relationships in Washington and a seat at the D.C. table, in addition to bringing a unified voice to D.C. of the importance of all of California's ports and harbors, large and small, to the national economy and security.

Staff is therefore recommending approval of City Council authorization to send a delegation of two-persons to C-MANC's "Washington Week" proceedings this coming March. Staff will be applying for Cable Committee grant funding in January when the grant cycle is open to cover the trip's costs for two-persons, and is supplying "in-kind" City staff time as its share; therefore, no direct fiscal impacts are anticipated, provided the grant is approved.

Finally, staff will bring an informational item to Council, likely the second meeting in February, discussing the D.C. agenda, final cost estimates and status of the Cable grant and draft letters to our Congressional representatives, the US Army Corps of Engineers and others and to seek Council input, if any, on the trip.

ATTACHMENT

1. January 6, 2020 letter from Congressman Carbajal to the Assistant Secretary of the Army and Director of the Office of Management and Budget for additional Morro Bay dredge funding.

COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE

VICE-CHAIR

SUBCOMMITTEE ON AVIATION

SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

SUBCOMMITTEE ON WATER RESOURCES
AND ENVIRONMENT

COMMITTEE ON ARMED SERVICES

SUBCOMMITTEE ON STRATEGIC FORCES

SUBCOMMITTEE ON TACTICAL AIR
AND LAND FORCES

COMMITTEE ON AGRICULTURE

SUBCOMMITTEE ON BIOTECHNOLOGY,
HORTICULTURE, AND RESEARCH

SUBCOMMITTEE ON LIVESTOCK
AND FOREIGN AGRICULTURE

SUBCOMMITTEE ON GENERAL FARM
COMMODITIES AND RISK MANAGEMENT

Congress of the United States
House of Representatives
Washington, DC 20515

January 6, 2020

SALUD O. CARBAJAL

24TH DISTRICT, CALIFORNIA

WEBSITE: CARBAJAL.HOUSE.GOV

1431 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3601

360 SOUTH HOPE AVENUE, C-301
SANTA BARBARA, CA 93105
(805) 730-1710

1411 MARSH STREET, SUITE 205
SAN LUIS OBISPO, CA 93401
(805) 546-8348

1619 S. THORNBURG STREET
SANTA MARIA, CA 93458
(805) 730-1710

The Honorable R.D. James
Assistant Secretary of the Army (Civil Works)
Office of the Assistant Secretary of the Army
108 Army Pentagon
Washington, D.C. 20310-0108

The Honorable Mick Mulvaney
Director
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Dear Assistant Secretary James and Director Mulvaney:

As you make determinations for the fiscal year 2020 U.S. Army Corps of Engineers (Corps) work plan, I respectfully request that you include \$250,000 in navigation maintenance funds for the Morro Bay Harbor. This would be in addition to the \$2.75 million included in the spending bill passed by Congress in December 2019 and would reflect the Corps total capability of \$3 million for work to be performed in the 2020 fiscal year.

For the City of Morro Bay Harbor Department, annual maintenance dredging is required to ensure adequate navigational depths for Harbor safety, commerce, and port of operations for Coast Guard Station Morro Bay. Exposure to the open ocean and strong winter currents carrying sediment into the harbor creates the need for a routine maintenance schedule.

These additional funds are necessary to complete a full dredge of the Harbor in order to maintain Morro Bay's outer channels at their full authorized depths and widths. It would ensure that the United States Coast Guard (USCG) station at Morro Bay remains fully operational and many of the commercial fishermen in the region can continue with their fishing activities. The USCG helps provide essential services to the Central Coast of California, including port safety coverage for the Diablo Canyon Nuclear Power Plant and Vandenberg Air Force Base. Morro Bay is also home to approximately 75 commercial fishing vessels, which harvest important protein sources for both the state and the nation. Combined these fishing vessels employ around 200 people directly. Additionally, commercial fishermen have earned around \$8.5 million at the dock and roughly land 4.5 million pounds of seafood.

Thank you for your attention to this important request which would help complete a full dredge of Morro Bay Harbor. Please do not hesitate to contact my office at (202) 225-3601 if you have any questions.

Sincerely,



SALUD CARBAJAL
Member of Congress

**Cc: Lieutenant General Todd T. Semonite, Chief of Engineers and Commanding General
Russell Vought, Acting Office of Management and Budget Director**

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AGENDA NO: B-1

MEETING DATE: January 14, 2020

Staff Report

TO: Honorable Mayor and City Council **DATE:** December 23, 2019
FROM: Janeen Burlingame – Management Analyst
SUBJECT: Public Hearing for and Consideration of Morro Bay Garbage Services Base-Year Rate Adjustment Application and Adoption of Resolution No. 03-20

STAFF RECOMMENDATION

Staff recommends the City Council hold a public hearing, consider all evidence and testimony presented and adopt Resolution No. 03-20 increasing solid waste rates as outlined in the Fiscal Impact section of this report; provided, that there is not a majority protest against such increase.

ALTERNATIVES

The Rate Setting Manual provides a process and schedule for rate application review and binds the contractor and the City to a method of determining revenue adequacy for the contractor while ensuring the community is receiving quality service at reasonable rates. The Council could choose to not approve the requested rate increase if it is believed any of the factors identified in the Rate Adjustment Application are inaccurate or inflated. Based on staff's evaluation of the Rate Adjustment Application, the information provided is accurate and reasonable.

FISCAL IMPACT

Adoption of Resolution No. 03-20 (Attachment 1) would result in the following increases to residential and commercial collection rates:

1. Effective February 1, 2020, a 20.5% increase; and
2. Effective January 1, 2021, and January 1, 2022, an increase based on the following:
 - a. Increases, if any, in the Consumer Price Index (CPI) for Bureau of Labor Statistics' Consumer Price Index for Urban Consumers based on the All U.S. City Average, Bureau of Labor Statistics for the month of June 2020 for January 1, 2021 and June 2021 for January 1, 2022;
 - b. Increases of 0.85% effective January 1, 2021, and 0.82% effective January 1, 2022, for increases in the cost of landfill disposal.

Increases in rates will be borne by individual customers, and there will be a negligible increase to franchise fee revenue.

DISCUSSION

The City Council adopted Resolution 48-01 approving the Garbage, Recycling and Greenwaste Franchise Agreement (the Agreement) for collection service effective January 1, 2002 and setting the initial rates for collection for residential and commercial customers.

Pursuant to Article 8.4 of the Agreement, the City uses the guidelines and approach outlined in the City of San Luis Obispo's "Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates" regarding adjustments for base year rate reviews and cost of living increases to the collection rates that occur throughout the contract term. The rate setting manual

Prepared By: JB

Dept Review: RL

City Manager Review: _____

City Attorney Review: CFN

and Agreement are on file at the Management Analyst's office for review upon request.

On August 30, 2019, the City received from Morro Bay Garbage Service a Base Year Rate Adjustment Application with a request for an increase to the solid waste rates (Attachment 2). The request is for a 20.5% increase to the solid waste rates, effective February 1, 2020.

The 20.5% proposed rate increase is comprised of the following:

1. 6.12% is based on increased vehicle costs that include costs for new equipment to stay current with the California Air Resources Board rules and regulations, fuel, and increased labor costs;
2. 3.96% is based on the net result of increases to the cost of operations;
3. 2.40% is based on the implementation of an Organics Program mandated by the State of California; and
4. 8.02% is related to the cost to process recyclable materials.

The Finance Director reviewed the Rate Adjustment Application and supplemental financial reports, and based on staff's evaluation, the information provided is accurate and reasonable.

Since the last base year adjustment occurred in 2017, the solid waste industry has seen major shifts in recycling and green waste collection resulting from new State regulations requiring rates of pay to employees as well as mandatory equipment upgrades. The State's efforts to combat climate change with regulations pertaining to the handling of organic waste and the ongoing Chinese ban on commingles recycles starting in 2018 have increased the cost of operations as well. Additional information on these changes is outlined in MBGS's Base Year Rate Adjustment Application letter in Attachment 2.

California Constitution Article XIII (Proposition 218)

Proposition 218 noticing and hearing requirements are being followed for review and consideration of the proposed solid waste rate increases to ensure the legal validity of those rates.

Per the Proposition 218 notification requirements, notices were mailed at least 45 days in advance of the public hearing to both property owners and customers (Attachment 3). The protest must be submitted in writing and received by the City Clerk before the close of the public hearing on January 14, 2020. The person signing the protest must either be the property owner or the customer of record. In the event a protest is submitted by the owner and also by the tenant responsible for payment of the bill, one valid protest is counted for the parcel.

If valid written protests are filed by a majority of customers/property owners, then the applicable proposed rate may not be imposed. Based on the customer count of 5,643 accounts, 2,821 valid protest votes would need to be filed for this to occur. As of December 23, 2019, a total of twelve (12) written protests were received by the Office of the City Clerk. At the conclusion of the public hearing, the City Clerk will be asked by the Mayor to make a statement indicating the number of valid protests received and indicate whether that amount is a majority of the customers/property owners.

To address the Interim Base Year CPI and landfill disposal cost rate adjustments for 2021 and 2022 outlined in #2 of the Fiscal Impact section of this report, staff included them in the current Proposition 218 notice in order to save on staff time and resources rather than conduct separate 218 notices in each of the next two years.

CONCLUSION

Adoption of the solid waste rates as recommended will ensure the garbage company receives the necessary operating revenues, including allowable profit, within the prescribed levels set by the City's solid waste rate setting policies. Therefore, it is staff's recommendation that if a majority protest does not occur the City Council adopt Resolution No. 03-20.

ATTACHMENTS

1. Resolution No. 03-20
2. Base Year Rate Adjustment Application
3. Proposition 218 Notice

RESOLUTION NO. 03-20

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
APPROVING MORRO BAY GARBAGE SERVICE
BASE-YEAR RATE ADJUSTMENT APPLICATION
AND ADJUSTING SOLID WASTE COLLECTION RATES**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the City Council adopted Resolution 48-01 approving the Garbage, Recycling and Greenwaste Franchise Agreement with Morro Bay Garbage Service (MBGS) for collection services effective January 1, 2002, and setting the initial rates for collection for residential and commercial customers; and

WHEREAS, pursuant to Article 8.4, the City will use the guidelines and approach outlined in the City of San Luis Obispo's "*Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates*;" and

WHEREAS, on August 30, 2019, MBGS District Manager, Jeff Smith, submitted a base year rate adjustment application and follow up modification to the originally submitted application in conformance with the franchise agreement and rate setting manual requesting a 20.5% increase to solid waste collection rates effective February 1, 2020; and

WHEREAS, notices regarding the requested rate increase and interim rate increases for January 1, 2021, and January 1, 2022, were sent on November 25, 2019, to all property owners and customers, and a public hearing regarding that matter was held on January 14, 2020; and

WHEREAS, sufficient protests were not received to prevent the rate increase; and

WHEREAS, a review of the Base Year Solid Waste Rate Adjustment Application has been completed in accordance with the adopted solid waste rate setting policies.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Morro Bay,

Section 1. The City Council approves the Morro Bay Garbage Service's Base Year Rate Adjustment Application to increase the solid waste collection rates by 20.5% as outlined in Exhibit A, effective February 1, 2020.

Section 2. The City Council approves the increase in solid waste collection rates effective January 1, 2021 and January 1, 2020 as follows:

- a. Increases, if any, in the Consumer Price Index (CPI) for Bureau of Labor Statistics' Consumer Price Index for Urban Consumers based on the All U.S. City Average, Bureau of Labor Statistics for the month of June 2020 for January 1, 2021 and June 2021 for January 1, 2022;

- b. Increases of 0.85% effective January 1, 2021, and 0.82% effective January 1, 2022, for increases in the cost of landfill disposal.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14th day of January 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

EXHIBIT A

Morro Bay Garbage Solid Waste Service Rates - Effective 2/1/2020 City of Morro Bay				
Service Description	Service Frequency	Currently Monthly Rate Effective 1/1/2019	Proposed Rate Adjustment %	Proposed Monthly Rate Effective 2/1/2020
MONTHLY SINGLE-FAMILY AND MULTI-UNIT RESIDENTIAL SERVICE (4 UNITS OR LESS)				
Price per month for specified carts collected each week. One green waste and one recycling cart is included at no additional charge once each week.				
MINI-CAN SERVICE				
One 19 gallon Cart	1	\$11.19	20.50%	\$13.48
ECONOMY RATE				
One 32 gallon Cart	1	\$17.91	20.50%	\$21.58
STANDARD RATE				
One 64 gallon Cart	1	\$35.81	20.50%	\$43.15
PREMIUM RATE				
One 96 gallon Cart	1	\$53.72	20.50%	\$64.73
SERVICE AWAY FROM THE STREET CURB (IN YARD)				
Additional per month per can or container charge		\$9.76	20.50%	\$11.76
MONTHLY COMMERCIAL GARBAGE CART SERVICE				
One 32 Gallon Waste Wheeler	1	\$36.97	20.50%	\$44.55
One 32 Gallon Waste Wheeler	2	\$72.17	20.50%	\$86.96
One 32 Gallon Waste Wheeler	3	\$94.39	20.50%	\$113.74
One 32 Gallon Waste Wheeler	4	\$116.63	20.50%	\$140.53
One 32 Gallon Waste Wheeler	5	\$151.84	20.50%	\$182.97
One 32 Gallon Waste Wheeler	6	\$187.03	20.50%	\$225.37
One 32 Gallon Waste Wheeler	7	\$222.91	20.50%	\$268.61
One 64 Gallon Waste Wheeler	1	\$53.64	20.50%	\$64.64
One 64 Gallon Waste Wheeler	2	\$94.36	20.50%	\$113.70
One 64 Gallon Waste Wheeler	3	\$136.95	20.50%	\$165.02
One 64 Gallon Waste Wheeler	4	\$185.14	20.50%	\$223.09
One 64 Gallon Waste Wheeler	5	\$231.48	20.50%	\$278.94
One 64 Gallon Waste Wheeler	6	\$270.38	20.50%	\$325.80
One 64 Gallon Waste Wheeler	7	\$318.43	20.50%	\$383.71
One 96 Gallon Waste Wheeler	1	\$72.15	20.50%	\$86.94
One 96 Gallon Waste Wheeler	2	\$125.82	20.50%	\$151.61
One 96 Gallon Waste Wheeler	3	\$185.08	20.50%	\$223.02
One 96 Gallon Waste Wheeler	4	\$246.20	20.50%	\$296.67
One 96 Gallon Waste Wheeler	5	\$299.91	20.50%	\$361.39
One 96 Gallon Waste Wheeler	6	\$366.55	20.50%	\$441.69
One 96 Gallon Waste Wheeler	7	\$442.29	20.50%	\$532.96

MONTHLY COMMERCIAL CONTAINER SERVICE - (CUBIC YARDS)				
1 Yd Container	1	\$91.04	20.50%	\$109.70
1 Yd Container	2	\$141.04	20.50%	\$169.95
1 Yd Container	3	\$181.79	20.50%	\$219.06
1 Yd Container	4	\$228.09	20.50%	\$274.85
1 Yd Container	5	\$263.32	20.50%	\$317.30
1 Yd Container	6	\$328.14	20.50%	\$395.41
1 Yd Container	7	\$495.73	20.50%	\$597.35
1.5 Yd Container	1	\$111.41	20.50%	\$134.25
1.5 Yd Container	2	\$183.68	20.50%	\$221.33
1.5 Yd Container	3	\$246.68	20.50%	\$297.25
1.5 Yd Container	4	\$313.34	20.50%	\$377.57
1.5 Yd Container	5	\$376.32	20.50%	\$453.47
1.5 Yd Container	6	\$448.57	20.50%	\$540.53
1.5 Yd Container	7	\$658.07	20.50%	\$792.97
2 Yd Container	1	\$133.66	20.50%	\$161.06
2 Yd Container	2	\$233.66	20.50%	\$281.56
2 Yd Container	3	\$313.34	20.50%	\$377.57
2 Yd Container	4	\$398.57	20.50%	\$480.28
2 Yd Container	5	\$487.49	20.50%	\$587.43
2 Yd Container	6	\$576.39	20.50%	\$694.55
2 Yd Container	7	\$827.76	20.50%	\$997.45
3 Yd Container	1	\$172.58	20.50%	\$207.96
3 Yd Container	2	\$313.34	20.50%	\$377.57
3 Yd Container	3	\$441.19	20.50%	\$531.63
3 Yd Container	4	\$559.70	20.50%	\$674.44
3 Yd Container	5	\$724.60	20.50%	\$873.14
3 Yd Container	6	\$835.71	20.50%	\$1,007.03
3 Yd Container	7	\$1,129.04	20.50%	\$1,360.49
4 Yd Container	1	\$228.09	20.50%	\$274.85
4 Yd Container	2	\$424.48	20.50%	\$511.50
4 Yd Container	3	\$589.33	20.50%	\$710.14
4 Yd Container	4	\$787.57	20.50%	\$949.02
4 Yd Container	5	\$985.77	20.50%	\$1,187.85
4 Yd Container	6	\$1,115.44	20.50%	\$1,344.11
4 Yd Container	7	\$1,450.64	20.50%	\$1,748.02
6 Yd Container	1	\$341.71	20.50%	\$411.76
6 Yd Container	2	\$620.42	20.50%	\$747.61
6 Yd Container	3	\$873.52	20.50%	\$1,052.59
6 Yd Container	4	\$1,108.23	20.50%	\$1,335.4

				2
6 Yd Container	5	\$1,434.69	20.50%	\$1,728.80
6 Yd Container	6	\$1,654.72	20.50%	\$1,993.94
6 Yd Container	7	\$2,235.49	20.50%	\$2,693.77
8 Yd Container	1	\$451.65	20.50%	\$544.24
8 Yd Container	2	\$840.46	20.50%	\$1,012.76
8 Yd Container	3	\$1,166.88	20.50%	\$1,406.09
8 Yd Container	4	\$1,559.41	20.50%	\$1,879.09
8 Yd Container	5	\$1,951.83	20.50%	\$2,351.96
8 Yd Container	6	\$2,208.55	20.50%	\$2,661.30
8 Yd Container	7	\$2,872.25	20.50%	\$3,461.06
Sunday Service	Per Occurrence	\$68.89	20.50%	\$83.01
EXTRA COLLECTION SERVICE OPTIONS				
Overstocked Garbage & extra bags Minimum/unit	Per Occurrence	\$8.94	20.50%	\$10.77
Overstocked Green waste & extra bags Minimum/unit	Per Occurrence	\$5.97	20.50%	\$7.19
Overstocked Blue Bin & extra bags Minimum/unit	Per Occurrence	\$4.47	20.50%	\$5.39
Monthly charge for additional 32, 64 or 96-gallon recycle service	Each	\$2.99	20.50%	\$3.60
Monthly charge for additional 32 or 96-gallon green waste service	Each	\$5.81	20.50%	\$7.00
Cart replacement more than once per 12 months	Per Occurrence	\$32.53	20.50%	\$39.20
Small item pickup (TV, toilet)	Each	\$16.28	20.50%	\$19.62
Per white good article/ appliance. (Once a month only)	Each	\$56.93	20.50%	\$68.60
Per mattress or box spring.	Each	\$17.00	20.50%	\$20.49
Re-deliver fee-if pulled for collections	Per Occurrence	\$31.64	20.50%	\$38.13
Install locking device on bin	Each	\$72.17	20.50%	\$86.96
Additional bin cleaning	Each	\$57.40	20.50%	\$69.17
Garbage extras on your scheduled pickup day	Per Yard	\$14.80	20.50%	\$17.83
Garbage extras - NOT ON YOUR SCHEDULED PICKUP DAY	Per Bag	\$12.18	20.50%	\$14.68
Garbage extras - NOT ON YOUR SCHEDULED PICKUP DAY	Per Yard	\$23.47	20.50%	\$28.28
Compactors	Per Ton	\$48.05	20.50%	\$57.90
Bin Rental	Per Month	\$33.70	20.50%	\$40.61
Temp Bin Rental	Per Day	\$1.87	20.50%	\$2.25
Stand by time	Per Hour	\$65.40	20.50%	\$78.81

Trip charge	Per Occurrence	\$8.17	20.50%	\$9.84
Damage/Destruction of bins or waste wheelers	Each	Replacement/repair at market price		
Rates for all commercial customers include one standard 96-gallon recycling serviced one time a week with no additional service charge.				
Rates for all commercial customers include one standard 64-gallon organic cart serviced one time a week with no additional service charge.				

Morro Bay Garbage

Base Year 2020 Modification for 1 Month Delay in Base Rate Implementation

Morro Bay Garbage submitted a rate application on August 30, 2019, requesting new rates effective January 1, 2020. The City has made no requests for information as of October 31, but has asked to postpone the effective date to February 1, 2020 to allow for additional review time, public notice and a hearing under California Proposition 218. Because Morro Bay Garbage bears no fault for this delay, it is appropriate that the City allow the Company to recover the revenue lost during the delay over the expected rate cycle of 36 months.

In addition, in October 2019, the Company incurred an increase of recycling tip fees that must be passed through to customers in order for the Company to maintain the operating ratio specified in the Company's agreement with the City. This analysis lays out the calculations that support the supplemental increase above that of the original base rate application.

Section 1: Calculation of 1 Month of Lost Revenue from Application

Line 1	Base Year Revenue from Application	\$2,536,349 (Page 2 Line 20)
Line 2	Base Rate Increase Percentage from Application (Includes franchise fee adjustment)	19.66% (Page 2 Line 25)
Line 3	Additional Revenue Requirement per Original Application	\$498,646 (L1xL2)
Line 4	1 Month Revenue to Be Recovered over 35 Months	<u>\$ 41,554</u> (L3/12)

Section 2: Calculation of Recycle Tip Fee Expense From October 1 Through December 31, 2019

Line 5	New Tip Fee/Ton:	\$ 96.00	
Line 6	Tip Fee/Ton Prior to October 2019	<u>\$ 67.50</u>	
Line 7	Increase in Tip Fee:	\$ 28.50 (L5-L7)	
Line 8	Annual Tons from Application	2,299	(Page 6, Line 72a)
Line 9	Monthly Tons (Annual Tons/12)	192	(L8/12)
		x <u>3</u>	
Line 10	Tons at Increased Rate for 3 months	576 (L9x3)	
Line 11	Lost Tip Fee Expense to be recovered over 35 Months	<u>\$ 16,416</u> (L7xL10)	

Section 3: Calculation of Adjusted Rate Increase Percentage

Line 12	Section 1 Recovery from Above	\$ 41,554 (L4)	
Line 13	Section 2 Recovery from Above	<u>16,416 (L11)</u>	
Line 14	Total to Be Recovered	<u>\$ 57,970</u>	
Line 15	Interest Rate (Note 1)	5.00%	
Line 16	Monthly Arrears Payment to Recover Balance Over 35 months (Note 2):	\$1,783	
Line 17	Annualized Recovery Payment	\$21,401 (L16x12)	
Line 18	Annualized Recovery Payment as a Percent of Base Revenue	0.84% (L17/L1)	
Line 19	Original Rate Adjustment	<u>19.66% (L2)</u>	
Line 20	Adjusted Rate Increase Percentage	<u><u>20.50%</u></u>	

Note 1: Wall Street Journal Prime Rate published October 31, 2019

Note 2: @PMT function in MS Excel using stated inputs



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- MORRO BAY GARBAGE

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August 30, 2019

Janeen Burlingame
City of Morro Bay
595 Harbor Street
Morro Bay, CA 93442

Subject: Morro Bay Garbage 2020 Base Year Rate Application

Dear Janeen,

I appreciate your meeting with Dane Johnson and me last week about solid waste, recycling, and street sweeping in Morro Bay. This letter summarizes our conversation and outlines the factors that influence our request for our rate adjustment. I have sent separately a general outline for street sweeping with some costs and service parameters for your review. That cost is not included in this rate request at this time.

Since our last base year in 2017, our industry has undergone major shifts in the areas of commingle recycling and green waste. There are new regulations for the state requiring rates of pay to employees as well as mandatory equipment upgrades. Combined, these shifts and regulations have an effect on what may at first seem to be a large request.

INDUSTRY WIDE FACTORS

The ongoing 2018 Chinese ban on commingled recyclables and California's efforts to combat climate change by moving toward more responsible handling of organic wastes have increased costs to our operations.

Recycle Markets

Recycling requires significant ongoing costs to provide containers, collect the material, run it through capital or labor intensive sort lines, bale and finally transport materials to a mill. These activities have been offset by the positive commodity value of the processed material. As a commodity business, we've had good and bad years that have generally averaged out to keep the net charge low. Since late 2017, however, we have seen negative pricing in commodities far worse than this industry has ever experienced, with consensus indicators that we are multiple years away from a recovery. We are now about 20 months into the Chinese ban. Instead of relenting, we have found that the Chinese are buying virgin pulp mills in the US to satisfy their



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country's demand for liner board. Meanwhile, Asian ports in Vietnam, Indonesia, and India are full of US recycle materials and additional bans and controls are threatened or in place.

The Chinese ban on mixed recycled material has forced the recovered materials industry, including the local Cold Canyon Processing Facility, to slow down its sort lines and add labor to remove contamination that had crept into the mix. There has been a dramatic increase in improper recycling since 2013, with contamination increasing from 9% to 28% of delivered tons. This triple punch of higher costs, lower material pricing, and increased contamination resulted in a 650% increase in Cold Canyon material processing fees since January 2018. Furthermore, the processing facility has provided notice that they will need to increase tipping fees another \$28.50 per ton, effective January 1, 2020. This phenomenon has played out throughout the western US, and we believe that our cost to deliver to the Cold Canyon Processing Facility is still significantly lower than any other delivery options. Our application includes a current comparison of material processing fees at facilities within trucking distance of SLO. You will find, that even at a tip fee of \$96 per ton, the local Cold Canyon processing fees are still competitive with our other alternatives.

Organic Waste

California laws designed to mitigate the costs of climate change are having an effect on rates. Morro Bay already saw an increase several years ago when we could no longer accept green waste at the landfill and started to transport the waste to Engel and Gray in the southern part of the County for processing. In 2019, the innovative organic waste digester operated by Hitachi-Zosen (HZI) came on line and started converting the organic waste produced in this county into electricity and a compost product while eliminating most of the negative green house gasses. This exciting project has not come without growing pains. There are too many large wood items and rocks in the organic material, for example. These difficult materials are causing inefficiencies at the facility and diminishing the suitability of the compost product. We are working with the IWMA and HZI to improve education to our customers and make operational adjustments at the facility, but there are costs associated with handling this excess residual waste in the interim.

The digester was designed to meet future needs. Last year, the Waste Connections hauling companies delivered about 25,000 tons of organic waste to Engel & Gray. This year, we are trending to move 30,000 tons from our service areas into the digester, an increase of 20%. The facility is designed for 34,000 tons and we are still early in the rollout phase of the business organics program. It is not a stretch to see us approach the target tonnage in the next few years.

In order to secure the plant construction, we entered a fixed fee agreement with HZI. This means that we pay the same monthly amount to HZI, regardless of tonnage. While this amount can be CPI indexed or increased for specific kinds of operational cost increases, as we get closer to capacity, your effective cost per ton will decrease. In the project development phase, it was suggested that per-ton pricing for this facility would be close to \$55/ton. Since we are not at full



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capacity and we are working with residual waste problems, the effective cost of the facility is higher than that goal. As innovation, education, and behavior change take hold, we should see lower effective per-ton costs. The current charges are higher than our former system with Engel & Gray, but we must recognize that Engel & Gray will fall under stricter requirements and will likely be closed due to state regulations in the near future.

LOCALIZED FACTORS

Investment in Equipment

The average age of the trucks used in Morro Bay is currently nearly 12 years old. Two of our trucks will soon be force-retired due to state environmental requirements, so this application includes the additional depreciation and interest associated with these trucks. New trucks are now costing close to \$400,000. We also continue to invest to replace carts and containers, and to add new carts as the organics program is expanded to more commercial customers.

Other Operational Costs

General operating costs have run higher than the CPI index used in our contract. It has been well documented that with increasing minimum wages in California, many other wages are pushed up too. Premiums for health care, fuel and other factors continue to increase on average of approximately 3% per year. Had we been using the local CPI which has been running from 3 to 4% annually, this request for increase would have been substantially lower.

Comparable Rates

Our packet includes a list of comparable rates in San Luis Obispo County. We are very pleased to report that in nearly all cases, our rates after the increase will continue to be among the lowest.

We realize that this request represents a sizeable increase. In order to mitigate further losses, we ask that you act on this request with sufficient time to implement the new rates on January 1.



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Solid Waste Rate Increase

The proposed increase of approx. \$3.52 on average per household or 19% in rates during this period breaks out as follows:

Breakdown of Price Increase	
Recycling Tip Fees	8.02%
Green Waste	2.40%
Equipment Investment	6.12%
Other Operational Costs	3.12%
Total Cost Increase	19.66%

Our management team has reviewed and accepts responsibility for this rate request. This application is based upon what our management team feels is the best course of action based on the conditions outlined in this letter. I look forward to discussing with you further regarding how best to minimize the impact of this rate request.

Sincerely,

Jeff Smith
District Manager

Morro Bay Garbage

Rate Adjustment Application for Base Year 2020

Summary

Requested Increase

Base Year Rate Application Price Increase 19.66%

1. Rate Increase Requested

Rate Schedule

Rate Schedule	Current Rate	Increased Rate	Adjustment (a)	New Rate	Cost Per Gallon
*Per Month					
Single Family Residential					
2. One 19 gallon waste wheeler container	\$11.19	\$2.20		\$13.38	\$0.42
3. One 32 gallon waste wheeler container	\$17.91	\$3.52		\$21.43	\$0.67
4. One 64 gallon waste wheeler container	\$35.81	\$7.04		\$42.85	\$0.67
5. One 96 gallon waste wheeler container	\$53.72	\$10.56		\$64.28	\$0.67
		\$5.83	Avg. Monthly Increase		

(a) Calculated rates are rounded up to the nearest \$0.01.

6. **Multiunit Residential and Commercial**

Rate increases of 19.66%
will be applied to all rates in each structure
with each rate rounded to the nearest \$0.01

Price Increase Breakdown

Recycling Tip Fees	8.02% Equipment Investment	6.12%
Green Waste	2.40% Other Operational Costs	3.12%
	Base Year Rate Application Price Increase	19.66%

Certification

To the best of my knowledge, the data and information in this application is complete, accurate, and consistent with the instructions provided by the Rate Setting Manual.

Name: Jeff Smith Title: District Manager

Signature: Date: 08/30/19

Morro Bay Garbage

Rate Adjustment Application for Base Year 2020

Financial Information

Historical		Current	Projected	
			Base Year	
2017	2018	2019	2020	2021

(from Pg. 4)

Section I - Allowable Costs

7. Direct Labor	\$687,402	\$813,174	\$717,729	\$737,842	\$750,385
8. Corporate Overhead	\$56,439	\$58,060	\$59,017	\$60,079	\$61,100
9. Office Salaries	\$144,750	\$99,100	\$134,567	\$137,582	\$139,921
10. Other General and Admin Costs	\$834,216	\$865,670	\$848,196	\$969,680	\$986,165
11. Total Allowable Costs	\$1,722,807	\$1,836,004	\$1,759,509	\$1,905,183	\$1,937,571

Section II - Allowable Operating Profit

12. Operating Ratio	99.2%	115.8%	104.9%	92.0%	92.0%
13. Allowable Operating Profit	\$14,703	(\$250,716)	(\$82,449)	\$165,668	\$168,484

Section III - Pass Through Costs

14. Tipping Fees	\$349,094	\$475,144	\$459,357	\$527,095	\$536,055
15. Franchise Fees	\$293,136	\$301,332	\$311,994	\$311,994	\$317,298
16. AB939 Fees	\$0	\$0	\$0	\$0	\$0
17. Other Pass-through costs	\$17,796	\$65,243	\$62,826	\$74,871	\$76,144
18. Total Pass Through Costs	\$660,025	\$841,719	\$834,177	\$913,960	\$929,497

Section IV - Revenue Requirement

19. Revenue Requirement			\$2,984,811	\$3,035,552
20. Total Revenue Offsets	\$2,397,536	\$2,427,006	\$2,511,237	\$2,536,349

(from Page 3)

Section V - Net Shortfall (Surplus)

21. Net Shortfall (Surplus)	\$448,462

Section VI - Percentage Change in Rates

22. Total Residential and Commercial Revenue without Increase in Base Year (pg.3, lines 19+39)	\$2,535,647
23. Percent Change in Residential and Commercial Revenue Requirement	17.69%
24. Franchise Fee Adjustment Factor	90%
25. Percent Change in Existing Rates	19.66%

Morro Bay Garbage

Rate Adjustment Application for Base Year 2020

Revenue Offset Summary

Section VII - Revenue Offsets					
	Historical		Current	Projected	
				Base Year	
	2017	2018	2019	2020	2021
Residential Revenue (without increase in Base Year)					
26. Single Family Residential	\$1,188,815	\$1,209,324	\$1,248,915	\$1,261,404	\$1,275,279
Multiunit Residential Dumpster					
27. Number of Accounts	0	0	0	0	0
28. Revenues	\$0	\$0	\$0	\$0	\$0
29. Less Allowance for Uncollectible Resid Accounts	\$0	\$0	\$0	\$0	\$0
30. Total Residential Revenue	\$1,188,815	\$1,209,324	\$1,248,915	\$1,261,404	\$1,275,279
Commercial Revenue (without increase in Base Year)					
Account Type: Commercial Can					
31. Number of Accounts	30	33	36	36	36
32. Revenues	\$46,997	\$51,697	\$56,397	\$56,961	\$57,587
Commercial Wastewheeler					
33. Number of Accounts	141	147	153	153	155
34. Revenues	\$109,050	\$113,690	\$118,331	\$119,514	\$120,829
Commercial Container					
35. Number of Accounts	389	360	331	331	335
36. Revenues	\$1,050,513	\$1,049,374	\$1,086,899	\$1,097,768	\$1,109,843
37. Less: Allowance for Uncollectible Commercial	\$0	\$0	\$0	\$0	\$0
38. Total Commercial Revenue	\$1,206,560	\$1,214,762	\$1,261,626	\$ 1,274,243	\$1,288,259
39. Interest on Investments	\$0	\$0	\$0	\$0	\$0
40. Other Income	\$2,161	\$2,921	\$696	\$702	\$12
41. Total Revenue Offsets	\$2,397,536	\$2,427,006	\$2,511,237	\$2,536,349	\$2,563,551

Morro Bay Garbage

Rate Adjustment Application for Base Year 2020

Cost Summary for Base Year

Description of Cost

		Section VIII - Base Year Cost Allocation			
		2017	2018	2019	Base Year 2020
Caliber Grouping					
Labor	Labor	\$640,196	\$751,110	\$659,929	\$678,598
Payroll Taxes	Payroll Taxes	\$47,207	\$62,064	\$57,799	\$59,244
42. Total Direct Labor		\$687,402	\$813,174	\$717,729	\$737,842
Corp OH					
43. Corporate Overhead	Corp OH	\$65,658	\$66,992	\$68,902	\$70,073
Less limitation (enter as negative)	Allow OH Tab	(\$9,219)	(\$8,933)	(\$9,885)	(\$9,994)
Total Corporate Overhead		\$56,439	\$58,060	\$59,017	\$60,079
Office salaries					
Office Salary	Office salaries	\$141,403	\$92,237	\$124,855	\$127,626
Payroll Taxes	Payroll Taxes - Office	\$3,347	\$6,864	\$9,713	\$9,955
44. Total Office Salaries		\$144,750	\$99,100	\$134,567	\$137,582
Bad Debt					
Bad Debt	Bad Debt	\$664	\$487	\$69	\$70
Bond					
Bond	Bond	\$1,752	\$1,810	\$2,069	\$2,104
Depreciation					
Depreciation	Depreciation	\$176,631	\$146,372	\$148,470	\$258,047
Drive Cam fees					
Drive Cam fees	Drive Cam Fees	\$5,511	\$5,152	\$1,121	\$1,141
Dues and Subscriptions					
Dues and Subscriptions	Dues & Subscriptions	\$1,307	\$1,150	\$4,242	\$4,314
Gas and Oil					
Gas and Oil	Gas & Oil	\$162,406	\$196,423	\$139,939	\$142,318
Insurance					
Insurance	Insurance	\$202,331	\$190,066	\$177,151	\$180,163
Laundry and Uniforms					
Laundry and Uniforms	Laundry and Uniforms	\$4,028	\$2,237	\$4,477	\$4,553
Legal and Accounting					
Legal and Accounting	Legal and Accounting	\$19,364	\$17,594	\$17,373	\$17,668
Miscellaneous and Other					
Miscellaneous and Other	Miscellaneous and Other	\$1,204	\$3,104	\$1,461	\$1,486
Office					
Office	Office	\$44,843	\$42,796	\$47,529	\$48,337
Operating Supplies					
Operating Supplies	Operating Supplies	\$3,987	\$10,156	\$16,206	\$16,481
Other Taxes					
Other Taxes	Other Taxes	\$6,930	\$6,955	\$7,011	\$7,130
Outside Services					
Outside Services	Outside Services	\$93,894	\$112,271	\$144,641	\$147,112
Permits and Licenses					
Permits and Licenses	Permits & Licenses	\$11,935	\$14,882	\$16,069	\$16,342
Postage					
Postage	Postage	\$377	\$392	\$1,274	\$1,296
Public Relations and Promotions					
Public Relations and Promotions	Public Relations and Promotions	\$163	\$2,523	\$573	\$583
Relocation					
Relocation	Employee Relocation	\$0	\$3,390	\$4,411	\$4,486
Telephone					
Telephone	Telephone	\$4,054	\$4,272	\$2,502	\$2,545
Tires					
Tires	Tires	\$18,444	\$12,449	\$19,145	\$19,471
Travel					
Travel	Travel	\$1,860	\$9,478	\$5,489	\$5,582
Truck Repairs					
Truck Repairs	Truck Repairs	\$67,235	\$76,201	\$82,722	\$84,128
Utilities					
Utilities	Utilities	\$5,294	\$5,509	\$4,252	\$4,324
45. Total Other Gen/Admin Costs		\$834,216	\$865,670	\$848,196	\$969,680
46. Total Tipping Fees	Tipping Fees	\$349,094	\$475,144	\$459,357	\$527,095
47. Total Franchise Fee	Franchise fees and taxes	\$293,136	\$301,332	\$311,994	\$311,994
48. Total AB 939/Regulatory Fees					
49. Total Lease Pmt to Affil Co.'s	Related Party Rent	\$15,321	\$33,333	\$34,600	\$35,188
49a. Interest Expense (to affiliate)	Interest	\$0	\$30,260	\$26,074	\$37,494
49b. Transportation Costs (to affiliate)	Transportation - Compactors, related parties	\$2,475	\$1,650	\$2,153	\$2,189
50. Total Cost		\$2,382,832	\$2,677,722	\$2,593,686	\$2,819,143

Morro Bay Garbage

Rate Adjustment Application for Base Year 2020

Base Year Revenue Offset Summary

Section IX - Revenue Offsets					
Description of Revenue	Overall	Franchise	Refuse Collection		
	Total	Total	City of Morro Bay	CPI Growth	State Parks
<i>Residential Revenue</i> (without increase in Base Year)					
51. Single Family Residential	1,261,404	1,261,404	1,248,915	12,489	-
Multiunit Residential Dumpster					
52. Number of Accounts	-	-	-	-	-
53. Revenues	\$ -	\$ -	\$ -	\$ -	\$ -
54. Less Allowance for Uncollectable	-	-	-	-	-
55. Total Residential Revenue	\$ 1,261,404	\$ 1,261,404	\$ 1,248,915	\$ 12,489	\$ -
<i>Commercial Revenue</i> (without increase in Base Year)					
Account Type: Commercial Can					
56. Number of Accounts	36	36	36	0	0
57. Revenues	\$56,961	\$56,961	\$56,397	\$564	\$0
Commercial Wastewheeler					
58. Number of Accounts	153	153	153	0	0
59. Revenues	\$119,514	\$119,514	\$118,331	\$1,183	\$0
Commercial Container					
60. Number of Accounts	331	330	330	0	1
61. Revenues	\$1,168,768	\$1,097,768	\$1,086,899	\$10,869	71,000.00
62. Less: Allowance for Uncollectible Commercial Accounts	\$0	\$0	\$0	\$0	\$0
63. Total Commercial Revenue	\$1,345,243	\$1,274,243	\$1,261,626	\$12,616	\$71,000
64. Interest on Investments	\$0	\$0	\$0	\$0	\$0
65. Other Income	\$702	\$702	\$696	\$7	\$0
66. Total Revenue Offsets	\$2,607,349	\$2,536,349	\$2,511,237	\$25,112	\$71,000

Morro Bay Garbage

Base Year Rate Adjustment Application

Operating Information

Historical			Current			Projected		
	Percent		Percent		Percent	Base Year	Percent	
2017	Change	2018	Change	2019	Change	2020	Change	2021

Section X - Operating Data

Municipal Solid Waste - Morro Bay

67.	Residential Accounts	4,646	1.2%	4,703	1.2%	4,761	0.0%	4,761	0.0%	4,761
	Commercial Accounts	530	2.3%	542	2.2%	554	0.0%	554	0.0%	554
68.	Routes	3	0.4%	3	5.1%	3	0.0%	3	0.0%	3
69.	Tons Collected	7,792	-2.4%	7,608	-2.5%	7,418	0.0%	7,418	0.0%	7,418
70.	Direct Labor Hours	6,240	0.4%	6,268	5.1%	6,588	0.0%	6,588	0.0%	6,588

Commingled Recyclables - Morro Bay

71.	Accounts	5,176	-0.7%	5,142	-0.7%	5,108	1.0%	5,159	1.0%	5,211
72.	Routes	3	0.0%	3	2.3%	3	1.0%	3	1.0%	3
	Tons Collected	2,468	-2.0%	2,418	-4.9%	2,299	1.0%	2,322	1.0%	2,346
73.	Direct Labor Hours	5,518	0.0%	5,518	2.3%	5,643	1.0%	5,700	1.0%	5,757

Green Waste and Organics - Morro Bay

74.	Accounts	0	#DIV/0!	2,243	100.0%	4,485	1.0%	4,530	1.0%	4,575
75.	Routes	1	36.0%	1	-35.1%	1	1.0%	1	1.0%	1
	Tons Collected	0	#DIV/0!	1,976	3.6%	2,047	4.0%	2,129	4.0%	2,214
76.	Direct Labor Hours	2,080	36.0%	2,829	-35.1%	1,836	1.0%	1,854	1.0%	1,873



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Comparative Rates

Single Family Residential Monthly Trash Rates			
	Container Size (Gallons)		
	30-40	60-70	90-101
Atascadero	\$26.49	\$41.56	\$52.18
Morro Bay	17.91	35.81	53.72
Paso Robles	32.33	42.41	46.81
San Luis Obispo	16.48	32.97	49.45
Santa Maria	na	30.69	34.81
San Miguel	28.23	44.48	61.06
Templeton	28.72	41.15	45.67
Requested: Mission Country Disposal Service Area			
Cambria	24.72	37.94	46.15
Cayucos	19.77	23.36	26.98

Note: Rates for Santa Maria are for every other week MSW collection. All other rates include weekly MSW collection.

Comparative garbage rates were compiled by William Statler, Consultant, in August 2019

Notice of Public Hearing Regarding Proposed Solid Waste Rate Increase

Property Owners and Tenants - Customers:

This notice is to inform you the City of Morro Bay ("the City") will hold a public hearing regarding solid waste disposal rate increases (the "Proposed Rate Increase") proposed by Morro Bay Garbage Service, Inc. ("Morro Bay Garbage") for properties and customers receiving solid waste services within the City. The Proposed Rate Increase will be considered by the Morro Bay City Council at the date, time and location specified below. Consistent with the requirements of Proposition 218, this notice also provides you with the following information:

- The Date, Time, and Place of the Public Hearing;
- The Reason for the Proposed Rate Increase; and
- The Basis for the Proposed Rate Increase; and
- The Majority Protest Procedures; and
- Proposed Rate Increase Amounts.

NOTICE OF PUBLIC HEARING

The Public Hearing for the Proposed Rate Increase within the City limits will be held on:

Date: January 14, 2020 Time: 5:30 PM

Place: Morro Bay City Council Chambers, Veterans Memorial Building, 209 Surf Street, Morro Bay, CA

At the Public Hearing, the Council will consider all public comment in support of and in opposition to the Proposed Rate Increase and whether or not a Majority Protest exists pursuant to the California Constitution (as described below). If approved, the Proposed Rate Increase would become effective on February 1, 2020.

Reason for the Proposed Rate Increase

The Proposed Rate Increase (amounting to an increase of 20.50% percent for solid waste, recycling, and green waste services) is necessary for Morro Bay Garbage to continue to provide safe, environmentally sound, and reliable solid waste, recycling, and green waste collection, transportation and disposal or processing services to the citizens of Morro Bay. Several factors have contributed to these increased costs, including, but not limited to: the rising costs associated with the processing of recycling material, increased costs associated with purchase, operation and fuel for vehicles, increased labor costs, and costs associated with the implementation of an Organics Program mandated by California Assembly Bill 1826 (AB 1826). AB 1826 requires local jurisdictions to develop a program to divert organic waste from landfills to an authorized composting facility. Organic waste is food waste, green waste, landscape and pruning waste, and nonhazardous wood waste.

Basis of the Proposed Rate Increase

The total Proposed Rate Increase of 20.50% percent is based on the following cost increases incurred by Morro Bay Garbage:

1. 6.12 percent of the Proposed Rate Increase is based on increased vehicle costs that include costs for new equipment to stay current with the California Air Resources Board rules and regulations, fuel, and increased labor costs.
2. 3.96 percent of the Proposed Rate is based on the net result of increases to the cost of operations.
3. 2.40 percent of the Proposed Rate Increase is based on the implementation of an Organics Program mandated by the State of California.
4. 8.02 percent of the Proposed Rate Increase is related to the cost to process recyclable materials.

In addition, commencing on January 1, 2021 and January 1, 2022, rates shall be increased based on the following:

1. Increases, if any, in the Consumer Price Index (CPI) for Bureau of Labor Statistics' Consumer Price Index for Urban Consumers based on the All U.S. City Average, Bureau of Labor Statistics for the month of June 2020 for January 1, 2021 and June 2021 for January 1, 2022.
2. Increases of 0.85 percent on January 1, 2021 and 0.82 percent for January 1, 2022 for increases in the cost of landfill disposal.
3. A copy of the 2020 Base Year Rate Adjustment Application, which provides additional information on the proposed rate increases, is available at the City Clerk's Office located at 595 Harbor Street, Morro Bay, CA 93442

How Do I Protest the Proposed Rate Increase?

Pursuant to Section 6 of Article XIII D of the California Constitution, the following persons may submit a written protest against the Proposed Rate Increase to the City Clerk before the close of the Public Hearing referenced above.

- An owner(s) of property (parcel(s)) receiving solid waste, recycling, and green waste services within the City limits. If the person(s) signing the protest, as an owner, is not shown on the last equalized assessment roll as the owner of the parcel(s) then the protest must contain or be accompanied by written evidence that such person signing the protest is the owner of the parcel(s) receiving services;
- or
- A tenant(s) whose name appears on Morro Bay Garbage's records as the customer of record for the corresponding parcel receiving solid waste, recycling, and green waste services within the City limits (tenant-customer).

A valid written protest must contain: 1) a statement that you protest the Proposed Rate Increase; 2) the address or Assessor's Parcel Number (APN) of the parcel or parcels which receive solid waste, recycling, and green waste services; and, 3) a signature by either the owner or the tenant-customer of the parcel or parcels. One written protest per parcel shall be counted in calculating a majority protest to the Proposed Rate Increase subject to the requirements of Section 6 of Article XIII D of the California Constitution. Written protests will not be accepted by e-mail or by facsimile. Verbal protests will not be counted in determining the existence of a majority protest. To be counted, a protest must be received in writing by the City Clerk before the close of the Public Hearing referenced above.

Written protests regarding the solid waste rate increase may be mailed to:

City of Morro Bay, Attn: City Clerk, 595 Harbor Street, Morro Bay, CA 93442

Written protests may also be personally delivered to the City Clerk's Office located at 595 Harbor Street, Morro Bay, CA 93442.

If valid written protests are presented by a majority of owners and/or tenants-customers of parcels receiving solid waste service within the City's limits, then the City will not adjust/increase the solid waste disposal rates. Only one protest per parcel will be counted in determining whether or not a majority protest exists.

Morro Bay Garbage – City of Morro Bay				
Solid Waste Service Rates - Effective 2/1/2020				
Service Description	Service Frequency	Currently Monthly Rate Effective 1/1/2019	Proposed Rate Adjustment %	Proposed Monthly Rate Effective 2/1/2020
MONTHLY SINGLE-FAMILY AND MULTI-UNIT RESIDENTIAL SERVICE (4 UNITS OR LESS)				
Price per month for specified carts collected each week. One green waste and one recycling cart is included at no additional charge once each week.				
MINI-CAN SERVICE				
One 19 gallon Cart	1	\$11.19	20.50%	\$13.48
ECONOMY RATE				
One 32 gallon Cart	1	\$17.91	20.50%	\$21.58
STANDARD RATE				
One 64 gallon Cart	1	\$35.81	20.50%	\$43.15
PREMIUM RATE				
One 96 gallon Cart	1	\$53.72	20.50%	\$64.73
SERVICE AWAY FROM THE STREET CURB (IN YARD)				
Additional per month per can or container charge		\$9.76	20.50%	\$11.76
MONTHLY COMMERCIAL GARBAGE CART SERVICE				
One 32 Gallon Waste Wheeler	1	\$36.97	20.50%	\$44.55
One 32 Gallon Waste Wheeler	2	\$72.17	20.50%	\$86.96
One 32 Gallon Waste Wheeler	3	\$94.39	20.50%	\$113.74
One 32 Gallon Waste Wheeler	4	\$116.63	20.50%	\$140.53
One 32 Gallon Waste Wheeler	5	\$151.84	20.50%	\$182.97

MONTHLY COMMERCIAL GARBAGE CART SERVICE continued				
One 32 Gallon Waste Wheeler	6	\$187.03	20.50%	\$225.37
One 32 Gallon Waste Wheeler	7	\$222.91	20.50%	\$268.61
One 64 Gallon Waste Wheeler	1	\$53.64	20.50%	\$64.64
One 64 Gallon Waste Wheeler	2	\$94.36	20.50%	\$113.70
One 64 Gallon Waste Wheeler	3	\$136.95	20.50%	\$165.02
One 64 Gallon Waste Wheeler	4	\$185.14	20.50%	\$223.09
One 64 Gallon Waste Wheeler	5	\$231.48	20.50%	\$278.94
One 64 Gallon Waste Wheeler	6	\$270.38	20.50%	\$325.80
One 64 Gallon Waste Wheeler	7	\$318.43	20.50%	\$383.71
One 96 Gallon Waste Wheeler	1	\$72.15	20.50%	\$86.94
One 96 Gallon Waste Wheeler	2	\$125.82	20.50%	\$151.61
One 96 Gallon Waste Wheeler	3	\$185.08	20.50%	\$223.02
One 96 Gallon Waste Wheeler	4	\$246.20	20.50%	\$296.67
One 96 Gallon Waste Wheeler	5	\$299.91	20.50%	\$361.39
One 96 Gallon Waste Wheeler	6	\$366.55	20.50%	\$441.69
One 96 Gallon Waste Wheeler	7	\$442.29	20.50%	\$532.96

MONTHLY COMMERCIAL CONTAINER SERVICE - (CUBIC YARDS)				
1 Yd Container	1	\$91.04	20.50%	\$109.70
1 Yd Container	2	\$141.04	20.50%	\$169.95
1 Yd Container	3	\$181.79	20.50%	\$219.06
1 Yd Container	4	\$228.09	20.50%	\$274.85
1 Yd Container	5	\$263.32	20.50%	\$317.30
1 Yd Container	6	\$328.14	20.50%	\$395.41
1 Yd Container	7	\$495.73	20.50%	\$597.35
1.5 Yd Container	1	\$111.41	20.50%	\$134.25
1.5 Yd Container	2	\$183.68	20.50%	\$221.33
1.5 Yd Container	3	\$246.68	20.50%	\$297.25
1.5 Yd Container	4	\$313.34	20.50%	\$377.57
1.5 Yd Container	5	\$376.32	20.50%	\$453.47
1.5 Yd Container	6	\$448.57	20.50%	\$540.53
1.5 Yd Container	7	\$658.07	20.50%	\$792.97
2 Yd Container	1	\$133.66	20.50%	\$161.06
2 Yd Container	2	\$233.66	20.50%	\$281.56
2 Yd Container	3	\$313.34	20.50%	\$377.57
2 Yd Container	4	\$398.57	20.50%	\$480.28
2 Yd Container	5	\$487.49	20.50%	\$587.43
2 Yd Container	6	\$576.39	20.50%	\$694.55
2 Yd Container	7	\$827.76	20.50%	\$997.45
3 Yd Container	1	\$172.58	20.50%	\$207.96
3 Yd Container	2	\$313.34	20.50%	\$377.57
3 Yd Container	3	\$441.19	20.50%	\$531.63
3 Yd Container	4	\$559.70	20.50%	\$674.44
3 Yd Container	5	\$724.60	20.50%	\$873.14
3 Yd Container	6	\$835.71	20.50%	\$1,007.03
3 Yd Container	7	\$1,129.04	20.50%	\$1,360.49
4 Yd Container	1	\$228.09	20.50%	\$274.85
4 Yd Container	2	\$424.48	20.50%	\$511.50
4 Yd Container	3	\$589.33	20.50%	\$710.14
4 Yd Container	4	\$787.57	20.50%	\$949.02
4 Yd Container	5	\$985.77	20.50%	\$1,187.85
4 Yd Container	6	\$1,115.44	20.50%	\$1,344.11
4 Yd Container	7	\$1,450.64	20.50%	\$1,748.02

MISSION COUNTRY DISPOSAL
 4388 OLD SANTA FE ROAD
 SAN LUIS OBISPO, CA 93401

PRESORTED
 STANDARD
 U.S. POSTAGE PAID
 CENTRAL COAST
 PRINTING

000002 * 000034 * 5-DIGIT 93442

0001946

PUBLIC SERVICE
 OR CURRENT RESIDENT
 955 SHASTA AVE
 MORRO BAY, CA 93442-1934



MONTHLY COMMERCIAL CONTAINER SERVICE - (CUBIC YARDS) continued				
6 Yd Container	1	\$341.71	20.50%	\$411.76
6 Yd Container	2	\$620.42	20.50%	\$747.61
6 Yd Container	3	\$873.52	20.50%	\$1,052.59
6 Yd Container	4	\$1,108.23	20.50%	\$1,335.42
6 Yd Container	5	\$1,434.69	20.50%	\$1,728.80
6 Yd Container	6	\$1,654.72	20.50%	\$1,993.94
6 Yd Container	7	\$2,235.49	20.50%	\$2,693.77
MONTHLY COMMERCIAL CONTAINER SERVICE CONT - (CUBIC YARDS)				
8 Yd Container	1	\$451.65	20.50%	\$544.24
8 Yd Container	2	\$840.46	20.50%	\$1,012.76
8 Yd Container	3	\$1,166.88	20.50%	\$1,406.09
8 Yd Container	4	\$1,559.41	20.50%	\$1,879.09
8 Yd Container	5	\$1,951.83	20.50%	\$2,351.96
8 Yd Container	6	\$2,208.55	20.50%	\$2,661.30
8 Yd Container	7	\$2,872.25	20.50%	\$3,461.06
Sunday Service	Per Occurrence	\$68.89	20.50%	\$83.01
EXTRA COLLECTION SERVICE OPTIONS				
Overstocked Garbage & extra bags Minimum/unit	Per Occurrence	\$8.94	20.50%	\$10.77
Overstocked Green waste & extra bags Minimum/unit	Per Occurrence	\$5.97	20.50%	\$7.19
Overstocked Blue Bin & extra bags Minimum/unit	Per Occurrence	\$4.47	20.50%	\$5.39
Monthly charge for additional 32, 64 or 96-gallon recycle service	Each	\$2.99	20.50%	\$3.60
Monthly charge for additional 32 or 96-gallon green waste service	Each	\$5.81	20.50%	\$7.00
Cart replacement more than once per 12 months	Per Occurrence	\$32.53	20.50%	\$39.20
Small item pickup (TV, toilet)	Each	\$16.28	20.50%	\$19.62
Per white good article/ appliance. (Once a month only)	Each	\$56.93	20.50%	\$68.60
Per mattress or box spring.	Each	\$17.00	20.50%	\$20.49
Re-deliver fee-if pulled for collections	Per Occurrence	\$31.64	20.50%	\$38.13
Install locking device on bin	Each	\$72.17	20.50%	\$86.96
Additional bin cleaning	Each	\$57.40	20.50%	\$69.17
Garbage extras on your scheduled pickup day	Per Yard	\$14.80	20.50%	\$17.83
Garbage extras - NOT ON YOUR SCHEDULED PICKUP DAY	Per Bag	\$12.18	20.50%	\$14.68
Garbage extras - NOT ON YOUR SCHEDULED PICKUP DAY	Per Yard	\$23.47	20.50%	\$28.28
Compactors	Per Ton	\$48.05	20.50%	\$57.90
Bin Rental	Per Month	\$33.70	20.50%	\$40.61
Temp Bin Rental	Per Day	\$1.87	20.50%	\$2.25
Stand by time	Per Hour	\$65.40	20.50%	\$78.81
Trip charge	Per Occurrence	\$8.17	20.50%	\$9.84
Damage/Destruction of bins or waste wheelers	Each	Replacement/repair at market price		
Rates for all commercial customers include one standard 96-gallon recycling serviced one time a week with no additional service charge.				
Rates for all commercial customers include one standard 64-gallon organic cart serviced one time a week with no additional service charge.				

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AGENDA NO: C-1

MEETING DATE: January 14, 2020

Staff Report

TO: Honorable Mayor and City Council

DATE: January 9, 2020

FROM: Rob Livick, PE/PLS – Public Works Director/City Engineer
Eric Casares, PE – Water Reclamation Facility (WRF) Program Manager
Anita Luck, Esq – Special Counsel, Aleshire and Wynder, LLP
Jennifer Callaway – Finance Director

SUBJECT: Adoption of Resolution No. 04-20 Approving Financing of the Water Reclamation Facility Project with Proceeds from the United States Environmental Protection Agency under the Water Infrastructure Finance and Innovation Act (WIFIA)

RECOMMENDATION

Staff recommends City Council adopt Resolution No. 04-20 approving proceedings to finance the new Water Reclamation Facility (WRF) Project from the proceeds of two installment sale agreements between the City and the Morro Bay Public Facilities Corporation, as each agreement is assigned to the United States Environmental Protection Agency (USEPA) and related documentation. Specifically, City Council approval of Resolution No. 04-20 authorizes the following items:

1. Approves the Wastewater System Project Installment Sale Agreement, consents to Assignment to USEPA, and approves the Wastewater Pledged Collateral pursuant to Section 4.5(a) of the Wastewater Installment Sale Agreement.
2. Approves the Water System Project Installment Sale Agreement, consents to Assignment to USEPA, and approves the Water Pledged Collateral pursuant to Section 4.5(a) of the Water Installment Sale Agreement.
3. Approves of the WIFIA Credit Agreement for the Wastewater System Project and the WIFIA Credit Agreement Water System Project.

ALTERNATIVES

No alternatives are recommended.

FISCAL IMPACT

In June 2018, the City completed a rate study for the WRF Project. The rate study was based on a total project cost of \$126 million and assumed that 49 percent of the total project cost would be financed by a low-interest loan through the USEPA's Water Infrastructure Finance and Innovation Act (WIFIA) program. Authorization of Resolution No. 04-20 will provide up to 49-percent of the project cost to a maximum authorized amount of \$61.7 million.

Securing the WIFIA loan will save the City, and its utility rate payers, approximately \$28M in debt service costs over the life of the loan compared to conventional bonds available on the market.

Prepared By: EC/RL

Dept Review: RL

City Manager Review: SC

City Attorney Review: CN/AL

BACKGROUND

Project Funding Overview

The City engaged Bartle Wells Associates (Bartle Wells) to complete the 2018 rate study. The 2018 rate study determined the rate increases necessary to fund the WRF Project and how the financing would be accomplished. In April 2018, the City Manager appointed a Blue Ribbon Commission to assist Bartle Wells and City staff with the preparation of the 2018 rate study, and develop a water and wastewater rate structure that was as affordable as reasonably possible for the community, while providing sufficient revenue to finance the WRF Project. Through the work of this group, a draft proposed maximum combined water and sewer rate of \$191 per month (for the typical single-family residential water and sewer customer) was proposed. These rates were approved through the Proposition 218 process and went into effect on July 1, 2019.

The City has been successful in its efforts to seek subsidized funding for the WRF Project and anticipates funding the project via a combination of sources as summarized in the table below.

	Total	% of Total	Water	% of Total	Wastewater	% of Total
WRF Project Costs	\$125.9		\$29.9	23.7%	\$96.0	76.3%
Projected Funding Sources						
WIFIA Financing	\$48.5	38.5%	\$26.4	88.4%	\$22.1	23.0%
SRF Loan*	48.5	38.5%	-	0.0%	48.5	50.5%
SRF Grant	5.0	4.0%	1.2	4.0%	3.8	4.0%
Cash Funding	<u>23.9</u>	<u>19.0%</u>	<u>2.3</u>	<u>7.6%</u>	<u>21.6</u>	<u>22.5%</u>
Total	125.9	100.0%	30	100.0%	96	100.0%

* Assumes outstanding SRF Planning Loan is rolled into a 30-year SRF Loan.

The table shows the amount of funding anticipated to be generated from each funding source and assumes WIFIA and the State Water Resources Control Board (State Water Board), through the Clean Water State Revolving Fund (CWSRF) program, will each contribute the same amount to the WRF Project. The City has been working with WIFIA staff for the last several years to secure this low interest funding. At the end of 2018, the City submitted a final application to the State Water Board and was placed on the CWSRF fundable list for Fiscal Year 2019/2020 on June 18, 2019. The total loan amounts authorized for WIFIA and CWSRF will be higher as they also will include costs for loan issuance plus interest accrued during construction related to each financing mechanism.

While the table above and associated financial analysis determined that only \$48.5 million of the WRF Project needs to be funded by WIFIA, the City is receiving authorization from WIFIA for "line of credit" reimbursement of up to \$61.7 million of eligible project costs (which equates to less than 49% of the projected total costs of the WRF project). The City is seeking this additional line of credit authorization due to current, favorable interest rates and the flexibility it will provide for the accumulated cash in the Wastewater and Water Funds. Staff will return to City Council later in 2020, once the CWSRF loan is nearing completion, to review and determine the optimal mix of WIFIA, SRF loans/grants and cash funding for the WRF project.

A summary of each funding source is provided below:

- **WIFIA:** The City will enter into separate financing agreements with WIFIA for water and wastewater financing (both funds are participating, as the Wastewater Fund covers the sewer portion of the project and the Water Fund covers the reclamation components of the project). Each utility will be responsible for funding its own share of debt service. Current WIFIA interest rates are approximately 2.20% to 2.40% for a loan with up to a 35-year repayment term. The final interest rate would be established when WIFIA provides final authorization for the financing. Approximately 55% of the total WIFIA financing will be allocated to the water utility's share of WRF Project costs and approximately 45% will be allocated to wastewater. Annual debt service for WIFIA financing is estimated at roughly \$2.3 million per year with the water utility allocated about \$1.25 million of annual debt service and the wastewater utility allocated roughly \$1.05 million of debt service per year.
- **CWSRF Loan:** CWSRF financing will apply solely to the wastewater utility's portion of the WRF Project per CWSRF guidelines. Debt service on the anticipated CWSRF financing is estimated at \$2.1 million per year assuming a 30-year loan at the current interest rate of 1.3%.
- **CWSRF Grant:** The State Water Board has also provided preliminary indication that it will provide \$5 million in CWSRF grant funding for the WRF Project.
- **Cash Funding:** The City has been applying some cash funding toward the WRF Project and will continue to evaluate how much cash funding it will ultimately contribute. Cash funding reduces the need for debt financing resulting in lower debt service. As noted above, staff is anticipated to return to City Council late in 2020, once the CWSRF loan is nearing completion, to review and determine the optimal mix of WIFIA, SRF loans/grants and cash funding for the WRF project.

The subsidized funding provided by the WIFIA and CWSRF programs results in substantial savings to the City via lower debt service payments compared to municipal bond financing. Interest rates for both programs are subject to change until locked in. Based on current interest rates, the present value savings of lower debt service due to use of the WIFIA financing program is estimated at roughly \$28 million compared to standard municipal bonds.

The City has adopted water and sewer rates and surcharges adequate to fund each utility's share of debt service payments for the WRF Project. At this point, no additional rate increases are anticipated. The potential remains for a subsequent collection of less than the adopted utility rates in the future (resulting in savings to the consumer). That will be determined after the construction contracts are executed for the conveyance and water reclamation portions of the project and the City conducts a rate review later in 2020.

WIFIA Overview

The City first submitted a letter of interest for WIFIA financing on April 10, 2017 and received an invitation to submit a formal application on July 17, 2017. The USEPA's WIFIA program provides low-interest financing and obtaining this financing will help to minimize the overall rate impact to customers. In September 2017, the City Council directed staff to pursue an accelerated project timeline to qualify for the WIFIA program and the City submitted the application for review in July 2018.

Since submitting the application, the City has been working with USEPA staff to facilitate their review of the environmental, financial, and technical aspects of the WRF Project. Adoption of Resolution No. 04-

20 and executing the WIFIA loan agreement is the culmination of nearly three years of work by City staff.

DISCUSSION

Resolution No. 04-20 approves the various documents associated with the WIFIA loan agreement. The 2018 rate study apportioned approximately 29 percent of the WRF Project as attributable to the water fund, and approximately 71 percent as attributable to the wastewater fund. That apportionment was based on the project components that benefitted the respective funds. Therefore, the City has determined to bifurcate the financing into two portions; a wastewater obligation and a water obligation. For each financing, the City will pledge the Net Revenues of the System (i.e., water or wastewater fees following payment of operation and maintenance expenses) to pay for the improvements. The maximum loan amounts authorized by Resolution No. 04-20 is \$26 Million for the wastewater portion and \$37 Million for the water portion. It should be noted that because the City also anticipates receiving funding from the State of California from the Clean Water State Revolving Loan Fund (CWSRF), and CWSRF cannot fund the water portion of the project, the City worked with EPA and the State Water Board staff to conjunctively apportion the available funding appropriately.

While authorized for the funding line of credit specified in Resolution No. 04-20, the analysis by Bartle Wells estimated the approximate amount of \$26.4 million for wastewater and the water \$22.1 million, if the City were to choose to use the full amount of accumulated cash identified in the 2018 rate analysis. As noted above, staff will return to City Council late in 2020, once the CWSRF loan is nearing completion, to review and determine the optimal mix of WIFIA, SRF loans/grants and cash funding for the WRF project.

In 2019, the Morro Bay Public Facilities Corporation (Corporation) was formed which allows the City to undertake financings related to the WRF Project. This corporation, overseen by a Board of Directors comprised of the Mayor and City Councilmembers of the City of Morro Bay, is a California nonprofit public benefit corporation.

For each of the wastewater and water financing, the City will enter into the following documents:

1. **Installment Sale Agreement.** This is the agreement whereby the Corporation undertakes the obligations related to the portion of the WRF Project being financed and agrees to sell such project back to the City. The City makes installment payments to the Corporation from funds collected from ratepayers. The installments are essentially comprised of principal and interest portions like a loan. The sum of the installments is the principal amount and constitutes the purchase price for the portion of the project. The major provisions of the installment contract include:
 - a. The Corporation appoints the City as its agent to construct the project.
 - b. The City promises to make the payments and hold the specific funds of the City related to the applicable system in certain ways to protect the interest of the corporation and any assignee.
 - c. On default the corporation and the City have an array of remedies, including accelerating the installment payments.
 - d. The City draws down on the money as the City needs funds to construct the WRF Project; the balance of the loan increases as more money is drawn down.
 - e. The City warrants that it is in compliance with federal and state laws.
 - f. The document sets out the additional debt test for undertaking future financings.
 - g. The document sets out rate covenants and requirements for when a reserve fund is needed.
2. **Assignment Agreement.** Under the Assignment Agreement, the Corporation assigns all of its interest in the Installment Sale Agreement (except certain rights to indemnifications and fees) to

- the USEPA. This is how WIFIA provides the upfront money for the construction of the WRF Project. As security, the Corporation assigns the installment payments to be paid by the City.
3. **WIFIA Credit Agreement.** In the credit agreement, the USEPA agrees to the financing and buying the Installment Sale Agreement to fund the WRF Project under certain conditions. This agreement describes how the money is disbursed for the project, relevant conditions to closing or disbursement, including refinancing of the State Water Resources Control Board (State Board) \$10.3 million planning loan, conditions for additional debt, covenants to provide certain information to the USEPA annually, and provisions required in other documents.

Generally, the major terms of the financing are as follows:

The financing is undertaken by the Federal Government under WIFIA which was enacted in 2014 to provide loans for major infrastructure investments. The WIFIA term sheet which describes the major terms is included as Attachment 2. These terms are further described in the documents. Some of the major terms include:

1. WIFIA will only finance up to 49 percent of Eligible Project Costs. The remaining financing will come in the near future from the Clean Water State Revolving Fund (CWSRF) Loan Program which has made a commitment to the City.
2. The interest rate is calculated by adding one basis point (0.01%) to the rate of securities of a similar nature as published, on the execution date of the WIFIA Credit Agreement, in the United States Treasury Bureau of Public Debt's daily rate table for State and Local Government Series (SLGS) securities (<https://www.treasurydirect.gov/GA-SL/SLGS/selectSLGSDate.htm>). The documents do allow for capitalized interest during the construction period until November 1, 2024.
3. The expected Maturity Date is November 1, 2058.
4. The obligation is pre-payable with no penalty on any interest payment date in a minimum amount of \$250,000.
5. The City must meet the rate covenant each year which means it has sufficient net revenues to cover 120 percent of all senior debt payments and 110 percent of all debt, including junior debt payments. A similar requirement of 120 percent is required for additional debt against maximum annual debt service on all senior obligations or 110 percent on all obligations.
6. In 2018, the City adopted debt policies pursuant to Resolution No. 43-18. The financing is in compliance with the City's policies. In addition, the City has complied in Section 5 of Resolution 04-20 with the Government Code Section 5852.1(a)(1) provision concerning certain good faith estimates related to the proposed financing.

ATTACHMENTS

1. Resolution No. 04-20
2. WIFIA Term Sheet (Water)
3. WIFIA Term Sheet (Wastewater)
4. Installment Sale Agreement (Wastewater)
5. Assignment Agreement (Wastewater)
6. WIFIA Credit Agreement (Wastewater)
7. Installment Sale Agreement (Water)
8. Assignment Agreement (Water)
9. WIFIA Credit Agreement (Water)

RESOLUTION NO. 04-20

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING PROCEEDINGS TO FINANCE THE CONSTRUCTION OF THE
WATER RECLAMATION FACILITY PROJECT FROM THE PROCEEDS OF TWO
INSTALLMENT SALE AGREEMENTS BETWEEN THE CITY OF MORRO BAY AND
THE MORRO BAY PUBLIC FACILITIES CORPORATION, AS EACH AGREEMENT
IS ASSIGNED TO THE U.S. ENVIRONMENTAL PROTECTION AGENCY,
APPROVING THE FORMS OF CERTAIN DOCUMENTS AND AUTHORIZING
ACTIONS IN CONNECTION THEREWITH**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the City of Morro Bay (the "City") plans to finance the acquisition, design, construction and equipping of a new water reclamation facility and related improvements (the "Project"); and

WHEREAS, the Morro Bay Public Facilities Corporation (the "Corporation") is a nonprofit public benefit corporation duly organized and existing under the laws of the State of California, and is authorized pursuant to the nonprofit public benefit law to purchase property and borrow money for the purpose of assisting the City in financing the Project; and

WHEREAS, in connection with the City undertaking the Project, the City conducted a Financial Plan and Rate Analysis for a New Water Reclamation Facility, dated July 5, 2018, by Bartle Wells Associates ("Study") which showed that certain Project costs are attributable to the wastewater system ("Wastewater System Portion") and certain Project costs are attributable to the water system ("Water System Portion"), and the City hereby determines that Project costs will be allocated among the two systems in a manner consistent with that rate study; and

WHEREAS, the water system rates and the wastewater system rates have been increased in amounts consistent with the recommendations in the rate study to finance the Project; and

WHEREAS, in order to fund the Project, the City has applied for financing to the State of California State Revolving Fund Loan Program and the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (the "EPA") under the Water Infrastructure Finance and Innovation Act, as amended by Section 1445 of the Fixing America's Surface Transportation Act of 2015, as further amended by Section 5008 of the Water Infrastructure Improvements For the Nation Act of 2016 and by Section 4201 of America's Water Infrastructure Act of 2018 (collectively "WIFIA"); and

WHEREAS, the Corporation desires to assist the City in financing the Wastewater System Portion of the Project, and to that end, desires to sell a portion of the Wastewater System Portion of the Project (the "WIFIA Wastewater System Portion of the Project") to the City pursuant to the Installment Sale Agreement, between the City and the Corporation, the form of which is presented herewith and on file with the City Clerk (the "Installment Sale Agreement (Wastewater System Project)"); and

WHEREAS, the Corporation desires to assist the City in financing the Water System Portion of the Project, and to that end, desires to sell a portion of the Water System Portion of the Project (the "WIFIA Water System Portion of the Project") to the City pursuant to the Installment Sale Agreement, between the City and the Corporation, the form of which is presented herewith and on file with the City Clerk (the "Installment Sale Agreement (Water System Project)"); and

WHEREAS, the Corporation and the City have the general power to sell and purchase property; and

WHEREAS, in order to raise funds for the Project, the Corporation will assign its interests in the Installment Sale Agreement (Wastewater System Project), including the installment payments (excepting certain rights to indemnification or costs) to the EPA pursuant to an Assignment Agreement, by and between the Corporation and the EPA, as the credit provider ("WIFIA Credit Provider"), the form of which is on file with the City Clerk and presented herewith (the "Assignment Agreement (Wastewater System Project)");

WHEREAS, in order to fund the WIFIA Wastewater System Portion of the Project and assume the rights of the Corporation under the Installment Sale Agreement (Wastewater System Project), the WIFIA Credit Provider is requiring that the City and the Corporation enter into the WIFIA Credit Agreement, with the WIFIA Credit Provider, the form of which is on file with the City Clerk and presented herewith (the "WIFIA Credit Agreement (Wastewater System Project)"); and

WHEREAS, in order to raise funds for the Project, the Corporation will assign its interests in the Installment Sale Agreement (Water System Project), including the installment payments (excepting certain rights to indemnification or costs) to the EPA pursuant to an Assignment Agreement, by and between the Corporation and the WIFIA Credit Provider, the form of which is on file with the City Clerk and presented herewith (the "Assignment Agreement (Water System Project)");

WHEREAS, in order to fund the WIFIA Water System Portion of the Project and assume the rights of the Corporation under the Installment Sale Agreement (Water System Project), the WIFIA Credit Provider is requiring that the City and the Corporation enter into the WIFIA Credit Agreement, with the WIFIA Credit Provider, the form of which is on file with the City Clerk and presented herewith (the "WIFIA Credit Agreement (Water System Project)"); and

WHEREAS, in order to finance the remainder of the Project, the City expects in the future to consummate the funding with the State of California; and

WHEREAS, the City hereby determines that installment payments due under the Installment Sale Agreement (Wastewater System Project) and payable to the Corporation, as assigned to WIFIA pursuant to the Assignment Agreement (Wastewater System Project), reflect the costs of the WIFIA Wastewater System Portion of the Project being funded by WIFIA and will be secured by, among other things, pledged revenues of the Wastewater System, and that installment payments due under the Installment Sale Agreement (Water System Project) reflect the costs of the WIFIA Water System Portion of the Project being funded by WIFIA and will be secured by, among other things, pledged revenues of the Water System; and

WHEREAS, in order to provide the funds for the acquisition, construction and installation of the WIFIA Wastewater System Portion of the Project and the WIFIA Water System Portion of

the Project, the Corporation will cause the WIFIA Credit Provider to advance funds from time to time pursuant to the WIFIA Credit Agreement (Wastewater System Project) and the WIFIA Credit Agreement (Water System Project) to the City, as agent for the Corporation, to pay the costs of the WIFIA Wastewater System Portion of the Project and the WIFIA Water System Portion of the Project; and

WHEREAS, the Corporation will appoint the City as its agent to carry out the construction of the WIFIA Wastewater System Portion of the Project, the City will apply all funds advanced under the WIFIA Credit Agreement (Wastewater System Project), to the costs of the WIFIA Wastewater System Portion of the Project, pursuant to the Installment Sale Agreement (Wastewater System Project) and the WIFIA Credit Agreement (Wastewater System Project), and

WHEREAS, the Corporation will appoint the City as its agent to carry out the construction of the WIFIA Water System Portion of the Project, the City will apply all funds advanced under the WIFIA Credit Agreement (Water System Project), to the costs of the WIFIA Water System Portion of the Project, pursuant to the Installment Sale Agreement (Water System Project) and the WIFIA Credit Agreement (Water System Project), and

WHEREAS, following the payment in full of the purchase price of the WIFIA Wastewater System Portion of the Project and the WIFIA Water System Portion of the Project, respectively, the City will have full and exclusive ownership of the WIFIA Wastewater System Portion of the Project and the WIFIA Water System Portion of the Project; and

WHEREAS, the installment payments for the WIFIA Wastewater System Portion of the Project shall be payable from revenues of the Wastewater System and secured by a pledge of and security interest in the Net Revenues of the Wastewater System and other funds described and defined in the Installment Sale Agreement (Wastewater System Project) ("Wastewater Pledged Collateral"); and

WHEREAS, the installment payments for the WIFIA Water System Portion of the Project shall be payable from revenues of the Water System and secured by a pledge of and security interest in the Net Revenues of the Water System and other funds described and defined in the Installment Sale Agreement (Water System Project) ("Water Pledged Collateral"); and

WHEREAS, pursuant to Section 5852.1(a)(1) of the California Government Code, the City must provide certain information regarding the proposed financing as provided below; and

WHEREAS, the Council has duly considered such transactions and wishes at this time to approve said transactions in the public interests of the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

Section 1. Recitals. The Council hereby finds the recitals hereto are true and correct and incorporates such recitals herein by this reference.

Section 2. Approval of Installment Sale Agreement (Wastewater System Project); Consent to Assignment. The Council hereby approves the Installment Sale Agreement (Wastewater System Project) in the form presented at this meeting, together with any changes therein or additions thereto deemed advisable by the Mayor, the City Manager, the Finance

Director or Treasurer, each acting alone (the "Designated Officers"), whose execution thereof shall be conclusive evidence of the approval of any such changes or additions, so long as the purchase price of the Installment Sale Agreement (Wastewater System Project) does not exceed \$26,000,000, the maximum interest rate related to the interest component of the installment payments does not exceed 3%, and the final payment date of the Installment Sale Agreement (Wastewater System Project) is not later than November 1, 2058. The interest component of the installment payments shall be calculated by adding one basis point (0.01%) to the rate of securities of a similar maturity (based on the weighted-average life of the principal components payable on each installment payment date) as published, on the execution date of the foregoing agreement, in the United States Treasury Bureau of Public Debt's daily rate table for State and Local Government Series (SLGS) securities, currently located on the Internet at <https://www.treasurydirect.gov/GA-SL/SLGS/selectSLGSDate.htm> (the "WIFIA Rate") The default interest rate shall not exceed 200 basis points above the otherwise applicable interest rate. The Designated Officers, each acting alone, are hereby authorized and directed for and in the name and on behalf of the City to execute, and the City Clerk is hereby authorized and directed to attest, the final form of the Installment Sale Agreement (Wastewater System Project) for and in the name of the City. The Council hereby authorizes the delivery and performance of the Installment Sale Agreement (Wastewater System Project) and consents to the assignment by the Corporation. The Council hereby approves the pledge of the Wastewater Pledged Collateral (including, without limitation, the Net Revenues of the Wastewater System) pursuant to Section 4.5(a) of the Installment Sale Agreement (Wastewater System Project).

Section 3. Approval of Installment Sale Agreement (Water System Project); Consent to Assignment. The Council hereby approves the Installment Sale Agreement (Water System Project) in the form presented at this meeting, together with any changes therein or additions thereto deemed advisable by the Designated Officers, whose execution thereof shall be conclusive evidence of the approval of any such changes or additions, so long as the purchase price of the Installment Sale Agreement (Water System Project) does not exceed \$37,000,000 the maximum interest rate related to the interest component of the installment payments does not exceed 3%, and the final payment date of the Installment Sale Agreement (Water System Project) is not later than November 1, 2058. The interest component of the installment payments shall be calculated at the WIFIA Rate. The default interest rate shall not exceed 200 basis points above the otherwise applicable interest rate. The Designated Officers, each acting alone, are hereby authorized and directed for and in the name and on behalf of the Corporation to execute, and the Secretary (or any designated deputy) is hereby authorized and directed to attest, the final form of the Installment Sale Agreement (Water System Project) for and in the name of the City. The City Council hereby authorizes the delivery and performance of the Installment Sale Agreement (Water System Project) and consents to the assignment by the Corporation. The Council hereby approves the pledge of the Water Pledged Collateral (including, without limitation, the Net Revenues of the Water System) pursuant to Section 4.5(a) of the Installment Sale Agreement (Water System Project).

Section 4. Approval of WIFIA Credit Agreement (Wastewater System Project) and the WIFIA Credit Agreement (Water System Project). The Council hereby approves of the WIFIA Credit Agreement (Wastewater System Project) and the WIFIA Credit Agreement (Water System Project) in the forms presented at this meeting, together with any changes therein or additions thereto deemed advisable by any Designated Officer, whose execution thereof shall be conclusive evidence of the approval of any such changes or additions. The Designated Officers, each acting alone, are hereby authorized and directed for and in the name and on behalf of the City to execute the final form of the WIFIA Credit Agreement (Wastewater System Project) and the WIFIA Credit Agreement (Water System Project) for and in the name of the

City. The Council hereby authorizes the delivery and performance of the WIFIA Credit Agreement (Wastewater System Project) and the WIFIA Credit Agreement (Water System Project) .

Section 5. Government Code Section 5852.1 Transparency. The City's financial consultants have provided the following good faith estimates pursuant to Government Code Section 5852.1: (a) the true interest cost with respect to the Installment Sale Agreement (Wastewater System Project) is 2.4% and with respect to the Installment Sale Agreement (Water System Project) is 2.4%, (b) the finance charges or fees to third parties related to the Installment Sale Agreement (Wastewater System Project) is \$206,500 and the Installment Sale Agreement (Water System Project) is \$200,000 (c) proceeds of the assignment with respect to the Installment Sale Agreement (Wastewater System Project) are expected to be \$25,183,811, not including any finance charges, reserves and capitalized interest funded by proceeds, and proceeds of the assignment with respect to the Installment Sale Agreement (Water System Project) are expected to be \$36,516,526, not including any finance charges, reserves and capitalized interest funded by proceeds, and (d) the total payment amount of the installment payments for the WIFIA Wastewater System Portion of the Project and WIFIA Water System Portion of the Project, respectively, calculated as provided in Section 5852.1(a)(1)(D) of the Government Code is estimated at \$40,678,981 and \$58,919,788 respectively (i.e. total of all payments the City will make to pay installment payments plus the finance charges set forth in section (b) which are not paid from proceeds).

Section 6. Official Actions. The Designated Officers, the City Clerk and all other officers of the City are each authorized and directed in the name and on behalf of the City to execute any term sheets or related documents and make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the documents approved pursuant to this Resolution. Whenever in this Resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer shall be absent or unavailable. All actions heretofore taken by the Designated Officers, including execution of any term sheets, are hereby ratified and approved by the Council.

Section 7. Effective Date. This Resolution shall take effect from and after its adoption.

Section 8. Certification. The City Clerk is hereby authorized and directed to certify the adoption of this resolution.

AYES:

NOES:

ABSENT:

ABSTAIN:

PASSED AND ADOPTED by the City Council, City of Morro Bay at a regular meeting thereof held on the ____th day of ____ 2020 by the following vote:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, _____, City Clerk of the City of Morro Bay, hereby attest to and certify that the foregoing resolution is the original resolution adopted by the Morro Bay City Council at its regular meeting held on the _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

City Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

[Date], 2020

City of Morro Bay
595 Harbor Street
Morro Bay, California 93442

RE: WIFIA Term Sheet for the City of Morro Bay Water Reclamation Facility Project –
Water System Portion (WIFIA Project No. WIFIA – N17150CA)

Ladies and Gentlemen:

This WIFIA Term Sheet (this “**Term Sheet**”) constitutes (a) the approval of the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (hereinafter, the “**USEPA**”), of the application for credit assistance of the City of Morro Bay (the “**City**”) dated July 12, 2018 (the “**Application**”) and (b) the agreement of USEPA to provide financing for the Morro Bay Water Reclamation Facility Project – Water System Portion (as further described below, the “**Project**”) pursuant to a secured installment payment structure. The financing shall be documented under the following three agreements: (1) an Installment Sale Agreement (the “**Installment Sale Agreement**”) between the City and the City of Morro Bay Public Facilities Corporation (the “**Corporation**”), (2) an Assignment Agreement from the Corporation to USEPA (the “**Assignment Agreement**”), and (3) a WIFIA Credit Agreement (the “**WIFIA Credit Agreement**” and together with the Installment Sale Agreement and the Assignment Agreement, the “**Financing Documents**”) among the City, the Corporation and USEPA.

The financing described above is provided pursuant to the Water Infrastructure Finance and Innovation Act (“**WIFIA**”), § 5021 *et seq.* of Public Law 113-121 (as amended by Public Law 114-94, Public Law 114-322 and Public Law 115-270) (the “**Act**”), codified as 33 U.S.C. §§ 3901-3914, and is subject in all respects to (i) the terms and conditions contained herein and (ii) the execution and delivery of each Financing Document by all parties thereto, each such agreement to be entered into on or after the date hereof and the terms and conditions contained therein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the WIFIA Credit Agreement.

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

By executing this Term Sheet, the City confirms its agreement to reimburse USEPA for any and all fees and expenses that USEPA incurs for legal counsel, financial advice, and other consultants in connection with the evaluation of the Project and the negotiation and preparation of

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the Financing Documents and related documents, whether or not such agreements are ultimately executed.

This Term Sheet shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable, and the internal laws of the State of California, if and to the extent such federal laws are not applicable.

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INDICATIVE TERMS OF THE WIFIA CREDIT AGREEMENT

SUMMARY OF TRANSACTION	Under the Financing Documents, the City will acquire the Project from the Corporation, in exchange for installment payments of the project purchase price paid by the City to the Corporation. Concurrently, the WIFIA Credit Provider will provide funding for the Project, in exchange for the Corporation's assignment of the installment payments that it receives from the City, to the WIFIA Credit Provider.
WIFIA CREDIT PROVIDER	United States Environmental Protection Agency, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the " WIFIA Credit Provider ").
CITY	The City of Morro Bay, a general law city and municipal corporation organized and existing under the laws of the State of California (the " City ").
PROJECT	The Morro Bay Water Reclamation Facility Project consists of the design and construction of a new water reclamation facility, sewage pump station and pipeline, new injection wells for groundwater storage, recycled water pipeline and waste discharge pipeline, located within the City and in an unincorporated area of the County of San Luis Obispo adjacent to the City boundaries. It comprises two sub-projects: the Wastewater System Project and the Water System Project. The WIFIA Credit Provider's financing of <i>a portion</i> of the Water System Project (such portion, the "Project") is the subject of this Term Sheet.
WIFIA CREDIT AMOUNT	A maximum principal amount (sum of disbursements) not to exceed \$36,516,525.66; provided that (a) the maximum principal amount available to be drawn under the WIFIA Credit Agreement, together with the amount of any other credit assistance provided under the Act, shall not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs, (b) the total federal assistance for the Project, including but not limited to the maximum principal amount available to be drawn under the WIFIA Credit Agreement and all federal direct and indirect grants, shall not exceed eighty percent (80%) of Total Project Costs, and (c) such amount does not include any interest that may be capitalized in accordance with the Financing

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	Documents and added to the Principal Component of the Installment Payments.
INSTALLMENT PAYMENTS	Under the Financing Documents, the City will acquire the Project from the Corporation, in exchange for installment payments paid by the City to the Corporation (“Installment Payments”), which will be assigned by the Corporation to the WIFIA Credit Provider. Each Installment Payment comprises a Principal Component and an Interest Component, which mimics a debt service structure under a traditional loan agreement. The Installment Payments may be adjusted in the same way that loan payments would be adjusted under a typical loan agreement.
INTEREST COMPONENT	The Interest Component of the Installment Payments shall be calculated assuming the Outstanding Principal Component bears interest at a fixed rate, calculated by adding one basis point (0.01%) to the rate of securities of a similar maturity (based on the weighted-average life of the Principal Components payable on each Installment Payment Date) as published, on the execution date of the WIFIA Credit Agreement, in the United States Treasury Bureau of Public Debt’s daily rate table for State and Local Government Series (SLGS) securities, currently located on the Internet at https://www.treasurydirect.gov/GA-SL/SLGS/selectSLGSDate.htm. Interest shall accrue and be computed on the basis of a 360-day year of twelve (12) thirty (30) day months and shall be compounded semi-annually. The Outstanding Balance shall also bear default interest at a rate of 200 basis points above the otherwise applicable interest rate, at such times and upon such terms as is provided in the Financing Documents.
INSTALLMENT PAYMENT DATES	The Principal Component of the Installment Payments shall be repaid in 69 semi-annual installments on May 1 and November 1 of each year, beginning on November 1, 2024. The Interest Component shall be paid in arrears on May 1 and November 1 of each year, beginning on November 1, 2024. The Installment Payment Commencement Date shall in no event be later than five (5) years after the Substantial Completion Date of the Project.

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	Payment dates may also include the date of any mandatory or optional prepayment, as set forth in the Financing Documents. Subject to the terms and conditions of the Financing Documents, no principal or interest shall be paid during the capitalized interest period.
FINAL INSTALLMENT PAYMENT DATE	November 1, 2058; provided that the Final Installment Payment Date shall be no later than the date that is thirty-five (35) years following the Substantial Completion Date.
PROJECTED SUBSTANTIAL COMPLETION DATE	November 1, 2023.
DEDICATED SOURCE FOR PAYMENT OF THE INSTALLMENT PAYMENTS	The dedicated source of repayment for the Installment Payments shall be System Revenues.
SECURITY AND LIEN PRIORITY	Payment of Installment Payments shall be secured by a senior lien on the Pledged Collateral, which includes the Net Revenues, amounts in the WIFIA Payment Account and amounts in the WIFIA Reserve Account, as well as other funds as may be available in the Water Fund for the benefit of holders of Obligations including funds in those accounts designated for Subordinated Obligations and the general reserve account. “Net Revenues” means System Revenues minus Operation and Maintenance Costs and includes Net Revenues on deposit in System Accounts (other than funds on deposit in accounts that are pledged solely to holders of Additional Senior Obligations). All System Revenues shall be deposited into the Revenue Account within the Water Fund and applied in the following order of priority: (i) <u>first</u>, to pay Operation and Maintenance Costs in amounts reasonably projected to be necessary during the applicable month for the payment of Operation and Maintenance Costs; (ii) <u>second</u>, on a prorated basis, into each Senior Obligation Payment Account (including the WIFIA Payment Account), the amount of interest (or interest component of an installment payment or capital lease payment) and principal (or principal component of an installment

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	payment or capital lease payment) accruing during the applicable month, assuming equal monthly accruals over the applicable number of months in the applicable Senior Obligation Payment Period, plus an amount equal to any transfer shortfalls that remain unfunded from prior months; provided, however, in the last month of a Senior Obligation Payment Period, the amount transferred shall be that amount needed to pay the amount due on the applicable Senior Obligation Interest Payment Date or Senior Obligation Principal Payment Date, and further provided, with respect to a Senior Obligation, no transfer with respect to interest on such Senior Obligation shall be made to the extent amounts have been pre-funded and are otherwise available to make the applicable interest payment; (iii) <u>third</u>, on a prorated basis, into the respective reserve accounts for the Senior Obligations (including the WIFIA Reserve Account) as required by the Senior Obligation Documents, in an amount equal to the amount required to be deposited therein to restore the balance in each Senior Obligations debt service reserve account to the applicable Senior Obligations debt service reserve requirement pursuant to the terms of the Senior Obligation Documents, including the amounts required to be deposited pursuant to Section 7(h) (<i>Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event – WIFIA Reserve Account</i>) of the WIFIA Credit Agreement; (iv) <u>fourth</u>, any other payments required to comply with the provisions of the Installment Sale Agreement and any Senior Obligation Documents; and (v) <u>fifth</u>, to the payment of Subordinate Obligations due and payable; and (vi) <u>sixth</u>, to fund the requirements of any reserve fund for such Subordinate Obligations in an amount equal to the amount required to be deposited therein to restore the balance in each reserve fund for such Subordinate Obligations to the applicable reserve requirement pursuant to the terms of the Subordinate Obligation Documents; and

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	vii) <u>seventh</u>, to a general reserve account to be used for any other lawful purposes of the Water System. After the City has made any required payments described in clauses (i) through (iv) above, any remaining Net Revenues in the Water Fund shall be available for any lawful purpose of the City relating to the Water System; provided, however, if there shall be a deficiency at any time in System Revenues required to make the deposits required pursuant to clauses (i), (ii), (iii) or (iv) above, the City shall make the required deposits from available amounts in the Subordinate Obligation Payment Accounts or the Subordinate Obligation Reserve Accounts or the general reserve account, in reverse order, with transfers going first to fund requirements of clause (i), second to fund requirements of clause (ii), third to fund requirements of clause (iii) and fourth to fund requirements of clause (iv).
PREPAYMENT	The Installment Payments shall be subject to mandatory prepayment, without prepayment premium, upon the occurrence of (a) a Bankruptcy Related Event of the City or the Corporation, (b) the acceleration of any other Senior Obligations or (c) any WIFIA Credit Document or Wastewater System Project Credit Agreement Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its term) or becomes void, invalid, ineffective or unenforceable, or an event that results in the material impairment in the pledge or priority of the security interest in the Pledged Collateral. The City may prepay the unpaid Principal Components of the Installment Payments in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the City; provided, however, that such prepayments shall be in principal amounts of \$250,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, but not more than once annually, on an Installment Payment Date by paying such unpaid Principal Components of the Installment Payments to be prepaid, together with the unpaid Interest Components of the Installment Payments accrued to the date of such prepayment, without penalty or premium, and concurrently therewith the City shall pay all other Additional Payments then due and payable to the WIFIA Credit Provider and the Assignee.

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RATE COVENANT	The City shall, subject to the remainder of this paragraph, fix, charge and collect rates, fees, and charges for the Water System during each City Fiscal Year which are reasonable, fair and nondiscriminatory and which will be at least sufficient to yield, during each City Fiscal Year until the Final Installment Payment Date, Net Revenues equal to at least (i) one hundred and twenty percent (120%) of the Debt Service payable during such City Fiscal Year with respect to all Outstanding Senior Obligations and (ii) one hundred and ten percent (110%) of the Debt Service payable during such City Fiscal Year with respect to all Outstanding Obligations.
ADDITIONAL OBLIGATIONS	(i) Except for Permitted Debt, the City shall not without the prior written consent of the WIFIA Credit Provider issue or incur Obligations of any kind (including any of the foregoing with respect to which the interest rate varies or may be adjusted by the City from time to time) that is payable from, secured or supported by all or any portion of the Pledged Collateral; <u>provided</u>, that the City shall not incur any Obligations of any kind payable from, secured or supported by all or any portion of the Pledged Collateral, including Permitted Debt, without the prior written consent of the WIFIA Credit Provider, while an Event of Default has occurred and is continuing. (ii) The City may not create, incur or suffer to exist (A) any Obligations the payments of which are senior or prior in right to the payment by the City of the Senior Obligations or (B) any Obligations of the Project that are secured by a Lien on any assets or property of the City other than the Pledged Collateral or the pledged collateral described in the Wastewater System Project Credit Agreement. (iii) The City shall not issue any Obligations the payments of, and security for, which are on parity with the Senior Obligations (the “Additional Senior Obligations”), unless: (A) the conditions set forth in the applicable Senior Obligation Document are satisfied; (B) no Event of Default has occurred and is continuing; (C) following issuance of the proposed Additional Senior Obligations, either (X) the Net Revenues for any four (4) consecutive quarters within the six (6) quarters immediately preceding the proposed issue date (such quarters relating to the City Fiscal Year)

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	shall be sufficient to equal or exceed one hundred and twenty percent (120%) of the greatest amount of Debt Service payable on all Outstanding Senior Obligations (including the proposed Additional Senior Obligations) and shall also be sufficient to equal or exceed one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Senior Obligations), in each case in the current or any future period; or (Y) the projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date (such quarters relating to the City Fiscal Year), shall be sufficient to equal or exceed one hundred and twenty percent (120%) of the greatest amount of Debt Service payable on all Outstanding Senior Obligations (including the proposed Additional Senior Obligations) and shall also be sufficient to equal or exceed one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Senior Obligations), in each case in the current or any future period; and (D) not later than thirty (30) days prior to the proposed issue date, the City shall have provided to the WIFIA Credit Provider a certificate signed by the City's Authorized Representative (x) specifying the proposed issue date of such proposed Additional Senior Obligations and (y) confirming that the issuance of such proposed Additional Senior Obligations is authorized pursuant to the WIFIA Credit Agreement. For purposes of the calculation for clause (C)(Y) only, when calculating projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date, the City may include as System Revenues those System Revenues resulting from rate increases that have been approved and will take effect within three (3) years of such date of calculation as confirmed by the Rate Consultant.
(iv)	The City shall not issue any Obligations the payments of, and security for, which are subordinated to the Senior Obligations (the “Additional Subordinate Obligations”), unless: (A) the conditions set forth in the applicable Subordinate Obligation Document are satisfied; (B) no Event of Default has occurred and is continuing; (C) following issuance of the proposed Additional

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	Subordinate Obligations, either (X) the Net Revenues for any four (4) consecutive quarters within the six (6) quarters immediately preceding the proposed issue date (such quarters relating to the City Fiscal Year) shall be sufficient to equal or exceed one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Subordinate Obligations) in the current or any future period or (Y) the projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date (such quarters relating to the City Fiscal Year), shall be sufficient to equal one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Subordinate Obligations) in the current or any future period; and (D) not later than thirty (30) days prior to the proposed issue date, the City shall have provided to the WIFIA Credit Provider a certificate signed by the City's Authorized Representative (x) specifying the proposed issue date of such proposed Additional Subordinate Obligations and (y) confirming that the issuance of such proposed Additional Subordinate Obligations is authorized pursuant to the WIFIA Credit Agreement. For purposes of the calculation for clause (C)(Y) only, when calculating projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date, the City may include as System Revenues those System Revenues resulting from rate increases that have been approved and will take effect within three (3) years of such date of calculation as confirmed by the Rate Consultant. (v) The City covenants that it will not have Outstanding at any time Obligations with respect to which the interest rate varies or may be adjusted by the City from time to time. (vi) The Corporation shall not issue or incur any obligations of any kind, including any bonds, notes, other evidences of indebtedness, installment sale arrangements, financing lease arrangements, or similar obligations, nor enter into any installment sale arrangements, financing lease arrangements, or similar arrangements with the City, except in connection with the issuance of Permitted Debt

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	by the City or debt permitted pursuant to the Wastewater System Project Credit Agreement Documents.
RESTRICTED PAYMENTS AND TRANSFERS	The City shall not permit System Revenues or other assets of the Water System, or any funds in any System Account or in any other Water System fund or account held by or on behalf of the City, to be paid or transferred or otherwise applied for purposes other than ownership, operation or maintenance of, or capital improvements to, the Water System.
WIFIA RESERVE ACCOUNT	The City shall establish, for purposes of ensuring timely payment of Installment Payments, a WIFIA Reserve Account within the Water Fund. If on any Installment Payment Date amounts in the WIFIA Payment Account are insufficient to pay the Installment Payment due on such Installment Payment Date, amounts in the WIFIA Reserve Account shall be transferred to the WIFIA Payment Account in the amount of such insufficiency. The WIFIA Reserve Account may remain unfunded until the occurrence of a WIFIA Reserve Event. “WIFIA Reserve Event” means, as of the final day of the City Fiscal Year, failure of the City to maintain a Senior Debt Service Coverage Ratio of at least 1.30 to 1.00. Beginning with the month immediately following delivery of an Updated Financial Model which demonstrates or discloses the occurrence of a WIFIA Reserve Event and for eleven (11) months thereafter, the City shall fund the WIFIA Reserve Account in an amount equal to one-twelfth (1/12) of the WIFIA Reserve Account Requirement. “WIFIA Reserve Account Requirement” means, as of the date of calculation, an amount equal to fifty percent (50%) of the maximum annual aggregate amount (without duplication) of Installment Payments that will become due on any two consecutive Installment Payment Dates on the Installment Payment Schedule. If, after the occurrence of a WIFIA Reserve Event, the City delivers to the WIFIA Credit Provider, for three (3) consecutive City Fiscal Years, an Updated Financial Model which demonstrates that the Senior Debt Service Coverage Ratio for the immediately preceding City Fiscal Year was not less than 1.30 to

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	1.00, the City may, upon written notice to the WIFIA Credit Provider at least ten (10) Business Days in advance, release any balance in the WIFIA Reserve Account to be applied to any Water System purpose.
WIFIA CREDIT AGREEMENT DOCUMENTATION	The WIFIA Credit Agreement shall be subject to the preparation, execution and delivery of the Financing Documents and any other documentation required by the WIFIA Credit Provider in connection therewith, in each case acceptable to the WIFIA Credit Provider and the City, which will contain certain conditions precedent, representations and warranties, affirmative and negative covenants, events of default, and other provisions as are typical of WIFIA credit agreements.
GOVERNING LAW	Federal laws of the United States of America, if and to the extent such federal laws are applicable, and the internal laws of the State of California, if and to the extent such federal laws are not applicable.
COUNTERPARTS	This Term Sheet, and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page shall be effective as delivery of an original executed counterpart.

[Signature pages follow]

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

Sincerely,

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

By: _____
Name: Andrew R. Wheeler
Title: Administrator

*[Signature Page to Morro Bay Water Reclamation Facility Project – Water System Portion
WIFIA Term Sheet]*

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ACKNOWLEDGED AND AGREED:

CITY OF MORRO BAY,
by its authorized representative

By: _____
Name:
Title:

CITY OF MORRO BAY PUBLIC FACILITIES CORPORATION,
by its authorized representative

By: _____
Name:
Title:

*[Signature Page to Morro Bay Water Reclamation Facility Project – Water System Portion
WIFIA Term Sheet]*

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

[Date], 2020

City of Morro Bay
595 Harbor Street
Morro Bay, California 93442

RE: WIFIA Term Sheet for the City of Morro Bay Water Reclamation Facility Project –
Wastewater System Portion (WIFIA Project No. WIFIA – N17108CA)

Ladies and Gentlemen:

This WIFIA Term Sheet (this “**Term Sheet**”) constitutes (a) the approval of the United States Environmental Protection Agency, acting by and through the Administrator of the Environmental Protection Agency (hereinafter, the “**USEPA**”), of the application for credit assistance of the City of Morro Bay (the “**City**”) dated July 12, 2018 (the “**Application**”) and (b) the agreement of USEPA to provide financing for the Morro Bay Water Reclamation Facility Project – Wastewater System Portion (as further described below, the “**Project**”) pursuant to a secured installment payment structure. The financing shall be documented under the following three agreements: (1) an Installment Sale Agreement (the “**Installment Sale Agreement**”) between the City and the City of Morro Bay Public Facilities Corporation (the “**Corporation**”), (2) an Assignment Agreement from the Corporation to USEPA (the “**Assignment Agreement**”), and (3) a WIFIA Credit Agreement (the “**WIFIA Credit Agreement**” and together with the Installment Sale Agreement and the Assignment Agreement, the “**Financing Documents**”) among the City, the Corporation and USEPA.

The financing described above is provided pursuant to the Water Infrastructure Finance and Innovation Act (“**WIFIA**”), § 5021 *et seq.* of Public Law 113-121 (as amended by Public Law 114-94, Public Law 114-322 and Public Law 115-270) (the “**Act**”), codified as 33 U.S.C. §§ 3901-3914, and is subject in all respects to (i) the terms and conditions contained herein and (ii) the execution and delivery of each Financing Document by all parties thereto, each such agreement to be entered into on or after the date hereof and the terms and conditions contained therein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the WIFIA Credit Agreement.

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

By executing this Term Sheet, the City confirms its agreement to reimburse USEPA for any and all fees and expenses that USEPA incurs for legal counsel, financial advice, and other consultants in connection with the evaluation of the Project and the negotiation and preparation of

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the Financing Documents and related documents, whether or not such agreements are ultimately executed.

This Term Sheet shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable, and the internal laws of the State of California, if and to the extent such federal laws are not applicable.

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INDICATIVE TERMS OF THE WIFIA CREDIT AGREEMENT

SUMMARY OF TRANSACTION	Under the Financing Documents, the City will acquire the Project from the Corporation, in exchange for installment payments of the project purchase price paid by the City to the Corporation. Concurrently, the WIFIA Credit Provider will provide funding for the Project, in exchange for the Corporation's assignment of the installment payments that it receives from the City, to the WIFIA Credit Provider.
WIFIA CREDIT PROVIDER	United States Environmental Protection Agency, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the " WIFIA Credit Provider ").
CITY	The City of Morro Bay, a general law city and municipal corporation organized and existing under the laws of the State of California (the " City ").
PROJECT	The Morro Bay Water Reclamation Facility Project consists of the design and construction of a new water reclamation facility, sewage pump station and pipeline, new injection wells for groundwater storage, recycled water pipeline and waste discharge pipeline, located within the City and in an unincorporated area of the County of San Luis Obispo adjacent to the City boundaries. It comprises two sub-projects: the Wastewater System Project and the Water System Project. The WIFIA Credit Provider's financing of <i>a portion</i> of the Wastewater System Project (such portion, the "Project") is the subject of this Term Sheet.
WIFIA CREDIT AMOUNT	A maximum principal amount (sum of disbursements) not to exceed \$25,183,810.80; provided that (a) the maximum principal amount available to be drawn under the WIFIA Credit Agreement, together with the amount of any other credit assistance provided under the Act, shall not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs, (b) the total federal assistance for the Project, including but not limited to the maximum principal amount available to be drawn under the WIFIA Credit Agreement and all federal direct and indirect grants, shall not exceed eighty percent (80%) of Total Project Costs, and (c) such amount does not include any interest that may be capitalized in accordance with the Financing

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	Documents and added to the Principal Component of the Installment Payments.
INSTALLMENT PAYMENTS	Under the Financing Documents, the City will acquire the Project from the Corporation, in exchange for installment payments paid by the City to the Corporation (“Installment Payments”), which will be assigned by the Corporation to the WIFIA Credit Provider. Each Installment Payment comprises a Principal Component and an Interest Component, which mimics a debt service structure under a traditional loan agreement. The Installment Payments may be adjusted in the same way that loan payments would be adjusted under a typical loan agreement.
INTEREST COMPONENT	The Interest Component of the Installment Payments shall be calculated assuming the Outstanding Principal Component bears interest at a fixed rate, calculated by adding one basis point (0.01%) to the rate of securities of a similar maturity (based on the weighted-average life of the Principal Components payable on each Installment Payment Date) as published, on the execution date of the WIFIA Credit Agreement, in the United States Treasury Bureau of Public Debt’s daily rate table for State and Local Government Series (SLGS) securities, currently located on the Internet at https://www.treasurydirect.gov/GA-SL/SLGS/selectSLGSDate.htm. Interest shall accrue and be computed on the basis of a 360-day year of twelve (12) thirty (30) day months and shall be compounded semi-annually. The Outstanding Balance shall also bear default interest at a rate of 200 basis points above the otherwise applicable interest rate, at such times and upon such terms as is provided in the Financing Documents.
INSTALLMENT PAYMENT DATES	The Principal Component of the Installment Payments shall be repaid in 69 semi-annual installments on May 1 and November 1 of each year, beginning on November 1, 2024. The Interest Component shall be paid in arrears on May 1 and November 1 of each year, beginning on November 1, 2024. The Installment Payment Commencement Date shall in no event be later than five (5) years after the Substantial Completion Date of the Project.

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	Payment dates may also include the date of any mandatory or optional prepayment, as set forth in the Financing Documents. Subject to the terms and conditions of the Financing Documents, no principal or interest shall be paid during the capitalized interest period.
FINAL INSTALLMENT PAYMENT DATE	November 1, 2058; provided that the Final Installment Payment Date shall be no later than the date that is thirty-five (35) years following the Substantial Completion Date.
PROJECTED SUBSTANTIAL COMPLETION DATE	November 1, 2023.
DEDICATED SOURCE FOR PAYMENT OF THE INSTALLMENT PAYMENTS	The dedicated source of repayment for the Installment Payments shall be System Revenues.
SECURITY AND LIEN PRIORITY	Payment of Installment Payments shall be secured by a senior lien on the Pledged Collateral, which includes the Net Revenues, amounts in the WIFIA Payment Account and amounts in the WIFIA Reserve Account, as well as other funds as may be available in the Wastewater Fund for the benefit of holders of Obligations including funds in those accounts designated for Subordinated Obligations and the general reserve account. “Net Revenues” means System Revenues minus Operation and Maintenance Costs and includes Net Revenues on deposit in System Accounts (other than funds on deposit in accounts that are pledged solely to holders of Additional Senior Obligations). All System Revenues shall be deposited into the Revenue Account within the Wastewater Fund and applied in the following order of priority: (i) <u>first</u>, to pay Operation and Maintenance Costs in amounts reasonably projected to be necessary during the applicable month for the payment of Operation and Maintenance Costs; provided, that for Operation and Maintenance Costs comprising an allocable share of operation and maintenance costs of the Cayucos Joint Powers Agreement Wastewater Treatment Plant pursuant to the Cayucos Joint Powers Agreement paid by the City less frequently than monthly, the amount of any payment accruing during the applicable month shall assume equal monthly accruals over

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	the number of months in the Cayucos Joint Powers Agreement Payment Period, plus an amount equal to any transfer shortfalls that remain unfunded from prior months; (ii) <u>second</u>, on a prorated basis, into each Senior Obligation Payment Account (including the WIFIA Payment Account), the amount of interest (or interest component of an installment payment or capital lease payment) and principal (or principal component of an installment payment or capital lease payment) accruing during the applicable month, assuming equal monthly accruals over the applicable number of months in the applicable Senior Obligation Payment Period, plus an amount equal to any transfer shortfalls that remain unfunded from prior months; provided, however, in the last month of a Senior Obligation Payment Period, the amount transferred shall be that amount needed to pay the amount due on the applicable Senior Obligation Interest Payment Date or Senior Obligation Principal Payment Date, and further provided, with respect to a Senior Obligation, no transfer with respect to interest on such Senior Obligation shall be made to the extent amounts have been pre-funded and are otherwise available to make the applicable interest payment; (iii) <u>third</u>, on a prorated basis, into the respective reserve accounts for the Senior Obligations (including the WIFIA Reserve Account) as required by the Senior Obligation Documents, in an amount equal to the amount required to be deposited therein to restore the balance in each Senior Obligations debt service reserve account to the applicable Senior Obligations debt service reserve requirement pursuant to the terms of the Senior Obligation Documents, including the amounts required to be deposited pursuant to Section 7(h) (<i>Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event – WIFIA Reserve Account</i>) of the WIFIA Credit Agreement; (iv) <u>fourth</u>, any other payments required to comply with the provisions of the Installment Sale Agreement and any Senior Obligation Documents; and

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	(v) <u>fifth</u>, to the payment of Subordinate Obligations due and payable; and (vi) <u>sixth</u>, to fund the requirements of any reserve fund for such Subordinate Obligations in an amount equal to the amount required to be deposited therein to restore the balance in each reserve fund for such Subordinate Obligations to the applicable reserve requirement pursuant to the terms of the Subordinate Obligation Documents; and vii) <u>seventh</u>, to a general reserve account to be used for any other lawful purposes of the Wastewater System. After the City has made any required payments described in clauses (i) through (iv) above, any remaining Net Revenues in the Wastewater Fund shall be available for any lawful purpose of the City relating to the Wastewater System; provided, however, if there shall be a deficiency at any time in System Revenues required to make the deposits required pursuant to clauses (i), (ii), (iii) or (iv) above, the City shall make the required deposits from available amounts in the Subordinate Obligation Payment Accounts or the Subordinate Obligation Reserve Accounts or the general reserve account, in reverse order, with transfers going first to fund requirements of clause (i), second to fund requirements of clause (ii), third to fund requirements of clause (iii) and fourth to fund requirements of clause (iv).
PREPAYMENT	The Installment Payments shall be subject to mandatory prepayment, without prepayment premium, upon the occurrence of (a) a Bankruptcy Related Event of the City or the Corporation, (b) the acceleration of any other Senior Obligations or (c) any WIFIA Credit Document or Water System Project Credit Agreement Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its term) or becomes void, invalid, ineffective or unenforceable, or an event that results in the material impairment in the pledge or priority of the security interest in the Pledged Collateral. The City may prepay the unpaid Principal Components of the Installment Payments in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the City; provided, however, that such prepayments shall be in principal amounts of \$250,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, but not more than once

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	annually, on an Installment Payment Date by paying such unpaid Principal Components of the Installment Payments to be prepaid, together with the unpaid Interest Components of the Installment Payments accrued to the date of such prepayment, without penalty or premium, and concurrently therewith the City shall pay all other Additional Payments then due and payable to the WIFIA Credit Provider and the Assignee.
RATE COVENANT	The City shall, subject to the remainder of this paragraph, fix, charge and collect rates, fees, and charges for the Wastewater System during each City Fiscal Year which are reasonable, fair and nondiscriminatory and which will be at least sufficient to yield, during each City Fiscal Year until the Final Installment Payment Date, Net Revenues equal to at least (i) one hundred and twenty percent (120%) of the Debt Service payable during such City Fiscal Year with respect to all Outstanding Senior Obligations and (ii) one hundred and ten percent (110%) of the Debt Service payable during such City Fiscal Year with respect to all Outstanding Obligations.
ADDITIONAL OBLIGATIONS	(i) Except for Permitted Debt, the City shall not without the prior written consent of the WIFIA Credit Provider issue or incur Obligations of any kind (including any of the foregoing with respect to which the interest rate varies or may be adjusted by the City from time to time) that is payable from, secured or supported by all or any portion of the Pledged Collateral; <u>provided</u>, that the City shall not incur any Obligations of any kind payable from, secured or supported by all or any portion of the Pledged Collateral, including Permitted Debt, without the prior written consent of the WIFIA Credit Provider, while an Event of Default has occurred and is continuing. (ii) The City may not create, incur or suffer to exist (A) any Obligations the payments of which are senior or prior in right to the payment by the City of the Senior Obligations or (B) any Obligations of the Project that are secured by a Lien on any assets or property of the City other than the Pledged Collateral or the pledged collateral described in the Water System Project Credit Agreement. (iii) The City shall not issue any Obligations the payments of, and security for, which are on parity with the Senior

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	Obligations (the “Additional Senior Obligations”), unless: (A) the conditions set forth in the applicable Senior Obligation Document are satisfied; (B) no Event of Default has occurred and is continuing; (C) following issuance of the proposed Additional Senior Obligations, either (X) the Net Revenues for any four (4) consecutive quarters within the six (6) quarters immediately preceding the proposed issue date (such quarters relating to the City Fiscal Year) shall be sufficient to equal or exceed one hundred and twenty percent (120%) of the greatest amount of Debt Service payable on all Outstanding Senior Obligations (including the proposed Additional Senior Obligations) and shall also be sufficient to equal or exceed one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Senior Obligations), in each case in the current or any future period; or (Y) the projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date (such quarters relating to the City Fiscal Year), shall be sufficient to equal or exceed one hundred and twenty percent (120%) of the greatest amount of Debt Service payable on all Outstanding Senior Obligations (including the proposed Additional Senior Obligations) and shall also be sufficient to equal or exceed one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Senior Obligations), in each case in the current or any future period; and (D) not later than thirty (30) days prior to the proposed issue date, the City shall have provided to the WIFIA Credit Provider a certificate signed by the City’s Authorized Representative (x) specifying the proposed issue date of such proposed Additional Senior Obligations and (y) confirming that the issuance of such proposed Additional Senior Obligations is authorized pursuant to the WIFIA Credit Agreement. For purposes of the calculation for clause (C)(Y) only, when calculating projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date, the City may include as System Revenues those System Revenues resulting from rate increases that have been

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	approved and will take effect within three (3) years of such date of calculation as confirmed by the Rate Consultant. (iv) The City shall not issue any Obligations the payments of, and security for, which are subordinated to the Senior Obligations (the “Additional Subordinate Obligations”), unless: (A) the conditions set forth in the applicable Subordinate Obligation Document are satisfied; (B) no Event of Default has occurred and is continuing; (C) following issuance of the proposed Additional Subordinate Obligations, either (X) the Net Revenues for any four (4) consecutive quarters within the six (6) quarters immediately preceding the proposed issue date (such quarters relating to the City Fiscal Year) shall be sufficient to equal or exceed one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Subordinate Obligations) in the current or any future period or (Y) the projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date (such quarters relating to the City Fiscal Year), shall be sufficient to equal one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Subordinate Obligations) in the current or any future period; and (D) not later than thirty (30) days prior to the proposed issue date, the City shall have provided to the WIFIA Credit Provider a certificate signed by the City’s Authorized Representative (x) specifying the proposed issue date of such proposed Additional Subordinate Obligations and (y) confirming that the issuance of such proposed Additional Subordinate Obligations is authorized pursuant to the WIFIA Credit Agreement. For purposes of the calculation for clause (C)(Y) only, when calculating projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date, the City may include as System Revenues those System Revenues resulting from rate increases that have been approved and will take effect within three (3) years of such date of calculation as confirmed by the Rate Consultant.

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	(v) The City covenants that it will not have Outstanding at any time Obligations with respect to which the interest rate varies or may be adjusted by the City from time to time. (vi) The Corporation shall not issue or incur any obligations of any kind, including any bonds, notes, other evidences of indebtedness, installment sale arrangements, financing lease arrangements, or similar obligations, nor enter into any installment sale arrangements, financing lease arrangements, or similar arrangements with the City, except in connection with the issuance of Permitted Debt by the City or debt permitted pursuant to the Water System Project Credit Agreement Documents.
RESTRICTED PAYMENTS AND TRANSFERS	The City shall not permit System Revenues or other assets of the Wastewater System, or any funds in any System Account or in any other Wastewater System fund or account held by or on behalf of the City, to be paid or transferred or otherwise applied for purposes other than ownership, operation or maintenance of, or capital improvements to, the Wastewater System.
WIFIA RESERVE ACCOUNT	The City shall establish, for purposes of ensuring timely payment of Installment Payments, a WIFIA Reserve Account within the Wastewater Fund. If on any Installment Payment Date amounts in the WIFIA Payment Account are insufficient to pay the Installment Payment due on such Installment Payment Date, amounts in the WIFIA Reserve Account shall be transferred to the WIFIA Payment Account in the amount of such insufficiency. The WIFIA Reserve Account may remain unfunded until the occurrence of a WIFIA Reserve Event. “WIFIA Reserve Event” means, as of the final day of the City Fiscal Year, failure of the City to maintain a Senior Debt Service Coverage Ratio of at least 1.30 to 1.00. Beginning with the month immediately following delivery of an Updated Financial Model which demonstrates or discloses the occurrence of a WIFIA Reserve Event and for eleven (11) months thereafter, the City shall fund the WIFIA Reserve Account in an amount equal to one-twelfth (1/12) of the WIFIA Reserve Account Requirement.

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	“WIFIA Reserve Account Requirement” means, as of the date of calculation, an amount equal to fifty percent (50%) of the maximum annual aggregate amount (without duplication) of Installment Payments that will become due on any two consecutive Installment Payment Dates on the Installment Payment Schedule. If, after the occurrence of a WIFIA Reserve Event, the City delivers to the WIFIA Credit Provider, for three (3) consecutive City Fiscal Years, an Updated Financial Model which demonstrates that the Senior Debt Service Coverage Ratio for the immediately preceding City Fiscal Year was not less than 1.30 to 1.00, the City may, upon written notice to the WIFIA Credit Provider at least ten (10) Business Days in advance, release any balance in the WIFIA Reserve Account to be applied to any Wastewater System purpose.
WIFIA CREDIT AGREEMENT DOCUMENTATION	The WIFIA Credit Agreement shall be subject to the preparation, execution and delivery of the Financing Documents and any other documentation required by the WIFIA Credit Provider in connection therewith, in each case acceptable to the WIFIA Credit Provider and the City, which will contain certain conditions precedent, representations and warranties, affirmative and negative covenants, events of default, and other provisions as are typical of WIFIA credit agreements.
GOVERNING LAW	Federal laws of the United States of America, if and to the extent such federal laws are applicable, and the internal laws of the State of California, if and to the extent such federal laws are not applicable.
COUNTERPARTS	This Term Sheet, and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page shall be effective as delivery of an original executed counterpart.

[Signature pages follow]

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

Sincerely,

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

By: _____
Name: Andrew R. Wheeler
Title: Administrator

*[Signature Page to Morro Bay Water Reclamation Facility Project – Wastewater System Portion
WIFIA Term Sheet]*

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3397113.10 043224 DRFT

ACKNOWLEDGED AND AGREED:

CITY OF MORRO BAY,
by its authorized representative

By: _____
Name:
Title:

CITY OF MORRO BAY PUBLIC FACILITIES CORPORATION,
by its authorized representative

By: _____
Name:
Title:

*[Signature Page to Morro Bay Water Reclamation Facility Project – Wastewater System Portion
WIFIA Term Sheet]*

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3397113.10 043224 DRFT

*Installment Sale Agreement for Morro Bay Wastewater System Loan
EPA/Hawkins draft 1/7/2020*

**INSTALLMENT SALE AGREEMENT
(Wastewater System Project)**

Between

CITY OF MORRO BAY

And

CITY OF MORRO BAY PUBLIC FACILITIES CORPORATION

For the

WASTEWATER SYSTEM PROJECT

MORRO BAY WATER RECLAMATION FACILITY

Dated as of [____], 2020

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Appendix A Installment Payment Schedule

**INSTALLMENT SALE AGREEMENT
(Wastewater System Project)**

This INSTALLMENT SALE AGREEMENT (Wastewater System Project) (this “Agreement”), dated as of [_____], 2020, is between the CITY OF MORRO BAY PUBLIC FACILITIES CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California, as seller (the “Corporation”), and the CITY OF MORRO BAY, a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State of California, as purchaser (the “City”).

BACKGROUND:

WHEREAS, the City wishes to finance the design and construction of the Project (as defined herein); and

WHEREAS, in connection with the City undertaking the Project, the City conducted a financial plan and rate study which showed that certain Project costs are attributable to the Wastewater System (as defined herein) and certain Project costs are attributable to the Water System (as defined herein), and the City has determined that Project costs will be allocated among the two systems in a manner consistent with that rate study; and

WHEREAS, the Water System rates and the Wastewater System rates have been increased in amounts consistent with the recommendations in the rate study to finance the Project; and

WHEREAS, the Corporation has been formed for the purpose, among others, of assisting the City in financing capital improvements for the Water System and the Wastewater System, including providing financing for the Project; and

WHEREAS, the Corporation desires to assist the City in financing the WIFIA Wastewater System Portion of the Project (as defined herein), and to that end is entering into this Agreement, the Assignment Agreement (as defined herein) and the WIFIA Credit Agreement (as defined herein); and

WHEREAS, in order to finance the Project, the City and the Corporation have determined to enter into (i) this Agreement under which the City will purchase the WIFIA Wastewater System Portion of the Project from the Corporation and (ii) a separate installment sale agreement under which the City will purchase the WIFIA Water System Portion of the Project (as defined herein) from the Corporation; and

WHEREAS, the City has determined that installment payments due under this Agreement and payable to the Corporation or any Assignee (as defined herein) (including the WIFIA Credit Provider) reflect the costs of the WIFIA Wastewater System Portion of the Project and will be secured by, among other things, pledged revenues of the Wastewater System, and that installment payments due under an installment sale agreement substantially the same as this Agreement and entered into with respect to the Water System Project reflect the costs of the Water System Project and will be secured by, among other things, pledged revenues of the Water System; and

WHEREAS, the City and the Corporation have arranged for the financing of the costs of the WIFIA Wastewater System Portion of the Project and the WIFIA Water System Portion of the Project by entering into two credit agreements, one for each of the Wastewater System Project and the Water System Project, and each among the City, the Corporation and the WIFIA Credit Provider (as defined herein); and

WHEREAS, in order to provide the funds for the acquisition, construction and installation of the WIFIA Wastewater System Portion of the Project, the Corporation will cause the WIFIA Credit Provider to advance funds from time to time pursuant to the WIFIA Credit Agreement to the City, as agent for the Corporation, to pay the costs of the WIFIA Wastewater System Portion of the Project; and

WHEREAS, the Corporation will appoint the City as its agent to carry out the construction of the WIFIA Wastewater System Portion of the Project, the City will apply all funds advanced under the WIFIA Credit Agreement, to the costs of the WIFIA Wastewater System Portion of the Project, pursuant to this Agreement, and

WHEREAS, as consideration for such advances by the WIFIA Credit Provider, the Corporation will assign all of its right, title and interest (including the right to receive Installment Payments (as defined herein)) in this Agreement (excepting only the Corporation's rights to Additional Payments under Section 4.4(f) (*Additional Payments*) and rights of indemnification under Section 5.2 (*Release and Indemnification Covenants*)) to the WIFIA Credit Provider, as the initial Assignee, pursuant to the Assignment Agreement; and

WHEREAS, the City will purchase the WIFIA Wastewater System Portion of the Project from the Corporation pursuant to this Agreement; and

WHEREAS, following the payment in full of the Purchase Price (as defined herein) of the WIFIA Wastewater System Portion of the Project, the City will have full and exclusive ownership of the WIFIA Wastewater System Portion of the Project; and

WHEREAS, the Purchase Price will be payable by the City in Installment Payments (as defined herein) pursuant to this Agreement to the Corporation or any Assignee (including the WIFIA Credit Provider) of this Agreement; and

WHEREAS, the Installment Payments shall be payable from revenues of the Wastewater System and secured by a pledge of and security interest in the Net Revenues of the Wastewater System (and shall not be payable from any assets of the City other than those derived from the Wastewater System); and

WHEREAS, in order to secure its obligations hereunder, including the obligation to pay the Installment Payments, the City will pledge and grant a security interest in the Pledged Collateral (as defined herein), including the Net Revenues (as defined herein); and

WHEREAS, this Agreement and the WIFIA Credit Agreement are being entered into for and relate solely to the WIFIA Wastewater System Portion of the Project, and the funding available under this Agreement and the WIFIA Credit Agreement is exclusively for the benefit of the WIFIA Wastewater System Portion of the Project.

AGREEMENT:

In consideration of the foregoing and the material covenants hereinafter contained, the City and the Corporation formally covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.1. Definitions. Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1.1 or as otherwise defined in this Agreement.

“Additional Payments” means the payments to be made by the City to the Corporation or to the Assignee pursuant to this Agreement (other than the Installment Payments) or the payments to be made by the City to the WIFIA Credit Provider pursuant to the WIFIA Credit Agreement, including, but not limited to, payments to be made pursuant to Section 10 (*Fees and Expenses*) of the WIFIA Credit Agreement.

“Additional Senior Obligations” means any Senior Obligations permitted under Section 5.7 (*Additional Obligations*) and under the Senior Obligation Document pursuant to which such Senior Obligations are issued or incurred after the Effective Date.

“Additional Subordinate Obligations” means any Subordinate Obligations permitted under Section 5.7 (*Additional Obligations*) and under the Subordinate Obligation Document pursuant to which such Subordinate Obligations are issued or incurred after the Effective Date.

“Assignee” means, initially, the WIFIA Credit Provider or such other entity as has been assigned the rights of the Corporation under this Agreement pursuant to the Assignment Agreement, and any further successors or assigns.

“Assignment Agreement” means the Assignment Agreement (Wastewater System Project), dated as of the Effective Date, between the Corporation and the WIFIA Credit Provider, as the initial Assignee.

“Authorized Representative” means: (a) with respect to the Corporation, its President, Vice President, Executive Director, Treasurer or Secretary, or any other person designated as an Authorized Representative of the Corporation by a written certificate of the Corporation signed by its President, Executive Director or Treasurer and filed with the City; and (b) with respect to the City, its City Manager and Finance Director or any other Person who shall be designated as an Authorized Representative of the City pursuant to a written certificate of the City signed by its City Manager or Finance Director and filed with the Corporation and the WIFIA Credit Provider and containing specimen signatures of such persons.

“Authorizing Resolutions” means the Resolution, and each resolution that authorizes the issuance of additional Obligations or that amends the terms of the Resolution or such other resolution.

“Bankruptcy Related Event” has the meaning assigned to that term in the WIFIA Credit Agreement.

“Business Day” means any day other than a Saturday, a Sunday or a day on which offices of the United States of America and its departments and agencies or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York or the City of Morro Bay, California.

“Capitalized Interest” means an aggregate amount equal to the amount of the Interest Components of the Installment Payments accruing at the Interest Rate during the Capitalized Interest Period based on aggregate unpaid Principal Components of the Installment Payments equal to the then current amounts advanced by the WIFIA Credit Provider under the WIFIA Credit Agreement permitted to be capitalized pursuant to Section 4.4(c)(ii) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*).

“Capitalized Interest Period” means the period from (and including) the Effective Date to (but excluding) the first day of the initial Payment Period, subject to earlier termination as set forth in Section 4.4(c)(iii) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*).

“Cayucos Joint Powers Agreement” means the Joint Powers Agreement for the Ownership, Operation and Maintenance of Wastewater Treatment Facilities, entered into October 25, 1982, by and between the City and the Cayucos Sanitary District, as amended, with respect to the operation of the Cayucos Joint Powers Agreement Wastewater Treatment Plant.

“Cayucos Joint Powers Agreement Payment Period” means, for any payments of an allocable share of operation and maintenance costs of the Cayucos Joint Powers Agreement Wastewater Treatment Plant pursuant to the Cayucos Joint Powers Agreement paid by the City less frequently than monthly, the number of months between payment dates for payments required to be made by the City pursuant to the Cayucos Joint Powers Agreement. With respect to the last payment of such allocable share of operation and maintenance costs, the Cayucos Joint Powers Agreement Payment Period shall be such shorter period between the penultimate payment date and the last payment date.

“Cayucos Joint Powers Agreement Wastewater Treatment Plant” means the existing wastewater treatment plant jointly owned by the City and the Cayucos Sanitary District and operated pursuant to the Cayucos Joint Powers Agreement.

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

“City Fiscal Year” means (a) as of the Effective Date, a fiscal year of the City commencing on July 1 of any calendar year and ending on June 30 of the immediately succeeding calendar year or (b) such other fiscal year as the City may hereafter adopt after giving thirty (30) days’ prior written notice to the WIFIA Credit Provider and the Assignee.

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

“Debt Service” means, with respect to any Obligations, for any period, as of any date of calculation, an amount equal to the sum of all interest and principal of Obligations accruing and payable in respect of such period or, if such Obligation is an installment sale agreement, the amount of installment payments accruing and payable in respect of such period.

“Default Rate” means an interest rate equal to the sum of the Interest Rate plus 200 basis points per annum, calculated on the basis of a three hundred sixty day (360) year of twelve (12) thirty (30) day months.

“Effective Date” means the date of this Agreement.

“Eligible Project Costs” has the meaning assigned to that term in the WIFIA Credit Agreement.

“Event of Default” means an event of default as described in Section 6.1 (*Events of Default Defined*).

“Final Installment Payment Date” means the earlier of (a) November 1, 2058 or such earlier date as is set forth in a revised Installment Payment Schedule; and (b) the Installment Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.

“Financing Documents” means (a) this Agreement, (b) the Assignment Agreement, (c) the WIFIA Credit Agreement, (d) the Water System Project Installment Sale Agreement, (e) the Water System Project Assignment Agreement; (f) the Water System Project Credit Agreement, (g) the Authorizing Resolutions, (h) all Senior Obligation Documents, and (i) each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing.

“GAAP” means generally accepted accounting principles for U.S. state and local governments, as established by the Government Accounting Standards Board (or any successor entity with responsibility for establishing accounting rules for U.S. state and local governments), in effect from time to time in the United States of America.

“Government Obligations” means (a) direct obligations of, or obligations on which the timely payment of principal and interest are fully and unconditionally guaranteed by, the United States of America or its departments and agencies, (b) bonds, debentures or notes issued by any of the following federal agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association or Federal Land Banks, (c) obligations issued or guaranteed by a Person controlled or supervised by and acting as an instrumentality of the United States of America or its departments and agencies pursuant to authority granted by the Congress of the United States of America, and (d) evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in clauses (a), (b) and (c) of this definition held by a bank or trust company as custodian and which underlying obligations are not available to satisfy any claim of the custodian or any Person claiming through the custodian or to whom the custodian may be obligated, in each case.

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

“Indemnatee” has the meaning set forth in Section 5.2 (*Release and Indemnification Covenants*).

“Installment Payment” individually, means with respect to any Installment Payment Date occurring on or after the Installment Payment Commencement Date, the sum of the Principal Component and the Interest Component (as adjusted to include interest at the Default Rate as set forth in Section 4.4(b) (*Installment Payments – Calculation of Interest Components*)) of such Installment Payment due and payable on such Installment Payment Date as set forth on the Installment Payment Schedule and “Installment Payments” collectively, means all payments required to be paid by the City on any date under Section 4.4 (*Installment Payments*), including any adjustments to include interest at the Default Rate as set forth in Section 4.4(b) (*Installment Payments – Calculation of Interest Components*).

“Installment Payment Commencement Date” means the earliest to occur of: (a) November 1, 2024; (b) if the Capitalized Interest Period ends pursuant to Section 4.4(c)(iii) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*) due to the occurrence of an Event of Default, the first Installment Payment Date immediately following the end of the Capitalized Interest Period; or (c) the Installment Payment Date falling closest to, but not later than, the fifth anniversary of the Substantial Completion Date.

“Installment Payment Date” means May 1 and November 1 in each year, commencing on the Installment Payment Commencement Date.

“Installment Payment Schedule” means the Installment Payment Schedule set forth in Appendix A (*Installment Payment Schedule*), as amended from time to time in accordance with Section 4.4(c) (*Installment Payments– Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*).

“Interest Component” means (a) with respect to an Installment Payment, the interest component (as adjusted to include interest at the Default Rate as set forth in Section 4.4(b) (*Installment Payments – Calculation of Interest Components*)) of such Installment Payment due and payable on the applicable Installment Payment Date as set forth on the Installment Payment Schedule and (b) with respect to the aggregate Installment Payments, all payments of the interest components of the Installment Payments required to be paid by the City on any date under Section 4.4 (*Installment Payments*), as adjusted to include interest at the Default Rate as set forth in Section 4.4(b) (*Installment Payments – Calculation of Interest Components*).

“Interest Rate” means [_____] percent ([_____]%) per annum, calculated on the basis of a three hundred sixty day (360) year of twelve (12) thirty (30) day months.

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

“Material Adverse Effect” means a material adverse effect on (a) the Wastewater System, the Project or the System Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the City, (c) the legality, validity or enforceability of any material provision of any Financing Document, (d) the ability of the City to enter into, perform or comply with any of its material obligations under any Financing Document, (e) the validity, enforceability or priority of the Liens provided under the Financing Documents on the Pledged Collateral in favor of the Secured Parties, (f) the validity and enforceability of the assignment provided by the Corporation to the WIFIA Credit Provider as initial Assignee under the Assignment Agreement, or (g) the WIFIA Credit Provider’s or the Assignee’s rights or remedies available under any Financing Document.

“Maximum Funding Amount” means the maximum amount of funds to be advanced by the WIFIA Credit Provider from time to time to the City, as agent for the Corporation, pursuant to the WIFIA Credit Agreement, to pay the costs of the WIFIA Wastewater System Portion of the Project, which amount shall not exceed \$25,183,810.80 (excluding any interest that is capitalized in accordance with the terms hereof and permitted to be added to the principal amount during the Capitalized Interest Period), except as otherwise agreed by the City and WIFIA Credit Provider.

“Net Revenues” means, for any period, an amount equal to all of the System Revenues received during such period minus the Operation and Maintenance Costs for such period.

“Obligations” means obligations, including any bonds, notes, other evidences of indebtedness, installment sale arrangements, financing lease arrangements, or similar obligations that are secured by a pledge and Lien on all or a portion of the System Revenues, including this Agreement, any other Senior Obligations, and any Subordinate Obligations.

“Operation and Maintenance Costs” means all actual maintenance and operation costs (excluding major maintenance costs and capital expenditures) incurred and paid from System Revenues (or, if applicable, forecasted to be incurred and paid from System Revenues) in connection with the operation and maintenance of the Wastewater System in any particular time period to which said term is applicable, including payments for taxes (excluding income taxes), insurance, consumables, advertising, marketing, payments pursuant to any agreements for the management, operation or maintenance of the Wastewater System, reasonable legal fees and expenses paid by the City in connection with the management, maintenance or operation of the Wastewater System, fees paid in connection with obtaining, transferring, maintaining or amending any authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders,

licenses, exemptions or declarations of or with any Governmental Authority, fees of the paying agent, Technical and Rate Consultant and other entities relating to administration of the Financing Documents, costs incurred in connection with the performance of environmental mitigation work to be carried out by the City (but only to the extent such work has a useful life of less than twelve (12) months), amounts required for reasonable general and administrative expenses (including employee salaries and benefits, but excluding unbudgeted extraordinary payments to pension funds and post-employment benefit funds), but exclusive in all cases of rebates or grants, debt payments, noncash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature.

“Outstanding” means, with respect to: (i) this Agreement, Installment Payments that have not been paid, in full, in immediately available funds; and (ii) all other Obligations, Obligations that have not been fully repaid, cancelled or legally defeased or discharged pursuant to Section 5.15(e) (*Covenants Regarding Other Obligations – Defeasance of Other Obligations*).

“Outstanding Balance” means, with respect to the Installment Payments (i) the initial Principal Components of the Installment Payments (equal to the sum of the aggregate amount then advanced by the WIFIA Credit Provider under the WIFIA Credit Agreement plus the Capitalized Interest added thereto pursuant to Section 4.4(c)(ii) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*)) minus (ii) the aggregate Principal Components of the Installment Payments paid or prepaid by the City pursuant to Article VII (*Prepayment of Installment Payments*).

“Payment Default” has the meaning set forth in Section 6.1(a) (*Events of Default Defined – Payment Default*).

“Payment Period” means the six (6) month period beginning on May 1, 2024 and ending on October 31, 2024, and each succeeding six (6) month period thereafter; provided, however, that if the Installment Payment Commencement Date occurs earlier than November 1, 2024, the first Payment Period shall be the six (6) month period ending on the date immediately prior to the Installment Payment Commencement Date.

“Permitted Investments” has the meaning assigned to that term in the WIFIA Credit Agreement.

“Permitted Liens” has the meaning assigned to that term in the WIFIA Credit Agreement.

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

“Pledged Collateral” means, collectively (a) the Net Revenues, (b) the WIFIA Payment Account and all proceeds deposited therein from time to time, (c) the WIFIA Reserve Account and all proceeds deposited therein from time to time, (d) available amounts in the Subordinate Obligation Payment Accounts, the Subordinate Obligation Reserve Accounts and the general reserve account from which the City shall make the required deposits of System Revenues as set forth in Section 4.5(c)(3) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds- Deposits in the Event of Deficiency*), and

(e) such other amounts as are pledged or available as set forth in Section 4.5 (*Pledge and Application of Net Revenues – Flow of Funds*).

“Principal Component” means (a) with respect to an Installment Payment, the principal component of such Installment Payment due and payable on the applicable Installment Payment Date as set forth on the Installment Payment Schedule and (b) with respect to the aggregate Installment Payments, all payments of the principal components of the Installment Payments required to be paid by the City on any date under Section 4.4 (*Installment Payments*) and which amount is equal to the aggregate amount advanced by the WIFIA Credit Provider under the WIFIA Credit Agreement plus the Capitalized Interest permitted to be capitalized pursuant to Section 4.4(c)(ii) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*).

“Project” means the design and construction of a new water reclamation facility, sewage pump station and pipeline, new injection wells for groundwater storage, recycled water pipeline and waste discharge pipeline, located within the City and in an unincorporated area of the County of San Luis Obispo adjacent to the City boundaries.

“Project Accounts” means the accounts established and held by the City pursuant to any Senior Obligation Documents or Subordinate Obligation Documents to hold proceeds of Senior Obligations or Subordinate Obligations issued or incurred to finance costs incurred in connection with the Wastewater System Project.

“Purchase Price” means the aggregate purchase price payable by the City to the Corporation for the purchase of the WIFIA Wastewater System Portion of the Project, payable by the City in Installment Payments as set forth in Section 4.4 (*Installment Payments*).

“Rate Consultant” means a single individual or firm, not related to the City and considered independent with respect to the City (i.e., not an employee of the City or any affiliate of the City or having other material business relationships with the City) authorized to do business in and qualified to practice in the areas required to provide the services required of the Rate Consultant, that has expertise in the technical requirements for establishing rates and charges for governmental water or wastewater systems similar in size and scope to the Wastewater System, selected by the City.

“Rate Covenant” has the meaning set forth in Section 5.6(b) (*Rates and Charges*).

“Resolution” means Resolution No. [___], adopted by the City Council on [___], 2019 and authorizing, among other things, the City to enter into this Agreement, the Assignment Agreement and the WIFIA Credit Agreement and to create the pledge and security interest established hereunder.

“Revenue Account” means the account so designated and established within the Wastewater Fund pursuant to Section 4.5(c)(1) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds- Establishment of Funds and Accounts*).

“Senior Debt Service Coverage Ratio” means, for each City Fiscal Year, the ratio of: (a) Net Revenues during such City Fiscal Year to (b) Debt Service on all Outstanding Senior Obligations for such City Fiscal Year.

“Senior Obligation Documents” means, collectively, (i) this Agreement, (ii) the Assignment Agreement, (iii) the WIFIA Credit Agreement; (iv) the SRF Planning Loan Agreement, and (v) the indenture of trust, trust agreement, supplemental installment sale agreement, installment sale agreement, lease, loan agreement or other document (including resolutions or ordinances) authorizing the issuance of any Senior Obligations or any securities which evidence Senior Obligations.

“Senior Obligation Interest Payment Date” means, with respect to any Senior Obligation, any date on which an interest payment on the applicable bonds, or a payment of the interest component of the applicable installment sale agreement or capital lease agreement, is regularly scheduled to be paid to holders of the applicable Senior Obligation.

“Senior Obligation Payment Accounts” means the payment accounts within the Wastewater Fund established pursuant to the Senior Obligation Documents for purposes of making payments of principal of and interest on Senior Obligations.

“Senior Obligation Payment Period” shall mean, for any Senior Obligation, (i) with respect to interest payments (or interest components of an installment payment), the number of months between the applicable Senior Obligation Interest Payment Dates and (ii) with respect to principal payments, including sinking fund installment redemptions (or the principal components of an installment payment or capital lease payment), the number of months between the applicable Senior Obligation Principal Payment Dates. With respect to the first interest payment and principal payment for any Senior Obligation, the applicable number of months determined as set forth above before the initial interest payment or principal payment, as applicable, shall also be a Senior Obligation Payment Period.

“Senior Obligation Principal Payment Date” means, with respect to any Senior Obligation, any date on which a principal payment or mandatory sinking fund redemption payment is due on the applicable bonds, or principal component of the applicable installment sale payment or capital lease payment, is regularly scheduled to be paid to holders of the applicable Senior Obligation.

“Senior Obligation Reserve Accounts” means the reserve accounts within the Wastewater Fund established pursuant to the Senior Obligation Documents.

“Senior Obligations” means (i) all Installment Payments due under this Agreement; (ii) all payments due under the SRF Planning Loan; and (iii) Additional Senior Obligations.

“SRF Planning Loan” and “SRF Planning Loan Agreement” means the existing Wastewater Planning Loan, Water Reclamation Facilities Project-Phase I Clean Water State Revolving Project No. C-06-8185-110, Agreement No. D-16-01016, dated January 20, 2017, in the initial amount of \$10,300,000, by and between the City and the California State Water Resources Control Board; provided however, that this defined term does not include any debt facility that refinances the planning loan.

“State” means the State of California.

“Subordinate Obligation Documents” means the indenture of trust, trust agreement, supplemental installment sale agreement, installment sale agreement, lease, loan agreement or other document (including resolutions or ordinances) authorizing the issuance of any Subordinate Obligations or any securities which evidence Subordinate Obligations.

“Subordinate Obligation Payment Accounts” means the payment accounts within the Wastewater Fund established pursuant to the Subordinate Obligation Documents for purposes of making payments of principal of and interest on Subordinate Obligations.

“Subordinate Obligation Reserve Accounts” means the reserve accounts within the Wastewater Fund established pursuant to the Subordinate Obligation Documents.

“Subordinate Obligations” means any Obligation that is fully subordinated to the City’s payment obligations under this Agreement in priority of payment (as to both principal and interest, installment payments, lease payments or similar payments due with respect to Obligations), voting and priority of security interest in the Net Revenues, including with respect to payment from revenues and reserves and payment upon default or acceleration of any such Obligations.

“Substantial Completion Date” means, with respect to the Project, the date on which the City, as agent of the Corporation, certifies to the WIFIA Credit Provider and the Assignee, with evidence satisfactory to the WIFIA Credit Provider and the Assignee, that the Project is able to perform the functions (for both the Wastewater System and the Water System) for which the Project is designed.

“System Accounts” means all funds, accounts or subaccounts holding System Revenues, including the Wastewater Fund and the Revenue Account, Senior Obligation Payment Accounts (including the WIFIA Payment Account), the Senior Obligation Reserve Accounts (including the WIFIA Reserve Account), the Subordinate Obligation Payment Accounts, the Subordinate Obligation Reserve Accounts and the general reserve account therein and such additional funds, accounts or sub-accounts that may be established in connection with the Wastewater System for System Revenues.

“System Revenues” means (a) all rates, fees, charges, rents, taxes or assessments dedicated to pay costs of the Wastewater System, and other income and receipts received by the City from the ownership or operation of the Wastewater System, (b) loss proceeds from business interruption insurance, (c) interest received on any moneys or securities held in System Accounts, and (d) the moneys and securities of any entity that is acquired by the City and that is deposited in the Revenue Account to the extent such moneys are applied to pay liabilities incurred by the acquired company prior to the date of acquisition.

System Revenues shall not include (i) proceeds of the issuance of Obligations, (ii) the proceeds for any insurance pertaining to loss or damage to persons and the property of others or to loss or damage to the Wastewater System, or the proceeds of condemnation or the sale or other disposition of any part of the Wastewater System, except to the extent any such proceeds are applied by the City to pay Operation and Maintenance Costs, (iii) transfers to the Revenue Account from any other fund or account, unless approved by the Assignee, (iv) any amount received or

receivable from the United States or the State (or any agency of either thereof) or from any other sources as or on account of a grant or contribution for or with respect to the construction, acquisition, improvement, extension, renewal or other development of any part of the Wastewater System, (v) customers' deposits or any other deposits subject to refund until such deposits have become the property of the City, (vi) any proceeds of ad valorem property taxes, or (vii) any proceeds of taxes or assessments restricted by law to be used by the City to pay bonds or other obligations heretofore or hereafter issued. "System Revenues" shall not include any amounts on deposit in the general fund of the City except to the extent such amounts constitute payment for fees and charges for the services and facilities furnished by the Wastewater System to the City.

"Technical and Rate Consultant" means a single individual or firm, or a combination of one or more individuals or firms, not related to the City and considered independent with respect to the City (i.e., not an employee of the City or any affiliate of the City or having other material business relationships with the City) authorized to do business in and qualified to practice in the areas required to provide the services required of the Technical and Rate Consultant, that together have expertise in the technical requirements for operation and maintenance of systems similar in size and scope to the Wastewater System and delivering the services provided by the Wastewater System, and establishing rates and charges for governmental water or wastewater systems similar in size and scope to the Wastewater System, selected by the City and reasonably acceptable to the Assignee.

"Wastewater Fund" means the fund or funds established and held by the City with respect to the Wastewater System.

"Wastewater System" means any and all properties and assets, real and personal, tangible and intangible, of the City, now or hereafter existing, used or pertaining to the disposal or reuse of wastewater, including the Wastewater System Project, sewage treatment plants, intercepting and collecting sewers, outfall sewers, force mains, pumping stations, ejector stations, pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, treatment, purification or disposal of sewage, and any necessary lands, rights of way and other real or personal property useful in connection therewith, and all additions, extensions, expansions, improvements and betterments thereto and equipping thereof, including the Project.

"Wastewater System Project" means the portion of the Project that is allocable to the Wastewater System equal to 71% of the Project costs.

"Water System" means [_____].

"Water System Project" means the portion of the Project that is allocable to the Water System equal to 29% of the Project costs.

"Water System Project Assignment Agreement" means the Assignment Agreement (Water System Project), dated as of the Effective Date, between the Corporation and the WIFIA Credit Provider, as the initial assignee thereunder.

"Water System Project Credit Agreement" means the WIFIA Credit Agreement, dated as of the Effective Date, by and among the WIFIA Credit Provider, the Corporation and the City relating to the WIFIA Water System Portion of the Project.

“Water System Project Credit Agreement Documents” means (a) the Water System Project Credit Agreement, (b) the Water System Project Installment Sale Agreement, (c) Water System Project Assignment Agreement and (d) the Financing Documents.

“Water System Project Installment Sale Agreement” means the Installment Sale Agreement (Water System Project), dated as of the Effective Date, by and between the City and the Corporation entered into with respect to the WIFIA Water System Portion of the Project.

“WIFIA Credit Agreement” means the WIFIA Credit Agreement, dated as of the Effective Date, by and among the WIFIA Credit Provider, the Corporation and the City relating to the WIFIA Wastewater System Portion of the Project.

“WIFIA Credit Documents” means (a) this Agreement, (b) the WIFIA Credit Agreement, and (c) the Assignment Agreement.

“WIFIA Credit Provider” means the United States Environmental Protection Agency, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency or any direct or indirect assignee of the original WIFIA Credit Provider’s interest in this Agreement.

“WIFIA Payment Account” means the account so designated and established within the Wastewater Fund pursuant to Section 4.5(c)(1) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds – Establishment of Funds and Accounts*) and Section 4.6 (*WIFIA Payment Account*), which will be used to accumulate Net Revenues to ensure timely payment of Installment Payments and from which Installment Payments will be paid.

“WIFIA Reserve Account” means the account so designated and established within the Wastewater Fund pursuant to Section 4.5(c)(1) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds - Establishment of Funds and Accounts*) and Section 4.7 (*WIFIA Reserve Account*), which will be used to accumulate amounts equal to the WIFIA Reserve Account Requirement to ensure timely payment of Installment Payments.

“WIFIA Reserve Account Requirement” means, as of the date of calculation, an amount equal to fifty percent (50%) of the maximum annual aggregate amount (without duplication) of Installment Payments that will become due on any two consecutive Installment Payment Dates on the Installment Payment Schedule.

“WIFIA Reserve Event” means, as of the final day of the City Fiscal Year, failure of the City to maintain a Senior Debt Service Coverage Ratio of at least 1.30 to 1.00.

“WIFIA Wastewater System Portion of the Project” means 20% of the Eligible Project Costs, all of which Eligible Project Costs are financed by this Agreement and the WIFIA Credit Agreement.

“WIFIA Water System Portion of the Project” means 29% of the aggregate Eligible Project Costs, all of which Eligible Project Costs are financed by the Water System Project Installment Sale Agreement and the Water System Project Credit Agreement.

Section 1.2. Interpretation.

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

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

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

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

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

(f) The appendices to this Agreement are hereby incorporated by reference and made an integral part of this Agreement.

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

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

(i) Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 8.1 (*Notices*) and signed by a duly authorized representative of such party.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1. Representations, Covenants and Warranties of the City. The City represents, covenants and warrants to the Corporation, the Assignee and the WIFIA Credit Provider as follows:

(a) The City is a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State of California, and is empowered, among other things, to maintain and operate the Wastewater System and to acquire in the name of the City any interest in real or personal property necessary or convenient for the operation of the Wastewater System and to execute and deliver this Agreement, and to carry out and consummate all transactions contemplated hereby and has duly authorized the execution, delivery and performance of this Agreement.

(b) The laws of the State authorize the City to enter into this Agreement, and to enter into the transactions contemplated hereby and to carry out its obligations hereunder.

(c) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a material breach of any ordinances or other statutory or organizational documents of the City, or conflicts with or results in a material breach of any applicable law, administrative rule or regulation, any applicable court or administrative decree or order or the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound or constitutes a default under any of the foregoing.

(d) The City has duly authorized, executed and delivered this Agreement in accordance with the laws of the State of California. This Agreement is a legal, valid and binding obligation of the City, enforceable in accordance with its terms, subject only to laws related to creditor's rights, moratorium, receivership, insolvency or bankruptcy, general equitable principles, judicial discretion and legal limitations applicable to public agencies in the State of California. No consent or approval of any trustee, holder of any indebtedness of the City or any other person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the City of this Agreement, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by this Agreement or (B) the fulfillment of or compliance by the City with the terms and conditions of this Agreement, except as have been obtained or made and as are in full force and effect.

(e) There is no action, suit, proceeding, inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting (i) the Wastewater System or the System Revenues, (ii) the ability of the City to execute, deliver and perform its obligations under this Agreement, or (iii) the City or the assets, properties or operations of the City which, solely in the case of this clause (iii), that in any case could reasonably be expected to result in a Material Adverse Effect, or (iv) the City's receipt of the System Revenues or ability to pay the Installment Payments on a timely basis. The City is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time, or both, could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any federal, state, educational or other Governmental Authority, which default could reasonably be expected to result in a Material Adverse Effect.

(f) During the term of this Agreement, the City will use the Project only for the purpose of the Wastewater System and the Water System. The allocation of the costs of the Project between the Wastewater System and the Water System is fair and reasonable, and the rates and charges payable by users of the Wastewater System and the Water System respectively, reflect such allocation of costs.

(g) The City has structured fees, estimated System Revenues and/or taken other lawful actions necessary to ensure that the pledge of and Lien on Net Revenues is sufficient to pay all Installment Payments and other Obligations when due and payable. The Pledged Collateral will be deposited in the funds and accounts as required herein and applied towards payment of all Installment Payments and other Obligations when due and payable.

(h) Section 9109(c)(2) of the California Commercial Code and Section 5451 of the California Government Code, permit the transactions contemplated by this Agreement and the City has taken all necessary action, in each case, to establish, in favor of the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee), the legal, valid, binding and enforceable Liens on the Pledged Collateral purported to be created, pledged, assigned, and granted pursuant to this Agreement, irrespective of whether any person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Liens on the Pledged Collateral are first priority senior Liens, are in full force and effect and (1) are not subordinate or junior to any other Liens in respect of the Pledged Collateral except for the Permitted Liens arising by operation of law and (2) are not *pari passu* with any obligations other than, with respect to the Liens on Net Revenues of Senior Obligations. Liens on amounts in the WIFIA Payment Account and the WIFIA Reserve Account are first priority senior Liens, are in full force and effect and are solely for the benefit of the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee). Except for Permitted Liens, neither the City or the Corporation has created, or is under any obligation to create, or has entered into any transaction or agreement that would result in the imposition of, any Lien on this Agreement, the Installment Payments, the Pledged Collateral, the Wastewater System, the Project, the System Revenues, the properties or assets in relation to the Project, or the properties or assets of the Corporation. All documents and instruments have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the Pledged Collateral and a legal, valid, binding, and enforceable assignment of the Corporation's rights in this Agreement pursuant to the Assignment Agreement, in both cases, in favor of the Assignee. Neither the attachment, validity, enforceability or priority of the security interest in the Pledged Collateral granted pursuant to this Agreement, or the assignment of the Corporation's right in this Agreement pursuant to the Assignment Agreement, to the Assignee, is governed by the Uniform Commercial Code.

(i) The City has an immediate need for, and expects to make immediate use of, the Project, which need is not temporary or expected to diminish during the term of this Agreement. To the extent the City is or may be required to use additional revenues or spend additional money to complete the Project or make the Project useable, the City represents, warrants and covenants to take all required actions to complete the Project and make the Project useable. The City presently intends to continue this Agreement and make all Installment Payments required hereunder for the

entire term of this Agreement and until the Purchase Price is irrevocably paid in full in immediately available funds.

(j) The City acknowledges that (i) the WIFIA Credit Provider, as a party to the WIFIA Credit Agreement and as the initial Assignee of the Corporation's rights in and to this Agreement pursuant to the Assignment Agreement, is acting solely for its own account and not as a fiduciary for the City or in the capacity of broker, dealer, placement agent, municipal securities underwriter or municipal advisor, (ii) the WIFIA Credit Provider has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of the City or with respect to the Installment Payments, and (iii) the WIFIA Credit Provider has expressed no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, or the correctness of any legal interpretation made by counsel to any other party with respect to any such matters.

Section 2.2. Representations, Covenants and Warranties of the Corporation. The Corporation represents, covenants and warrants to the City, the WIFIA Credit Provider and the Assignee as follows:

(a) The Corporation is a nonprofit public benefit corporation duly organized, operating and validly existing under the laws of the State; has all requisite power and authority to execute and deliver this Agreement and the Assignment Agreement and to carry out and consummate the transactions contemplated hereby and thereby and to own and hold real and personal property and to sell the same; and has duly authorized the execution, delivery and performance of this Agreement and the Assignment Agreement.

(b) Neither the execution and delivery of this Agreement and the Assignment Agreement nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a material breach of the Corporation's articles of incorporation, resolutions, bylaws or other organizational documents or conflicts with or results in a material breach of any applicable law, administrative rule or regulation, any applicable court or administrative decree or order or the terms, conditions or provisions of any restriction or any agreement or instrument to which the Corporation is now a party or by which the Corporation is bound or constitutes a default under any of the foregoing.

(c) The Corporation has good and marketable title to the WIFIA Wastewater System Portion of the Project, which is otherwise free and clear of encumbrances, except as previously disclosed to the City, the WIFIA Credit Provider and the Assignee, sufficient to cause the acquisition, construction and installation of the WIFIA Wastewater System Portion of the Project by the City, as agent of the Corporation, as set forth in this Agreement and to sell the WIFIA Wastewater System Portion of the Project to the City under this Agreement.

(d) The Corporation has duly authorized, executed and delivered this Agreement and the Assignment Agreement in accordance with the laws of the State of California. This Agreement and the Assignment Agreement are each a legal, valid and binding obligation of the Corporation, enforceable in accordance with its terms, subject only to laws related to creditor's rights, moratorium, receivership, insolvency or bankruptcy, general equitable principles, judicial

discretion and legal limitations applicable to public agencies in the State of California. No consent or approval of any trustee, holder of any indebtedness of the Corporation or any other person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Corporation of this Agreement and the Assignment Agreement, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by this Agreement and the Assignment Agreement or (B) the fulfillment of or compliance by the Corporation with the terms and conditions of this Agreement and the Assignment Agreement, except as have been obtained or made and as are in full force and effect.

(e) The Corporation shall cooperate fully with the Assignee at the expense of the City in filing any proof of loss with respect to any insurance policy maintained pursuant to Article V (*Covenants of the City and the Corporation*) and shall cooperate fully with the City in contesting any Lien filed or established against the WIFIA Wastewater System Portion of the Project or the System Revenues, upon the request and at the expense of the City pursuant to Article V (*Covenants of the City and the Corporation*).

ARTICLE III

ACQUISITION AND CONSTRUCTION OF THE WIFIA WASTEWATER SYSTEM PORTION OF THE PROJECT

Section 3.1. Acquisition and Construction of the WIFIA Wastewater System Portion of the Project. The Corporation agrees to cause the acquisition, construction and installation of the WIFIA Wastewater System Portion of the Project by the City, as agent of the Corporation, as set forth below. In order to provide the funds for the acquisition, construction and installation of the WIFIA Wastewater System Portion of the Project, the Corporation agrees to cause the WIFIA Credit Provider, in consideration of the assignment of the Corporation's rights hereunder pursuant to the Assignment Agreement, to advance funds from time to time to the City, as agent for the Corporation, in an aggregate amount not to exceed the Maximum Funding Amount, subject to the terms and conditions of the WIFIA Credit Agreement. The Corporation hereby appoints the City as its agent to carry out all phases of the acquisition, construction and installation of the WIFIA Wastewater System Portion of the Project under and in accordance with the provisions hereof. The City hereby accepts such appointment and assumes all rights, liabilities, duties and responsibilities of the Corporation regarding the acquisition, construction and installation of the WIFIA Wastewater System Portion of the Project. As agent of the Corporation hereunder, the City shall enter into, administer and enforce all purchase orders or other contracts relating to the WIFIA Wastewater System Portion of the Project. In constructing the WIFIA Wastewater System Portion of the Project, the City shall comply with the obligations and covenants of the City set forth in the WIFIA Credit Agreement.

The Corporation hereby appoints the City as its agent to request funds from time to time under the WIFIA Credit Agreement. The City hereby accepts such appointment and assumes all rights, liabilities, duties and responsibilities of the Corporation under the WIFIA Credit Agreement regarding the requisition of funds from time to time under the WIFIA Credit Agreement. The City, as agent of the Corporation, shall prepare and submit all requisitions for funds to the WIFIA Credit Provider in accordance with the requirements of Exhibit D (*Requisition Procedures*) of the WIFIA

Credit Agreement. The City, as agent of the Corporation, is solely responsible for meeting the conditions set forth above, and for proper preparation of and timely submission of requisitions, and any delays or denials of funding for any reason whatsoever are the sole responsibility of the City, as agent of the Corporation. The City hereby agrees to apply all amounts made available by the WIFIA Credit Provider to the City, as agent of the Corporation, for payment of Eligible Project Costs pursuant to the WIFIA Credit Agreement to Eligible Project Costs of the WIFIA Wastewater System Portion of the Project.

The City hereby agrees to diligently supervise and provide for, or cause to be supervised and provided for, the acquisition, construction and installation of the WIFIA Wastewater System Portion of the Project in accordance with the plans and specifications, purchase orders, construction contracts and other documents relating thereto and approved by the City under all applicable requirements of law and the WIFIA Credit Agreement. All contracts for, and all work relating to, the acquisition, construction and installation of the WIFIA Wastewater System Portion of the Project are subject to all applicable provisions of law relating to the acquisition and construction of public works by the City. The City has the right to specify the exact scope, nature and identification of the WIFIA Wastewater System Portion of the Project and the respective components thereof, and to modify the description of the WIFIA Wastewater System Portion of the Project or any component thereof, subject to any limitations set forth in the WIFIA Credit Agreement.

The failure to complete the WIFIA Wastewater System Portion of the Project by its estimated completion date does not constitute an Event of Default hereunder or a ground for termination hereof, nor will any such failure result in the diminution, abatement or extinguishment of the obligations of the City hereunder to pay the Installment Payments when due. Nothing contained herein shall be deemed to be a waiver of the Corporation's, the WIFIA Credit Provider's or the Assignee's rights and remedies should the City fail to complete the WIFIA Wastewater System Portion of the Project and to complete other improvement and modification of the WIFIA Wastewater System Portion of the Project as represented, warranted and covenanted herein.

ARTICLE IV

INSTALLMENT SALE OF WIFIA WASTEWATER SYSTEM PORTION OF THE PROJECT TO CITY; INSTALLMENT PAYMENTS

Section 4.1. Sale of WIFIA Wastewater System Portion of the Project to City. In consideration for the Corporation's assistance in the acquisition, construction and installation of the WIFIA Wastewater System Portion of the Project, the City agrees to purchase from the Corporation, and hereby purchases from the Corporation, and the Corporation agrees to sell and convey to the City, and hereby sells and conveys to the City, the WIFIA Wastewater System Portion of the Project by paying the Purchase Price therefor to the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee). The Purchase Price for the WIFIA Wastewater System Portion of the Project shall be payable by the City in Installment Payments as set forth in Section 4.4 (*Installment Payments*). Following the payment in full of the Purchase Price of the WIFIA Wastewater System Portion of the Project, the City will have full and exclusive ownership of the WIFIA Wastewater System Portion of the Project.

Section 4.2. Title; Taxes. Title to the WIFIA Wastewater System Portion of the Project purchased and sold under this Agreement shall vest in the City on the Effective Date. The Corporation shall take all actions necessary to vest in the City all of the Corporation's rights in and title to the WIFIA Wastewater System Portion of the Project. Such title shall be held by the City in trust for the benefit of the Assignee, pending the payment in full of the Purchase Price of the WIFIA Wastewater System Portion of the Project under this Agreement.

The parties to this Agreement contemplate that the WIFIA Wastewater System Portion of the Project will be used for a governmental or proprietary purpose of the City and, therefore, that the WIFIA Wastewater System Portion of the Project will be exempt from all property taxes, including any licensing fees. The Installment Payments payable by the City under this Agreement have been established to reflect the savings resulting from this exemption from taxation. The City will take such actions necessary under applicable law to obtain said exemption. Nevertheless, if the use, possession or acquisition of the WIFIA Wastewater System Portion of the Project is determined to be subject to taxation, or licensing fees, or later becomes subject to such taxes, or licensing fees, the City shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to the WIFIA Wastewater System Portion of the Project.

Section 4.3. [Reserved]

Section 4.4. Installment Payments.

(a) Obligation to Pay. The City agrees to pay to the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee), the Purchase Price of the WIFIA Wastewater System Portion of the Project, payable in Installment Payments, each consisting of a Principal Component and an Interest Component, on the Installment Payment Dates and on each other date (including the Final Installment Payment Date) and any date on which payment thereof is due by reason of the optional or mandatory prepayment of the Installment Payments) on which payment thereof is required to be made hereunder; provided, that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. Notwithstanding anything herein to the contrary, all Installment Payments and all Additional Payments then due and payable remaining unpaid as of the Final Installment Payment Date shall be due and payable in full on the Final Installment Payment Date (or on any earlier date on which the unpaid Principal Components of the Installment Payments are subject to mandatory prepayment).

The Principal Component and the Interest Component of each Installment Payment shall be calculated as set forth below and the Installment Payments shall be calculated as level payments so that each Installment Payment is approximately equal in amount in order for the aggregate unpaid Principal Components of the Installment Payments to be reduced to zero (\$0) on the Final Installment Payment Date.

The Principal Components of the Installment Payments shall be the aggregate amount set forth in the Installment Payment Schedule as the aggregate Principal Components of all of the Installment Payments. The Principal Component of each Installment Payment shall be as set forth in the Installment Payment Schedule for the applicable Installment Payment Date.

The Interest Components of the Installment Payments shall be calculated as set forth in Section 4.4(b) (*Installment Payments – Calculation of Interest Components*).

Installment Payments shall be payable as set forth in Section 4.4(g) (*Installment Payments – Manner of Payments*).

No Installment Payments shall be due and payable during the Capitalized Interest Period.

(b) Calculation of Interest Components. The Interest Components of the Installment Payments shall accrue and be calculated based on the aggregate unpaid Principal Components of the Installment Payments from time to time, at the Interest Rate on the basis of a 360-day year of twelve 30-day months; provided, that, upon the occurrence of an Event of Default, the Interest Components of the Installment Payments shall be calculated based on the unpaid Principal Components of the Installment Payments at the Default Rate for the period (i) in the case of any Payment Default, from (and including) its due date to (but excluding) the date of actual payment and (ii) in the case of any other Event of Default, from (and including) the date of occurrence of such Event of Default to (but excluding) the earlier of the date on which (x) such Event of Default has been cured (if applicable) in accordance with the terms of this Agreement and (y) the Purchase Price has been irrevocably paid in full to the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee) in immediately available funds. For the avoidance of doubt, Capitalized Interest shall accrue and be added to the unpaid Principal Components of the Installment Payments, and the Interest Component of the Installment Payments shall accrue and be calculated, only on the amounts advanced by the WIFIA Credit Provider under the WIFIA Credit Agreement as and to the extent so advanced in accordance with Section 4 (*Disbursement Conditions*) of the WIFIA Credit Agreement.

(c) Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule.

(i) The initial Installment Payment Schedule is a “projected” Installment Payment Schedule that corresponds to Exhibit F in the WIFIA Credit Agreement.

(ii) No payment of any Installment Payment is required to be made during the Capitalized Interest Period. On each May 1 and November 1 occurring during the Capitalized Interest Period, an aggregate amount equal to the Capitalized Interest in the six (6) month period ending immediately prior to such May 1 or November 1, as applicable, shall be added to the unpaid Principal Components of the Installment Payments. The Interest Components of the Installment Payments shall commence accruing on Capitalized Interest at the Interest Rate on the date such Capitalized Interest is added to the unpaid Principal Components of the Installment Payments during the Capitalized Interest Period pursuant to this Section 4.4(c)(ii). The initial Installment Payment Schedule includes such “projected” additions of Capitalized Interest.

(iii) Within thirty (30) days after the end of the Capitalized Interest Period, it is anticipated that the Assignee shall give written notice to the City stating the unpaid Principal Components of the Installment Payments, which aggregate amount shall be equal to the Outstanding Balance, in either case, as of the close of business on the last day of the Capitalized

Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the City under this Agreement, the WIFIA Credit Agreement or under any of the other WIFIA Credit Documents. Notwithstanding the foregoing, the Capitalized Interest Period shall end immediately upon written notification to the City by the Assignee that an Event of Default has occurred, in which case the provisions of Section 4.4(c)(ii) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*) shall no longer apply, accrued Interest Components of the Installment Payments shall no longer be permitted to be capitalized and each Installment Payment following the end of the Capitalized Interest Period shall include an Interest Component calculated as set forth in Section 4.4(b) (*Installment Payments – Calculation of Interest Components*) and Installment Payments shall be payable as set forth in Section 4.4(g) (*Installment Payments – Manner of Payments*). For purposes of this subsection, an Event of Default under Section 6.1(d) (*Events of Default Defined – Cross Default with Other Financing Documents*) shall be deemed to have occurred upon the occurrence of any nonpayment of any Obligation when due, regardless of whether the holders of the applicable Obligations, or any legal order, has waived, permitted deferral of, or forgiven any such payment. The Assignee may in its discretion at any time and from time to time, or when so requested by the City, advise the City by written notice of the amount of the unpaid Principal Components of the Installment Payments and the Outstanding Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(iv) The Assignee is hereby authorized by the City and the Corporation to modify the Installment Payment Schedule from time to time (including after a prepayment), in accordance with Section 4.4(a) (*Installment Payments – Obligation to Pay*), to reflect (A) any change to the unpaid Principal Components of the Installment Payments or the date and amount of any Installment Payment due and payable or to become due and payable by the City under this Agreement at the end of the Capitalized Interest Period (taking into account if less than \$25,183,810.80 has been advanced by the WIFIA Credit Provider under the WIFIA Credit Agreement and the Capitalized Interest), (B) any partial prepayments of the unpaid Principal Components of the Installment Payments, and (C) such other information as the Assignee may determine is necessary for administering this Agreement. Any calculations described above shall be rounded up to the nearest whole cent. Any adjustments or revisions to the Installment Payment Schedule as a result of changes in the Outstanding Balance (due to prepayment or otherwise) shall be applied in accordance with Section 7.6 (*General Prepayment Instructions*). Absent manifest error, the Assignee's determination of such matters shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the City's obligations under this Agreement, the WIFIA Credit Agreement or any other WIFIA Credit Document. It is anticipated that the Assignee shall provide the City with a copy of the revised Installment Payment Schedule, but no failure to provide or delay in providing the City with such revised Installment Payment Schedule shall affect any of the obligations of the City under this Agreement.

(d) Rate on Overdue Payments. If the City fails to make any of the payments required in this Section on or before the due date therefor, the Installment Payment in default shall continue as an obligation of the City until the amount in default shall have been fully paid and the City agrees to pay the same with interest thereon, to the extent permitted by law, from the date thereof at the Default Rate or, if lower, the maximum rate then permitted by law.

(e) Assignment. The City understands and agrees that all Installment Payments have been assigned by the Corporation to the Assignee under the Assignment Agreement, and the City hereby assents to such assignment. The Corporation hereby directs the City, and the City hereby agrees, to pay to the Assignee all payments payable by the City under this Section and all amounts payable by the City under Article VII (*Prepayment of Installment Payments*).

(f) Additional Payments. In addition to the Installment Payments to be made by the City hereunder, the City shall pay to the Corporation, the WIFIA Credit Provider and the Assignee, as applicable, from time to time when due the Additional Payments for administering and enforcing this Agreement.

(g) Manner of Payments. Payments under this Agreement shall be made in accordance with instructions given by the person entitled to such payment, and in the case of the WIFIA Credit Provider, in accordance with Section 8 (*Payment of Installment Payments*) of the WIFIA Credit Agreement.

Section 4.5. Pledge and Application of Net Revenues – Flow of Funds.

(a) Pledge of Pledged Collateral. As security for the City's obligation to pay the Installment Payments pursuant to this Agreement, and concurrently with the issuance and delivery of this Agreement, the City hereby irrevocably grants, pledges and assigns to the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee), a Lien on and security interest in the Pledged Collateral. Such Lien and security interest hereby granted shall constitute a first and prior Lien and security interest in the Pledged Collateral and such Lien and security interest shall attach, be perfected and be valid and binding immediately without the need for any physical delivery, recordation, filing, or further act. All organizational, regulatory or other necessary action on the part of the City and the Corporation with respect to the foregoing has been duly and validly taken. The Pledged Collateral shall not be used for any other purpose while any of the Installment Payments remain unpaid, except that out of the System Revenues there may be apportioned such sums, for such purposes, as are expressly permitted by this Agreement and the WIFIA Credit Agreement.

(b) Priority of Liens. The Lien on and security interest in the Pledged Collateral granted hereunder is in full force and effect and is not subordinate or junior to any other Lien on or security interest in the Pledged Collateral. The Lien on and security interest in the Net Revenues and the collateral described in clause (d) of the definition of "Pledged Collateral" granted hereby is on a parity with the pledge and lien which secures the payment of the Senior Obligations. The Lien on and security interest in the WIFIA Payment Account and all proceeds deposited therein from time to time and the WIFIA Reserve Account and all proceeds deposited therein from time to time is not subject to any other Lien or security interest. In addition, with respect to the Lien on and security interest in amounts in the WIFIA Payment Account and the WIFIA Reserve Account, such Lien and security interest is solely for the benefit of the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee), and the Holders of other Senior Obligations shall have no Lien on or claim to funds in the WIFIA Payment Account or the WIFIA Reserve Account following deposit therein.

(c) Deposit of System Revenues Into Revenue Account; Flow of Funds.

(1) *Establishment of Funds and Accounts.* The City has previously established the Wastewater Fund on its books of account and records, which the City shall continue to hold and maintain for the purposes and uses set forth herein. Within the Wastewater Fund the City shall establish the Revenue Account, the WIFIA Payment Account and the WIFIA Reserve Account. The City shall establish a Senior Obligation Payment Account for the SRF Planning Loan within the Wastewater Fund. At the time of issuance of any Additional Senior Obligation, the City shall establish the related Senior Obligation Payment Account and the related Senior Obligation Reserve Account within the Wastewater Fund for that Additional Senior Obligation. At the time of issuance of any Additional Subordinate Obligations, the City shall establish the related Subordinate Obligation Payment Account and the related Subordinate Obligation Reserve Account within the Wastewater Fund for that Additional Subordinate Obligation.

Amounts on deposit in each Senior Obligation Payment Account shall be applied only as set forth in Section 4.5(c)(5) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds – Application of Senior Obligation Payment Accounts*) and shall be pledged only to the applicable Senior Obligation. Amounts on deposit in each Senior Obligation Reserve Account shall be applied only as set forth in Section 4.5(c)(6) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds – Application of Senior Obligation Reserve Accounts*) and shall be pledged only to the applicable Senior Obligation. Amounts on deposit in each Subordinate Obligation Payment Account shall be applied only as set forth in Section 4.5(c)(7) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds – Application of Subordinate Obligation Payment Accounts*)) and may be pledged as set forth in clause (d) of the definition of “Pledged Collateral” to Senior Obligations. Amounts on deposit in each Subordinate Obligation Reserve Account shall be applied only as set forth in Section 4.5(c)(8) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds – Application of Subordinate Obligation Reserve Accounts*) and may be pledged as set forth in clause (d) of the definition of “Pledged Collateral” to Senior Obligations. Amounts on deposit in the general reserve account shall be applied only as set forth in Section 4.5(c)(9) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds – Application of General Reserve Account*) and may be pledged as set forth in clause (d) of the definition of “Pledged Collateral” to Senior Obligations.

(2) *Deposit of System Revenues Into Revenue Account; Flow of Funds.* Immediately upon receipt thereof by the City, the City shall deposit all System Revenues into the Revenue Account. The City shall apply amounts in the Wastewater Fund, and the Revenue Account, the WIFIA Payment Account and the WIFIA Reserve Account therein, only as permitted by this Agreement. Amounts on deposit in the Revenue Account shall be applied by the City on the first Business Day of each month to pay the following amounts in the following order of priority:

(A) first, to pay Operation and Maintenance Costs in amounts reasonably projected to be necessary during the applicable month for the payment of Operation and Maintenance Costs; provided, that for Operation and Maintenance Costs comprising an allocable share of operation and maintenance costs of the Cayucos Joint Powers Agreement Wastewater Treatment Plant pursuant to the Cayucos Joint Powers Agreement paid by the City less frequently than monthly, the amount of any payment accruing during the applicable month shall assume equal monthly accruals over the number of months in the Cayucos Joint Powers Agreement Payment Period, plus an amount equal to any transfer shortfalls that remain unfunded from prior months;

(B) second, on a prorated basis, into each Senior Obligation Payment Account (including the WIFIA Payment Account), the amount of interest (or interest component of an installment payment or capital lease payment) and principal (or principal component of an installment payment or capital lease payment) accruing during the applicable month, assuming equal monthly accruals over the applicable number of months in the applicable Senior Obligation Payment Period, plus an amount equal to any transfer shortfalls that remain unfunded from prior months; provided, however, in the last month of a Senior Obligation Payment Period, the amount transferred shall be that amount needed to pay the amount due on the applicable Senior Obligation Interest Payment Date or Senior Obligation Principal Payment Date, and further provided, with respect to a Senior Obligation, no transfer with respect to interest on such Senior Obligation shall be made to the extent amounts have been pre-funded and are otherwise available to make the applicable interest payment;

(C) third, on a prorated basis, into the respective Senior Obligation Reserve Accounts (including the WIFIA Reserve Account) as required by the Senior Obligation Documents, in an amount equal to the amount required to be deposited therein to restore the balance in each Senior Obligation Reserve Account to the applicable reserve requirement pursuant to the terms of the Senior Obligation Documents, including, with respect to this Agreement, the amounts required to be deposited pursuant to Section 4.7 (*WIFIA Reserve Account*);

(D) fourth, any other payments required to comply with the provisions of the Senior Obligation Documents (including this Agreement and the WIFIA Credit Agreement); and

(E) fifth, to the respective Subordinate Obligation Payment Accounts as required by the applicable Subordinate Obligation Documents to pay interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the Subordinate Obligations during the applicable month; and

(F) sixth, to the respective Subordinate Obligation Reserve Accounts as required by the Subordinate Obligation Documents, in an amount equal to the amount required to be deposited therein to restore the balance in each Subordinate Obligation Reserve Account to the applicable reserve requirement pursuant to the terms of the Subordinate Obligation Documents; and

(G) seventh, to a general reserve account, to be used for any other lawful purposes of the Wastewater System.

(3) *Deposits in the Event of Deficiency.* After the City has made any required payments described in clauses (A) through (D) above, any remaining Net Revenues in the Wastewater Fund shall be available for any lawful purpose of the City relating to the Wastewater System; provided, however, if there shall be a deficiency at any time in System Revenues required to make the deposits required pursuant to clauses (A), (B), (C) or (D) above, the City shall make the required deposits from available amounts in the Subordinate Obligation Payment Accounts or the Subordinate Obligation Reserve Accounts or the general reserve account, in reverse order, with transfers going first to fund requirements of clause (A), second to fund requirements of clause (B), third to fund requirements of clause (C) and fourth to fund requirements of clause (D).

(4) *Application of Wastewater Fund Generally.* All System Revenues received shall be deposited into the Revenue Account when and as received and applied only as set forth above. The City shall not permit System Revenues or other assets of the Wastewater System, or any funds in the Wastewater Fund or any other System Account held by or on behalf of the City, to be paid or transferred or otherwise applied for purposes other than ownership, operation or maintenance of, or capital improvements to, the Wastewater System.

(5) *Application of Senior Obligation Payment Accounts.* Amounts on deposit in each Senior Obligation Payment Account (including the WIFIA Payment Account) shall be applied only to the payment of interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Senior Obligation. Amounts on deposit in any Senior Obligation Payment Account (including the WIFIA Payment Account) are not available for deposits to, and may not be transferred to, any other Senior Obligation Payment Account.

(6) *Application of Senior Obligation Reserve Accounts.* Amounts on deposit in each Senior Obligation Reserve Account (including the WIFIA Reserve Account) shall be applied only as set forth in the following sentence. If on any Senior Obligation Interest Payment Date or Senior Obligation Principal Payment Date amounts in the related applicable Senior Obligation Payment Account are insufficient to pay interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Senior Obligation due on such Senior Obligation Interest Payment Date or Senior Obligation Principal Payment Date, as applicable, amounts in the applicable Senior Obligation Reserve Account shall be transferred to the applicable Senior Obligation Payment Account in the amount of such insufficiency. Amounts on deposit in any Senior Obligation Reserve Account (including the WIFIA Reserve Account) are not available for deposits to, and may not be transferred to, any other Senior Obligation Payment Account or any other Senior Obligation Reserve Account.

(7) *Application of Subordinate Obligation Payment Accounts.* Amounts on deposit in each Subordinate Obligation Payment Account shall be applied to the payment of interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Subordinate Obligation, but only as and to the extent due and payable. Amounts on deposit in any Subordinate Obligation Payment Account may not be transferred out of such Subordinate Obligation Payment Account to pay any such amounts more than five (5) days prior to the date any such payment is due. Amounts on deposit in any Subordinate Obligation Payment Account are also available to be applied as set forth in Section 4.5(c)(3) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds – Deposits in the Event of Deficiency*).

(8) *Application of Subordinate Obligation Reserve Account.* Amounts on deposit in each Subordinate Obligation Reserve Account shall be applied only as set forth in the following two sentences. If on any date on which interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Subordinate Obligation, amounts in the related applicable Subordinate Obligation Payment Account are insufficient to pay interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Senior Obligation due on such date, amounts in the applicable Subordinate Obligation Reserve Account shall be transferred to the applicable Subordinate Obligation Payment Account in the amount of such insufficiency. Amounts on deposit in any Subordinate Obligation Reserve Account are also available to be applied as set forth in Section 4.5(c)(3) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds – Deposits in the Event of Deficiency*).

(9) *Application of General Reserve Account.* Amounts on deposit in the general reserve account may be applied to any other lawful purposes of the Wastewater System. Amounts on deposit in the general reserve account are available to be applied as set forth in Section 4.5(c)(3) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds – Deposits in the Event of Deficiency*).

(d) No Preference or Priority. Payment of the Installment Payments and the principal of and interest on any Senior Obligations shall be made without preference or priority. If the amount of Net Revenues on deposit in the Wastewater Fund are at any time insufficient to enable the City to pay when due the Installment Payments and the principal of and interest on any Senior Obligations, such payments will be made on a pro rata basis.

(e) Other Uses of Net Revenues Permitted. The City shall not use System Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 4.5 and shall not apply any portion of the System Revenues in contravention of this Agreement. The City shall manage, conserve and apply the Net Revenues on

deposit in the Wastewater Fund in such a manner that all deposits required to be made under the subsection (c) will be made at the times and in the amounts so required.

(f) Budget and Appropriation of Installment Payments. The City shall adopt all necessary budgets and make all necessary appropriations of the Installment Payments and Senior Obligations from the Net Revenues. If any Installment Payment requires the adoption by the City of a supplemental budget or appropriation, the City shall promptly adopt the same. The covenants on the part of the City contained in this subsection (f) are non-cancellable obligations and duties imposed by law, and it is the duty of each and every public official of the City to take such actions and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this subsection (f).

Section 4.6. WIFIA Payment Account. The City hereby establishes for the purposes of making the Installment Payments, the WIFIA Payment Account within the Wastewater Fund. On or before each Installment Payment Date, moneys in the WIFIA Payment Account shall be applied to pay the Installment Payment due on such Installment Payment Date.

Section 4.7. WIFIA Reserve Account. The City hereby establishes for the purposes of ensuring the timely payment of the Installment Payments in the event of an insufficiency in System Revenues, the WIFIA Reserve Account within the Wastewater Fund, which will be funded from time to time pursuant to this Section 4.7 with Net Revenues available after making the transfers described in clauses (A) and (B) in Section 4.5(c)(2) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds - Deposit of System Revenues Into Revenue Account; Flow of Funds*). If on any Installment Payment Date amounts in the WIFIA Payment Account are insufficient to pay the Installment Payment due on such Installment Payment Date, amounts in the WIFIA Reserve Account shall be transferred to the WIFIA Payment Account in the amount of such insufficiency.

The WIFIA Reserve Account may remain unfunded until the occurrence of a WIFIA Reserve Event. Beginning with the month immediately following delivery of an updated financial model which demonstrates or discloses the occurrence of a WIFIA Reserve Event and for eleven (11) months thereafter, the City shall fund the WIFIA Reserve Account in an amount equal to one-twelfth (1/12) of the WIFIA Reserve Account Requirement. Funds shall be deposited in the WIFIA Reserve Account in accordance with clause (C) of Section 4.5(c)(2) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds - Deposit of System Revenues Into Revenue Account; Flow of Funds*). Thereafter, and subject to the flow of funds in Section 4.5(c)(2) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds - Deposit of System Revenues Into Revenue Account; Flow of Funds*), the City shall maintain the WIFIA Reserve Account in an amount equal to the WIFIA Reserve Account Requirement.

If, after the occurrence of a WIFIA Reserve Event, the City delivers to the Assignee, for three (3) consecutive City Fiscal Years, an updated financial model which demonstrates that the Senior Debt Service Coverage Ratio for the immediately preceding City Fiscal Year was not less than 1.30 to 1.00, the City may, upon written notice to the Assignee at least ten (10) Business Days

in advance, release any balance in the WIFIA Reserve Account to be applied to any Wastewater System purpose.

Section 4.8. Special Obligation of the City; Obligations Absolute. The City's obligation to pay the Installment Payments and any other amounts coming due and payable hereunder constitute a special, limited obligation of the City payable solely from the Pledged Collateral and the other funds provided herein for the payment of the Installment Payments or for the performance of any other agreements or covenants required to be performed by it contained herein. Under no circumstances is the City required to advance moneys derived from any source of income other than the Net Revenues for the payment of the Installment Payments and such other amounts, and no other funds or property of the City are liable for the payment of the Installment Payments. The City may, however, but in no event shall be obligated to, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the City for such purpose.

Except as provided in the foregoing paragraph, the obligation of the City to pay the Installment Payments, and the obligation of the City to perform and observe the other agreements contained herein, are absolute and unconditional and are not subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach of the Corporation, the Assignee or the WIFIA Credit Provider of any obligation to the City or otherwise with respect to the Wastewater System, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Corporation, the Assignee or the WIFIA Credit Provider. Until such time as all of the Installment Payments have been fully paid or prepaid, the City:

- (i) will not suspend or discontinue payment of any Installment Payments,
- (ii) will perform and observe all other agreements contained in this Agreement, and
- (iii) will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Wastewater System, the sale of the Wastewater System, the taking by eminent domain of title to or temporary use of any component of the Wastewater System, commercial frustration of purpose, any change in the tax or other laws of the United States of America or the State of California or any political subdivision of either thereof or any failure of the Corporation to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement.

ARTICLE V

COVENANTS OF THE CITY

Section 5.1. Disclaimer of Warranties. None of the Corporation, the Assignee nor the WIFIA Credit Provider makes any 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 City of the WIFIA Wastewater System Portion of the Project, the Wastewater System, or any portion thereof, or any other representation or warranty with respect to any of the WIFIA Wastewater System Portion of the Project, the Wastewater System, or any portion thereof. In no event is the Corporation, the Assignee or the WIFIA Credit Provider liable for incidental, indirect, special or consequential damages incidental to or arising out of this Agreement or the WIFIA Wastewater System Portion of the Project or the existence, furnishing, functioning or use of the WIFIA Wastewater System Portion of the Project or any item or products or services comprising a portion of the WIFIA Wastewater System Portion of the Project.

Section 5.2. Release and Indemnification Covenants. The City shall, to the extent permitted by law, indemnify the Corporation and any official, employee, agent or representative of the Corporation (each such Person being herein referred to as an “Indemnatee”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnatee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement, (b) the use, maintenance, condition or management of, or from any work or thing done on or about the Wastewater System or the selection, construction or sale of the Project by or to the City, its employees, agents, contractors, vendors, and subcontractors, (c) any breach or default on the part of the City in the performance of any of its representation, warranties, covenants, and obligations under this Agreement, (d) any act or omission of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Wastewater System or the Project, any act or omission of any lessee of the City with respect to the Wastewater System or Project, (e) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters arising out of or in direct relation to the Project, or (f) any strict liability under the laws or judicial decisions of any state or the United States arising out of or in direct relation to the Project; provided, that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee. In case any action or proceeding is brought against an Indemnatee by reason of any claim with respect to which such Indemnatee is entitled to indemnification hereunder, the City shall be entitled, at its expense, to participate in the defense thereof; provided, that such Indemnatee has the right to retain its own counsel, at the City’s expense, and such participation by the City in the defense thereof shall not release the City of any liability that it may have to such Indemnatee. Any Indemnatee against whom any indemnity claim contemplated in this Section 5.2 is made shall be entitled, after consultation with the City and upon consultation with legal counsel wherein such Indemnatee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the City for purposes of this Section 5.2. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnatee. To the extent permitted by applicable law, neither the City nor the Corporation shall assert, and each of the City and the Corporation hereby waives, any claim against any Indemnatee or the City or the Corporation, respectively, on any theory of liability, for special, indirect, consequential or punitive

damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement and the other transactions contemplated hereby, provided, that nothing in this sentence shall limit the City's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnatee is entitled to indemnification hereunder. All amounts due to any Indemnatee under this Section 5.2 shall be payable promptly upon demand therefor.

The obligations of the City under this Section 5.2 shall survive the payment or prepayment in full of the Purchase Price of the WIFIA Wastewater System Portion of the Project or transfer of this Agreement, the enforcement of any provision of this Agreement, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 5.2) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the City hereunder.

Section 5.3. Sale or Eminent Domain of Wastewater System; Liens on Wastewater System.

(a) The City shall not sell, lease or assign its rights in and to the Wastewater System or a substantial portion of the assets included in the Wastewater System, in each case unless such sale, lease or assignment (i) could not reasonably be expected to have a Material Adverse Effect and (ii) is made by the City in the ordinary course of business. The City may not enter into any agreement which impairs the operation of the Wastewater System or any part of it necessary to secure adequate Net Revenues to pay the Installment Payments or any Senior Obligations, or which otherwise would impair the rights of the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee) with respect to the Net Revenues.

(b) Any amounts received as awards as a result of the taking of all or any part of the Wastewater System by the lawful exercise of eminent domain, if and to the extent that such right can be exercised against such property of the City shall, with the prior written consent of the Assignee, either (a) be used for the acquisition or construction of improvements and extension of the Wastewater System, or (b) be applied on a pro rata basis to prepay the Installment Payments and any Senior Obligations on the next available prepayment date.

(c) Except for Permitted Liens, the City shall not create, incur, assume or permit to exist any Lien on the Wastewater System, the Pledged Collateral, the System Revenues, or the City's respective rights therein. The Corporation shall not collaterally assign any of its rights under or pursuant to this Agreement and shall not permit a Lien to encumber the Corporation's rights or privileges under this Agreement, unless in favor of the Assignee.

Section 5.4. Insurance. The City shall at all times procure and maintain or cause to be maintained insurance on the Wastewater System and the construction of the Project with responsible insurers in such amounts and against such risks (including damage to or destruction of the Wastewater System) as are customarily maintained with respect to works and properties of like character against accident to, loss of or damage to such works or properties. Such insurance shall include coverage for casualty losses to the facilities constituting part of the Wastewater System. All amounts collected from insurance against accident to or destruction of any portion of the

Wastewater System shall, with the prior written consent of the Assignee, either (a) be used to repair or rebuild such damaged or destroyed portion of the Wastewater System, or (b) be applied on a pro rata basis to prepay the Installment Payments and any Senior Obligations on the next available prepayment date.

The City shall also maintain, with responsible insurers, worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the City, the Corporation and the Assignee.

Upon request by the Assignee and the WIFIA Credit Provider, the City shall file evidence of all insurance policies maintained under this Section at least annually with the Assignee and the WIFIA Credit Provider.

Section 5.5. Records and Accounts. So long as any Installment Payments shall remain unpaid and until five (5) years after the Purchase Price of the WIFIA Wastewater System Portion of the Project shall have been paid in full, the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee) shall have the right, upon reasonable prior notice, to visit and inspect any portion of the System, to examine books of account and records of the City relating to the System, to make copies and extracts therefrom at the City's expense, and to discuss the City's affairs, finances and accounts relating to the Wastewater System with, and to be advised as to the same by, its officers and employees and its independent public accountants, all at such reasonable times and intervals as the Corporation (or upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee) may request. The City agrees to pay all out-of-pocket expenses incurred by the Corporation (or upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee) in connection with the exercise of its rights under this Section 5.5 at any time when an Event of Default shall have occurred and be continuing. The City shall maintain and retain all files relating to the Project and this Agreement until five (5) years after the later of the date on which (a) all rights and duties under this Agreement have been fulfilled and (ii) any litigation relating to the Project or this Agreement is finally resolved or, if the Corporation (or upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee) have reasonable cause to extend such date, a date to be mutually agreed upon by the Assignee and the City. The City shall provide to the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee) in a timely manner all records and documentation relating to the Wastewater Project.

Section 5.6. Rates and Charges.

(a) The City shall fix, charge, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Wastewater System which are reasonable, fair and nondiscriminatory and which will be at least sufficient, after making allowances for contingencies and error in the estimates, to yield System Revenues during each City Fiscal Year sufficient to pay the following amounts in the following order of priority:

- (i) all Operation and Maintenance Costs projected by the City to become due and payable in the City Fiscal Year;

- (ii) all Installment Payments and all payments of principal of and interest or installment payments on any Senior Obligations as they become due and payable during the City Fiscal Year, without preference or priority; and
- (iii) all payments required to meet any other obligations of the City which are charges, liens, encumbrances upon, or which are otherwise payable from, the System Revenues or the Net Revenues during such City Fiscal Year.

(b) In addition, the City shall fix, charge, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Wastewater System which are reasonable, fair and nondiscriminatory and which will be at least sufficient to yield Net Revenues during each City Fiscal Year which are at least equal to (i) one hundred and twenty percent (120%) of the Debt Service payable during such City Fiscal Year with respect to all Outstanding Senior Obligations and (ii) one hundred and ten percent (110%) of the Debt Service payable during such City Fiscal Year with respect to all Outstanding Obligations (collectively, the “Rate Covenant”).

If the forecast furnished by the City in the most recent updated financial model delivered by the City demonstrates that projected Net Revenues may be inadequate to satisfy the Rate Covenant for any City Fiscal Year until the Final Installment Payment Date, or if the City fails to satisfy the Rate Covenant for the most recently ended City Fiscal Year, the City shall (x) within thirty (30) days after request by the Assignee, engage the Technical and Rate Consultant to review and analyze the operations of the Wastewater System and recommend actions regarding revising the rates or changing the methods of operations, or any other actions to increase the Net Revenues so as to satisfy the Rate Covenant, (y) cause the Technical and Rate Consultant to issue its report, including any such recommended actions, no later than ninety (90) days following such engagement, and (z) either, within thirty (30) days (or such reasonable period of time required to do so under applicable law), (A) implement the Technical and Rate Consultant’s recommendation or (B) undertake an alternative course of action after demonstrating to the Assignee’s satisfaction that an alternative plan will generate an equivalent or greater increase to the Net Revenues so as to satisfy the Rate Covenant.

Section 5.7. Additional Obligations. Except as expressly permitted by this Section 5.7, the City shall not without the prior written consent of the Assignee, issue or incur indebtedness of any kind (including debt with respect to which the interest rate varies or may be adjusted by the City from time to time) that is payable from, secured or supported by all or any portion of the Pledged Collateral; provided further that in no event shall the City incur any indebtedness of any kind payable from, secured or supported by all or any portion of the Pledged Collateral, including indebtedness otherwise permitted by this Section 5.7, without the prior written consent of the Assignee, while an Event of Default has occurred and is continuing.

(a) No Superior Obligations. The City shall not create, incur or suffer to exist any Obligations the payments of which are senior or prior in right to the payment by the City of the Senior Obligations.

(b) No Obligations for the Project Secured by Other Collateral. The City shall not create, incur or suffer to exist any Obligations of the Project that are secured by a Lien on any

assets or property of the City other than the Pledged Collateral or the pledged collateral described in the Water System Project Installment Sale Agreement.

(c) No Variable Rate Obligations. The City shall not create, incur or suffer to exist any Obligations that with respect to which the interest rate varies or may be adjusted by the City from time to time.

(d) Additional Senior Obligations. The City shall not issue any Obligations the payments of, and security for, which are on parity with the Senior Obligations (the “Additional Senior Obligations”), unless: (A) the conditions set forth in the applicable Senior Obligation Document are satisfied; (B) no Event of Default has occurred and is continuing; (C) following issuance of the proposed Additional Senior Obligations, either (X) the Net Revenues for any four (4) consecutive quarters within the six (6) quarters immediately preceding the proposed issue date (such quarters relating to the City Fiscal Year) shall be sufficient to equal or exceed one hundred and twenty percent (120%) of the greatest amount of Debt Service payable on all Outstanding Senior Obligations (including the proposed Additional Senior Obligations) and shall also be sufficient to equal or exceed one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Senior Obligations), in each case in the current or any future period; or (Y) the projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date (such quarters relating to the City Fiscal Year), shall be sufficient to equal or exceed one hundred and twenty percent (120%) of the greatest amount of Debt Service payable on all Outstanding Senior Obligations (including the proposed Additional Senior Obligations) and shall also be sufficient to equal or exceed one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Senior Obligations), in each case in the current or any future period, and (D) not later than thirty (30) days prior to the proposed issue date, the City shall have provided to the Assignee a certificate signed by the City’s Authorized Representative (x) specifying the proposed issue date of such proposed Additional Senior Obligations and (y) confirming that the issuance of such proposed Additional Senior Obligations is authorized pursuant to this Section 5.7(d) and satisfies the applicable requirements of this Section 5.7(d). For purposes of the calculation for clause (C)(Y) of this Section 5.7(d) only, when calculating projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date, the City may include as System Revenues those System Revenues resulting from rate increases that have been approved and will take effect within three (3) years of such date of calculation as confirmed by the Rate Consultant.

(e) Additional Subordinate Obligations. The City shall not issue any Obligations the payments of, and security for, which are subordinated to the Senior Obligations (the “Additional Subordinate Obligations”), unless: (A) the conditions set forth in the applicable Subordinate Obligation Document are satisfied; (B) no Event of Default has occurred and is continuing; (C) following issuance of the proposed Additional Subordinate Obligations, either (X) the Net Revenues for any four (4) consecutive quarters within the six (6) quarters immediately preceding the proposed issue date (such quarters relating to the City Fiscal Year) shall be sufficient to equal or exceed one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Subordinate Obligations) in the current or any future period or (Y) the projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date (such quarters relating to

the City Fiscal Year), shall be sufficient to equal one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Subordinate Obligations) in the current or any future period; and (D) not later than thirty (30) days prior to the proposed issue date, the City shall have provided to the Assignee a certificate signed by the City's Authorized Representative (x) specifying the proposed issue date of such proposed Additional Subordinate Obligations and (y) confirming that the issuance of such proposed Additional Subordinate Obligations is authorized pursuant to this Section 5.7(e) and satisfies the applicable requirements of this Section 5.7(e). For purposes of the calculation for clause (C)(Y) of this Section 5.7(e) only, when calculating projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date, the City may include as System Revenues those System Revenues resulting from rate increases that have been approved and will take effect within three (3) years of such date of calculation as confirmed by the Rate Consultant.

Section 5.8. Operation of Wastewater System in Efficient and Economical Manner. The City shall operate the Wastewater System in an efficient and economical manner and maintain and preserve the Wastewater System in good repair and working order. The City shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the approvals from Governmental Authorities and any other rights, licenses, franchises, and authorizations material to the operation of the Wastewater System.

Section 5.9. Investments: Acquisition, Disposition and Valuation of Investments. Amounts on deposit in the Wastewater Fund, and the Revenue Account, the Senior Obligation Payment Accounts (including the WIFIA Payment Account), the Senior Obligation Reserve Accounts (including the WIFIA Reserve Account), the Subordinate Obligation Payment Accounts, the Subordinate Obligation Reserve Accounts therein, shall be held uninvested or shall be invested only in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder at such times as may be necessary to ensure that funds will be available within the applicable account to be applied towards the purpose for which the applicable account has been established.

Section 5.10. Reserved.

Section 5.11. Access to the Wastewater System. To the extent permitted by law, the City agrees that the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee) shall have the right at all reasonable times to enter upon and to examine and inspect the Wastewater System.

Section 5.12. Assignment by the Corporation. In consideration for advancing funds from time to time pursuant to the WIFIA Credit Agreement for the acquisition, construction and installation of the WIFIA Wastewater System Portion of the Project, the Corporation has assigned pursuant to the Assignment Agreement to the Assignee, all of the Corporation's rights, title and interest under this Agreement (excepting only the Corporation's rights to Additional Payments under Section 4.4(f) (*Additional Payments*) and rights of indemnification under Section 5.2 (*Release and Indemnification Covenants*)), including but not limited to (a) the right to receive and collect all of the Installment Payments from the City; (b) the right to receive and collect any proceeds of any insurance maintained thereunder with respect to the Project, or any eminent

domain award (or proceeds of sale under threat of eminent domain) paid with respect to the Project; and (c) the right to exercise such rights and remedies conferred on the Corporation under this Agreement as may be necessary or convenient (i) to enforce payment of the Installment Payments and any amounts required to be credited to the payment or prepayment thereof, or (ii) otherwise to protect the interests of the Corporation or the Assignee in the event of a default by the City under this Agreement. All necessary action or approvals on the part of the Corporation with respect to the foregoing has been duly and validly taken. The City and the Corporation shall, from time to time at the request of the Assignee, execute and deliver such further acknowledgments, agreements and instruments of assignment, transfer and assurance, and do all such further acts and things as may be necessary or appropriate in the reasonable opinion of the Assignee to give effect to the provisions of this Section 5.12 and to more perfectly confirm the rights, titles and interests assigned and transferred to the Assignee pursuant to the Assignment Agreement.

Notwithstanding the assignment described above, in no event shall the City be required to allocate any Installment Payment among more than one person or entity or make a payment to more than one address or wire transfer destination, and the person or entity to whom Installment Payments are to be made shall be authorized to give all consents and approvals to be obtained from the Corporation hereunder on behalf of and for all transferees. No further action will be required by the Corporation, any other owner of an interest therein or the City to evidence any such assignment, but the City shall acknowledge each such assignment in writing if so requested and shall keep a complete and accurate record of all such assignments. Nothing contained herein shall be deemed to be restriction on the sale or assignability of this Agreement or the rights of the WIFIA Credit Provider or the Assignee hereunder.

Section 5.13. Further Assurances; No Impairment. The City and the Corporation shall at any and all times, to the extent permitted by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens on the Pledged Collateral (whether now existing or hereafter arising) granted to the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee) pursuant to this Agreement, or intended so to be granted pursuant to this Agreement, or which the City or the Corporation may become bound to grant, and the City and the Corporation shall at all times maintain the Pledged Collateral and the Corporation's rights in this Agreement free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by this Agreement, other than as permitted by this Agreement, and all necessary action or approvals on the part of the City and the Corporation to that end shall be duly and validly taken at all times. The City and the Corporation shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Pledged Collateral and the assignment of this Agreement by the Corporation to the Assignee pursuant to the Assignment Agreement against all claims and demands of all Persons whomsoever.

Neither the City or the Corporation shall, or shall permit any person to, without the prior written consent of the Assignee, (i) extinguish the Rate Covenant, (ii) extinguish or impair the Liens on the Pledged Collateral or any dedicated source of repayment of the Installment Payments or any other Obligations (the proceeds of which are applied to fund Project costs), in each case granted pursuant to this Agreement or the Financing Documents, (iii) extinguish or impair the

assignment by the Corporation of all of its right, title and interest in this Agreement to the Assignee pursuant to the Assignment Agreement, (iv) amend, modify, replace or supplement this Agreement or any other Financing Document in a manner that could adversely affect the Assignee (in the Assignee's determination) in connection with this Agreement or the WIFIA Credit Agreement or which could reasonably be expected to result in a Material Adverse Effect, (v) waive or permit a waiver of any provision of this Agreement or any other Financing Document in a manner that could adversely affect the Assignee (in the Assignee's determination) in connection with this Agreement or the WIFIA Credit Agreement or which could reasonably be expected to result in a Material Adverse Effect, or (vi) terminate, assign or replace this Agreement or any Financing Document.

Section 5.14. Reporting and Filing Requirements. The City shall make the filings and deliver the notices required by the WIFIA Credit Agreement, including but not limited to:

(a) The City shall provide to the Assignee not later than ninety (90) days after the beginning of each City Fiscal Year, an updated base case financial model reflecting the then-current and projected conditions, which shall include, *inter alia*, (i) the City's capital improvement plan, major maintenance plan, projected rates and charges, projected debt outstanding and annual debt service, projected operation and maintenance costs of the Wastewater System, (ii) evidence of compliance with the Rate Covenant for the most recent City Fiscal Year and the projected Rate Covenant coverages through the Final Installment Payment Date, (iii) calculation of the Senior Debt Service Coverage Ratio for the most recent City Fiscal Year, (iv) a written narrative identifying any material changes to the underlying assumptions from the previous updated base case financial model and (v) a certificate signed by the City's Authorized Representative, certifying that (1) the updated financial model, including the assumptions and supporting documentation, as of its date, is accurate and reasonable to the best of the City's knowledge and belief, (2) the annual projected Net Revenues will be sufficient to meet the Installment Payment Schedule and to satisfy the Rate Covenant through the Final Installment Payment Date, (3) whether the City is in compliance with its obligations in respect of the Rate Covenant pursuant to this Agreement, and (4) whether a WIFIA Reserve Event has occurred.

(b) The City shall deliver to the Assignee, as soon as available, but no later than one hundred eighty (180) days after the end of each City Fiscal Year: (i) a copy of the audited income statement and balance sheet of the City as of the end of such City Fiscal Year, (A) setting forth in each case in comparative form the figures for the previous fiscal year, (B) certified without qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the City and (C) which shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except, with respect to the annual financial statements, for changes approved or required by the independent public accountants certifying such statements and disclosed therein), and (ii) together with each delivery of such annual audited financial statements, a certificate signed by the chief executive officer or chief financial officer of the City or the City's Authorized Representative, stating whether or not, to the City's knowledge after reasonable investigation, during the annual period covered by such financial statements, there occurred any Default or Event of Default and, if any such Default or Event of Default shall have occurred during such period, the nature of such Default or Event of Default and the actions that the City has taken or intends to take in respect thereof.

(c) The City shall provide the Assignee with written notification at least thirty (30) days prior to instituting any increase to the aggregate total Project costs in an amount equal to or greater than five percent (5%), which notification shall set forth the nature of the proposed increase and an estimate of the impact of such increase on the capital costs and operating costs of the Wastewater System.

(d) The City shall, within thirty (30) days after the City learns of the occurrence, give the Assignee notice of any of the events or receipt of any of the notices described in Section 16(h) (*Reporting Requirements – Notices*) of the WIFIA Credit Agreement.

(e) The City shall, at any time while the unpaid Principal Components of the Installment Payments remain unpaid and outstanding, promptly deliver to the Assignee such additional information regarding the business, financial, legal or organizational affairs of the City or regarding the WIFIA Wastewater System Portion of the Project, the Wastewater System or the System Revenues as the Assignee may from time to time reasonably request.

Section 5.15. Covenants Regarding Other Obligations.

(a) Proceeds. The City shall establish and maintain Project Accounts within the Wastewater Fund into which all proceeds of Obligations (other than this Agreement and the Water System Project Installment Sale Agreement) except for capitalized interest and required reserves, shall be deposited and held until expended to pay costs, or to reimburse the City for costs paid by the City, of the acquisition, construction and installation of capital improvements to the Wastewater System for which such Obligations were incurred or issued. The City shall maintain accurate records showing all disbursements from such Project Accounts.

(b) Documents. Each Senior Obligation Document entered into by the City with respect to Additional Senior Obligations and each Subordinate Obligation Document entered into by the City with respect to Subordinate Obligations shall contain a flow of funds substantively the same as the flow of funds set forth in Section 4.5(c)(2) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds - Deposit of System Revenues Into Revenue Account; Flow of Funds*).

(c) Payment Accounts. The City shall establish each payment account for making payments of principal of or interest on any Additional Senior Obligations as a Senior Obligation Payment Account within the Wastewater Fund. Each such Senior Obligation Payment Account shall be available only for the payment of interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), and pledged only to, the applicable Senior Obligation. The City shall establish each payment account for making payments of principal of or interest on any Subordinate Obligations as a Subordinate Obligation Payment Account within the Wastewater Fund.

(d) Reserve Accounts. The City shall establish each reserve account for any Additional Senior Obligations as a Senior Obligation Reserve Account within the Wastewater Fund. Each such Senior Obligation Reserve Account shall be pledged only to the applicable Senior Obligation. Each such Senior Obligation Reserve Account shall be available only for transfer to

the applicable Senior Obligation Payment Account in the amount of any insufficiency in the applicable Senior Obligation Payment Account to pay interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Senior Obligation due on such Senior Obligation Interest Payment Date or Senior Obligation Principal Payment Date, as applicable, and pledged only to the applicable Senior Obligation. The City shall establish each reserve account for any Subordinate Obligations as a Subordinate Obligation Reserve Account within the Wastewater Fund.

(e) Defeasance of Other Obligations. If Obligations (other than this Agreement and the Water System Project Installment Sale Agreement) are deemed discharged by either: (i) depositing with an escrow agent or other fiduciary, in trust, at or before the final stated maturity date, money which is fully sufficient to pay and discharge the applicable principal amount due, including all principal and interest and prepayment premium, (if any) at or before their respective due dates; (ii) depositing with an escrow agent or other fiduciary, in trust, noncallable Government Obligations in such amount as an independent certified public accountant shall determine in writing will, together with the interest to accrue thereon and without reinvestment, be fully sufficient to pay and discharge the applicable principal amount due, including all principal and interest and prepayment premium, (if any), at or before their respective due dates, and under the applicable Senior Obligation Documents or Subordinate Obligation Documents all obligations of the City with respect to the Obligations referred to above are released and discharged, such discharged Obligations shall be deemed no longer Outstanding for all purposes of this Agreement. Any defeasance of Obligations (other than this Agreement and the Water System Project Installment Sale Agreement) not satisfying the requirements of clause (i) or (ii) of the preceding sentence shall be deemed to remain Outstanding for all purposes of this Agreement.

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

Section 6.1. Events of Default Defined. Any one or more of the following events shall constitute an “Event of Default” hereunder:

(a) Payment Default. The City shall fail to (i) pay when due any part of any Installment Payment due and payable under this Agreement and such failure continues for a period of five (5) days, or (ii) make any mandatory prepayment required pursuant to the provisions of Article VII (*Prepayment of Installment Payments*) when and as the payment thereof shall be required under this Agreement or on the Final Installment Payment Date (each such failure, a “Payment Default”).

(b) Covenant Default. The City shall fail to observe or perform any covenant, agreement or obligation of the City under this Agreement (other than in the case of any Payment Default or other Event of Default separately called out in this Section 6.1), and such failure shall not be cured within thirty (30) days after the earlier to occur of (i) receipt by the City from the Assignee of written notice thereof or (ii) the City’s knowledge of such failure; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this

Section 6.1(b), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the City shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (i) or (ii) above, as applicable.

(c) Acceleration of Senior Obligations. With respect to any Senior Obligation, any acceleration shall occur of the maturity of that Senior Obligation, any such Senior Obligation shall not be paid in full upon the final maturity thereof, or any Holder of such Senior Obligation shall have the immediate right to accelerate such Senior Obligation.

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

(e) Bankruptcy Related Event. A Bankruptcy Related Event shall occur with respect to the City or the Corporation.

(f) Failure to Satisfy Rate Covenant. The City fails to satisfy the Rate Covenant for two (2) consecutive City Fiscal Years.

(g) Failure to Fund WIFIA Reserve Account. (i) After the occurrence of a WIFIA Reserve Event, the City fails to initially fully fund the WIFIA Reserve Account to its required balance pursuant to the requirements of this Agreement or (ii) after initial funding, the City fails to maintain the WIFIA Reserve Account in an amount equal to the WIFIA Reserve Account Requirement, with the exception of if such failure is due to a lack of receipt by the City of Net Revenues available for funding.

(h) WIFIA Credit Agreement Default. The occurrence of an Event of Default under the WIFIA Credit Agreement.

Section 6.2. Remedies on Default. Whenever any Event of Default has happened and is continuing, the Corporation shall have the right, at its option and without any further demand or notice, to:

(a) declare all principal components of the unpaid Installment Payments, together with accrued interest thereon to be immediately due and payable, whereupon the same shall become due and payable; and

(b) cease permitting accrued interest on the unpaid Principal Components of the Installment Payments to be capitalized;

(c) apply the Default Rate provisions of Section 4.4(d) (*Installment Payments - Rate on Overdue Payments*);

(d) apply to and obtain from any court of competent jurisdiction such decree or order as may be necessary to require officials of the City to charge and collect rates for services provided by the City and the Wastewater System sufficient to meet all requirements of this Agreement; and

(e) exercise all of the remedies set forth in the WIFIA Credit Agreement; and

(f) take whatever action at law or in equity, including specific enforcement, mandamus, or any equitable remedies available, as may be desirable and permitted by law to collect the Installment Payments then due or thereafter to become due pursuant to this Agreement, or enforce performance and observance of any obligation, agreement or covenant of the City under this Agreement.

In addition, the City is liable for, and hereby agrees to pay, all reasonable legal costs and expenses, including court costs, incurred by the Corporation, the Assignee and the WIFIA Credit Provider in the enforcement of any of the remedies listed above or any other remedy available to the Corporation. So long as there has occurred and is continuing an Event of Default, the Interest Components of the unpaid Installment Payments shall be calculated at the Default Rate as provided herein.

Section 6.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission 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 thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Corporation to exercise any remedy reserved to it in this Article VI it shall not be necessary to give any notice, other than such notice as may be required in this Agreement or by law.

Section 6.4. Prosecution and Defense of Suits. The City shall promptly, upon request of the Corporation or the Assignee, from time to time take or cause to be taken such action as may be necessary or proper to remedy or cure any defect in or cloud upon the title to the Wastewater System whether now existing or hereafter developing and shall prosecute all such suits, actions and other proceedings as may be appropriate for such purpose.

Section 6.5. No Additional Waiver Implied by One Waiver. If any agreement contained in this Agreement is breached by either party and thereafter waived by the other party, such waiver is limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

Section 6.6. Liability Limited to Pledged Collateral. Notwithstanding any provision of this Agreement, the City's liability to pay the Installment Payments and other amounts hereunder is limited solely to the Pledged Collateral as provided in Article IV (*Installment Sale Of WIFIA Wastewater System Portion of the Project To City; Installment Payments*). If the Pledged Collateral is insufficient at any time to pay an Installment Payment in full, the City is not liable to pay or prepay such Installment Payment other than from Pledged Collateral.

Section 6.7. Rights of the Assignee. Such rights and remedies as are granted to the Corporation under this Article VI (*Events of Default and Remedies*) or under this Agreement shall be exercised by the Assignee in accordance with the provisions of the Assignment Agreement.

ARTICLE VII

PREPAYMENT OF INSTALLMENT PAYMENTS

Section 7.1. Prepayment. The City has the right to prepay the Installment Payments, but only in the manner, at the times and in all respects in accordance with the provisions of this Article VII.

Section 7.2. Mandatory Prepayment. The City shall immediately prepay one hundred percent (100%) of the unpaid Principal Components of the Installment Payments in full in immediately available funds upon the occurrence of a Bankruptcy Related Event of the City or the Corporation, the Event of Default in Section 6.1(c) (*Events of Default Defined – Acceleration of Senior Obligations*) or the Event of Default in Section 17(a)(viii) (*Events of Default and Remedies – Invalidity of WIFIA Credit Documents*) of the WIFIA Credit Agreement. Such mandatory prepayment shall include all unpaid Interest Components of the Installment Payments to be prepaid, accrued to the date of such prepayment, without penalty or premium, and concurrently therewith the City shall pay all other Additional Payments then due and payable to the WIFIA Credit Provider and the Assignee. Upon the occurrence of a Bankruptcy Related Event of the City or the Corporation or the Events of Default described above, the City shall promptly deliver to the Assignee a notice of such Bankruptcy Related Event or Event of Default; *provided*, that the City's failure to deliver such notice shall not diminish, impair or otherwise affect the City's obligation to make any such mandatory prepayment as and when the circumstances requiring such mandatory prepayment have occurred.

Section 7.3. Optional Prepayment. The City may prepay the unpaid Principal Components of the Installment Payments in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the City; provided, however, that such prepayments shall be in principal amounts of \$250,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, but not more than once annually, on an Installment Payment Date, by paying such unpaid Principal Components of the Installment Payments to be prepaid, together with the unpaid Interest Components of the Installment Payments to be prepaid, accrued to the date of such prepayment, without penalty or premium, and concurrently therewith the City shall pay all other Additional Payments then due and payable to the WIFIA Credit Provider and the Assignee. Each prepayment of the unpaid Principal Components of the Installment Payments shall be made on such prepayment date and in such Principal Component amount as shall be specified by the City in a written notice delivered to the Assignee not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the Assignee. At any time between delivery of such written notice and the applicable optional prepayment, the City may, without penalty or premium, rescind its announced optional prepayment by further written notice to the Assignee. Anything in this Section 7.3 to the contrary notwithstanding, the failure by the City to make any optional prepayment shall not constitute a breach or default under this Agreement.

Section 7.4. Prepayment From Net Proceeds of Insurance or Eminent Domain. The City may prepay the unpaid Principal Components of the Installment Payments in whole or in part, on any date, if and to the extent the City (with the prior written consent of the Assignee) determines to apply any proceeds of insurance award or condemnation award with respect to the Wastewater System for such purpose in accordance with Sections 5.3 (*Sale or Eminent Domain of Wastewater System; Liens on Wastewater System*) or 5.4 (*Insurance*), at a prepayment price equal to 100% of the unpaid Principal Components of the Installment Payments to be prepaid plus the unpaid Interest Components of the Installment Payments to be prepaid, accrued to the date of such prepayment, without penalty or premium. In the event of the taking of all or any part of the Wastewater System by the lawful exercise of eminent domain or accident to or destruction of any portion of the Wastewater System, the City shall promptly deliver to the Assignee a notice of such taking or accident or destruction; provided, that the City's failure to deliver such notice shall not diminish, impair or otherwise affect the City's obligation to make any such mandatory prepayment as and when the circumstances requiring such mandatory prepayment have occurred.

Section 7.5. City's Certificate. Each prepayment pursuant to this Article VII shall be accompanied by a certificate signed by the City's Authorized Representative identifying the Section of this Agreement pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

Section 7.6. General Prepayment Instructions. If the City prepays only part of the unpaid Principal Components of the Installment Payment, the Assignee may make a notation on the Installment Payment Schedule indicating the amount of the unpaid Principal Components of the Installment Payments being prepaid. Absent manifest error, the Assignee's determination of such matters as set forth on the Installment Payment Schedule shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the City's obligations under this Agreement, the WIFIA Credit Agreement or any other WIFIA Credit Document. All such partial prepayments shall be applied to adjust amortization in a manner that maintains approximately equal Installment Payments. If such funds have not been so paid on the prepayment date, such unpaid Principal Components of the Installment Payments shall continue to accrue interest until payment thereof at the rate provided for in Section 4.4(b) (*Installment Payments – Calculation of Interest Components*).

Section 7.7. No Surrender of Agreement Required. No surrender of this Agreement shall ever be required as a condition for payment or otherwise.

ARTICLE VIII

MISCELLANEOUS

Section 8.1. Notices. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to the City:	The City of Morro Bay City Hall – 595 Harbor Street Morro Bay, CA 93442 Attention: Rob Livick, P.E. Email: rlivick@morrobayca.gov
If to the Corporation:	City of Morro Bay Public Facilities Corporation c/o The City of Morro Bay City Hall – 595 Harbor Street Morro Bay, CA 93442 Attention: Rob Livick, P.E. Email: rlivick@morrobayca.gov
If to the WIFIA Credit Facility Provider:	Environmental Protection Agency WJC-W 6201A 1200 Pennsylvania Avenue NW Washington, D.C. 20460 Attention: WIFIA Director Email: WIFIA_Portfolio@epa.gov

Unless otherwise instructed by the WIFIA Credit Provider, all notices to the WIFIA Credit Provider should be made by email to the email address noted above for the WIFIA Credit Provider. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a City’s Authorized Representative, with respect to notices to the City, by the Assignee, with respect to notices to the Assignee, or by the WIFIA Credit Provider, with respect to notices to the WIFIA Credit Provider. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 8.1 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 8.1 (or in accordance with the latest unrevoked written direction from the receiving party); provided, that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 8.2. Third Party Beneficiary. The WIFIA Credit Provider is hereby made a third-party beneficiary under this Agreement with all rights of a third-party beneficiary.

Section 8.3. Binding Effect. This Agreement inures to the benefit of and is binding upon the Corporation and the City, and their respective successors and assigns. For avoidance of doubt, this Agreement inures to the benefit of and is binding upon the Assignee (upon the assignment by the Corporation pursuant to the Assignment Agreement).

Section 8.4. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 8.5. Amendments Changes and Modifications. No amendment, modification, termination, or waiver of any provision of this Agreement shall in any event be effective unless signed in writing by the City and the Assignee (upon the assignment by the Corporation pursuant to the Assignment Agreement) with the written consent of the WIFIA Credit Provider.

Section 8.6. Net Contract. This Agreement shall be deemed and construed to be a “net contract” and the City hereby agrees that the Installment Payments shall be an absolute net return to the Corporation, free and clear of any expenses, charges or set-offs whatsoever.

Section 8.7. Further Assurances and Corrective Instruments. The Corporation and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project hereby sold or intended so to be or for carrying out the expressed intention of this Agreement.

Section 8.8. Execution in Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 31 (*Notices*) of the WIFIA Credit Agreement shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

Section 8.9. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 8.10. Corporation and City Representatives. Whenever under the provisions of this Agreement the approval of the Corporation or the City is required, or the Corporation or the City is required to take some action at the request of the other, such approval or such request shall be given for the Corporation by an Authorized Representative of the Corporation and for the City by a City Representative, and any party hereto shall be authorized to rely upon any such approval or request.

Section 8.11. No Defeasance of Installment Payments. The City shall have no right to defease or otherwise discharge its obligation hereunder to make Installment Payments prior to the payment in full of the Purchase Price of the WIFIA Wastewater System Portion of the Project under this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

CITY OF MORRO BAY PUBLIC FACILITIES
CORPORATION, as Seller

By: _____
Name:
Title: Executive Director

CITY OF MORRO BAY, as Purchaser

By: _____
Name:
Title: Mayor

*[Signature Page to Morro Bay Water Reclamation Facility Project – Wastewater System Portion
Installment Sale Agreement]*

3362771.11 043224 AGMT

APPENDIX A
INSTALLMENT PAYMENT SCHEDULE

(As of the Effective Date)

<u>Installment Payment Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Aggregate Installment Payment</u>

**ASSIGNMENT AGREEMENT
(Wastewater System Project)**

This ASSIGNMENT AGREEMENT (Wastewater System Project) (this “Agreement”), dated as of [_____], 2020, is between the CITY OF MORRO BAY PUBLIC FACILITIES CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the “Corporation” and the “Assignor”), and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency, with an address at 1200 Pennsylvania Avenue NW, Washington, DC 20460, as assignee (the “Assignee”).

BACKGROUND:

WHEREAS, the City of Morro Bay, a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State of California (the “City”) wishes to finance the design and construction of the Project (as defined in the ISA (as defined below)); and

WHEREAS, the Corporation has been formed for the purpose, among others, of assisting the City in financing capital improvements for its water and wastewater systems, including providing financing for the Project; and

WHEREAS, the Corporation desires to assist the City in financing a portion of the Project costs for the wastewater system portion of the Project (such portion of Project costs, the “WIFIA Wastewater System Portion of the Project”), and to that end is entering into (i) the Installment Sale Agreement (Wastewater System Project), dated as of the Effective Date, between the City and the Corporation under which the City will purchase the WIFIA Wastewater System Portion of the Project from the Corporation (as more particularly defined herein, the “ISA”), (ii) this Agreement and (iii) the WIFIA Credit Agreement, dated as of the Effective Date, by and among the Assignee, the Corporation and the City relating to the Wastewater System Portion of the Morro Bay Water Reclamation Facility (WIFIA-N17108CA) (as more particularly defined herein, the “WIFIA Credit Agreement”); and

WHEREAS, in order to provide the funds for the acquisition, construction and installation of the WIFIA Wastewater System Portion of the Project, the Corporation will cause the WIFIA Credit Provider to advance funds from time to time pursuant to the WIFIA Credit Agreement; and

WHEREAS, the Corporation will appoint the City as its agent to carry out the construction of the WIFIA Wastewater System Portion of the Project, the City will apply all funds advanced under the WIFIA Credit Agreement, to the costs of the WIFIA Wastewater System Portion of the Project, pursuant to the ISA; and

WHEREAS, as consideration for such advances by the WIFIA Credit Provider, the Corporation wishes to assign all of its right, title and interest (including the right to receive Installment Payments (as defined in the ISA) in the ISA (excepting only the Corporation’s rights

to Additional Payments under Section 4.4(f) (*Additional Payments*) of the ISA and rights of indemnification under Section 5.2 (*Release and Indemnification Covenants*) of the ISA) to the WIFIA Credit Provider, as the initial Assignee, as provided herein.

AGREEMENT:

In consideration of the foregoing and the material covenants hereinafter contained, the Corporation and the Assignee formally covenant, agree and bind themselves as follows:

SECTION 1. *Defined Terms.* All capitalized terms not otherwise defined herein have the respective meanings given those terms in the ISA.

SECTION 2. *Assignment.* The Corporation hereby assigns and transfers to the Assignee without recourse all of the Corporation's rights, title and interest under the ISA (excepting only the Corporation's rights to Additional Payments under Section 4.4(f) (*Additional Payments*) of the ISA and rights of indemnification under Section 5.2 (*Release and Indemnification Covenants*) of the ISA), including but not limited to:

(a) the right to receive and collect all of the Installment Payments from the City under the ISA,

(b) the right to receive and collect any proceeds of any insurance maintained with respect to the Project, or any eminent domain award (or proceeds of sale under threat of eminent domain) paid with respect to the Project, and

(c) the right to exercise such rights and remedies conferred on the Corporation under the ISA as may be necessary or convenient (i) to enforce payment of the Installment Payments and any amounts required to be credited to the payment or prepayment thereof, or (ii) otherwise to protect the interests of the Corporation in the event of a default by the City under the ISA.

All necessary action or approvals on the part of the Corporation with respect to the foregoing has been duly and validly taken.

SECTION 3. *Advances of Funds under WIFIA Credit Agreement.* In consideration of the assignment made hereunder by the Corporation to the Assignee, and subject to satisfaction of the conditions precedent set forth in Section 11(a) (*Conditions Precedent to Effectiveness*) of the WIFIA Credit Agreement, the Assignee agrees to cause the WIFIA Credit Provider to advance funds under the WIFIA Credit Agreement on the terms and conditions of the WIFIA Credit Agreement, including without limitation the conditions precedent set forth in Section 11(b) (*Conditions Precedent to Disbursements*) of the WIFIA Credit Agreement. Whenever it is provided in the WIFIA Credit Agreement that the WIFIA Credit Provider's obligation to advance funds under the WIFIA Credit Agreement shall cease or be suspended or terminated thereunder, the Assignee's obligation under this Agreement to cause the WIFIA Credit Provider to advance funds under the WIFIA Credit Agreement shall similarly cease or be suspended or terminated, as the case may be.

SECTION 4. *Corporation Representations, Warranties and Covenants.* The Corporation hereby represents, warrants and covenants to and with the Assignee that:

(a) The Corporation has all requisite power and authority to execute and deliver this Agreement and to carry out and consummate the transactions contemplated hereby and has duly authorized the execution, delivery and performance of this Agreement.

(b) Neither the execution and delivery of this Agreement nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a material breach of the Corporation's articles of incorporation, resolutions, bylaws or other organizational documents or conflicts with or results in a material breach of any applicable law, administrative rule or regulation, any applicable court or administrative decree or order or the terms, conditions or provisions of any restriction or any agreement or instrument to which the Corporation is now a party or by which the Corporation is bound or constitutes a default under any of the foregoing.

(c) The Corporation has duly authorized, executed and delivered this Agreement in accordance with the laws of the State of California. This Agreement is a legal, valid and binding obligation of the Corporation, enforceable in accordance with its terms, subject only to laws related to creditor's rights, moratorium, receivership, insolvency or bankruptcy, general equitable principles, judicial discretion and legal limitations applicable to public agencies in the State of California. No consent or approval of any trustee, holder of any indebtedness of the Corporation or any other person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Corporation of this Agreement, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by this Agreement or (B) the fulfillment of or compliance by the Corporation with the terms and conditions of this Agreement, except as have been obtained or made and as are in full force and effect.

(d) The ISA is free and clear of all claims, liens, security interests, encumbrances of any kind or character created by, through or under the Corporation, except the rights of the City thereunder, and except as contemplated in the ISA. The ISA is and shall remain free of all claims, liens, security interests and encumbrances arising through any act or omission of the Corporation.

(e) No modifications, amendments or changes have been made to the ISA.

(f) The ISA is valid, binding and enforceable in accordance with its terms.

(g) The Corporation has not previously assigned any right, title or interest in the ISA to any other party and no other party has any superior right, title or interest than such right, title and interest being assigned to the Assignee hereunder.

(h) The Corporation does not have any defenses, setoff rights, claims or other demands of any kind that can be asserted to reduce, eliminate or contravene the rights being assigned to the Assignee hereunder.

(i) The Corporation has the right to assign the ISA to the Assignee as set forth herein and the undersigned officer of the Corporation has the requisite power and authority to enter into this Agreement.

(j) The Corporation has complied with and performed all of its obligations under the ISA and all related documents and instruments.

(k) The ISA delivered to the Assignee herewith is an original and constitutes the entire writing, obligation and agreement between the Corporation and City respecting the Installment Payments due thereunder.

(l) The Corporation shall not issue or incur any obligations of any kind, including any bonds, notes, other evidences of indebtedness, installment sale arrangements, financing lease arrangements, or similar obligations, nor enter into any installment sale arrangements, financing lease arrangements, or similar arrangements with the City, except in connection with Obligations incurred by the City that are permitted pursuant to Section 5.7 (*Additional Obligations*) of the ISA or permitted pursuant to the Water System Project Installment Sale Agreement.

SECTION 5. *Acceptance.* Subject to satisfaction of the conditions precedent set forth in Section 11(a) (*Conditions Precedent to Effectiveness*) of the WIFIA Credit Agreement, the Assignee hereby accepts the assignments made herein.

SECTION 6. *Further Assurances.* The Corporation shall, from time to time at the request of the Assignee, execute and deliver such further acknowledgments, agreements and instruments of assignment, transfer and assurance, and do all such further acts and things as may be necessary or appropriate in the reasonable opinion of the Assignee to give effect to the provisions hereof and to more perfectly confirm the rights, titles and interests assigned and transferred to the Assignee pursuant to this Agreement.

SECTION 7. *Sale of Rights in the ISA.* The Assignee shall not sell its rights in the ISA and this Agreement at any time prior to the Substantial Completion Date. After such date, the Assignee may sell its rights in the ISA and this Agreement to another entity or reoffer it into the capital markets only in accordance with the provisions of this Section 7. Such sale or reoffering shall be on such terms as the Assignee shall deem advisable. However, in making such sale or reoffering the Assignee shall not change the terms and conditions of the ISA without the prior written consent of the City and the Corporation in accordance with Section 24 (*Amendments and Waivers*) of the WIFIA Credit Agreement. The Assignee shall provide, at least sixty (60) days prior to any sale or reoffering of its rights in the ISA and this Agreement, written notice to the City of the Assignee's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default under the ISA. The provision of any notice pursuant to this Section shall not (x) obligate the Assignee to sell nor (y) provide the City or the Corporation with any rights or remedies in the event the Assignee for any reason, does not sell its rights in the ISA and this Agreement. Notwithstanding anything herein to the contrary, any sale of its rights in the ISA and this Agreement shall provide that the sale is in accordance with all pertinent securities laws and that the assignee has reviewed pertinent information from the City with respect to the financial condition of the City, the Net Revenues, and the Wastewater System, and that the assignee understands the type of investment it has

purchased or has been provided the opportunity to review and receive information and has chosen not to do so.

SECTION 8. *Amendments and Waivers.* No amendment, modification, termination, or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

SECTION 9. *Execution in Counterparts.* This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

SECTION 10. *Effectiveness; Binding Effect.* This Agreement shall be effective on the Effective Date. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. The Corporation shall not assign or delegate its rights or obligations hereunder without the prior written consent of the Assignee.

SECTION 11. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**CITY OF MORRO BAY PUBLIC FACILITIES
CORPORATION,**

by its authorized representative,
as *Assignor*

By: _____

Name:

Title: Executive Director

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

By: _____
Name: Andrew R. Wheeler
Title: Administrator

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

WIFIA CREDIT AGREEMENT

With

CITY OF MORRO BAY

and

CITY OF MORRO BAY PUBLIC FACILITIES CORPORATION

For the

Wastewater System Portion of the

**MORRO BAY WATER RECLAMATION FACILITY
(WIFIA – N17108CA)**

Dated as of [_____], 2020

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EXHIBIT A - Reserved

EXHIBIT B – Anticipated Disbursement Schedule

EXHIBIT C– Form of Certification Regarding Debarment, Suspension and other Responsibility Matters

EXHIBIT D – Requisition Procedures

EXHIBIT E – Form of Non-Lobbying Certificate

EXHIBIT F – Installment Payment Schedule

EXHIBIT G-1 – Opinions Required from Counsel to the City

EXHIBIT G-2 – Opinions Required from Special Counsel to the Corporation

EXHIBIT H-1 – Form of City Closing Certificate

EXHIBIT H-2 – Form of Corporation Closing Certificate

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EXHIBIT K – Form of Public Benefits Report

WIFIA CREDIT AGREEMENT

(Wastewater System Portion of the
Morro Bay Water Reclamation Facility)

THIS WIFIA CREDIT AGREEMENT (this “**Agreement**”), dated as of [_____], 2020, is by and among the **CITY OF MORRO BAY**, a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State of California (the “**State**”), with an address at 595 Harbor Street, Morro Bay, CA 93442 (the “**City**”), the **CITY OF MORRO BAY PUBLIC FACILITIES CORPORATION**, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the “**Corporation**”) and the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “**Administrator**”), with an address at 1200 Pennsylvania Avenue NW, Washington, DC 20460 (the “**WIFIA Credit Provider**”).

RECITALS:

WHEREAS, the Congress of the United States of America enacted the Water Infrastructure Finance and Innovation Act, as amended by Section 1445 of the Fixing America’s Surface Transportation Act of 2015, as further amended by Section 5008 of the Water Infrastructure Improvements For the Nation Act of 2016 and by Section 4201 of America’s Water Infrastructure Act of 2018 (collectively, as the same may be amended from time to time, the “**Act**” or “**WIFIA**”), which is codified as 33 U.S.C. §§ 3901-3914;

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

WHEREAS, in connection with the City undertaking the Project (as defined herein), the City determined that certain Project costs are attributable to the City’s wastewater system and certain Project costs are attributable to the City’s water system, and the City has determined that Project costs will be allocated among the two systems accordingly;

WHEREAS, the City has requested that the WIFIA Credit Provider make proceeds available for the wastewater system portion of the Project and for the water system portion of the Project through separate agreements in a principal amount not to exceed (i) \$25,183,810.80 for the wastewater system portion of the Project and (ii) \$36,516,525.66 for the water system portion of the Project, in each case, excluding interest that is capitalized in accordance with the terms hereof and to be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Project pursuant to the application submitted by the City for WIFIA financial assistance dated July 12, 2018 (the “**Application**”);

WHEREAS, the Corporation has been formed for the purpose, among others, of assisting the City in financing capital improvements, including providing financing for the Project;

WHEREAS, in order to finance the Project (i) the City has entered into two installment sale agreements with the Corporation, pursuant to which the City will purchase part of the wastewater system portion of the Project and part of the water system portion of the Project from the Corporation and (ii) in exchange for these sales of portions of the Project, the City will pay installment payments to the Corporation, such payments being secured by, among other thing, the net revenues of the wastewater system and the water system, all as further described in the respective installment sale agreements;

WHEREAS, the City has determined that installment payments due under the ISA (as defined herein) reflect the portion of the costs of the Wastewater System Project (as defined herein) to be funded by the WIFIA Credit Provider pursuant to this Agreement and will be secured by, among other things, Net Revenues (as defined herein) of the Wastewater System (as defined herein);

WHEREAS, the City has determined that installment payments due under the Water System Project ISA (as defined herein) reflect the portion of the costs of the Water System Project (as defined herein) to be funded by the WIFIA Credit Provider pursuant to the Water System Project Credit Agreement (as defined herein) and will be secured by, among other things, pledged revenues of the Water System;

WHEREAS, as of the date hereof, the Administrator has approved WIFIA financial assistance for the Project to be provided in the form of this Agreement and the Water System Project Credit Agreement, subject to the terms and conditions contained in this Agreement and in the Water System Project Credit Agreement, respectively;

WHEREAS, based on the Application and the representations, warranties and covenants set forth herein, the WIFIA Credit Provider proposes to make funding available under this Agreement to the City Related Parties (as defined herein) by purchasing the interests of the Corporation in the ISA (as defined herein), with such purchase proceeds being made available to the City for Eligible Project Costs, and the City has structured the Installment Payments (as defined herein) paid by it pursuant to the ISA to reflect the portion of the wastewater system portion of the Project to be funded by the WIFIA Credit Provider;

WHEREAS, in exchange for the WIFIA Credit Provider making funding available under this Agreement, the Corporation has agreed to assign all of its right, title and interest in and to the ISA (excepting only the Corporation's rights to Additional Payments under Section 4.4(f) (*Additional Payments*) of the ISA and rights of indemnification under Section 5.2 (*Release and Indemnification Covenants*) of the ISA) to the WIFIA Credit Provider, as the initial Assignee, pursuant to the Assignment Agreement (as defined herein); and

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

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending

to be legally bound hereby, it is hereby mutually agreed by and between the City, the Corporation and the WIFIA Credit Provider as follows:

ARTICLE I

Definitions and Interpretation

Section 1. Definitions.

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

“Acceptable Credit Rating” means, with respect to any Person, the rating of its unsecured, senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than (a) at the time such Person executes, delivers or issues a repurchase agreement, ‘A+’, ‘A1’ or the equivalent rating from each Nationally Recognized Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable; and (b) at any time thereafter, ‘A’, ‘A2’ or the equivalent rating from each Nationally Recognized Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable.

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

“Additional Payments” means the payments to be made by the City to the Corporation or to the Assignee pursuant to the ISA (other than the Installment Payments) or the payments to be made by the City to the WIFIA Credit Provider pursuant to this Agreement, including, but not limited to, payments to be made pursuant to Section 10 (*Fees and Expenses*).

“Additional Principal Project Contracts” means (a) any contract, agreement, letter of intent, understanding or instrument listed in Part B of **Schedule 12(n)** (*Principal Project Contracts*) and (b) any other contract, agreement, letter of intent, understanding or instrument entered into by (or on behalf of) the City after the Effective Date with respect to the design and construction of the Project, in the case of this clause (b), (i) pursuant to which the City has payment obligations in excess of two and one half percent (2.5%) of the Project Budget in the aggregate, or (ii) the termination of which could reasonably be expected to have a Material Adverse Effect, but excluding, in the case of this clause (b), any (A) insurance policies, (B) Governmental Approvals and (C) agreements, documents and instruments (1) providing for, governing or evidencing any Permitted Debt and any related Permitted Lien for such Permitted Debt, or (2) entered into to consummate any Permitted Investment.

“Additional Senior Obligations” means any Senior Obligations permitted under Section 15(a) (*Negative Covenants – Indebtedness*) and under the Financing Documents, which Senior Obligations are issued or incurred after the Effective Date.

“Additional Subordinate Obligations” means any Subordinate Obligations permitted under Section 15(a) (*Negative Covenants – Indebtedness*) and under the Financing Documents, which Subordinate Obligations are issued or incurred after the Effective Date.

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

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

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

“Anti-Corruption Laws” means all laws, rules and regulations of any jurisdiction from time to time concerning or relating to bribery or corruption.

“Anti-Money Laundering Laws” means all U.S. and other applicable laws, rules and regulations of any jurisdiction from time to time concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

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

“Assignee” means, initially, the WIFIA Credit Provider or such other entity as has been assigned the rights of the Corporation under the ISA pursuant to the Assignment Agreement, and any further successors or assigns.

“Assignment Agreement” means the Assignment Agreement (Wastewater System Project), dated as of the Effective Date, between the Corporation and the WIFIA Credit Provider, as the initial Assignee, assigning all of the Corporation’s right, title and interest in the ISA (excepting only the Corporation’s rights to Additional Payments under Section 4.4(f) (*Additional Payments*) of the ISA and rights of indemnification under Section 5.2 (*Release and Indemnification Covenants*) of the ISA) to the WIFIA Credit Provider.

“Authorizing Resolutions” means the Resolution, and each resolution that authorizes the issuance of additional Obligations or that amends the terms of the Resolution or such other resolution.

“Bank Secrecy Act” means the Bank Secrecy Act of 1970, as amended, and the regulations promulgated thereunder.

“Bankruptcy Related Event” means, with respect to a City Related Party: (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of a City Related Party or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for a City Related Party or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; (b) a

City Related Party shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) make a general assignment for the benefit of creditors, (iv) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (v) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief, in each case under any Insolvency Law, (vi) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (iv), inclusive, of this clause (b), or (vii) take any action for the purpose of effecting any of the foregoing, including seeking approval or legislative enactment by any Governmental Authority to authorize commencement of a voluntary proceeding under any Insolvency Law; (c) the City shall fail to make an Installment Payment in accordance with Section 8 (*Payment of Installment Payments and Additional Payments*) of this Agreement and Section 4.4 (*Installment Payments*) of the ISA and such failure is not cured within thirty (30) days following notification by the WIFIA Credit Provider of failure to make such payment; (d) (i) any Person shall commence a process pursuant to which all or a substantial part of the Pledged Collateral may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Senior Obligations, or (ii) any Person shall commence a process pursuant to which all or a substantial part of the Pledged Collateral may be sold or otherwise disposed of pursuant to a sale or disposition of such Pledged Collateral in lieu of foreclosure; or (e) any receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official shall transfer, pursuant to directions issued by the Holders, funds on deposit in any of the System Accounts upon the occurrence and during the continuation of an Event of Default under this Agreement or an event of default under the Financing Documents for application to the prepayment of any principal amount of the Senior Obligations other than in accordance with the provisions of the Financing Documents or this Agreement.

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

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

“Capital Expenditures” means expenditures made or liabilities incurred for the acquisition of any assets, improvements or replacements thereto that have a useful life of more than one (1) year and that are capitalized in accordance with GAAP.

“Capitalized Interest” means an aggregate amount equal to the amount of the Interest Components of the Installment Payments accruing at the WIFIA Interest Rate during the Capitalized Interest Period based on aggregate unpaid Principal Components of the Installment Payments equal to the then current amounts advanced by the WIFIA Credit Provider under this Agreement permitted to be capitalized pursuant to Section 4.4(c)(ii) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*) of the ISA and Section 8(c) (*Payment of Installment Payments and Additional Payments – Capitalized Interest Period*) of this Agreement.

“Capitalized Interest Period” means the period from (and including) the Effective Date to (but excluding) the first day of the initial Payment Period, subject to earlier termination as set forth in Section 8(c) (*Payment of Installment Payments and Additional Payments – Capitalized Interest Period*) of this Agreement and in Section 4.4(c)(iii) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*) of the ISA.

“Cayucos Joint Powers Agreement” means the Joint Powers Agreement for the Ownership, Operation and Maintenance of Wastewater Treatment Facilities, entered into October 25, 1982, by and between the City and the Cayucos Sanitary District, as amended, with respect to the operation of the Cayucos Joint Powers Agreement Wastewater Treatment Plant.

“Cayucos Joint Powers Agreement Payment Period” means, for any payments of an allocable share of operation and maintenance costs of the Cayucos Joint Powers Agreement Wastewater Treatment Plant pursuant to the Cayucos Joint Powers Agreement paid by the City less frequently than monthly, the number of months between payment dates for payments required to be made by the City pursuant to the Cayucos Joint Powers Agreement. With respect to the last payment of such allocable share of operation and maintenance costs, the Cayucos Joint Powers Agreement Payment Period shall be such shorter period between the penultimate payment date and the last payment date.

“Cayucos Joint Powers Agreement Wastewater Treatment Plant” means the existing wastewater treatment plant jointly owned by the City and the Cayucos Sanitary District and operated pursuant to the Cayucos Joint Powers Agreement.

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

“City Fiscal Year” means (a) as of the Effective Date, a fiscal year of the City commencing on July 1 of any calendar year and ending on June 30 of the immediately succeeding calendar year or (b) such other fiscal year as the City may hereafter adopt after giving thirty (30) days’ prior written notice to the WIFIA Credit Provider in accordance with Section 15(f) (*Negative Covenants – Fiscal Year*).

“City’s Authorized Representative” means any Person who shall be designated as such pursuant to Section 21 (*City’s Authorized Representative*).

“City Related Party” means, individually or collectively, the City and the Corporation.

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

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

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

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

“Construction Schedule” means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached as **Schedule II** (*Construction Schedule*), and (b) any updates thereto included in the periodic reports submitted to the WIFIA Credit Provider pursuant to Section 16(d) (*Reporting Requirements – Construction Reporting*) most recently approved by the WIFIA Credit Provider.

“Control” means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms **“Controlling”** and **“Controlled by”** have meanings correlative to the foregoing.

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

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

“Debt Service” means, with respect to any Obligations, for any period, as of any date of calculation, an amount equal to the sum of all interest and principal of Obligations accruing and payable in respect of such period or, if such Obligation is an installment sale agreement, the amount of installment payments accruing and payable in respect of such period.

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

“Default Rate” means an interest rate equal to the sum of (a) the WIFIA Interest Rate plus (b) 200 basis points.

“Development Default” means (a) the City abandons work or fails, in the reasonable judgment of the WIFIA Credit Provider, to diligently prosecute the work related to the Project or (b) the City fails to achieve Substantial Completion of the Project within twenty-four (24) months following the Projected Substantial Completion Date, unless delayed due to Uncontrollable Force or unless the WIFIA Credit Provider has consented in writing to such delay for a period of time.

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

“Effective Date” means the date of this Agreement.

“Eligible Project Costs” means, in reference to the entire Project, amounts in the Project Budget approved by the WIFIA Credit Provider, which are paid by or for the account of the City in connection with the Project (including, as applicable, Project expenditures incurred prior to the receipt of WIFIA credit assistance), which shall arise from the following:

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

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

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

“End of the Validation Period” means the sixtieth (60th) day following the adoption of the Resolution by the City Council of the City on [____], 2020, which day is the last day for any interested person to bring an action in the superior court of the County [____] pursuant to California Code of Civic Procedure Section 863.

“Environmental Laws” has the meaning provided in Section 12(p) (*Representations and Warranties of the City Related Parties – Environmental Matters*).

“EPA” means the United States Environmental Protection Agency.

“Event of Default” has the meaning provided in Section 17(a) (*Events of Default and Remedies*).

“Event of Loss” means any event or series of events that causes any portion of the Wastewater System to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a casualty, a failure of title, or any loss of such property through eminent domain.

“Existing Indebtedness” means indebtedness or other financing arrangements (including installment sale arrangements) of the City that has been issued or incurred prior to the Effective

Date that are payable from System Revenues, as listed and described in **Schedule III** (*Existing Indebtedness*).

“Existing Principal Project Contract” means each contract of the City set forth in Part A of **Schedule 12(n)** (*Principal Project Contracts*).

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

“Final Disbursement Date” means the earliest of (a) the date on which amounts available under this Agreement have been disbursed in full; (b) the last anticipated date of disbursement set forth in the then-current Anticipated Disbursement Schedule; (c) the date on which the City has certified to the WIFIA Credit Provider that it will not request any further disbursements under this Agreement; (d) the date on which the WIFIA Credit Provider terminates its obligations relating to disbursements of any undisbursed amounts under this Agreement in accordance with Section 17 (*Events of Default and Remedies*); and (e) the date that is one (1) year after the Substantial Completion Date.

“Final Installment Payment Date” means the earlier of (a) November 1, 2058 or such earlier date as is set forth in a revised Installment Payment Schedule; and (b) the Installment Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.

“Financial Statements” has the meaning provided in Section 12(t) (*Representations and Warranties of the City Related Parties – Financial Statements*).

“Financing Documents” means (a) the ISA, (b) the Assignment Agreement, (c) this Agreement, (d) the Water System Project ISA, (e) the Water System Project Assignment Agreement, (f) the Water System Project Credit Agreement, (g) the Authorizing Resolutions, (h) all Senior Obligation Documents, and (i) each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing.

“GAAP” means generally accepted accounting principles for U.S. state and local governments, as established by the Government Accounting Standards Board (or any successor entity with responsibility for establishing accounting rules for U.S. state and local governments), in effect from time to time in the United States of America.

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

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

“Governmental Authority” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or

possessions, including the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“**Holder**” means, when used with respect to the ISA, the WIFIA Credit Provider, as the initial Assignee (and any subsequent Assignee) and, when used with respect to any other Obligation, the obligee, holder or registered owner of such Obligation, as applicable.

“**Indemnitee**” has the meaning provided in Section 32 (*Indemnification*).

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

“**Installment Payment**” individually, means with respect to any Installment Payment Date occurring on or after the Installment Payment Commencement Date, the sum of the Principal Component and the Interest Component (as adjusted to include interest at the Default Rate as set forth in Section 6 (*Interest Rate*) of this Agreement and Section 4.4(b) (*Installment Payments – Calculation of Interest Components*) of the ISA) of such Installment Payment due and payable on such Installment Payment Date as set forth on the Installment Payment Schedule and “**Installment Payments**” collectively, means all payments required to be paid by the City on any date under Section 8 (*Payment of Installment Payments and Additional Payments*) of this Agreement and Section 4.4 (*Installment Payments*) of the ISA, including any adjustments to include interest at the Default Rate as set forth in Section 6 (*Interest Rate*) of this Agreement and Section 4.4(b) (*Installment Payments – Calculation of Interest Components*) of the ISA).

“**Installment Payment Commencement Date**” means the earliest to occur of (a) November 1, 2024; (b) if the Capitalized Interest Period ends pursuant to Section 8(c) (*Payment of Installment Payments and Additional Payments – Capitalized Interest Period*) due to the occurrence of an Event of Default, the first Installment Payment Date immediately following the end of the Capitalized Interest Period; or (c) the Installment Payment Date falling closest to, but not later than, the fifth anniversary of the Substantial Completion Date.

“**Installment Payment Date**” means May 1 and November 1 in each year, commencing on the Installment Payment Commencement Date.

“**Installment Payment Schedule**” means the Installment Payment Schedule reflected in **Exhibit F** (*Installment Payment Schedule*), as amended from time to time in accordance with Section 8(f) (*Payment of Installment Payments and Additional Payments – Adjustments to Installment Payment Schedule*) of this Agreement and in **Appendix A** (*Installment Payment Schedule*) of the ISA, as amended from time to time in accordance therewith.

“**Interest Component**” means (a) with respect to an Installment Payment, the interest component (as adjusted to include interest at the Default Rate as set forth in Section 6 (*Interest Rate*) of this Agreement and Section 4.4(b) (*Installment Payments – Calculation of Interest Components*) of the ISA) of such Installment Payment due and payable on the applicable Installment Payment Date as set forth on the Installment Payment Schedule and (b) with respect to the aggregate Installment Payments, all payments of the interest components of the Installment

Payments required to be paid by the City on any date under Section 8 (*Payment of Installment Payments and Additional Payments*) of this Agreement and Section 4.4 (*Installment Payments*) of the ISA, as adjusted to include interest at the Default Rate as set forth in Section 6 (*Interest Rate*) of this Agreement and Section 4.4(b) (*Installment Payments – Calculation of Interest Components*) of the ISA).

“Investment Grade Rating” means a public rating no lower than ‘BBB-’, ‘Baa3’, ‘BBB (low)’, or higher, from a Nationally Recognized Rating Agency.

“ISA” means that Installment Sale Agreement (Wastewater System Project), dated as of the Effective Date, between the City and the Corporation, pursuant to which the City purchased the Wastewater System Portion of the Project.

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

“Loss Proceeds” means any proceeds of builders’ risk or casualty insurance (other than any proceeds from any policy of business interruption insurance insuring against loss of revenues upon the occurrence of certain casualties or events covered by such policy of insurance) or proceeds of eminent domain proceedings resulting from any Event of Loss.

“Major Maintenance” means all reasonably necessary periodic major overhaul and repair (excluding any maintenance or repair of a routine or ordinary course nature) of the Wastewater System.

“Major Maintenance Costs” means all expenses incurred or to be incurred by the City relating to Major Maintenance and paid or to be paid from System Revenues.

“Material Adverse Effect” means a material adverse effect on (a) the Wastewater System, the Project or the System Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the City, (c) the legality, validity or enforceability of any material provision of any Financing Document, (d) the ability of the City to enter into, perform or comply with any of its material obligations under any Financing Document, (e) the validity, enforceability or priority of the Liens provided under the Financing Documents on the Pledged Collateral in favor of the Secured Parties, (f) the validity and enforceability of the assignment provided by the Corporation to the WIFIA Credit Provider as initial Assignee under the Assignment Agreement, or (g) the WIFIA Credit Provider’s or the Assignee’s rights or remedies available under any Financing Document.

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

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

“**NEPA Determination**” means the [Finding of No Significant Impact][Categorical Exclusion][Record of Decision] for the Project issued by EPA on [____], 20[____] in accordance with NEPA.

“**Net Loss Proceeds**” means Loss Proceeds after excluding any proceeds of delay-in-start-up insurance and proceeds covering liability of the City to third parties.

“**Net Revenues**” means, for any period, an amount equal to all of the System Revenues received during such period minus the Operation and Maintenance Costs for such period.

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

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

“**Obligations**” means obligations, including any bonds, notes, other evidences of indebtedness, installment sale arrangements, financing lease arrangements, or similar obligations that are secured by a pledge and Lien on all or a portion of the System Revenues, including the ISA, any other Senior Obligations, and any Subordinate Obligations.

“**OFAC**” means the Office of Foreign Assets Control of the United States Department of the Treasury.

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

“**Operation and Maintenance Costs**” means all actual maintenance and operation costs (excluding Major Maintenance Costs and Capital Expenditures) incurred and paid from System Revenues (or, if applicable, forecasted to be incurred and paid from System Revenues) in connection with the operation and maintenance of the Wastewater System in any particular time period to which said term is applicable, including payments for taxes (excluding income taxes), insurance, consumables, advertising, marketing, payments pursuant to any agreements for the management, operation or maintenance of the Wastewater System, reasonable legal fees and expenses paid by the City in connection with the management, maintenance or operation of the Wastewater System, fees paid in connection with obtaining, transferring, maintaining or amending any Governmental Approvals, fees of the paying agent, Technical and Rate Consultant and other entities relating to administration of the Financing Documents, costs incurred in connection with

the performance of environmental mitigation work to be carried out by the City (but only to the extent such work has a useful life of less than twelve (12) months), amounts required for reasonable general and administrative expenses (including employee salaries and benefits, but excluding unbudgeted extraordinary payments to pension funds and post-employment benefit funds), but exclusive in all cases of rebates or grants, debt payments, noncash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature.

“Organizational Documents” means: (a) the constitutional and statutory provisions that are the basis for the existence and authority of the City Related Parties, including any enabling statutes, ordinances or public charters and any other organic laws establishing the City Related Parties and (b) the resolutions, bylaws, code of regulations, operating procedures or other organizational documents (including any amendments, modifications or supplements thereto) of or adopted by the City Related Parties by which the City Related Parties, their powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived.

“Outstanding” means, with respect to: (i) the ISA, Installment Payments that have not been paid, in full, in immediately available funds; and (ii) all other Obligations, Obligations that have not been fully repaid, cancelled or legally defeased or discharged pursuant to Section 5.15(e) (*Covenants Regarding Other Obligations – Defeasance of Other Obligations*) of the ISA.

“Outstanding Balance” means, with respect to the Installment Payments (i) the initial Principal Components of the Installment Payments (equal to the sum of the aggregate amount then advanced by the WIFIA Credit Provider under this Agreement plus the Capitalized Interest added thereto pursuant to Section 4.4(c)(ii) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*) of the ISA and Section 8(c) (*Payment of Installment Payments and Additional Payments – Capitalized Interest Period*) of this Agreement) minus (ii) the aggregate Principal Components of the Installment Payments paid or prepaid by the City pursuant to Article VII (*Prepayment of Installment Payments*) of the ISA and Section 9 (*Prepayment*) of this Agreement.

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

“Payment Default” has the meaning provided in Section 17(a)(i) (*Events of Default and Remedies – Payment Default*).

“Payment Period” means the six (6) month period beginning on May 1, 2024 and ending on October 31, 2024, and each succeeding six (6) month period thereafter; provided, however, that if the Installment Payment Commencement Date occurs earlier than November 1, 2024, the first Payment Period shall be the six (6) month period ending on the date immediately prior to the Installment Payment Commencement Date.

“Permitted Debt” means:

- (a) until December 31, 2020, the SRF Planning Loan;

- (b) other Existing Indebtedness;
- (c) the ISA;
- (d) Additional Senior Obligations that satisfy the requirements of Section 15(a) (*Negative Covenants – Indebtedness*) and the Financing Documents; and
- (e) Additional Subordinate Obligations that satisfy the requirements of Section 15(a) (*Negative Covenants – Indebtedness*) and the Financing Documents.

“Permitted Investments” means any investments in which the City may invest its funds, as listed in Section 53601 of the California Government Code, in compliance with the City’s investment policy then in effect.

“Permitted Liens” means:

- (a) Liens imposed pursuant to the WIFIA Credit Documents;
- (b) Liens imposed pursuant to the Resolution Documents;
- (c) Liens imposed on Net Revenues as security for Permitted Debt;
- (d) Liens imposed by law, including Liens for taxes that are not yet due or are being contested in compliance with Section 14(j) (*Affirmative Covenants – Material Obligations*);
- (e) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 14(j) (*Affirmative Covenants – Material Obligations*);
- (f) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance, and other social security laws or regulations;
- (g) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;
- (h) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 17(a)(vi) (*Events of Default and Remedies – Material Adverse Judgment*); and
- (i) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that, in any case, do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the City.

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

“Pledged Collateral” means, collectively, (a) the Net Revenues, (b) the WIFIA Payment Account and all proceeds deposited therein from time to time, (c) the WIFIA Reserve Account and all proceeds deposited therein from time to time, (d) available amounts in the Subordinate Obligation Payment Accounts, the Subordinate Obligation Reserve Accounts and the general reserve account from which the City shall make the required deposits of System Revenues as set forth in Section 4.5(c)(3) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds- Deposits in the Event of Deficiency*) of the ISA, and (e) such other amounts as are pledged or available as set forth in Section 4.5 (*Pledge and Application of Net Revenues – Flow of Funds*) of the ISA.

“Principal Component” means (a) with respect to an Installment Payment, the principal component of such Installment Payment due and payable on the applicable Installment Payment Date as set forth on the Installment Payment Schedule and (b) with respect to the aggregate Installment Payments, all payments of the principal components of the Installment Payments required to be paid by the City on any date under Section 8 (*Payment of Installment Payments and Additional Payments*) of this Agreement and Section 4.4 (*Installment Payments*) of the ISA and which amount is equal to the aggregate amount then drawn pursuant to this Agreement plus the Capitalized Interest permitted to be capitalized pursuant to Section 8(c) (*Payment of Installment Payments and Additional Payments – Capitalized Interest Period*) of this Agreement and Section 4.4(c)(ii) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*) of the ISA.

“Principal Project Contracts” means the Existing Principal Project Contracts and the Additional Principal Project Contracts.

“Principal Project Party” means any Person (other than the City) party to a Principal Project Contract.

“Project” means the design and construction of a new water reclamation facility, sewage pump station and pipeline, new injection wells for groundwater storage, recycled water pipeline and waste discharge pipeline, located within the City and in an unincorporated area of the County of San Luis Obispo adjacent to the City boundaries.

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

“Projected Substantial Completion Date” means November 1, 2023, as such date may be adjusted in accordance with Section 16(d) (*Reporting Requirements – Construction Reporting*).

“Public Benefits Report” has the meaning provided in Section 16(e) (*Reporting Requirements – Public Benefits Report*).

“Purchase Price” means the aggregate purchase price payable by the City to the Corporation for the purchase of the Wastewater System Portion of the Project, payable by the City in Installment Payments as set forth in Section 4.4 (*Installment Payments*) of the ISA.

“Rate Consultant” means a single individual or firm, not related to the City and considered independent with respect to the City (i.e., not an employee of the City or any affiliate of the City or having other material business relationships with the City) authorized to do business in and qualified to practice in the areas required to provide the services required of the Rate Consultant, that has expertise in the technical requirements for establishing rates and charges for governmental water or wastewater systems similar in size and scope to the Wastewater System, selected by the City.

“Rate Covenant” has the meaning set forth in Section 14(a) (*Affirmative Covenants – Rate Covenant*).

“Related Documents” means the Financing Documents, the WIFIA Credit Documents and the Principal Project Contracts.

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

“Resolution” means Resolution No. [___], adopted by the City Council on [___], 2020 and authorizing, among other things, the City to enter into the ISA, the Assignment Agreement and this Agreement and to create the pledge and security interest established under the ISA.

“Resolution Documents” means (i) the Authorizing Resolutions and (ii) each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing.

“Revenue Account” means the account so designated and established within the Wastewater Fund pursuant to the ISA.

“Sanctioned Country” means, at any time, a country or territory which is itself the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or controlled by any such Person or Persons.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered, or enforced from time to time by the Government, including those administered by OFAC or the U.S. Department of State.

“Secured Obligations” means the Senior Obligations (including the obligations of the City under this Agreement and the ISA, the Subordinate Obligations, and any other obligation secured by all or a portion of the Pledged Collateral.

“Secured Parties” means the WIFIA Credit Provider, as the initial Assignee, and any other Holders of Secured Obligations.

“Senior Debt Service Coverage Ratio” means, for each City Fiscal Year, the ratio of: (a) Net Revenues during such City Fiscal Year to (b) Debt Service on all Outstanding Senior Obligations for such City Fiscal Year.

“Senior Obligation Documents” means, collectively, (i) the ISA, (ii) the Assignment Agreement, (iii) this Agreement, (iv) the SRF Planning Loan Agreement, and (v) the indenture of trust, trust agreement, supplemental installment sale agreement, installment sale agreement, lease, loan agreement or other document (including resolutions or ordinances) authorizing the issuance of any Senior Obligations or any securities which evidence Senior Obligations.

“Senior Obligation Interest Payment Date” means, with respect to any Senior Obligation, any date on which an interest payment on the applicable bonds, or a payment of the interest component of the applicable installment sale agreement or capital lease agreement, is regularly scheduled to be paid to holders of the applicable Senior Obligation.

“Senior Obligation Payment Accounts” means the payment accounts within the Wastewater Fund established pursuant to the Senior Obligation Documents for purposes of making payments of principal of and interest on Senior Obligations.

“Senior Obligation Payment Period” shall mean, for any Senior Obligation, (i) with respect to interest payments (or interest components of an installment payment), the number of months between the applicable Senior Obligation Interest Payment Dates and (ii) with respect to principal payments, including sinking fund installment redemptions (or the principal components of an installment payment or capital lease payment), the number of months between the applicable Senior Obligation Principal Payment Dates. With respect to the first interest payment and principal payment for any Senior Obligation, the applicable number of months determined as set forth above before the initial interest payment or principal payment, as applicable, shall also be a Senior Obligation Payment Period.

“Senior Obligation Principal Payment Date” means, with respect to any Senior Obligation, any date on which a principal payment or mandatory sinking fund redemption payment is due on the applicable bonds, or principal component of the applicable installment sale payment or capital lease payment, is regularly scheduled to be paid to holders of the applicable Senior Obligation.

“Senior Obligation Reserve Accounts” means the reserve accounts within the Wastewater Fund established pursuant to the Senior Obligation Documents.

“Senior Obligations” means (i) all Installment Payments due under the ISA, (ii) the payments due under the SRF Planning Loan, and (iii) Additional Senior Obligations.

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

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

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

“SRF Planning Loan” and **“SRF Planning Loan Agreement”** means the existing Wastewater Planning Loan, Water Reclamation Facilities Project-Phase I Clean Water State Revolving Project No. C-06-8185-110, Agreement No. D-16-01016, dated January 20, 2017, in the initial amount of \$10,300,000, by and between the City and the California State Water Resources Control Board; provided however, that this defined term does not include any debt facility that refinances the planning loan.

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

“Subordinate Obligation Documents” means the indenture of trust, trust agreement, supplemental installment sale agreement, installment sale agreement, lease, loan agreement or other document (including resolutions or ordinances) authorizing the issuance of any Subordinate Obligations or any securities which evidence Subordinate Obligations.

“Subordinate Obligation Payment Accounts” means the payment accounts within the Wastewater Fund established pursuant to the Subordinate Obligation Documents for purposes of making payments of principal of and interest on Subordinate Obligations.

“Subordinate Obligation Reserve Accounts” means the reserve accounts within the Wastewater Fund established pursuant to the Subordinate Obligation Documents.

“Subordinate Obligations” means any Obligation that is fully subordinated to the City’s payment obligations under the ISA in priority of payment (as to both principal and interest, installment payments, lease payments or similar payments due with respect to Obligations), voting and priority of security interest in the Net Revenues, including with respect to payment from revenues and reserves and payment upon default or acceleration of any such Obligations.

“Substantial Completion” means, with respect to the Project, the stage at which the Project is able to perform the functions (for both the Wastewater System and the Water System) for which the Project is designed.

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

“System Accounts” means all funds, accounts or subaccounts holding System Revenues, including the Wastewater Fund and the Revenue Account, Senior Obligation Payment Accounts (including the WIFIA Payment Account), the Senior Obligation Reserve Accounts (including the WIFIA Reserve Account), the Subordinate Obligation Payment Accounts, the Subordinate Obligation Reserve Accounts and the general reserve account therein and such additional funds, accounts or sub-accounts that may be established in connection with the Wastewater System for System Revenues.

“System Revenues” means (a) all rates, fees, charges, rents, taxes or assessments dedicated to pay costs of the Wastewater System, and other income and receipts received by the City from the ownership or operation of the Wastewater System, (b) Loss Proceeds from business interruption insurance, (c) interest received on any moneys or securities held in System Accounts, and (d) the moneys and securities of any entity that is acquired by the City and that is deposited in the Revenue Account to the extent such moneys are applied to pay liabilities incurred by the acquired company prior to the date of acquisition.

System Revenues shall not include (i) proceeds of the issuance of Obligations, (ii) the proceeds for any insurance pertaining to loss or damage to persons and the property of others or to loss or damage to the Wastewater System, or the proceeds of condemnation or the sale or other disposition of any part of the Wastewater System, except to the extent any such proceeds are applied by the City to pay Operation and Maintenance Costs, (iii) transfers to the Revenue Account from any other fund or account, unless approved by the WIFIA Credit Provider, (iv) any amount received or receivable from the United States or the State (or any agency of either thereof) or from any other sources as or on account of a grant or contribution for or with respect to the construction, acquisition, improvement, extension, renewal or other development of any part of the Wastewater System, (v) customers’ deposits or any other deposits subject to refund until such deposits have become the property of the City, (vi) any proceeds of ad valorem property taxes, or (vii) any proceeds of taxes or assessments restricted by law to be used by the City to pay bonds or other obligations heretofore or hereafter issued. “System Revenues” shall not include any amounts on deposit in the general fund of the City except to the extent such amounts constitute payment for fees and charges for the services and facilities furnished by the Wastewater System to the City.

“Technical and Rate Consultant” means a single individual or firm, or a combination of one or more individuals or firms, not related to the City and considered independent with respect to the City (i.e., not an employee of the City or any affiliate of the City or having other material business relationships with the City) authorized to do business in and qualified to practice in the areas required to provide the services required of the Technical and Rate Consultant, that together have expertise in the technical requirements for operation and maintenance of systems similar in size and scope to the Wastewater System and delivering the services provided by the Wastewater System, and establishing rates and charges for governmental water or wastewater systems similar in size and scope to the Wastewater System, selected by the City and reasonably acceptable to the WIFIA Credit Provider.

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

“Uncontrollable Force” means any cause beyond the control of the City, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (provided, that the City shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the City and the City does not control the administrative agency or governmental officer or body; provided, that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the City.

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

“Updated Financial Model” means the Base Case Financial Model, updated in accordance with Section 16(a) (*Reporting Requirements – Updated Financial Model*).

“Wastewater Fund” means the fund or funds established and held by the City with respect to the Wastewater System.

“Wastewater System” means any and all properties and assets, real and personal, tangible and intangible, of the City, now or hereafter existing, used or pertaining to the disposal or reuse of wastewater, including the Wastewater System Project, sewage treatment plants, intercepting and collecting sewers, outfall sewers, force mains, pumping stations, ejector stations, pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, treatment, purification or disposal of sewage, and any necessary lands, rights of way and other real or personal property useful in connection therewith, and all additions, extensions, expansions, improvements and betterments thereto and equipping thereof, including the Project.

“Wastewater System Portion of the Project” means 20% of the Eligible Project Costs, all of which Eligible Project Costs are financed by the ISA and this Agreement.

“Wastewater System Project” means the portion of the Project that is allocable to the Wastewater System equal to 71% of the Project costs.

“Water System” means [_____]

“Water System Portion of the Project” means 29% of the Eligible Project Costs, all of which Eligible Project Costs are financed by the Water System Project ISA and the Water System Project Credit Agreement.

“Water System Project” means the portion of the Project that is allocable to the Water System equal to 29% of the Project costs.

“Water System Project Assignment Agreement” means the Assignment Agreement (Water System Project), dated as of the Effective Date, between the Corporation and the WIFIA Credit Provider, as the initial assignee thereunder.

“Water System Project Credit Agreement” means the WIFIA Credit Agreement, dated as of the Effective Date, by and among the WIFIA Credit Provider, the Corporation and the City relating to the Water System Portion of the Project.

“Water System Project Credit Agreement Documents” means (a) the Water System Project Credit Agreement, (b) the Water System Project ISA, (c) the Water System Project Assignment Agreement and (d) the Financing Documents.

“Water System Project ISA” means that Installment Sale Agreement (Water System Project), dated as of the Effective Date, between the City and the Corporation, pursuant to which the City purchased the Water System Portion of the Project.

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

“WIFIA Credit Documents” means (a) this Agreement, (b) the ISA, and (c) the Assignment Agreement.

“WIFIA Credit Facility” means the proceeds made by the WIFIA Credit Provider to the City on the terms and conditions set forth herein, pursuant to the Act, in a principal amount not to exceed \$25,183,810.80 (excluding capitalized interest), to be used in respect of Eligible Project Costs paid or incurred by the City for the Wastewater System Project and to pay for the purchase price of the Corporation’s interests in the ISA.

“WIFIA Credit Provider” has the meaning provided in the preamble hereto.

“WIFIA Credit Provider’s Authorized Representative” means the Administrator and any other Person who shall be designated as such pursuant to Section 22 (*WIFIA Credit Provider’s Authorized Representative*).

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

“WIFIA Payment Account” means the account so designated and established within the Wastewater Fund pursuant to the ISA, which will be used to accumulate Net Revenues to ensure timely payment of Installment Payments and from which Installment Payments will be paid.

“WIFIA Reserve Account” means the account so designated and established within the Wastewater Fund pursuant to the ISA, which will be used to accumulate amounts equal to the WIFIA Reserve Account Requirement to ensure timely payment of Installment Payments.

“WIFIA Reserve Account Requirement” means, as of the date of calculation, an amount equal to fifty percent (50%) of the maximum annual aggregate amount (without duplication) of Installment Payments that will become due on any two consecutive Installment Payment Dates on the Installment Payment Schedule.

“WIFIA Reserve Event” means, as of the final day of the City Fiscal Year, failure of the City to maintain a Senior Debt Service Coverage Ratio of at least 1.30 to 1.00.

Section 2. Interpretation.

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

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

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

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

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

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

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

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

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

(j) Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 31 (*Notices*) and signed by a duly authorized representative of such party.

(k) Whenever this Agreement requires a change in principal amount, interest rate or payment schedule of the Installment Payments, it is intended that such change be reflected in the ISA.

ARTICLE II THE WIFIA CREDIT FACILITY

Section 3. WIFIA Credit Facility Amount. The principal amount available under this Agreement shall not exceed \$25,183,810.80 (excluding any interest that is capitalized in accordance with the terms hereof). Proceeds available to be drawn under this Agreement shall be disbursed from time to time in accordance with Section 4 (*Disbursement Conditions*) and Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*).

Section 4. Disbursement Conditions.

(a) Pursuant to the ISA, the Corporation has appointed the City as its agent to request funds from time to time under this Agreement and the City has accepted such appointment and assumed all rights, liabilities, duties and responsibilities of the Corporation under this Agreement regarding the requisition of funds from time to time under this Agreement. Subject to Section 4(d) below, proceeds shall be disbursed under this Agreement solely in respect of Eligible Project Costs paid or incurred and approved for payment by or on behalf of the City in connection with the Project and in consideration for the assignment by the Corporation of its interests in the ISA pursuant to the Assignment Agreement. If the City intends to utilize the disbursed proceeds to make progress payments for Project construction work performed under the Principal Project Contracts, the City shall demonstrate to the satisfaction of the WIFIA Credit Provider that such progress payments are commensurate with the value of the work that has been completed. Each disbursement of available amounts under this Agreement shall be made pursuant to a requisition and certification (a “**Requisition**”) in the form set forth in **Appendix One** (*Form of Requisition*) to **Exhibit D** (*Requisition Procedures*), along with all documentation and other information required thereby, submitted by the City to, and approved by, the WIFIA Credit Provider, all in accordance with the procedures of **Exhibit D** (*Requisition Procedures*) and subject to the requirements of this Section 4 and the conditions set forth in Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*); provided, that no disbursements of proceeds under this Agreement shall be made prior to the End of the Validation Period nor after the Final Disbursement Date.

(b) The City shall deliver copies of each Requisition (which shall include all costs of the Project for which the City seeks funding, whether through this Agreement or through the Water System Project Credit Agreement) to the WIFIA Credit Provider on or before the first (1st) Business Day of each month for which a disbursement is requested. If the WIFIA Credit Provider shall expressly approve a Requisition or shall not expressly deny a Requisition, disbursements of funds shall be made on the fifteenth (15th) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such fifteenth (15th) day is not a Business Day. Express WIFIA Credit Provider approval or denial shall be substantially in the form annexed hereto as **Appendix Two** (*[Approval/Disapproval] of the WIFIA Credit Provider*) to **Exhibit D** (*Requisition Procedures*). In no event shall disbursements be made more than once each month.

(c) At the time of any disbursement, the sum of all prior disbursements of proceeds under this Agreement and the disbursement then to be made shall not exceed the cumulative disbursements through the end of the then-current Federal Fiscal Year set forth in the

Anticipated Disbursement Schedule, as the same may be amended from time to time in accordance with the terms of this Agreement. Subject to this Section 4, any scheduled disbursement (as reflected in the Anticipated Disbursement Schedule) that remains undrawn at the end of any Federal Fiscal Year shall automatically roll forward to be available in the succeeding Federal Fiscal Year, having the effect of automatically updating the Anticipated Disbursement Schedule without need for the WIFIA Credit Provider's approval. The City may also amend the Anticipated Disbursement Schedule by submitting a revised version thereof to the WIFIA Credit Provider no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions. Such revised Anticipated Disbursement Schedule shall become effective upon the WIFIA Credit Provider's approval thereof, which approval shall be granted in the WIFIA Credit Provider's sole discretion.

(d) With respect to each Requisition (i) the Eligible Project Costs relating to the Project in its entirety shall be allocated pro rata between the Wastewater System Project and the Water System Project based on the following percentages: 40.82% for the Wastewater System Project and 59.18% for the Water System Project; and (ii) proceeds available under this Agreement shall be disbursed hereunder only if there is a concurrent disbursement under the Water System Project Credit Agreement.

Section 5. Term. The term of this Agreement shall extend from the Effective Date to the Final Installment Payment Date or to such earlier date as all amounts due or to become due to the WIFIA Credit Provider hereunder have been irrevocably paid in full in immediately available funds.

Section 6. Interest Rate. The interest rate with respect to the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) (the "**WIFIA Interest Rate**") shall be [] percent ([]%) per annum. Interest will accrue and be computed on the Outstanding Balance (as well as on any past due interest) (and the corresponding unpaid Interest Component of the Installment Payments will accrue) from time to time on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months; provided, that, upon the occurrence of an Event of Default, the City shall pay interest on the Outstanding Balance (and the corresponding Interest Components of the Installment Payments shall be calculated based on the unpaid Principal Components of the Installment Payments) at the Default Rate for the period (a) in the case of any Payment Default, from (and including) its due date to (but excluding) the date of actual payment and (b) in the case of any other Event of Default, from (and including) the date of occurrence of such Event of Default to (but excluding) the earlier of the date on which (i) such Event of Default has been cured (if applicable) in accordance with the terms of this Agreement and (ii) the Purchase Price has been irrevocably paid in full to the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the WIFIA Credit Provider as the initial Assignee) in immediately available funds. For the avoidance of doubt, Capitalized Interest shall accrue and be added to the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments), and interest on the Outstanding Balance (and the corresponding unpaid Interest Components of the Installment Payments) shall accrue and be calculated, only on the amounts advanced by the WIFIA Credit Provider under this Agreement as and to the extent so advanced in accordance with Section 4 (*Disbursement Conditions*).

Section 7. Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event.

(a) Pledge of Security. As security for the City's obligation to pay the Installment Payments pursuant to the ISA, and concurrently with the issuance and delivery of this Agreement, the City has granted, pledged and assigned pursuant to the ISA to the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the WIFIA Credit Provider, as the initial Assignee), a Lien on and security interest in the Pledged Collateral. The City's obligation to pay the Installment Payments is secured by the Lien on and security interest in the Net Revenues on a parity with the Senior Obligations and senior to all Subordinate Obligations. The Lien and security interest granted to the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the WIFIA Credit Provider, as the initial Assignee) in the ISA is effective, valid, binding and perfected, in all cases, irrespective of whether any Person has notice of the granting of such Lien and security interest shall attach, be perfected and be valid and binding immediately without the need for any physical delivery, recordation, filing, or further act. All organizational, regulatory or other necessary action on the part of the City and the Corporation with respect to the foregoing has been duly and validly taken. The Pledged Collateral shall not be used for any other purpose while any of the Installment Payments remain unpaid, except that out of the System Revenues there may be apportioned such sums, for such purposes, as are expressly permitted by this Agreement and the ISA. The Lien on and security interest in the Pledged Collateral is in full force and effect and is not subordinate or junior to any other Lien on or security interest in the Pledged Collateral. The Lien on and security interest in the Net Revenues and the collateral described in clause (d) of the definition of "Pledged Collateral" granted hereby is on a parity with the pledge and lien which secures the payment of the Senior Obligations. The Lien on and security interest in the WIFIA Payment Account and all proceeds deposited therein from time to time and the WIFIA Reserve Account and all proceeds deposited therein from time to time is not subject to any other Lien or security interest. In addition, with respect to the Lien on and security interest in amounts in the WIFIA Payment Account and the WIFIA Reserve Account, such Lien and security interest is solely for the benefit of the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the WIFIA Credit Provider, as the initial Assignee), and the Holders of other Senior Obligations shall have no Lien on or claim to funds in the WIFIA Payment Account or the WIFIA Reserve Account following deposit therein. The City's obligation with respect to funds drawn under this Agreement is evidenced by the obligation of the City to pay to the Corporation the Installment Payments pursuant to the ISA. THIS AGREEMENT SHALL NOT ITSELF BE A DEBT INSTRUMENT.

(b) Priority of Liens. Except (i) for Permitted Liens and (ii) to the extent otherwise provided in Section 7(a) (*Security and Priority; Assignment by Corporation; Flow of Funds; WIFIA Reserve Event – Pledge of Security*), the Pledged Collateral will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto, that is of equal rank with or senior to the pledge of the City created under the WIFIA Credit Documents, without priority or preference and notwithstanding that Senior Obligations may be issued at different times and under different financing documentation. All necessary action or approvals on the part of the City Related Parties with respect to the foregoing has been duly and validly taken.

(c) Special Limited Obligations. The City's obligation to pay the Installment Payments and any other amounts coming due and payable hereunder constitute a special, limited obligation of the City payable solely from the Pledged Collateral and the other funds provided herein for the payment of the Installment Payments or for the performance of any other agreements or covenants required to be performed by it contained herein. Under no circumstances is the City required to advance moneys derived from any source of income other than the Net Revenues for the payment of the Installment Payments and such other amounts, and no other funds or property of the City are liable for the payment of the Installment Payments. The City may, however, but in no event shall be obligated to, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the City for such purpose. As long as the WIFIA Credit Provider, as the initial Assignee, is the Holder of the ISA, the WIFIA Credit Provider may exercise any right or remedy that may be available to the Corporation under the Financing Documents.

(d) Assignment by the Corporation. In consideration for advancing funds from time to time pursuant to this Agreement for the acquisition, construction and installation of the Wastewater System Portion of the Project, the Corporation has assigned pursuant to the Assignment Agreement to the WIFIA Credit Provider as the initial Assignee, all of the Corporation's rights, title and interest under the ISA (excepting only the Corporation's rights to Additional Payments under Section 4.4(f) (*Additional Payments*) of the ISA and rights of indemnification under Section 5.2 (*Release and Indemnification Covenants*) of the ISA), including but not limited to (i) the right to receive and collect all of the Installment Payments from the City; (ii) the right to receive and collect any proceeds of any insurance maintained thereunder with respect to the Project, or any eminent domain award (or proceeds of sale under threat of eminent domain) paid with respect to the Project; and (iii) the right to exercise such rights and remedies conferred on the Corporation under the ISA as may be necessary or convenient (y) to enforce payment of the Installment Payments and any amounts required to be credited to the payment or prepayment thereof, or (z) otherwise to protect the interests of the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the WIFIA Credit Provider, as the initial Assignee) in the event of a default by the City under the ISA. All necessary action or approvals on the part of the Corporation with respect to the foregoing has been duly and validly taken. The City and the Corporation shall, from time to time at the request of the WIFIA Credit Provider, as the initial Assignee, execute and deliver such further acknowledgments, agreements and instruments of assignment, transfer and assurance, and do all such further acts and things as may be necessary or appropriate in the reasonable opinion of the WIFIA Credit Provider, as the initial Assignee, to give effect to the provisions of this Section and to more perfectly confirm the rights, titles and interests assigned and transferred to the WIFIA Credit Provider, as the initial Assignee, pursuant to the Assignment Agreement.

(e) Funds Limited to System Purposes Only. The City shall not use System Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of the WIFIA Credit Documents. The City shall manage, conserve and apply the Net Revenues on deposit in the Wastewater Fund in such a manner that all deposits required to be made under the subsection (f) will be made at the times and in the amounts so required.

(f) Flow of Funds. Immediately upon receipt thereof by the City, the City shall deposit all System Revenues into the Revenue Account. The City shall apply amounts in the Wastewater Fund, and the Revenue Account, the WIFIA Payment Account and the WIFIA Reserve Account therein, only as permitted by the WIFIA Credit Documents. Amounts on deposit in the Revenue Account shall be applied by the City on the first Business Day of each month to pay the following amounts in the following order of priority:

(i) first, to pay Operation and Maintenance Costs in amounts reasonably projected to be necessary during the applicable month for the payment of Operation and Maintenance Costs; provided, that for Operation and Maintenance Costs comprising an allocable share of operation and maintenance costs of the Cayucos Joint Powers Agreement Wastewater Treatment Plant pursuant to the Cayucos Joint Powers Agreement paid by the City less frequently than monthly, the amount of any payment accruing during the applicable month shall assume equal monthly accruals over the number of months in the Cayucos Joint Powers Agreement Payment Period, plus an amount equal to any transfer shortfalls that remain unfunded from prior months;

(ii) second, on a prorated basis, into each Senior Obligation Payment Account (including the WIFIA Payment Account), the amount of interest (or interest component of an installment payment or capital lease payment) and principal (or principal component of an installment payment or capital lease payment) accruing during the applicable month, assuming equal monthly accruals over the applicable number of months in the applicable Senior Obligation Payment Period, plus an amount equal to any transfer shortfalls that remain unfunded from prior months; provided, however, in the last month of a Senior Obligation Payment Period, the amount transferred shall be that amount needed to pay the amount due on the applicable Senior Obligation Interest Payment Date or Senior Obligation Principal Payment Date, and further provided, with respect to a Senior Obligation, no transfer with respect to interest on such Senior Obligation shall be made to the extent amounts have been pre-funded and are otherwise available to make the applicable interest payment;

(iii) third, on a prorated basis, into the respective Senior Obligation Reserve Accounts (including the WIFIA Reserve Account) as required by the Senior Obligation Documents, in an amount equal to the amount required to be deposited therein to restore the balance in each Senior Obligation Reserve Account to the applicable reserve requirement pursuant to the terms of the Senior Obligation Documents, including, with respect to the ISA, the amounts required to be deposited pursuant to Section 7(p) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event – WIFIA Reserve Account*) of this Agreement and Section 4.7 (*WIFIA Reserve Account*) of the ISA;

(iv) fourth, any other payments required to comply with the provisions of the Senior Obligation Documents (including the ISA and this Agreement); and

(v) fifth, to the respective Subordinate Obligation Payment Accounts as required by the applicable Subordinate Obligation Documents to pay interest on (or interest component of an installment payment of capital lease payment comprising) and principal

of (or principal component of an installment payment or capital lease payment comprising), the Subordinate Obligations during the applicable month; and

(vi) sixth, to the respective Subordinate Obligation Reserve Accounts as required by the Subordinate Obligation Documents, in an amount equal to the amount required to be deposited therein to restore the balance in each Subordinate Obligation Reserve Account to the applicable reserve requirement pursuant to the terms of the Subordinate Obligation Documents; and

(vii) seventh, to a general reserve account, to be used for any other lawful purposes of the Wastewater System.

(g) Deposits in the Event of Deficiency. After the City has made any required payments described in clauses (i) through (iv) above, any remaining Net Revenues in the Wastewater Fund shall be available for any lawful purpose of the City relating to the Wastewater System; provided, however, if there shall be a deficiency at any time in System Revenues required to make the deposits required pursuant to clauses (i), (ii), (iii) or (iv) above, the City shall make the required deposits from available amounts in the Subordinate Obligation Payment Accounts or the Subordinate Obligation Reserve Accounts or the general reserve account, in reverse order, with transfers going first to fund requirements of clause (i), second to fund requirements of clause (ii), third to fund requirements of clause (iii) and fourth to fund requirements of clause (iv).

(h) Application of Wastewater Funds Generally. All System Revenues received shall be deposited into the Revenue Account when and as received and applied only as set forth above. The City shall not permit System Revenues or other assets of the Wastewater System, or any funds in the Wastewater Fund or any other System Account held by or on behalf of the City, to be paid or transferred or otherwise applied for purposes other than ownership, operation or maintenance of, or capital improvements to, the Wastewater System.

(i) Establishment of Funds and Accounts. The City has previously established the Wastewater Fund on its books of account and records, which the City shall continue to hold and maintain for the purposes and uses set forth herein. Within the Wastewater Fund the City shall establish the Revenue Account, the WIFIA Payment Account and the WIFIA Reserve Account. The City shall establish a Senior Obligation Payment Account for the SRF Planning Loan within the Wastewater Fund. At the time of issuance of any Additional Senior Obligation, the City shall establish the related Senior Obligation Payment Account and the related Senior Obligation Reserve Account within the Wastewater Fund for that Additional Senior Obligation. At the time of issuance of any Additional Subordinate Obligations, the City shall establish the related Subordinate Obligation Payment Account and the related Subordinate Obligation Reserve Account within the Wastewater Fund for that Additional Subordinate Obligation.

Amounts on deposit in each Senior Obligation Payment Account shall be applied only as set forth in Section 7(j) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event - Application of Senior Obligation Payment Accounts*) and shall be pledged only to the applicable Senior Obligation. Amounts on deposit in each Senior Obligation Reserve Account shall be applied only as set forth in Section 7(k) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event - Application of Senior*

Obligation Reserve Accounts) and shall be pledged only to the applicable Senior Obligation. Amounts on deposit in each Subordinate Obligation Payment Account shall be applied only as set forth in Section 7(l) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event - Application of Subordinate Obligation Payment Accounts*)) and may be pledged as set forth in clause (d) of the definition of “Pledged Collateral” to Senior Obligations. Amounts on deposit in each Subordinate Obligation Reserve Account shall be applied only as set forth in Section 7(m) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event - Application of Subordinate Obligation Reserve Accounts*)) and may be pledged as set forth in clause (d) of the definition of “Pledged Collateral” to Senior Obligations. Amounts on deposit in the general reserve account shall be applied only as set forth in Section 7(n) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event - Application of General Reserve Account*) and may be pledged as set forth in clause (d) of the definition of “Pledged Collateral” to Senior Obligations.

(j) Application of Senior Obligation Payment Accounts. Amounts on deposit in each Senior Obligation Payment Account (including the WIFIA Payment Account) shall be applied only to the payment of interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Senior Obligation. Amounts on deposit in any Senior Obligation Payment Account (including the WIFIA Payment Account) are not available for deposits to, and may not be transferred to, any other Senior Obligation Payment Account.

(k) Application of Senior Obligation Reserve Accounts. Amounts on deposit in each Senior Obligation Reserve Account (including the WIFIA Reserve Account) shall be applied only as set forth in the following sentence. If on any Senior Obligation Interest Payment Date or Senior Obligation Principal Payment Date amounts in the related applicable Senior Obligation Payment Account are insufficient to pay interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Senior Obligation due on such Senior Obligation Interest Payment Date or Senior Obligation Principal Payment Date, as applicable, amounts in the applicable Senior Obligation Reserve Account shall be transferred to the applicable Senior Obligation Payment Account in the amount of such insufficiency. Amounts on deposit in any Senior Obligation Reserve Account (including the WIFIA Reserve Account) are not available for deposits to, and may not be transferred to, any other Senior Obligation Payment Account or any other Senior Obligation Reserve Account.

(l) Application of Subordinate Obligation Payment Accounts. Amounts on deposit in each Subordinate Obligation Payment Account shall be applied to the payment of interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Subordinate Obligation, but only as and to the extent due and payable. Amounts on deposit in any Subordinate Obligation Payment Account may not be transferred out of such Subordinate Obligation Payment Account to pay any such amounts more than five (5) days prior to the date any such payment is due. Amounts on deposit in any Subordinate Obligation Payment Account are also available to be applied as set forth in Section 7(g) (*Security and Priority;*

Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event – Deposits in the Event of Deficiency).

(m) Application of Subordinate Obligation Reserve Account. Amounts on deposit in each Subordinate Obligation Reserve Account shall be applied only as set forth in the following two sentences. If on any date on which interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Subordinate Obligation, amounts in the related applicable Subordinate Obligation Payment Account are insufficient to pay interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Senior Obligation due on such date, amounts in the applicable Subordinate Obligation Reserve Account shall be transferred to the applicable Subordinate Obligation Payment Account in the amount of such insufficiency. Amounts on deposit in any Subordinate Obligation Reserve Account are also available to be applied as set forth in Section 7(g) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event – Deposits in the Event of Deficiency*).

(n) Application of General Reserve Account. Amounts on deposit in the general reserve account may be applied to any other lawful purposes of the Wastewater System. Amounts on deposit in the general reserve account are available to be applied as set forth in Section 7(g) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event – Deposits in the Event of Deficiency*).

(o) WIFIA Payment Account. The City shall establish, for the purposes of making the Installment Payments as required pursuant to Section 8 (*Payment of Installment Payments and Additional Payments*), a WIFIA Payment Account within the Wastewater Fund. On or before each Installment Payment Date, moneys in the WIFIA Payment Account shall be applied to pay the Installment Payment due on such Installment Payment Date.

(p) WIFIA Reserve Account. The City shall establish, for the purposes of ensuring the timely payment of the Installment Payments in the event of an insufficiency in System Revenues, a WIFIA Reserve Account within the Wastewater Fund, which will be funded from time to time pursuant to this Section 7(p) with Net Revenues available after making the transfers described in clauses (i) and (ii) in Section 7(f) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event – Flow of Funds*). If on any Installment Payment Date amounts in the WIFIA Payment Account are insufficient to pay the Installment Payment due on such Installment Payment Date, amounts in the WIFIA Reserve Account shall be transferred to the WIFIA Payment Account in the amount of such insufficiency.

The WIFIA Reserve Account may remain unfunded until the occurrence of a WIFIA Reserve Event. Beginning with the month immediately following delivery of an Updated Financial Model which demonstrates or discloses the occurrence of a WIFIA Reserve Event and for eleven (11) months thereafter, the City shall fund the WIFIA Reserve Account in an amount equal to one-twelfth (1/12) of the WIFIA Reserve Account Requirement. Funds shall be deposited in the WIFIA Reserve Account in accordance with clause (iii) of Section 7(f) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event – Flow of Funds*).

Thereafter, and subject to the flow of funds in Section 7(f) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event – Flow of Funds*), the City shall maintain the WIFIA Reserve Account in an amount equal to the WIFIA Reserve Account Requirement.

If, after the occurrence of a WIFIA Reserve Event, the City delivers to the WIFIA Credit Provider, for three (3) consecutive City Fiscal Years, an Updated Financial Model which demonstrates that the Senior Debt Service Coverage Ratio for the immediately preceding City Fiscal Year was not less than 1.30 to 1.00, the City may, upon written notice to the WIFIA Credit Provider at least ten (10) Business Days in advance, release any balance in the WIFIA Reserve Account to be applied to any Wastewater System purpose.

Section 8. Payment of Installment Payments and Additional Payments.

(a) Fixed Level Payments; Additional Payments. On each Installment Payment Date occurring on or after the Installment Payment Commencement Date, the City shall pay to the WIFIA Credit Provider, as the initial Assignee (i) the Installment Payments (each consisting of a Principal Component and an Interest Component), paid as level payments so that each payment shall be approximately equal in amount. In addition, the City shall pay from time to time when due all other obligations due and payable to the WIFIA Credit Provider pursuant to this Agreement and the ISA as Additional Payments. All such payments shall be made in accordance with Section 8(e) (*Payment of Installment Payments and Additional Payments – Manner of Payment*). All such payments shall be made on each Installment Payment Date and on each other date (including the Final Installment Payment Date and any date on which payment thereof is due by reason of the mandatory prepayment of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments)) on which payment thereof is required to be made hereunder and under the ISA; provided, that if any such date is not a Business Day, payment shall be made on the next Business Day following such date.

Payments of the Installment Payments shall be made in the amounts set forth in respect of such Installment Payment Date on the Installment Payment Schedule included in **Exhibit F** (*Installment Payment Schedule*) of this Agreement, as the same may be revised as provided in Section 8(f) (*Payment of Installment Payments and Additional Payments – Adjustments to Installment Payment Schedule*) which revisions shall be reflected on a revised Installment Payment Schedule to include as **Exhibit F** (*Installment Payment Schedule*) of this Agreement and **Appendix A** (*Installment Payment Schedule*) of the ISA. The amount of each Installment Payment shall be calculated by the WIFIA Credit Provider in such manner that each of such payments shall be approximately equal in amount, in order for the Outstanding Balance (the aggregate unpaid Principal Components of the Installment Payments) to be reduced to \$0 on the Final Installment Payment Date.

Within thirty (30) days prior to the Installment Payment Commencement Date, the WIFIA Credit Provider may (or, at the written request of the City, shall) give written notice to the City of the amount of the Installment Payment (each of which shall be approximately equal in amount), which amount shall be deemed conclusive absent manifest error; provided, that no failure to provide or delay in providing the City with such notice shall affect any of the obligations of the City under this Agreement, the ISA or the other WIFIA Credit Documents. To the extent that any prepayments of the Outstanding Balance (and the corresponding unpaid Principal Components of

the Installment Payments) shall be made, such prepayments shall be applied to the remaining Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) and the remaining Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) shall be recalculated as provided in Section 9(e) (*Prepayment – General Prepayment Instructions*) of this Agreement and reflected in a revised Installment Payment Schedule to include as **Exhibit F** (*Installment Payment Schedule*) of this Agreement and **Appendix A** (*Installment Payment Schedule*) of the ISA.

(b) Final Installment Payment Date. Notwithstanding anything herein to the contrary, all Installment Payments and all Additional Payments then due and payable remaining unpaid as of the Final Installment Payment Date shall be due and payable in full on the Final Installment Payment Date (or on any earlier date on which the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) are subject to mandatory prepayment).

(c) Capitalized Interest Period. No payment of any Installment Payment is required to be made during the Capitalized Interest Period. On each May 1 and November 1 occurring during the Capitalized Interest Period, interest accrued on the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) in the six (6) month period ending immediately prior to such date shall be capitalized and added to the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments). Interest on Capitalized Interest shall commence accruing at the WIFIA Interest Rate on the date such Capitalized Interest is added to the unpaid Principal Components of the Installment Payments during the Capitalized Interest Period pursuant to this Section 8(c) (and the corresponding Section 4.4(c) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*) of the ISA). Within thirty (30) days after the end of the Capitalized Interest Period, it is anticipated that the WIFIA Credit Provider shall give written notice to the City stating the unpaid Principal Components of the Installment Payments, which aggregate amount shall be equal to the Outstanding Balance, in either case, as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the City under this Agreement, the ISA or under any of the other WIFIA Credit Documents. Notwithstanding the foregoing, the Capitalized Interest Period shall end immediately upon written notification to the City by the WIFIA Credit Provider that an Event of Default has occurred, in which case the provisions of this Section 8(c) and the provisions of Section 4.4(c)(ii) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*) of the ISA shall no longer apply, and accrued interest on the unpaid Principal Components of the Installment Payments shall no longer be permitted to be capitalized and each Installment Payment following the end of the Capitalized Interest Period shall include an Interest Component calculated as set forth in Section 4.4(b) (*Installment Payments – Calculation of Interest Components*) of the ISA and Installment Payments shall be payable as set forth in Section 4.4(g) (*Installment Payments – Manner of Payments*) of the ISA. For purposes of this subsection, an Event of Default under Section 17(a)(v) (*Events of Default and Remedies – Cross Default with Other Financing Documents*) shall be deemed to have occurred upon the occurrence of any nonpayment of any Obligation when due, regardless of whether the Holders of the applicable Obligations, or any legal order, has waived, permitted deferral of, or forgiven any such payment.

(d) [Reserved]

(e) Manner of Payment. Payments under the ISA and this Agreement to the WIFIA Credit Provider or a subsequent Assignee shall be made by wire transfer on or before each Installment Payment Date in Dollars and in immediately available funds (without counterclaim, offset or deduction) in accordance with the payment instructions set forth in **Schedule IV** (*WIFIA Payment Instructions*), as may be modified in writing from time to time by the WIFIA Credit Provider. The City may make any such payment or portion thereof with funds then on deposit in the WIFIA Payment Account.

(f) Adjustments to Installment Payment Schedule.

(i) The Outstanding Balance will be (A) increased on each occasion on which the WIFIA Credit Provider disburses proceeds under this Agreement, by the amount of such disbursement; (B) increased on each occasion on which interest on the unpaid Principal Components of the Installment Payments is capitalized pursuant to the provisions of Section 8(c) (*Payment of Installment Payments and Additional Payments – Capitalized Interest Period*) of this Agreement and Section 4.4(c) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*) of the ISA, by the amount of interest so capitalized; and (C) decreased upon each payment or prepayment of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments), by the amount of Outstanding Balance (or unpaid Principal Components) so paid or prepaid. The WIFIA Credit Provider may in its discretion at any time and from time to time, or when so requested by the City, advise the City by written notice of the amount of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(ii) The WIFIA Credit Provider is hereby authorized by the City Related Parties to modify the Installment Payment Schedule included in **Exhibit F** (*Installment Payment Schedule*) of this Agreement from time to time (including after a prepayment) and to make corresponding changes in **Appendix A** (*Installment Payment Schedule*) of the ISA from time to time (including after a prepayment), in accordance with Section 4.4(a) (*Installment Payments – Obligation to Pay*) of the ISA, to reflect (A) any change to the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) or the date and amount of any Installment Payment due and payable or to become due and payable by the City under the ISA at the end of the Capitalized Interest Period (taking into account if less than \$25,183,810.80 has been advanced by the WIFIA Credit Provider under the WIFIA Credit Agreement and the Capitalized Interest), (B) any partial prepayments of the unpaid Principal Components of the Installment Payments, and (C) such other information as the WIFIA Credit Provider may determine is necessary for administering this Agreement and the ISA. Any calculations described above shall be rounded up to the nearest whole cent. Any adjustments or revisions to the Installment Payment Schedule as a result of changes in the Outstanding Balance (due to prepayment of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) or otherwise) shall be applied in accordance with Section 9(e) (*Prepayment – General Prepayment Instructions*). Absent manifest error, the WIFIA Credit Provider's determination of such matters as set forth on the Installment Payment Schedule included in **Exhibit F** (*Installment Payment Schedule*) of this Agreement and **Appendix A** (*Installment Payment Schedule*) of the ISA shall be conclusive

evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the City's obligations under this Agreement, the ISA or any other WIFIA Credit Document. The WIFIA Credit Provider shall provide the City with a copy of the revised Installment Payment Schedule to include as **Exhibit F** (*Installment Payment Schedule*) of this Agreement and **Appendix A** (*Installment Payment Schedule*) of the ISA, but no failure to provide or delay in providing the City with such revised Installment Payment Schedule shall affect any of the obligations of the City under this Agreement, the ISA or the other WIFIA Credit Documents.

Section 9. Prepayment.

(a) Mandatory Prepayment. The City shall immediately prepay one hundred percent (100%) of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) in full in immediately available funds upon the occurrence of a Bankruptcy Related Event of a City Related Party, the Event of Default in Section 17(a)(iv) (*Events of Default and Remedies – Acceleration of Senior Obligations*) or the Event of Default in Section 17(a)(viii) (*Events of Default and Remedies – Invalidity of WIFIA Credit Documents*). Such mandatory prepayment shall include all unpaid interest on the Outstanding Balance to be prepaid (and the corresponding Interest Components of the Installment Payments to be prepaid) accrued to the date of such prepayment, without penalty or premium, and concurrently therewith the City shall pay all other Additional Payments then due and payable to the WIFIA Credit Provider and the Assignee. Upon the occurrence of a Bankruptcy Related Event of a City Related Party or the Events of Default described above, the City shall promptly deliver to the WIFIA Credit Provider a notice of such Bankruptcy Related Event or Event of Default; provided, that the City's failure to deliver such notice shall not diminish, impair or otherwise affect the City's obligation to make any such mandatory prepayment as and when the circumstances requiring such mandatory prepayment have occurred.

(b) Optional Prepayment. The City may prepay the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the City; provided, however, that such prepayments shall be in principal amounts of \$250,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, but not more than once annually, on an Installment Payment Date, by paying such portion of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) to be prepaid, together with the unpaid interest on the Outstanding Balance to be prepaid (and the corresponding Interest Components of the Installment Payments to be prepaid) accrued to the date of such prepayment, without penalty or premium, and concurrently therewith the City shall pay all other Additional Payments then due and payable to the WIFIA Credit Provider and the Assignee. Each prepayment of Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) shall be made on such prepayment date and in such principal amount (or the corresponding Principal Component amount) as shall be specified by the City in a written notice delivered to the WIFIA Credit Provider not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the WIFIA Credit Provider. At any time between delivery of such written notice and the applicable optional prepayment, the City may, without penalty or premium, rescind its announced optional prepayment by further written notice to the WIFIA Credit Provider. Anything in this Section 9(b) to the contrary

notwithstanding, the failure by the City to make any optional prepayment shall not constitute a breach or default under this Agreement or the ISA.

(c) Prepayment From Net Proceeds of Insurance or Eminent Domain. The City may prepay the unpaid Principal Components of the Installment Payments in whole or in part, on any date, if and to the extent the City (with the prior written consent of the Assignee) determines to apply any proceeds of insurance award or condemnation award with respect to the Wastewater System for such purpose in accordance with Section 5.3 (*Sale or Eminent Domain of Wastewater System; Liens on Wastewater System*) of the ISA or Section 5.4 (*Insurance*) of the ISA, at a prepayment price equal to 100% of the unpaid Principal Components of the Installment Payments to be prepaid plus the unpaid interest on the Outstanding Balance to be prepaid (and the corresponding Interest Components of the Installment Payments to be prepaid) accrued to the date of such prepayment, without penalty or premium. In the event of the taking of all or any part of the Wastewater System by the lawful exercise of eminent domain or accident to or destruction of any portion of the Wastewater System, the City shall promptly deliver to the Assignee a notice of such taking or accident or destruction; provided, that the City's failure to deliver such notice shall not diminish, impair or otherwise affect the City's obligation to make any such mandatory prepayment as and when the circumstances requiring such mandatory prepayment have occurred.

(d) City's Certificate. Each prepayment pursuant to this Section 9 shall be effected pursuant to **Article VII** (*Prepayment of Installment Payments*) of the ISA accompanied by a certificate signed by the City's Authorized Representative identifying the Section of the ISA pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

(e) General Prepayment Instructions. If the City prepays only part of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments), the WIFIA Credit Provider may make a notation on the Installment Payment Schedule included in **Exhibit F** (*Installment Payment Schedule*) of this Agreement and **Appendix A** (*Installment Payment Schedule*) of the ISA indicating the amount of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) being prepaid. Absent manifest error, the WIFIA Credit Provider's determination of such matters as set forth on the Installment Payment Schedule included in **Exhibit F** (*Installment Payment Schedule*) of this Agreement and **Appendix A** (*Installment Payment Schedule*) of the ISA shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the City's obligations under this Agreement, the ISA or any other WIFIA Credit Document. All such partial prepayments shall be applied to adjust amortization in a manner that maintains approximately equal Installment Payments. If such funds have not been so paid on the prepayment date, such Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) shall continue to accrue interest until payment thereof at the rate provided for in Section 6 (*Interest Rate*) and the corresponding rate in the ISA.

Section 10. Fees and Expenses.

(a) Fees. The City shall pay the following amounts as Additional Payments under the ISA:

(i) a servicing set-up fee equal to \$5,205 (the “**Servicing Set-Up Fee**”), which shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Credit Provider with respect thereto (or, if earlier, the first disbursement date of proceeds under this Agreement);

(ii) an annual construction period servicing fee equal to \$5,205 (the “**Construction Period Servicing Fee**”), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15 during the Construction Period (including the Federal Fiscal Year during which the Substantial Completion Date occurs); provided, that the initial Construction Period Servicing Fee shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Credit Provider with respect thereto (or, if earlier, the first disbursement date of proceeds under this Agreement), in a pro-rated amount equal to \$3,035¹; and

(iii) an annual operating period servicing fee equal to \$3,905 (the “**Operating Period Servicing Fee**”), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15, beginning with the first November 15 following the end of the Federal Fiscal Year during which the Substantial Completion Date occurs, until (and including) the Final Installment Payment Date; provided, that the Operating Period Servicing Fee due and payable with respect to the Federal Fiscal Year during which the Final Installment Payment Date occurs shall be equal to the pro-rata monthly portion of the then applicable Operating Period Servicing Fee multiplied by the number of partial or whole months remaining between October 1 and the Final Installment Payment Date.

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

(c) Expenses. The City agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the WIFIA Credit Provider (payable as Additional Payments under the ISA) on demand from time to time, within thirty (30) days after receipt of any invoice from the WIFIA Credit Provider, for any and all fees, costs, charges, and expenses incurred by it (including the fees, costs, and expenses of its legal counsel, financial advisors, auditors and other consultants and advisors) in connection with the negotiation, preparation, execution, delivery, and performance of this Agreement and the other WIFIA Credit

¹ NTD: This amount assumes a February 2020 closing.

Documents and the transactions hereby and thereby contemplated, including attorneys', and engineers' fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with (i) the enforcement of or attempt to enforce, or the protection or preservation of any right or claim under, the Pledged Collateral or any provision of this Agreement or any of the other WIFIA Credit Documents or the rights of the WIFIA Credit Provider thereunder; (ii) any amendment, modification, waiver, or consent with respect to this Agreement or any other Related Document; and (iii) any work-out, restructuring, or similar arrangement of the obligations of the City under this Agreement or the other WIFIA Credit Documents, including during the pendency of any Event of Default.

(d) The obligations of the City under this Section 10 shall survive the payment or prepayment in full of all of the Installment Payments, the enforcement of any provision of this Agreement or the other WIFIA Credit Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

ARTICLE III CONDITIONS PRECEDENT

Section 11. Conditions Precedent.

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

(i) The City shall have duly executed and delivered to the WIFIA Credit Provider this Agreement, the Resolution and the ISA, each in form and substance satisfactory to the WIFIA Credit Provider.

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

(iii) The City shall have delivered to the WIFIA Credit Provider complete and fully executed copies of each Existing Principal Project Contract, together with any amendments, waivers or modifications thereto, along with a certification in the City Closing Certificate that each such document is complete, fully executed and in full force and effect.

(iv) Each City Related Party shall have delivered to the WIFIA Credit Provider (A) a copy of its Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of State of the State, to the extent applicable), along with a certification in the City Closing Certificate or the Corporation Closing Certificate, as

applicable, that such Organizational Documents are in full force and effect, and (B) all further instruments and documents (including any resolutions, ordinances, and supplements) as are necessary for each City Related Party to execute and deliver, and to perform its respective obligations under, the WIFIA Credit Documents to which it is a party and to consummate and implement the transactions contemplated by the WIFIA Credit Documents.

(v) Counsel to the City shall have rendered to the WIFIA Credit Provider legal opinions satisfactory to the WIFIA Credit Provider in its sole discretion (including those opinions set forth on **Exhibit G-1** (*Opinions Required from Counsel to the City*) and counsel to the Corporation shall have rendered to the WIFIA Credit Provider legal opinions satisfactory to the WIFIA Credit Provider in its sole discretion (including those opinions set forth on **Exhibit G-2** (*Opinions Required from Special Counsel to the Corporation*)).

(vi) Each City Related Party shall have delivered to the WIFIA Credit Provider the Non-Debarment Certificate.

(vii) The City shall have delivered to the WIFIA Credit Provider the Non-Lobbying Certificate.

(viii) The Corporation shall have delivered to the WIFIA Credit Provider a certificate, signed by the Corporation's authorized representative, substantially in the form attached hereto as **Exhibit H-2** (*Form of Corporation Closing Certificate*) (the "**Corporation Closing Certificate**") (A) designating the Corporation's authorized representative (B) confirming such person's position and incumbency, and (C) certifying as to certain other matters. The City shall have delivered to the WIFIA Credit Provider a certificate, signed by the City's Authorized Representative, substantially in the form attached hereto as **Exhibit H-1** (*Form of City Closing Certificate*) (the "**City Closing Certificate**") (A) designating the City's Authorized Representative, (B) confirming such person's position and incumbency, and (C) certifying as to the satisfaction of the following conditions precedent:

(A) the aggregate of all funds committed to the development and construction of the Project as set forth in the Base Case Financial Model and in the Project Budget are sufficient to carry out the Project, pay all Total Project Costs anticipated for the Project and achieve Substantial Completion by the Projected Substantial Completion Date;

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

(C) as of the Effective Date, (x) the maximum principal amount of proceeds available under this Agreement (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the City, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (y) the total federal assistance provided to the Project, including the maximum principal amount of proceeds available under this Agreement (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs;

(D) the City is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project, and, if requested by the WIFIA Credit Provider, has provided evidence satisfactory to the WIFIA Credit Provider of such compliance;

(E) the City has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project during its useful life;

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

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

(H) no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since July 12, 2018.

(ix) The City shall have provided evidence to the WIFIA Credit Provider's satisfaction of the assignment by at least two (2) Nationally Recognized Rating Agencies of a public Investment Grade Rating to the Senior Obligations proposed to be issued for the Project, along with a certification in the City Closing Certificate that no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(x) The City shall have delivered to the WIFIA Credit Provider a Base Case Financial Model in form and substance acceptable to the WIFIA Credit Provider, along with a certification in the City Closing Certificate that such Base Case Financial Model (A) demonstrates that projected Net Revenues are sufficient to meet the Installment Payment Schedule, (B) demonstrates compliance with the Rate Covenant for each City Fiscal Year through the Final Installment Payment Date and a Senior Debt Service

Coverage Ratio for each Payment Period through the Final Installment Payment Date that is not less than 1.30 to 1.00; (C) reflects amortization and payment schedules acceptable to the WIFIA Credit Provider and (D) demonstrates that the City has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project over the useful life of the Project.

(xi) The City, and each Principal Project Party, has obtained insurance with respect to the Project that meets the requirements of this Agreement in accordance with Section 14(f) (*Affirmative Covenants – Insurance*). The City shall have added the WIFIA Credit Provider as an additional insured to each of its liability policies for the Project (other than workers' compensation insurance).

(xii) No later than thirty (30) days prior to the Effective Date, the City shall have delivered to the WIFIA Credit Provider the Public Benefits Report.

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

(xiv) Each of the WIFIA Payment Account and the WIFIA Reserve Account shall have been created in the Wastewater Fund.

(xv) The City shall have delivered such other agreements, documents, instruments, opinions and other items required by the WIFIA Credit Provider, all in form and substance satisfactory to the WIFIA Credit Provider.

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

(i) The City shall have provided to the WIFIA Credit Provider evidence satisfactory to the WIFIA Credit Provider that (A) the aggregate amount of all disbursements under this Agreement (including the requested disbursement but excluding any interest that is capitalized in accordance with the terms hereof) shall not exceed (1) \$25,183,810.80, (2) the amount of Eligible Project Costs paid or incurred by the City, and (3) the cumulative disbursements through the end of the current Federal Fiscal Year as set forth in the Anticipated Disbursement Schedule; (B) the City has sufficient available funds committed to the Project, which together with funds that remain available and not yet drawn under this Agreement, will be sufficient to pay the reasonably anticipated remaining Total Project Costs; and (C) the total federal assistance provided to the Project, including the maximum principal amount of proceeds available under this Agreement (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

(ii) The City shall have provided an Updated Financial Model in compliance with the requirements of Section 16(a) (*Reporting Requirements – Updated Financial Model*).

(iii) The City shall have delivered to the WIFIA Credit Provider a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*) (including satisfactory Eligible Project Costs Documentation relating to such Requisition), and the WIFIA Credit Provider shall have approved (or be deemed to have approved in accordance with Section 4(b) (*Disbursement Conditions*)) such Requisition. The City's Authorized Representative shall also certify in such Requisition that:

(A) all Governmental Approvals necessary as of the time of such disbursement for the development, construction, operation and maintenance of the Project have been issued and are in full force and effect (and are not subject to any notice of violation, breach or revocation);

(B) each of the insurance policies obtained by the City and by any applicable Principal Project Party in satisfaction of the conditions in Section 14(f) (*Affirmative Covenants – Insurance*) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider;

(C) at the time of, and immediately after giving effect to, any disbursement of proceeds under this Agreement then currently requested, (x) no Default or Event of Default hereunder shall have occurred and be continuing, (y) no event of default or default that, with the giving of notice or the passage of time or both, would constitute an event of default, in each case, under any other Related Document, shall have occurred and be continuing, and (z) no Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred since July 12, 2018;

(D) the City, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including without limitation 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products). Supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, are being maintained and are available for review upon request by the WIFIA Credit Provider; and

(E) the representations and warranties of the City Related Parties set forth in this Agreement (including Section 12 (*Representations and Warranties of the City Related Parties*)) and in each other WIFIA Credit Document shall be true and correct as of each date on which any disbursement of proceeds under this Agreement is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

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

(v) To the extent not previously delivered to the WIFIA Credit Provider, the City shall have provided copies of any Principal Project Contracts (including any amendment, modification or supplement thereto) entered into after the Effective Date, along with a certification in the Requisition that each such document is complete, fully executed and in full force and effect.

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

(vii) Notwithstanding the foregoing, a condition to any disbursements after December 31, 2020 is that the SRF Planning Loan shall have been fully discharged or refinanced with Additional Senior Obligations or Additional Subordinate Obligations.

(viii) The End of the Validation Period has occurred.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

Section 12. Representations and Warranties of the City Related Parties. Each City Related Party hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 12(b) (*Representations and Warranties of the City Related Parties – Officers' Authorization*), Section 12(k) (*Representations and Warranties of the City Related Parties – Credit Ratings*), and the first sentence of Section 12(n) (*Representations and Warranties of the City Related Parties – Principal Project Contracts*), as of each date on which any disbursement under this Agreement is requested or made:

(a) Organization; Power and Authority. (i) The City is a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State, has full legal right, power and authority to do business in the State and to enter into the Related Documents then in existence, to execute and deliver this Agreement and the ISA, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of this Agreement, the ISA, and the Related Documents; and (ii) the Corporation is a nonprofit public benefit corporation duly organized and validly existing under its Organizational Documents and the laws of the State, has full legal right, power and authority to do business in the State and to enter into the Related Documents then in existence, to execute and deliver this Agreement, and to carry out and consummate all transactions

contemplated hereby and thereby and has duly authorized the execution, delivery and performance of this Agreement and the Related Documents.

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

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

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

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

(f) Litigation. Except as set forth in **Schedule 12(f) (Litigation)**, there is no action, suit, proceeding or, to the knowledge of the City Related Parties, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending and served or, to the knowledge of the City Related Parties, threatened against the Wastewater System

or the ability of the City Related Parties to execute, deliver and perform their respective obligations under the Related Documents (including construction of the Project and increasing Wastewater System rates as contemplated in the Base Case Financial Model). As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the City Related Parties, any inquiry or investigation before or by any court or other Governmental Authority pending and served, or to the knowledge of the City Related Parties, threatened against the Wastewater System, a City Related Party or the assets, properties or operations of a City Related Party, that in any case could reasonably be expected to result in a Material Adverse Effect. To the knowledge of the City Related Parties, there are no actions of the type described above pending or, threatened against any of the Principal Project Parties, except for matters arising after the Effective Date that could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) adversely affect the City's ability to receive System Revenues in amounts sufficient to meet the financial projections contained in the Base Case Financial Model (or any Updated Financial Model, to the extent any Updated Financial Model has been approved by the WIFIA Credit Provider) or to pay the Installment Payments. Neither City Related Party is in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. (i) Section 9109(c)(2) of the California Commercial Code and Section 5451 of the California Government Code, permit the Financing Documents and (ii) the City Related Parties have taken all necessary action, in each case, to establish, in favor of the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the WIFIA Credit Provider, as the initial Assignee), the legal, valid, binding and enforceable Liens on the Pledged Collateral purported to be created, pledged, assigned, and granted pursuant to and in accordance with the Financing Documents, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Liens on the Pledged Collateral are first priority senior Liens, are in full force and effect and (A) are not subordinate or junior to any other Liens in respect of the Pledged Collateral except for the Permitted Liens arising by operation of law, and (B) are not *pari passu* with any obligations other than, with respect to the Liens on Net Revenues, Senior Obligations. Liens on amounts in the WIFIA Payment Account and the WIFIA Reserve Account are first priority senior Liens, are in full force and effect and are solely for the benefit of the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the WIFIA Credit Provider, as the initial Assignee). The City is not in breach of any covenants set forth in Section 14(b) (*Affirmative Covenants – Securing Liens*) or in the Financing Documents with respect to the matters described in such Section. As of the Effective Date and as of each other date this representation and warranty is made, (i) all documents and instruments have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the Pledged Collateral and a legal, valid, binding, and enforceable assignment of the Corporation's right in the ISA, in both cases, in favor of the WIFIA Credit Provider, as the initial Assignee, upon the assignment by the Corporation pursuant to the Assignment Agreement, to the extent contemplated by the Financing Documents, and (ii) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Financing Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid.

Neither the attachment, validity, enforceability or priority of the security interest in the Pledged Collateral granted pursuant to the Financing Documents to the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the WIFIA Credit Provider, as the initial Assignee), or the assignment by the Corporation pursuant to the Assignment Agreement, is governed by the UCC.

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

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

(j) Compliance with Laws.

(i) The City, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including without limitation 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products).

(ii) To ensure such compliance, the City has included in all contracts with respect to the Project (A) the contract clauses relating to the Davis-Bacon Act requirements that are set forth in the Code of Federal Regulations, Title 29 Part 5.5 and (B) requirements that its contractor(s) (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 12(j) and follow applicable federal guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any applicable laws, rules, regulations and requirements set forth in this Section 12(j) (including without limitation with respect to the Davis-Bacon Act requirements).

(iii) No notices of violation of any applicable law have been issued, entered or received by the City or, to the City's knowledge and solely in respect of the Project or any Principal Project Contract, any Principal Project Party, other than, in each case, notices of violations that are immaterial.

(iv) None of the City Related Parties nor, to the knowledge of the City Related Parties, any Principal Project Party, is (A) a Sanctioned Person or (B) in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (1) any applicable Anti-Money Laundering Laws; (2) any applicable Sanctions; (3) any applicable

Anti-Corruption Laws; or (4) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal. There are no pending or, to the knowledge of the City Related Parties, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, any City Related Party or any Principal Project Party, with respect to any possible or alleged violations of any Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any anti-drug trafficking or anti-terrorism laws. No use of proceeds disbursed under this Agreement or any other transaction contemplated by this Agreement or any other Related Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(k) Credit Ratings. The Outstanding Senior Obligations have received a public Investment Grade Rating from at least two (2) Nationally Recognized Rating Agencies, and written evidence of such ratings has been provided to the WIFIA Credit Provider prior to the Effective Date, and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(l) No Defaults. No Default or Event of Default, and no default or event of default by either City Related Party under any Related Document (excluding Principal Project Contracts), has occurred and is continuing.

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

(n) Principal Project Contracts. Attached as **Schedule 12(n)** (*Principal Project Contracts*) is a list of the Existing Principal Project Contracts and all Additional Principal Project Contracts that are expected to be entered into. With respect to each Principal Project Contract executed as of any date on which this representation and warranty is made, (x) it is in full force and effect, (y) all conditions precedent to the obligations of the respective parties under each such Principal Project Contract have been satisfied, (z) the City has delivered to the WIFIA Credit Provider a fully executed, complete and correct copy of each such Principal Project Contract, including any amendments or modifications thereto and any related side letters and related credit support instruments. No event has occurred that gives the City or, to the City's knowledge, any Principal Project Party, the right to terminate any such Principal Project Contract. The City is not in breach of any material term in or in default under any of such Principal Project Contracts, and to the knowledge of the City no party to any of such agreements or contracts is in breach of any material term therein or in default thereunder.

(o) Information. The information furnished by the City to the WIFIA Credit Provider, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; provided, that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the City (including

the Base Case Financial Model, any Updated Financial Model, and the assumptions therein) except that each of the Base Case Financial Model and any Updated Financial Model (i) is based on assumptions that were reasonable in all material respects when made, (ii) was prepared in good faith and (iii) represents, in the opinion of the City, reasonable projections at the time made of the future performance of the Wastewater System and the Project (it being understood that projections are not to be considered or regarded as facts and contain significant uncertainties and contingencies, many of which are beyond the control of the City, that actual results may differ significantly from projections and that no representation is made with respect to the accuracy of such projections).

(p) Environmental Matters. [Except as set forth in **Schedule 12(p)** (*Environmental Matters*), e][E]ach of the City and, to the City's knowledge, each Principal Project Party, is in compliance with all laws applicable to the Wastewater System relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the Wastewater System (collectively, the "**Environmental Laws**"). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. The City has not received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the City is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Wastewater System and, to the City's knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by the City with any such Environmental Law or Governmental Approval. The City has provided to the WIFIA Credit Provider all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the City regarding the City's or the Project's compliance with (A) Environmental Laws and (B) Governmental Approvals that are required for the Project and relate to Environmental Laws.

(q) Sufficient Rights. The City possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the Wastewater System, in each case as is necessary and sufficient as of the date this representation is made for the construction, operation, maintenance and repair of the Wastewater System. As of any date on which this representation and warranty is made, the Principal Project Contracts then in effect and the Governmental Approvals that have been obtained and are then in full force and effect create rights in the City sufficient to enable the City to own, construct, operate, maintain and repair the Wastewater System and to perform its obligations under the Principal Project Contracts to which it is a party.

(r) Insurance. The City is in compliance with all insurance obligations required under each Principal Project Contract and the other Related Documents as of the date on which this representation and warranty is made.

(s) No Liens. Except for Permitted Liens, neither City Related Party has created, or is under any obligation to create, and has entered into any transaction or agreement that would result in the imposition of, any Lien on the ISA, the Pledged Collateral, the Installment

Payments, the Wastewater System, the Project, the System Revenues, the properties or assets in relation to the Project, or the properties or assets of the Corporation.

(t) Financial Statements. Each income statement, balance sheet and statement of operations and cash flows (collectively, “**Financial Statements**”) delivered to the WIFIA Credit Provider pursuant to Section 16(b) (*Reporting Requirements – Annual Financial Statements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the City as of the respective dates of the balance sheets included therein and the results of operations of the City for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there are no liabilities or obligations of the City of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GAAP.

(u) Securities Laws. Under existing law, the ISA may be issued and sold without registration under the Securities Act of 1933, as amended.

(v) Taxes. The City is not required to file tax returns with any Governmental Authority. The Corporation has (i) filed all tax returns required by applicable laws to be filed by it and (ii) paid all income taxes payable by it that have become due pursuant to such tax returns and all other material taxes and assessments payable by it that have become due (other than those taxes that it is contesting in good faith and by appropriate proceedings, for which adequate reserves have been established to the extent required by generally accepted accounting principles established by the Government Accounting Standards Board).

(w) Sufficient Funds. The maximum amount available for disbursement under this Agreement, when combined with all other funds committed for the development and construction of the Project as set forth under the various sources of funds in the Base Case Financial Model and the Project Budget will be sufficient to carry out the Project, pay all Total Project Costs anticipated for the development and construction of the Project and achieve Substantial Completion by the Projected Substantial Completion Date.

(x) Sovereign Immunity. The City either has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the City under any of the Related Documents to which it is a party or the transactions contemplated hereby or thereby, including the obligations of the City hereunder and thereunder, or, to the extent that the City has such immunity, the City has waived such immunity pursuant to Section 14(n) (*Affirmative Covenants – Immunity*). The Corporation either has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the Corporation under any of the Related Documents to which it is a party or the transactions contemplated hereby or thereby, including the obligations of the Corporation hereunder and thereunder, or, to the extent that the Corporation has such immunity, the Corporation has waived such immunity pursuant to Section 14(n) (*Affirmative Covenants – Immunity*).

(y) Patriot Act. The City is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act. The Corporation is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

(z) No Federal Debt. Neither City Related Party has any delinquent federal debt (including tax liabilities but excluding any delinquencies that have been resolved with the appropriate federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996).

Section 13. Representations and Warranties of WIFIA Credit Provider. The WIFIA Credit Provider represents and warrants that:

(a) Power and Authority. The WIFIA Credit Provider has all requisite power and authority to make the disbursement of proceeds under this Agreement and to perform all transactions contemplated by the Related Documents to which it is a party.

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

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

ARTICLE V COVENANTS

Section 14. Affirmative Covenants. Each City Related Party covenants and agrees as follows until the date the Purchase Price, Additional Payments and other obligations of the City under the ISA and this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in immediately available funds, unless the WIFIA Credit Provider waives compliance in writing:

(a) Rate Covenant. (i) The City shall fix, charge, prescribe, revise and collect rates, fees, and charges for the services and facilities furnished by the Wastewater System which are reasonable, fair and nondiscriminatory and which will be at least sufficient to yield Net Revenues during each City Fiscal Year which are at least equal to (i) one hundred and twenty percent (120%) of the Debt Service payable during such City Fiscal Year with respect to all Outstanding Senior Obligations and (ii) one hundred and ten percent (110%) of the Debt Service payable during such City Fiscal Year with respect to all Outstanding Obligations (collectively, the **"Rate Covenant"**).

(ii) If the forecast furnished by the City in the most recent Updated Financial Model delivered by the City pursuant to Section 16(a) (*Reporting Requirements – Updated Financial Model*) demonstrates that projected Net Revenues may be inadequate to satisfy the Rate Covenant for any City Fiscal Year until the Final Installment Payment Date, or if the City fails to satisfy the Rate Covenant for the most recently ended City Fiscal Year, the City shall (x) within thirty (30) days after request by the WIFIA Credit Provider, engage the Technical and Rate Consultant to review and analyze the operations of the

Wastewater System and recommend actions regarding revising the rates or changing the methods of operations, or any other actions to increase the Net Revenues so as to satisfy the Rate Covenant, (y) cause the Technical and Rate Consultant to issue its report, including any such recommended actions, no later than ninety (90) days following such engagement, and (z) either, within thirty (30) days (or such reasonable period of time required to do so under applicable law), (A) implement the Technical and Rate Consultant's recommendation or (B) undertake an alternative course of action after demonstrating to the WIFIA Credit Provider's satisfaction that an alternative plan will generate an equivalent or greater increase to the Net Revenues so as to satisfy the Rate Covenant.

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

(c) Use of Proceeds. The City shall use the proceeds disbursed under this Agreement for purposes permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents.

(d) Prosecution of Work; Verification Requirements.

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

(ii) The City shall ensure that each Principal Project Party complies with all applicable laws and legal or contractual requirements with respect to any performance security instrument delivered by such Principal Project Party to the City and shall ensure

that any letter of credit provided pursuant to any Principal Project Contract meets the requirements therefor set forth in such Principal Project Contract.

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

(e) Operations and Maintenance. The City shall (i) operate and maintain the Wastewater System (A) in a reasonable and prudent manner and (B) substantially in accordance with the Updated Financial Model most recently approved by the WIFIA Credit Provider (except as necessary to prevent or mitigate immediate threats to human health and safety or to prevent or mitigate physical damage to material portions of the Wastewater System) and (ii) maintain the Wastewater System in good repair, working order and condition and in accordance with the requirements of all applicable laws and each applicable Related Document. The City shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(f) Insurance.

(i) The City shall at all times procure and maintain or cause to be maintained insurance on the Wastewater System and the construction of the Project, with responsible insurers in such amounts and against such risks (including damage to or destruction of the Wastewater System) as are customarily maintained with respect to works and properties of like character against accident to, loss of, or damage to such works or properties. All policies of insurance required to be maintained herein shall, to the extent reasonably obtainable, provide that the WIFIA Credit Provider shall be given thirty (30) days written notice of any intended cancellation thereof or reduction of coverage provided thereby. The City shall cause each Principal Project Party to obtain and maintain builders risk and casualty and liability insurance in accordance with the requirements of the applicable Principal Project Contract.

(ii) The City shall (by maintaining with responsible insurers) provide for workers' compensation insurance for City's workers and insurance against public liability and property damage to the Wastewater System to the extent reasonably necessary to protect the City and the WIFIA Credit Provider.

(iii) The City shall cause all liability insurance policies that it maintains (and, during the Construction Period, that are maintained by any Principal Project Party), other than workers' compensation insurance, to reflect the WIFIA Credit Provider as an additional insured to the extent of its insurable interest.

(iv) Promptly upon request by the WIFIA Credit Provider, the City shall deliver to the WIFIA Credit Provider copies of any underlying insurance policies obtained by or on behalf of the City in respect of the Project. All such policies shall be available at

all reasonable times for inspection by the WIFIA Credit Provider, its agents and representatives.

(v) The City shall comply with the insurance requirements of the Financing Documents and shall deliver to the WIFIA Credit Provider within thirty (30) days after receipt thereof any certifications or opinions provided to the City pursuant to the Financing Documents with respect to the City's program of insurance.

(g) Maintain Legal Structure. The City shall maintain its existence as a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State. The Corporation shall maintain its existence as a nonprofit public benefit corporation organized and existing under its Organizational Documents and the laws of the State.

(h) System Accounts; Permitted Investments.

(i) The City shall maintain the Revenue Account in accordance with the terms hereof and the WIFIA Credit Documents. All System Revenues received shall be deposited into the Revenue Account when and as received in trust for the benefit of the Holders of the Secured Obligations, subject to the application of System Revenues to Operation and Maintenance Expenses of the Wastewater System.

(ii) Amounts on deposit in the System Accounts shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder at such times as may be necessary to ensure that funds will be available within the applicable account to be applied towards the purpose for which the applicable account has been established.

(i) Compliance with Laws.

(i) The City shall, and shall require its contractors and subcontractors at all tiers with respect to the Project, to comply with all applicable laws, rules, regulations and requirements, including without limitation 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products).

(ii) To ensure such compliance, the City shall include in all contracts with respect to the Project (A) the contract clauses relating to the Davis-Bacon Act requirements that are set forth in the Code of Federal Regulations, Title 29 Part 5.5 and (B) requirements that its contractor(s) (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 14(i) and follow applicable federal guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any applicable laws, rules, regulations and requirements set forth in this Section 14(i) (including without limitation with respect to the Davis-Bacon Act requirements).

(j) Material Obligations. The City Related Parties shall pay their respective material obligations promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon the System

Revenues or other assets of the Wastewater System, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, might give rise to a Lien upon such properties or any part thereof or on the System Revenues, the Pledged Collateral, the ISA or the Installment Payments; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by a City Related Party in good faith by appropriate proceedings and so long as the City Related Party shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(k) SAM Registration. The City shall (i) obtain and maintain through the Final Disbursement Date an active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) prior to the Effective Date and provide such registration information to the WIFIA Credit Provider and (ii) within sixty (60) days prior to each anniversary of the Effective Date until the Final Disbursement Date, provide to the WIFIA Credit Provider evidence of such active registration status with no active exclusions reflected in such registration.

(l) DUNS Number. The City shall (i) obtain and maintain from Dun & Bradstreet (or a successor entity) a Data Universal Numbering System Number (a “**DUNS Number**”) prior to the Effective Date and provide such number to the WIFIA Credit Provider and (ii) within sixty (60) days prior to each anniversary of the Effective Date, provide to the WIFIA Credit Provider evidence of the continuing effectiveness of such DUNS Number, in each case until the Final Installment Payment Date or to such earlier date as all amounts due or to become due to the WIFIA Credit Provider under this Agreement have been irrevocably paid in full in immediately available funds.

(m) Events of Loss; Loss Proceeds. If an Event of Loss shall occur with respect to the Wastewater System or any part thereof, the City shall (i) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as applicable, in respect of such Event of Loss and (ii) apply all Net Loss Proceeds in respect of such Event of Loss to repair, reconstruct, and/or replace the portion of the Wastewater System in respect of which the applicable Loss Proceeds were received. The City shall begin such repair, reconstruction or replacement promptly after such damage or destruction shall occur, and shall continue and properly complete such repair, reconstruction or replacement as expeditiously as possible, and shall pay out of such Loss Proceeds all costs and expenses in connection with such repair, reconstruction or replacement so that the same shall be completed and the Wastewater System shall be free and clear of all claims and Liens. If such Net Loss Proceeds exceed the costs of such repair, reconstruction or replacement, then the excess Net Loss Proceeds shall be deposited in the Revenue Account and be available for other proper uses of funds deposited in the Revenue Account. If such Net Loss Proceeds are insufficient to enable the City to restore or replace the damaged portions of the Wastewater System, the City shall provide additional funds for that purpose. If permitted by the ISA, the City may apply excess Net Loss Proceeds to redeem or prepay Senior Obligations in accordance with the terms of the Senior Obligation Documents.

(n) Waiver of Sovereign Immunity. To the fullest extent permitted by applicable law, the City agrees that it will not assert any immunity (and hereby waives any such

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

(o) Accounting and Audit Procedures.

(i) The City shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all (i) System Revenues, operating expenses, capital expenses, depreciation, reserves, debt issued and outstanding and debt payments and (ii) Project-related costs, Requisitions submitted hereunder, proceeds received pursuant to disbursements made under this Agreement, payments made by the City with regard to the Project, other sources of funding for the Project (including amounts paid from such sources for Project costs so that audits may be performed to ensure compliance with and enforcement of this Agreement). The City shall use accounting, audit and fiscal procedures conforming to GAAP, including, accounting of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments), Installment Payments, Additional Payments, disbursements, prepayments and calculation of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) and the calculation of interest accrued on the Outstanding Balance (and the corresponding Interest Component accrued on the amount of the unpaid Principal Components of the Installment Payments).

(ii) The City shall have a single or program-specific audit conducted in accordance with 2 C.F.R. Part 200 Subpart F and 31 U.S.C. § 7502 in 2020 and annually thereafter, except to the extent biennial audits are permitted for the City pursuant to 2 C.F.R. § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the City shall cooperate fully in the conduct of any periodic or compliance audits conducted by the WIFIA Credit Provider, or designees thereof, pursuant to 40 C.F.R. Part 35, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the financing of the Project, to the Administrator, or the designee thereof, for any such project or programmatic audit.

(p) Access; Records.

(i) So long as any Outstanding Balance shall remain outstanding and until five (5) years after the Outstanding Balance shall have been paid in full, the WIFIA Credit Provider shall have the right, upon reasonable prior notice, to visit and inspect any portion of the Wastewater System, to examine books of account and records of the City relating to the Wastewater System, to make copies and extracts therefrom at the City's expense, and to discuss the City's affairs, finances and accounts relating to the Wastewater System with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the City irrevocably authorizes its independent public accountants to discuss with the WIFIA Credit Provider the affairs,

finances and accounts of the City, whether or not any representative of the City is present, it being understood that nothing contained in this Section 14(p) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the WIFIA Credit Provider may request. The City agrees to pay all out-of-pocket expenses incurred by the WIFIA Credit Provider in connection with the WIFIA Credit Provider's exercise of its rights under this Section 14(p) at any time when an Event of Default shall have occurred and be continuing.

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

(q) SRF Planning Loan. By no later than December 31, 2020, the City shall fully discharge, or refinance with Additional Senior Obligations or Additional Subordinate Obligations, the SRF Planning Loan.

Section 15. Negative Covenants. Each City Related Party covenants and agrees as follows until the date the Purchase Price, Additional Payments and other obligations of the City under the ISA and this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in immediately available funds, unless the WIFIA Credit Provider waives compliance in writing:

(a) Indebtedness.

(i) Except for Permitted Debt, the City shall not without the prior written consent of the WIFIA Credit Provider issue or incur indebtedness of any kind (including debt with respect to which the interest rate varies or may be adjusted by the City from time to time) that is payable from, secured or supported by all or any portion of the Pledged Collateral; provided further that in no event shall the City incur any indebtedness of any kind payable from, secured or supported by all or any portion of the Pledged Collateral, including Permitted Debt, without the prior written consent of the WIFIA Credit Provider, while an Event of Default has occurred and is continuing.

(ii) The City may not create, incur or suffer to exist (A) any Obligations the payments of which are senior or prior in right to the payment by the City of the Senior Obligations or (B) any Obligations of the Project that are secured by a Lien on any assets or property of the City other than the Pledged Collateral or the pledged collateral described in the Water System Project Credit Agreement.

(iii) The City shall not issue any Obligations the payments of, and security for, which are on parity with the Senior Obligations (the "**Additional Senior**

Obligations”), unless: (A) the conditions set forth in the applicable Senior Obligation Document are satisfied; (B) no Event of Default has occurred and is continuing; (C) following issuance of the proposed Additional Senior Obligations, either (X) the Net Revenues for any four (4) consecutive quarters within the six (6) quarters immediately preceding the proposed issue date (such quarters relating to the City Fiscal Year) shall be sufficient to equal or exceed one hundred and twenty percent (120%) of the greatest amount of Debt Service payable on all Outstanding Senior Obligations (including the proposed Additional Senior Obligations) and shall also be sufficient to equal or exceed one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Senior Obligations), in each case in the current or any future period; or (Y) the projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date (such quarters relating to the City Fiscal Year), shall be sufficient to equal or exceed one hundred and twenty percent (120%) of the greatest amount of Debt Service payable on all Outstanding Senior Obligations (including the proposed Additional Senior Obligations) and shall also be sufficient to equal or exceed one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Senior Obligations), in each case in the current or any future period; and (D) not later than thirty (30) days prior to the proposed issue date, the City shall have provided to the WIFIA Credit Provider a certificate signed by the City’s Authorized Representative (x) specifying the proposed issue date of such proposed Additional Senior Obligations and (y) confirming that the issuance of such proposed Additional Senior Obligations is authorized pursuant to this Section 15(a)(iii) and satisfies the applicable requirements of this Section 15(a)(iii). For purposes of the calculation for clause (C)(Y) of this Section 15(a)(iii) only, when calculating projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date, the City may include as System Revenues those System Revenues resulting from rate increases that have been approved and will take effect within three (3) years of such date of calculation as confirmed by the Rate Consultant.

(iv) The City shall not issue any Obligations the payments of, and security for, which are subordinated to the Senior Obligations (the “**Additional Subordinate Obligations**”), unless: (A) the conditions set forth in the applicable Subordinate Obligation Document are satisfied; (B) no Event of Default has occurred and is continuing; (C) following issuance of the proposed Additional Subordinate Obligations, either (X) the Net Revenues for any four (4) consecutive quarters within the six (6) quarters immediately preceding the proposed issue date (such quarters relating to the City Fiscal Year) shall be sufficient to equal or exceed one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Subordinate Obligations) in the current or any future period or (Y) the projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date (such quarters relating to the City Fiscal Year), shall be sufficient to equal one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Subordinate Obligations) in the current or any future period; and (D) not later than thirty (30) days prior to the proposed issue date, the City shall have provided to the WIFIA Credit Provider a certificate signed by the City’s Authorized Representative (x) specifying the proposed issue date of such proposed Additional Subordinate Obligations and (y) confirming that the

issuance of such proposed Additional Subordinate Obligations is authorized pursuant to this Section 15(a)(iv) and satisfies the applicable requirements of this Section 15(a)(iv). For purposes of the calculation for clause (C)(Y) of this Section 15(a)(iv) only, when calculating projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date, the City may include as System Revenues those System Revenues resulting from rate increases that have been approved and will take effect within three (3) years of such date of calculation as confirmed by the Rate Consultant.

(v) Notwithstanding any of the foregoing clauses of this Section 15(a) or anything contained in any Financing Document, the City covenants that it will not have Outstanding at any time Obligations that with respect to which the interest rate varies or may be adjusted by the City from time to time.

(vi) The Corporation shall not issue or incur any obligations of any kind, including any bonds, notes, other evidences of indebtedness, installment sale arrangements, financing lease arrangements, or similar obligations, nor enter into any installment sale arrangements, financing lease arrangements, or similar arrangements with the City, except in connection with Obligations incurred by the City that are permitted pursuant to this Section 15(a) or permitted pursuant to the Water System Project Credit Agreement Documents.

(b) No Lien Extinguishment or Adverse Amendments. Neither City Related Party shall, or shall permit any Person to, without the prior written consent of the WIFIA Credit Provider or as otherwise specifically permitted in the WIFIA Credit Documents, (i) extinguish the Rate Covenant, (ii) extinguish or impair the Liens on the Pledged Collateral or any dedicated source of repayment of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) or any other Obligations (the proceeds of which are applied to fund Total Project Costs), in each case granted pursuant to the Financing Documents, (iii) extinguish or impair the assignment by the Corporation of all of its right, title and interest in this Agreement to the Assignee pursuant to the Assignment Agreement, (iv) amend, modify, replace or supplement any Related Document in a manner that could adversely affect the WIFIA Credit Provider (in the WIFIA Credit Provider's determination) in connection with the ISA or this Agreement or which could reasonably be expected to result in a Material Adverse Effect, (v) waive or permit a waiver of any provision of any Related Document in a manner that could adversely affect the WIFIA Credit Provider (in the WIFIA Credit Provider's determination) in connection with the ISA or this Agreement or which could reasonably be expected to result in a Material Adverse Effect, (vi) terminate, assign or replace any WIFIA Credit Document, or (vii) terminate, assign or replace any Related Document (other than as set forth in this Agreement or the replacement of any Principal Project Contract permitted under Section 17(a)(xi) (*Events of Default and Remedies – Default Under Principal Project Contracts*)) in a manner that could adversely affect the WIFIA Credit Provider or that could reasonably be expected to have a Material Adverse Effect.

(c) No Prohibited Liens. Except for Permitted Liens, the City shall not create, incur, assume or permit to exist any Lien on the Project, the Pledged Collateral, the System Revenues, or the City's respective rights therein. The City shall not collaterally assign any of its rights under or pursuant to any Principal Project Contract and shall not permit a Lien to encumber

the City's rights or privileges under any Principal Project Contract, unless pursuant to the Financing Documents in favor of all Secured Parties. The Corporation shall not collaterally assign any of its rights under or pursuant to the ISA and shall not permit a Lien to encumber the Corporation's rights or privileges under the ISA other than as provided in the Assignment Agreement. Notwithstanding the previous sentence, the Corporation may collaterally assign its rights to receive payments under other installment sale agreements entered into in connection with the issuance of Permitted Debt.

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

(e) No Prohibited Sale, Lease or Assignment. The City shall not sell, lease or assign its rights in and to the Wastewater System, a substantial portion of the assets included in the Wastewater System, or its rights and obligations under any Principal Project Contract, in each case unless such sale, lease or assignment (i) could not reasonably be expected to have a Material Adverse Effect and (ii) is made by the City in the ordinary course of business.

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

(g) Mergers and Acquisitions. The City shall not, and shall not agree to, reorganize, consolidate with or merge into another Person unless (i) such reorganization, merger or consolidation is with or into another entity established by State law and such reorganization, merger or consolidation is mandated by State law, and in each case, does not adversely affect or impair to any extent or in any manner (A) the System Revenues or other elements of the Pledged Collateral or (B) the availability of the System Revenues for the payment and security of the obligations of the City under the ISA or this Agreement; and (ii) the City provides to the WIFIA Credit Provider, no later than sixty (60) days prior to the date of reorganization, consolidation or merger, prior written notice of such reorganization, consolidation or merger and the agreements and documents authorizing the reorganization, consolidation or merger, satisfactory in form and substance to the WIFIA Credit Provider. In addition, the City shall provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the WIFIA Credit Provider. The Corporation shall not, and shall not agree to, reorganize, consolidate with or merge into another Person.

(h) No Defeasance. Notwithstanding anything to the contrary in any Financing Document or document related thereto, the City shall have no right to defease or otherwise discharge its obligation under the ISA to make Installment Payments prior to the payment in full of the Purchase Price of the WIFIA Wastewater System Portion of the Project under the ISA, and no Outstanding Balance shall be considered or deemed to have been paid until the payment in full in immediately available funds by the City of the Outstanding Balance (and the corresponding payment in full of the Purchase Price of the WIFIA Wastewater System Portion of the Project under the ISA).

(i) Hedging. The City shall not enter into any swap or hedging transaction, including inflation indexed swap transactions, “cap” or “collar” transactions, futures, or any other hedging transaction with respect to, or payable from, System Revenues.

Section 16. Reporting Requirements.

(a) Updated Financial Model.

(i) The City shall provide to the WIFIA Credit Provider not later than ninety (90) days after the beginning of each City Fiscal Year, an updated Base Case Financial Model reflecting the then-current and projected conditions. The Updated Financial Model shall demonstrate to the satisfaction of the WIFIA Credit Provider that the City has developed and identified adequate revenues to implement a plan for operating, maintaining and repairing the Project over its useful life, and shall include (A) the City’s capital improvement plan, major maintenance plan, projected rates and charges, projected debt outstanding and annual debt service, projected operation and maintenance costs of the Wastewater System; (B) evidence of compliance with the Rate Covenant for the most recent City Fiscal Year and the projected Rate Covenant coverages through the Final Installment Payment Date; (C) calculation of the Senior Debt Service Coverage Ratio for the most recent City Fiscal Year; (D) a written narrative identifying any material changes to the underlying assumptions from the previous Updated Financial Model and (E) a certificate signed by the City’s Authorized Representative, certifying that (1) the Updated Financial Model, including the assumptions and supporting documentation, as of its date, is accurate and reasonable to the best of the City’s knowledge and belief, (2) the annual projected Net Revenues will be sufficient to meet the Installment Payment Schedule and to satisfy the Rate Covenant through the Final Installment Payment Date, (3) whether the City is in compliance with its obligations in respect of the Rate Covenant pursuant to Section 14(a) (*Affirmative Covenants – Rate Covenant*), and (4) whether a WIFIA Reserve Event has occurred.

(b) Annual Financial Statements. The City shall deliver to the WIFIA Credit Provider, as soon as available, but no later than one hundred eighty (180) days after the end of each City Fiscal Year:

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

(ii) together with each delivery of such annual audited financial statements, a certificate signed by the chief executive officer or chief financial officer of

the City or the City's Authorized Representative, stating whether or not, to the City's knowledge after reasonable investigation, during the annual period covered by such financial statements, there occurred any Default or Event of Default and, if any such Default or Event of Default shall have occurred during such period, the nature of such Default or Event of Default and the actions that the City has taken or intends to take in respect thereof.

(c) Final Design Specifications. Upon the request of the WIFIA Credit Provider, the City shall deliver to the WIFIA Credit Provider, no later than ten (10) days after the date of such request, any notice to proceed, the final designs, plans and specifications relating to the development and construction of the Project.

(d) Construction Reporting. The WIFIA Credit Provider shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development of the Project, including environmental compliance, design, and construction of the Project. The City shall be responsible for administering construction oversight of the Project in accordance with applicable federal, state and local governmental requirements. The City agrees to cooperate in good faith with the WIFIA Credit Provider in the conduct of such monitoring by promptly providing the WIFIA Credit Provider with such reports, documentation or other information as shall be requested by the WIFIA Credit Provider or its agents, including any independent engineer reports, documentation or information. During the period through Substantial Completion of the Project, the City shall furnish to the WIFIA Credit Provider, on a quarterly basis, a report on the status of the Project, substantially in the form of **Exhibit J (Form of Quarterly Report)**. The report shall be executed by the City's Authorized Representative and, for any quarter, shall be delivered to the WIFIA Credit Provider not later than the thirtieth (30th) day of the following quarter (or if such day is not a Business Day, on the next following Business Day). If the then-current projection for the Substantial Completion Date is a date later than the Projected Substantial Completion Date, the City shall provide in such report a description in reasonable detail to the reasonable satisfaction of the WIFIA Credit Provider of the reasons for such projected delay, an estimate of the impact of such delay on the capital and operating costs of the Wastewater System (if any), and that the new date could not reasonably be expected to result in a Material Adverse Effect.

(e) Public Benefits Report. The City shall deliver to the WIFIA Credit Provider a report, in the form of **Exhibit K (Form of Public Benefits Report)** (the "**Public Benefits Report**"), (i) no later than thirty (30) days prior to the Effective Date, (ii) within ninety (90) days following the Substantial Completion Date and (iii) within ninety (90) days following the fifth (5th) anniversary of the Substantial Completion Date. The City agrees that information described under this Section 16(e) may be made publicly available by the WIFIA Credit Provider at its discretion.

(f) Modifications to Total Project Costs. For the period through the Substantial Completion Date, the City shall provide the WIFIA Credit Provider with written notification at least thirty (30) days prior to instituting any increase to the aggregate Total Project Costs in an amount equal to or greater than five percent (5%), which notification shall set forth the nature of the proposed increase and an estimate of the impact of such increase on the capital costs and operating costs of the Wastewater System. The City's notice shall demonstrate that the proposed increase is consistent with the provisions of this Agreement, is necessary or beneficial to the

Project, does not materially impair the WIFIA Credit Provider's security or the City's ability to comply with its obligations under the Related Documents (including any financial ratios or covenants included therein), and could not reasonably be expected to result in a Material Adverse Effect.

(g) Operations and Maintenance. The WIFIA Credit Provider shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) the Project's operations and, as the WIFIA Credit Provider may request from time to time, to receive reporting on the operation and management of the Project, and copies of any contracts relating to the operation and maintenance of the Project. The City agrees to cooperate in good faith with the WIFIA Credit Provider in the conduct of such monitoring by promptly providing the WIFIA Credit Provider with such reports, documentation, or other information requested by the WIFIA Credit Provider. The WIFIA Credit Provider has the right, in its sole discretion, to retain such consultants or advisors, to carry out the provisions of this Section 16(g). On or prior to the Substantial Completion Date, the City shall deliver to the WIFIA Credit Provider an operations and maintenance manual with respect to the Project, in form and substance reasonably acceptable to the WIFIA Credit Provider.

(h) Notices.

(i) The City shall, within thirty (30) days after the City learns of the occurrence, give the WIFIA Credit Provider notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

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

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

(C) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against a City Related Party before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by a City Related Party in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against a City Related Party that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against a City Related Party with award amounts in excess of \$500,000 that are payable (in whole or in part) from System Revenues, either individually or in the aggregate;

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

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

(F) Amendments: except as otherwise agreed by the WIFIA Credit Provider in writing, copies of (1) any proposed amendments to the ISA, the Water System Project ISA, or the Resolution and any proposed material amendments to any other Financing Documents, in each case, at least thirty (30) days prior to the effective date thereof and (2) fully executed amendments of any Related Document within ten (10) days following execution thereof;

(G) Related Document Defaults: any material breach or default or event of default on the part of the City or any other party under any Related Document;

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

(I) Ratings Changes: any change in the rating assigned to the Senior Obligations or the WIFIA Credit Facility, in each case by any Nationally Recognized Rating Agency that has provided a public rating on such indebtedness, and any notices, reports or other written materials (other than those that are ministerial in nature) received from any such rating agencies;

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

(K) Additional Principal Project Contracts: copies of any executed Additional Principal Project Contracts (together with any related contracts, side letters or other understandings);

(L) Issuance of Obligations: copies of any final issuing instrument (together with any continuing disclosure documents, ordinances, official statement, certifications or cash flow projections in connection therewith), prepared in connection with the incurrence of any Permitted Debt (including any Additional Senior Obligations);

(M) Other Adverse Events: the occurrence of any other event or condition, including without limitation any notice of breach from a contract counterparty or any Holder of any Obligations, that could reasonably be expected to result in a Material Adverse Effect or have a material and adverse effect on the Project; and

(N) Draws on WIFIA Reserve Account: the occurrence of any draws on the WIFIA Reserve Account to fund payments of Installment Payments when due.

(ii) Within thirty (30) calendar days after the City learns of the occurrence of an event specified in clause (i) above (other than sub-clauses (A) (*Substantial Completion*), (F) (*Amendments*), (I) (*Ratings Changes*) (in the case of a ratings upgrade), (K) (*Additional Principal Project Contracts*), (L) (*Issuance of Obligations*) and

(N) (*Draws on WIFIA Reserve Account*)), the City's Authorized Representative shall provide a statement to the WIFIA Credit Provider setting forth the actions the City proposes to take with respect thereto. The City shall also provide the WIFIA Credit Provider with any further information reasonably requested by the WIFIA Credit Provider from time to time concerning the matters described in clause (i) above.

(i) Requested Information. The City shall, at any time while the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) remains unpaid and outstanding, promptly deliver to the WIFIA Credit Provider such additional information regarding the business, financial, legal or organizational affairs of the City or regarding the Project, the Wastewater System or the System Revenues as the WIFIA Credit Provider may from time to time reasonably request.

ARTICLE VI EVENTS OF DEFAULT

Section 17. Events of Default and Remedies.

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

(i) Payment Default. The City shall fail to (i) pay when due any part of any Installment Payment due and payable under the ISA and such failure continues for a period of five (5) days, or (ii) make any mandatory prepayment required pursuant to the provisions of Section 9 (*Prepayment*) and Article VII (*Prepayment of Installment Payments*) of the ISA, in each case when and as the payment thereof shall be required under the ISA and this Agreement or on the Final Installment Payment Date (each such failure, a “**Payment Default**”).

(ii) Covenant Default. A City Related Party shall fail to observe or perform any covenant, agreement or obligation of that City Related Party under this Agreement, the ISA or any other WIFIA Credit Document (other than in the case of any Payment Default, any payment default under the Water System Project Credit Agreement, any payment default of Obligations secured by Water System revenues, any Development Default, any failure to comply with the Rate Covenant or any failure to fully fund the WIFIA Reserve Account to its required balance), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the City Related Party from the WIFIA Credit Provider of written notice thereof or (B) the City Related Party’s knowledge of such failure; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this clause (ii), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the City Related Party shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable.

(iii) Misrepresentation Default. Any of the representations, warranties or certifications of the City Related Parties made in or delivered pursuant to the WIFIA Credit Documents (or in any certificates delivered by the City Related Parties in connection with the WIFIA Credit Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided, that no Event of Default shall be deemed to have occurred under this clause (iii) if and so long as (A) such misrepresentation is not intentional, (B) such misrepresentation is not a misrepresentation in respect of Section 12(g) (*Representations and Warranties of the City Related Parties – Security Interests*), Section 12(h) (*Representations and Warranties of the City Related Parties – No Debarment*), Section 12(j) (*Representations and Warranties of the City Related Parties – Compliance with Laws*), or Section 12(y) (*Representation and Warranties of the City Related Parties –*

Patriot Act), (C) in the reasonable determination of the WIFIA Credit Provider, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect, (D) in the reasonable determination of the WIFIA Credit Provider, the underlying issue giving rise to the misrepresentation is capable of being cured, (E) the underlying issue giving rise to the misrepresentation is cured by the relevant City Related Party within thirty (30) days from the date on which the relevant City Related Party first became aware (or reasonably should have become aware) of such misrepresentation, and (F) the relevant City Related Party diligently pursues such cure during such thirty (30) day period.

(iv) Acceleration of Senior Obligations. With respect to any Senior Obligation, any acceleration shall occur of the maturity of that Senior Obligation, any such Senior Obligation shall not be paid in full upon the final maturity thereof, or any Holder of such Senior Obligation shall have the immediate right to accelerate such Senior Obligation.

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

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

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

(viii) Invalidity of WIFIA Credit Documents or Water System Project Credit Agreement Documents. (A) Any WIFIA Credit Document or Water System Project Credit Agreement Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or any City Related Party contests in any manner the validity or enforceability of any WIFIA Credit Document or Water System Project Credit Agreement Document to which it is a party or denies it has any further liability under any WIFIA Credit Document or Water System Project Credit Agreement Document to which it is a party, or purports to revoke, terminate or rescind any WIFIA Credit Document or Water System Project Credit Agreement Document to which it is a party; (B) any Financing Document ceases (other than as expressly permitted thereunder) to be effective or to grant a valid and binding security interest on any material portion of the Pledged Collateral other than as a result of actions or a failure to act by, and within the control of, any Secured Party, and with the priority purported to be created thereby; (C) any event occurs that results in the material impairment in the perfection or priority of the WIFIA Credit Provider's security interest in the Pledged Collateral or in the value of such Pledged Collateral; or

(D) any event occurs that results in the material impairment in the Corporation's assignment of its rights and interests in the ISA to the WIFIA Credit Provider.

(ix) Failure to Satisfy Rate Covenant. The City fails to satisfy the Rate Covenant for two (2) consecutive City Fiscal Years.

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

(xi) Default Under Principal Project Contracts. The City shall default in the timely performance of any covenant, agreement or obligation under any Principal Project Contract or any Principal Project Contract shall be terminated prior to its scheduled expiration (unless in any case such default or termination could not reasonably be expected to have a Material Adverse Effect), and the City shall have failed to cure such default or to obtain an effective written waiver or revocation thereof prior to the expiration of the applicable grace period specified in any such Principal Project Contract, or to obtain an effective revocation of such termination (as the case may be); provided, however, that no Event of Default shall be deemed to have occurred or be continuing under this clause (xi) if, in the case of any termination of a Principal Project Contract, the City replaces such Principal Project Contract with a replacement agreement (1) entered into with another counterparty that (I) is of similar or greater creditworthiness (including credit support), technical capability and relevant experience as the counterparty being replaced was at the time the applicable Principal Project Contract was originally executed (or otherwise reasonably acceptable to the WIFIA Credit Provider), (II) is not, at the time of such replacement, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency and (III) is not, at the time of such replacement, in violation of any applicable laws, (2) on substantially the same terms and conditions as the Principal Project Contract being replaced (or otherwise reasonably acceptable to the WIFIA Credit Provider) and (3) effective as of the date of termination of the Principal Project Contract being replaced.

(xii) Cessation of System Operations. Following the Substantial Completion Date, operation of the Wastewater System shall cease for a continuous period of not less than one hundred eighty (180) days unless (A) such cessation of operations shall occur by reason of an Uncontrollable Force that is not due to the fault of the City (and which the City could not reasonably have avoided or mitigated) or (B) the City shall have in force an insurance policy or policies under which the City is entitled to recover amounts sufficient to pay (and may use such amounts to pay), Debt Service for all Senior Obligations (including the Installment Payments) and costs and expenses of the City during such cessation of operations.

(xiii) Failure to Fund WIFIA Reserve Account. (1) After the occurrence of a WIFIA Reserve Event, the City fails to initially fully fund the WIFIA Reserve Account to its required balance pursuant to the requirements of this Agreement or (2) after initial funding, the City fails to maintain the WIFIA Reserve Account in an amount equal to the WIFIA Reserve Account Requirement, with the exception of if such failure is due to a lack of receipt of by the City of Net Revenues available for funding.

(b) Upon the occurrence of any Bankruptcy Related Event of a City Related Party, the Event of Default in Section 17(a)(iv) (*Events of Default and Remedies - Acceleration of Senior Obligations*) or the Event of Default in Section 17(a)(viii) (*Events of Default and Remedies – Invalidity of WIFIA Credit Documents*), all obligations of the WIFIA Credit Provider hereunder with respect to the disbursement of any undisbursed amounts under this Agreement shall automatically be deemed terminated, and the Installment Payments shall be subject to mandatory prepayment as set forth in Section 9 (*Prepayment – Mandatory Prepayment Upon a Bankruptcy Related Event*) and Article VII (*Prepayment of Installment Payments*) of the ISA.

(c) Upon the occurrence of any Event of Default, the WIFIA Credit Provider, by written notice to the City, may exercise any or all of the following remedies:

(i) the WIFIA Credit Provider may suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts under this Agreement;

(ii) the WIFIA Credit Provider may cease permitting accrued interest on the unpaid Principal Components of the Installment Payments to be capitalized;

(iii) the WIFIA Credit Provider may apply the Default Rate provisions of Section 6 (*Interest Rate*) and Section 4.4(d) (*Installment Payments – Rate on Overdue Payments*) of the ISA;

(iv) the WIFIA Credit Provider may suspend or debar the City from further participation in any Government program administered by the WIFIA Credit Provider and to notify other departments and agencies of such default; and/or

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

(d) No action taken pursuant to this Section 17 shall relieve either City Related Party from its obligations pursuant to this Agreement, the ISA or the other WIFIA Credit Documents, all of which shall survive any such action.

ARTICLE VII MISCELLANEOUS

Section 18. Disclaimer of Warranty. The WIFIA Credit Provider makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for a particular purpose or fitness for use of the Project or any portion thereof or any other warranty with respect thereto. In no event shall the WIFIA Credit Provider be liable for any incidental, indirect, special or consequential damages incidental to or arising out of this Agreement or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Agreement.

Section 19. No Personal Recourse. No official, employee or agent of the WIFIA Credit Provider, the City or the Corporation or any Person executing this Agreement or any of the other WIFIA Credit Documents shall be personally liable on this Agreement or such other WIFIA Credit Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 20. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the City, the Corporation, the Government, or the WIFIA Credit Provider, solely by virtue of this Agreement, and the City agrees to indemnify and hold the WIFIA Credit Provider, the Servicer (if any), the Administrator, and the Government harmless, to the extent permitted by law and in accordance with Section 32 (*Indemnification*), from any lawsuit or claim arising in law or equity solely by reason of this Agreement, and that no third party creditor or creditors of either City Related Party shall have any right against the WIFIA Credit Provider with respect to the disbursement of proceeds made pursuant to this Agreement.

Section 21. City's Authorized Representative. The City shall at all times have appointed a City's Authorized Representative by designating such Person or Persons from time to time to act on the City's behalf pursuant to a written certificate furnished to the WIFIA Credit Provider and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the City.

Section 22. WIFIA Credit Provider's Authorized Representative. The WIFIA Credit Provider hereby appoints the Director of the WIFIA Program, whose notice details are set forth below in Section 31 (*Notices*), to serve as the WIFIA Credit Provider's Authorized Representative under this Agreement until such time as a successor or successors shall have been appointed. Thereafter, the successor in office shall serve as the WIFIA Credit Provider's Authorized Representative. The WIFIA Credit Provider shall provide notice to the City within a reasonable time period following the succession.

Section 23. Servicer. The WIFIA Credit Provider may from time to time designate another entity or entities to perform, or assist the WIFIA Credit Provider in performing, the duties of the Servicer or specified duties of the WIFIA Credit Provider under this Agreement and the ISA. The WIFIA Credit Provider shall give the City written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the WIFIA Credit Provider shall be deemed to be a reference to the Servicer with respect to any duties which the WIFIA Credit Provider shall have delegated to such Servicer. The WIFIA Credit Provider may at any time

assume the duties of any Servicer under this Agreement and the ISA. The City Related Parties shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 24. Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

Section 25. Governing Law. This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

Section 26. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 27. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. None of either City Related Party's rights or obligations hereunder nor any interest therein may be assigned or delegated by either City Related Party without the prior written consent of the WIFIA Credit Provider.

Section 28. Remedies Not Exclusive. No remedy conferred herein or reserved to the WIFIA Credit Provider is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 29. Delay or Omission Not Waiver. No delay or omission of the WIFIA Credit Provider to exercise any right or remedy provided hereunder upon a default of a City Related Party (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the WIFIA Credit Provider may be exercised from time to time, and as often as may be deemed expedient by the WIFIA Credit Provider.

Section 30. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 31 (*Notices*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

Section 31. Notices. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to WIFIA Credit
Provider: Environmental Protection Agency
WJC-W 6201A
1200 Pennsylvania Avenue NW
Washington, D.C. 20460
Attention: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

If to City: The City of Morro Bay
City Hall – 595 Harbor Street
Morro Bay, CA 93442
Attention: Rob Livick, P.E.
Email: rlivick@morrobayca.gov

with a copy to: City of Morro Bay Public Facilities Corporation
c/o The City of Morro Bay
City Hall – 595 Harbor Street
Morro Bay, CA 93442
Attention: Rob Livick, P.E.
Email: rlivick@morrobayca.gov

Unless otherwise instructed by the WIFIA Credit Provider's Authorized Representative, all notices to the WIFIA Credit Provider should be made by email to the email address noted above for the WIFIA Credit Provider. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a City's Authorized Representative, with respect to notices to the City, or by the WIFIA Credit Provider's Authorized Representative, with respect to notices to the WIFIA Credit Provider or the Servicer. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 31 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 31 (or in accordance with the latest unrevoked written direction from the receiving party); provided, that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 32. Indemnification. The City shall, to the extent permitted by law, indemnify the WIFIA Credit Provider and any official, employee, agent or representative of the WIFIA Credit Provider (each such Person being herein referred to as an "**Indemnatee**") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnatee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the disbursement of proceeds under this Agreement or the use of the proceeds

thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided, that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee. In case any action or proceeding is brought against an Indemnatee by reason of any claim with respect to which such Indemnatee is entitled to indemnification hereunder, the City shall be entitled, at its expense, to participate in the defense thereof; provided, that such Indemnatee has the right to retain its own counsel, at the City's expense, and such participation by the City in the defense thereof shall not release the City of any liability that it may have to such Indemnatee. Any Indemnatee against whom any indemnity claim contemplated in this Section 32 is made shall be entitled, after consultation with the City and upon consultation with legal counsel wherein such Indemnatee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the City Related Parties for purposes of this Section 32. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnatee. To the extent permitted by applicable law, neither the City, the Corporation nor the WIFIA Credit Provider shall assert, and each of the City, the Corporation and the WIFIA Credit Provider hereby waives, any claim against any Indemnatee or the City or the Corporation, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the disbursement of proceeds under this Agreement or the use of the proceeds thereof, provided, that nothing in this sentence shall limit the City's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnatee is entitled to indemnification hereunder. All amounts due to any Indemnatee under this Section 32 shall be payable promptly upon demand therefor. The obligations of the City under this Section 32 shall survive the payment or prepayment in full of the unpaid Principal Components of the Installment Payments, or transfer of the ISA, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 32) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the City hereunder or thereunder.

Section 33. Sale of Rights in the ISA. The WIFIA Credit Provider, as the initial Assignee, shall not sell its rights in the ISA and the Assignment Agreement at any time prior to the Substantial Completion Date. After such date, the WIFIA Credit Provider, as the initial Assignee, may sell its rights in the ISA and the Assignment Agreement to another entity or reoffer it into the capital markets only in accordance with the provisions of this Section 33. Such sale or reoffering shall be on such terms as the WIFIA Credit Provider, as the initial Assignee, shall deem advisable. However, in making such sale or reoffering the WIFIA Credit Provider, as the initial Assignee, shall not change the terms and conditions of this Agreement without the prior written consent of the City and the Corporation in accordance with Section 24 (*Amendments and Waivers*). The WIFIA Credit Provider, as the initial Assignee, shall provide, at least sixty (60) days prior to any sale or reoffering of its rights in the ISA and the Assignment Agreement, written notice to the

City of the WIFIA Credit Provider's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section shall not (x) obligate the WIFIA Credit Provider, as the initial Assignee, to sell nor (y) provide any City Related Party with any rights or remedies in the event the WIFIA Credit Provider, as the initial Assignee, for any reason, does not sell its rights in the ISA and the Assignment Agreement. Notwithstanding anything herein to the contrary, any sale of its rights in the ISA and the Assignment Agreement shall provide that the sale is in accordance with all pertinent securities laws and that the assignee has reviewed pertinent information from the City with respect to the financial condition of the City, the Net Revenues, and the Wastewater System, and that the assignee understands the type of investment it has purchased or has been provided the opportunity to review and receive information and has chosen not to do so.

Section 34. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 35. Termination. This Agreement shall terminate upon the irrevocable payment in full in immediately available funds by the City of the Outstanding Balance (and the corresponding payment in full of the Purchase Price of the WIFIA Wastewater System Portion of the Project under the ISA), together with the Additional Payments and all accrued interest, fees and expenses with respect thereto; provided, however, that the indemnification requirements of Section 32 (*Indemnification*), the reporting and record keeping requirements of Section 14(p) (*Affirmative Covenants – Access; Records*) and the payment requirements of Section 10 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such Sections.

Section 36. Integration. This Agreement constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

CITY OF MORRO BAY

By: _____
Name:
Title: Mayor

**CITY OF MORRO BAY PUBLIC
FACILITIES CORPORATION**

By: _____
Name:
Title: Executive Director

*[Signature Page to Morro Bay Water Reclamation Facility Project – Wastewater System Portion
WIFIA Credit Agreement]*

3329868.11 043224 DRFT

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

By: _____
Name: Andrew R. Wheeler
Title: Administrator

SCHEDULE I
PROJECT BUDGET

Sources	Percent (%)	Amount (\$)
Drinking Water System WIFIA Loan	29%	\$36,516,525.66
Wastewater System WIFIA Loan	20%	\$25,183,810.80
Cleanwater SRF Loan (Wastewater System)	51%	\$64,218,717.54
Total Sources	100%	\$125,919,054.00
Project Element	Description	Estimated Costs
New Water Reclamation Facility (WRF)	0.97 million gallons per day (MGD) WRF will provide preliminary, secondary, tertiary, and advanced treatment, and will produce recycled water meeting indirect potable reuse (IPR) standards for a groundwater replenishment reuse project using subsurface application.	\$75,475,897.00
Conveyance Facilities	Includes approximately 13,000 linear feet of high-density polyethylene or fusible PVC, ranging in diameter from 12 to 20 inches as the West Alignment pipeline; a 15,000 linear feet trenchless crossing of Willow Cramp Creek Communication Conduit; approximately 16,000 linear feet of high-density polyethylene or fusible PVC, 8 inches in diameter as the Indirect Potable Reuse East pipeline; and a Dual Pump Station with a firm capacity of 14 million gallons per day	\$30,884,235.00
Recycled Water Facilities	Includes a minimum of four injection wells with a general depth of approximately 60 feet where purified water from the WRF will be pumped into the aquifer and a yet to be determined amount of monitoring wells of approximately 60-foot depth.	\$4,400,000.00
Additional Project Costs	Includes General City Costs, Program Management and Planning, Environmental, Funding Support, Property Acquisition, Public Outreach, New Electrical Services, and Planning and Permitting.	\$15,158,922.00
Total Uses		\$125,919,054.00
Total Eligible Project Costs		\$125,919,054.00
Total Project Costs		\$125,919,054.00

SCHEDULE II
CONSTRUCTION SCHEDULE

Project Element	Design Completion	Construction Start	Substantial Completion	Final Completion
WRF	12/26/19	02/03/20	04/08/22	7/05/22
Conveyance Facilities	5/01/20	7/31/20	12/07/21	2/08/22
Recycled Water Facilities	04/01/22	06/24/22	7/31/22	05/26/23

SCHEDULE III
EXISTING INDEBTEDNESS

[To be provided by City]

A. Senior Obligations

	Agreement/Series	Outstanding Principal
1.	SRF Planning Loan	
2.		

SCHEDULE IV

WIFIA PAYMENT INSTRUCTIONS

Acceptable Methods for WIFIA Payments to EPA

Option 1 PAY.GOV

Use of Pay.gov to make payments to EPA is the preferred electronic payment method. In Pay.gov, users can track their payments to EPA and schedule recurring or automatic payments. Although it is not mandatory to register for a user id to access and use Pay.Gov, registration is recommended to have access to all Pay.gov system functionality.

1. Access the Pay.gov system by going to <https://www.pay.gov> and search for WIFIA or click on the following hyperlink to directly launch the WIFIA Loan Collection & Fees Form.
2. Provide the following information on your payment to ensure proper credit:
 - Remitter's contact phone number
 - Company/Organization Name as it appears on EPA document
 - Complete address, including city, state, zip code
 - Project Name
 - Loan Number: this is EPA WIFIA Credit Facility number, NOT the remitter's number
 - From the "Payment Type" drop down menu select the type from the Fee Notice letter
 - Other Description: please note the reference number from the Fee Notice letter
3. Follow the remaining on-screen instructions to successfully process the payment to EPA.
4. Send an email to lvfc-grants@epa.gov and wifia_portfolio@epa.gov informing that a payment has been made.

Option 2 FEDWIRE

Wire transfers made through FedWire are an alternative electronic wire transfer initiated between the City and its organization's financial institution (bank) and EPA. FedWire is typically used to initiate financial institution (bank) generated "same day" electronic payments.

Cities must work within the processing guidelines established by their bank, which may include processing cutoffs, transaction fees, and other bank requirements.

Banks that do not maintain an account at a Federal Reserve Bank (FRB) must use the services of correspondent banks that do have an FRB account. To process a payment using FedWire please:

1. Send FedWire deposits as early as possible and no later than 5 p.m. ET on the desired EPA receipt date
2. Review the FedWire form Instructions provided in Attachment 1 and complete the form. It is very important that all relevant details identified in the instructions are accurate.
3. Send an email to lvfc-grants@epa.gov and wifia_portfolio@epa.gov informing that a payment has been made.

Option 3 CHECK PAYMENTS

4. Send checks to:
U.S. EPA
Las Vegas Finance Center
4220 S. Maryland Pkwy, Bldg C, Ste 503
Las Vegas NV 89119
5. Provide the following information on your check payment to ensure proper credit please:
 - Company/remitter's name (City name as it appears on EPA document)
 - Complete address, including city, state, zip
 - Remitter's point of contact person and phone number
 - EPA WIFIA Credit Facility # (NOT the remitter's number)
 - Payment Type/Reason for payment from the Fee Notice letter
 - Reference number from the Fee Notice letter.
6. Send an email to lvfc-grants@epa.gov and wifia_portfolio@epa.gov informing that a payment has been submitted.

NOTE: When checks are provided as payment, you authorize the EPA to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When the EPA uses information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.

Attachment 1 – FedWire Payment Form and Instructions

		U.S. Environmental Protection Agency FUNDS TRANSFER DEPOSIT		
PC		INSTRUCTIONS: Explicit completion and routing instructions are located on the reverse of this form. It is requested that prudent care be taken to ensure that all information is provided in the requested format. Failure to provide the information in the requested format may cause a delay in the notification of the funds transfer to EPA.		
TO 021030004	TYPE 10			
FROM	CL	REF	AMOUNT \$	
SENDER				
RECEIVER TREAS NYC/(68011233)EPA				
THIRD PARTY INFORMATION				

The above FedWire form presented to your bank (who will initiate and transmit the FedWire payment) **MUST** contain all details below: *

TO (ABA)	021030004
TYPE	10
RECEIVER	TREAS NYC/(68011233)EPA
THIRD PARTY INFORMATION	To ensure proper credit please include the following information on your payment: • Company/remitter's name (City name as it appears on EPA document) • Complete address, including city, state, zip code • Remitter's point of contact person and phone number • EPA WIFIA Credit Facility # (NOT the remitter's number) • Payment Type/Reason for payment from the Fee Notice letter • Reference number from the Fee Notice letter
Shaded Areas	Those items that are shaded on the Form are to be entered by the bank on the funds transfer message. (Depending on the Federal Reserve District, some items may not be required.)
*Important: Failure to initiate the FedWire electronic wire transaction properly with the above fields included, will result in untimely or non-receipt of funds at EPA.	

For questions about payments to EPA please contact EPA Las Vegas Finance Center:

Phone: (702)798-2485, Office Hours: 7am to 4:30pm PST. Voicemails can be left when calling outside these hours
Email: lvfc-grants@epa.gov

For questions about the WIFIA program:

Email: wifia@epa.gov

SCHEDULE 12(f)

LITIGATION

No.	Parties	Date Initiated	Description	Venue

SCHEDULE 12(n)

PRINCIPAL PROJECT CONTRACTS

A. Existing Principal Project Contracts (effective as of the date of this Agreement)

Contract	Date	Parties	Description

B. Expected Additional Principal Project Contracts (expected to either be executed, or are executed and expected to become effective, at a future date)

Contract	Expected Effective Date	Parties	Description

SCHEDULE 12(p)
ENVIRONMENTAL MATTERS

[To be provided by City]

EXHIBIT A
RESERVED

EXHIBIT B
ANTICIPATED DISBURSEMENT SCHEDULE

<u>Federal Fiscal Year</u>	<u>Amount</u>
2020	\$17,591,905.40
2021	\$7,591,905.40

EXHIBIT C

FORM OF CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The undersigned, on behalf of the [City of Morro Bay]/[City of Morro Bay Public Facilities Corporation], hereby certifies that the [City of Morro Bay]/[City of Morro Bay Public Facilities Corporation] has fully complied with its verification obligations under 2 C.F.R. § 180.320 and hereby further confirms, based on such verification, that, to its knowledge, the [City of Morro Bay]/[City of Morro Bay Public Facilities Corporation] and its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. 1532.995):

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

(b) Have not within a three (3) year period preceding the Effective Date been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

Dated: _____

**[CITY OF MORRO BAY]/[CITY OF MORRO BAY
PUBLIC FACILITIES CORPORATION]²**

By: _____

Name:

Title:

² To be executed by an Authorized Representative.

EXHIBIT D

REQUISITION PROCEDURES

This **Exhibit D** sets out the procedures which the City agrees to follow in submitting Requisitions for the disbursement of proceeds under the WIFIA Credit Agreement in respect of the Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Sections 2 through 4 set out the circumstances in which the WIFIA Credit Provider may reject or correct Requisitions submitted by the City or withhold a disbursement. The City expressly agrees to the terms hereof, and further agrees that (i) the rights of the WIFIA Credit Provider contained herein are in addition to (and not in lieu of) any other rights or remedies available to the WIFIA Credit Provider under the WIFIA Credit Agreement, and (ii) nothing contained herein shall be construed to limit the rights of the WIFIA Credit Provider to take actions including administrative enforcement action and actions for breach of contract against the City if it fails to carry out its obligations under the WIFIA Credit Agreement during the term thereof.

Section 1. General Requirements. All requests by the City for the disbursement of proceeds under the WIFIA Credit Agreement shall be made by electronic mail or overnight delivery service by submission to the WIFIA Credit Provider, in accordance with Section 31 (*Notices*) of the WIFIA Credit Agreement, of a Requisition, in form and substance satisfactory to the WIFIA Credit Provider and completed and executed by the City's Authorized Representative. The form of Requisition is attached as **Appendix One** (*Form of Requisition*) to this **Exhibit D**.

Supporting documentation should be submitted with the requisition. If the City anticipates that it will draw down all or a portion of the proceeds under the WIFIA Credit Agreement to reimburse the City for Eligible Project Costs paid by or on behalf of the City prior to such disbursement of proceeds under the WIFIA Credit Agreement, whether paid from funds of the City or proceeds of Obligations issued by the City, including for the purpose of paying or redeeming such Obligations, the City shall deliver appropriate documentation, including invoices and records, evidencing such incurred or paid Eligible Project Costs (the "**Eligible Project Costs Documentation**"). The Eligible Project Costs Documentation must provide sufficient detail to enable the WIFIA Credit Provider to verify that such costs are Eligible Project Costs paid by the City, in connection with the reimbursement of such Eligible Project Costs or for the purpose of paying or redeeming, in whole or part, the portion of any such short-term interim financing in respect of which the proceeds were used to pay such documented Eligible Project Costs. The WIFIA Credit Provider shall review the Eligible Project Costs Documentation for compliance with WIFIA disbursement requirements, and any amounts approved by the WIFIA Credit Provider as Eligible Project Costs will be disbursed at such time as the City submits a Requisition in respect of such approved amounts.

The WIFIA Credit Provider agrees to promptly send to the City in accordance with Section 31 (*Notices*) of the WIFIA Credit Agreement, an acknowledgement of receipt of each Requisition in the form attached as **Appendix Two** (*[Approval/Disapproval] of the WIFIA Credit Provider*) to this **Exhibit D** setting forth the date of receipt by the WIFIA Credit Provider of such Requisition and setting forth the Business Day on which disbursement will be made absent denial by the WIFIA Credit Provider. All disbursement requests must be received by the WIFIA Credit Provider

at or before 5:00 P.M. (EST) on the first (1st) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15th) day of such calendar month or, if either such day is not a Business Day, the next succeeding Business Day. If a Requisition is approved by the WIFIA Credit Provider, the WIFIA Credit Provider will notify the City of such approval and of the amount so approved.

Section 2. Rejection. A Requisition may be rejected in whole or in part by the WIFIA Credit Provider if it is: (a) submitted without signature; (b) submitted under signature of a Person other than a City's Authorized Representative; (c) submitted after prior disbursement of all proceeds under the WIFIA Credit Agreement; (d) submitted without adequate Eligible Project Costs Documentation, including (i) copies of invoices and records evidencing the Eligible Project Costs, (ii) a summary of the progress of construction of the Project and a general description of the work done for which the funds being requisitioned are being applied (or a certification that no change has occurred since the date of the latest quarterly report provided pursuant to Section 16(d) (*Reporting Requirements – Construction Reporting*), and (iii) a copy of the most recent update to the City's risk register, if requested by the WIFIA Credit Provider.

The WIFIA Credit Provider will notify the City of any Requisition so rejected, and the reasons therefor. Any Requisition rejected for the reasons specified above (other than Section 2(c)) must be resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the WIFIA Credit Facility proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the WIFIA Credit Provider will so notify the City.

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the WIFIA Credit Provider, after telephonic or email notification to the City, and will thereafter be treated as if submitted in the corrected amount.

Section 4. Withholding. The WIFIA Credit Provider shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of proceeds under the WIFIA Credit Agreement if: (a) a Default or an Event of Default shall have occurred and be continuing; (b) the City (i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable law, in connection with the transactions contemplated hereby; (ii) prevents or materially impairs the ability of the WIFIA Credit Provider to monitor compliance by the City with applicable law pertaining to the Project or with the terms and conditions of the WIFIA Credit Agreement; (iii) fails to observe or comply with any applicable law, or any term or condition of the WIFIA Credit Agreement; (iv) fails to satisfy the conditions set forth in Section 4 (*Disbursement Conditions*) and Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*) of the WIFIA Credit Agreement; or (v) fails to deliver Eligible Project Costs Documentation satisfactory to the WIFIA Credit Provider at the times and in the manner specified by the WIFIA Credit Agreement; provided, that in such case of Section 4(v), the WIFIA Credit Provider may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

APPENDIX ONE TO EXHIBIT D

FORM OF REQUISITION

United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
WJC-W 6201A
Washington, D.C. 20460
Attention: WIFIA Director

Re: Morro Bay Water Reclamation Facility Project (WIFIA Ref N17108CA and WIFIA Ref N17150CA)

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of each of the WIFIA Credit Agreement for the Wastewater System Portion of the Morro Bay Water Reclamation Facility and the WIFIA Credit Agreement for the Water System Portion of the Morro Bay Water Reclamation Facility, each dated as of [date] (together, the “WIFIA Credit Agreements”), each by and between the CITY OF MORRO BAY (the “City”), the CITY OF MORRO BAY PUBLIC FACILITIES CORPORATION and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “WIFIA Credit Provider”), the City hereby requests disbursement in the amount set forth below in respect of Eligible Project Costs paid or incurred by the City. “WIFIA Credit Facility” collectively refers to the WIFIA Credit Facility described in each WIFIA Credit Agreement. All other capitalized terms used but not defined herein have the meaning set forth in the WIFIA Credit Agreements.

In connection with this Requisition the undersigned, as the City’s Authorized Representative, hereby represents and certifies the following:

1.	Project name	
2.	City name	
3.	WIFIA reference number (Wastewater System)	N17108CA
	WIFIA reference number (Water System)	N17150CA
4.	Requisition number	
5.	³Requested disbursement amount from the WIFIA Credit Agreement for the	\$ 40.82% of requested disbursement

³ With respect to each Requisition, (i) the Eligible Project Costs relating to the Project in its entirety shall be allocated pro rata between the Wastewater System Project and the Water System Project based on the following percentages: 40.82% for the Wastewater System Project and 59.18% for the Water System Project; and (ii) proceeds available under the WIFIA Credit Agreement shall be disbursed hereunder only if there is a concurrent disbursement under the Water System Project Credit Agreement. NOTE: the last disbursement will have to adjusted slightly to account for rounding for a non-standard number.

	Wastewater System Portion & percentage of total disbursement	
	Requested disbursement amount from the WIFIA Credit Agreement for the Water System Portion & percentage of total disbursement	\$[] 59.18% of requested disbursement
	TOTAL:	\$[]
6.	Requested disbursement date (the “Disbursement Date”)	[]
7.	Total amounts previously disbursed under the WIFIA Credit Agreement for the Wastewater System Portion	\$[]
	Total amounts previously disbursed under the WIFIA Credit Agreement for the Water System Portion	\$[]
	TOTAL:	\$[]
8.	Wire instructions	[]

9. The amounts hereby requisitioned have been paid or incurred and approved for payment by or on behalf of the City for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from WIFIA Credit Facility proceeds. No portion of the amounts requisitioned will be applied to pay for Eligible Project Costs that have been previously paid, or are expected to be paid, with proceeds of debt of the City that is not the WIFIA Credit Facility (“Other Debt”).
10. The aggregate amount of all disbursements of the WIFIA Credit Facility (including the amount requested under this Requisition but excluding any interest that is capitalized in accordance with the WIFIA Credit Agreements) does not exceed (a) the amount of the WIFIA Credit Facility, (b) the amount of Eligible Project Costs paid or incurred by the City, and (c) the cumulative disbursements through the end of the current Federal Fiscal Year as set forth in the Anticipated Disbursement Schedule in each WIFIA Credit Agreement.
11. The City has sufficient available funds committed to the Project, which together with funds that remain available and not yet drawn under the WIFIA Credit Facility, will be sufficient to pay the reasonably anticipated remaining Total Project Costs.
12. The total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Credit Facility (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

13. The City has all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Credit Facility proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval has been issued and is in full force and effect (and is not subject to any notice of violation, breach or revocation).
14. Each of the insurance policies obtained by the City in satisfaction of Section 11(a)(xvi) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Credit Agreements is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
15. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Credit Facility proceeds), (i) no Default or Event of Default and (ii) no event of default under any other Related Document and no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any Related Document, in each case, has occurred and is continuing. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since July 12, 2018.
16. The City, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including without limitation 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products). Supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, are being maintained and are available for review upon request by the WIFIA Credit Provider.
17. The representations and warranties of the City Related Parties set forth in the WIFIA Credit Agreements and in each other Related Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).
18. Each Financing Document and Principal Project Contract that has been delivered by the City to the WIFIA Credit Provider pursuant to Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*) is complete, fully executed and in full force and effect.
19. The current estimated percentage of physical completion of the Project is [____]%. The City is in compliance with Section 16(d) (*Reporting Requirements – Construction Report*) and no change has occurred since the date of the most recently delivered quarterly construction progress report that could reasonably be expected to cause a Material Adverse Effect.
20. The City has [repaid][refinanced] all Project-related planning loans from the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund (including the State

Loan) [with long-term Clean Water State Revolving Fund or Drinking Water State Revolving Fund construction loans].⁴

⁴ For any disbursement occurring after December 31, 2020.

21. All documentation evidencing the Eligible Project Costs to be reimbursed to the City by the above-requested disbursement has been delivered by the City to the WIFIA Credit Provider at the times and in the manner specified by the WIFIA Credit Agreements, including the details set forth [in the attachment hereto, which is in form satisfactory to the WIFIA Credit Provider]]below:

WASTEWATER SYSTEM PORTION								WIFIA USE ONLY	
Vendor or Contractor Name ⁵	Invoice Number ⁶	Invoice Date	Payment Date	Invoice Amount	WIFIA Requested Amount ⁷	Activity Type ⁸	Description of Activity ⁹	Approved Amount	Notes

WATER SYSTEM PORTION								WIFIA USE ONLY	

⁵ If seeking reimbursement for internal costs, enter “Internally financed activities.”

⁶ Vendor’s number indicated on the invoice sent to the Borrower.

⁷ If the amount requested for reimbursement by WIFIA is less than the total amount of the invoice, include an explanation for the difference.

⁸ Specify whether activity is: (a) **Development phase activity**, which includes planning, preliminary engineering, design, environmental review, revenue forecasting and other pre-construction activities; (b) **Construction**, which includes construction, reconstruction, rehabilitation and replacement activities; (c) **Acquisition of real property**, which includes acquiring an interest in real property, environmental mitigation, construction contingencies and acquisition of equipment; (d) **Carrying costs**, including capitalized interest, as necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction; (e) **WIFIA fees**, including for application and credit processing; or (f) **Other**, with an explanation in column H.

⁹ Provide a brief description of the activities included in the invoice for which WIFIA funds are being requested and any other notes that will aid in the review of the disbursement request.

Vendor or Contractor Name ¹⁰	Invoice Number ¹¹	Invoice Date	Payment Date	Invoice Amount	WIFIA Requested Amount ¹²	Activity Type ¹³	Description of Activity ¹⁴	Approved Amount	Notes

¹⁰ If seeking reimbursement for internal costs, enter “Internally financed activities.”

¹¹ Vendor’s number indicated on the invoice sent to the Borrower.

¹² If the amount requested for reimbursement by WIFIA is less than the total amount of the invoice, include an explanation for the difference.

¹³ Specify whether activity is: (a) **Development phase activity**, which includes planning, preliminary engineering, design, environmental review, revenue forecasting and other pre-construction activities; (b) **Construction**, which includes construction, reconstruction, rehabilitation and replacement activities; (c) **Acquisition of real property**, which includes acquiring an interest in real property, environmental mitigation, construction contingencies and acquisition of equipment; (d) **Carrying costs**, including capitalized interest, as necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction; (e) **WIFIA fees**, including for application and credit processing; or (f) **Other**, with an explanation in column H.

¹⁴ Provide a brief description of the activities included in the invoice for which WIFIA funds are being requested and any other notes that will aid in the review of the disbursement request.

22. The undersigned acknowledges that if the City makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Government in connection with the Project, the Government reserves the right to impose on the City the penalties of 18 U.S.C. § 1001, to the extent the Government deems appropriate.

Dated: _____

CITY OF MORRO BAY¹⁵

By: _____

Name:

Title:

¹⁵ To be executed by an Authorized Representative.

APPENDIX TWO TO EXHIBIT D

[APPROVAL/DISAPPROVAL] OF THE WIFIA CREDIT PROVIDER (To be delivered to the City)

Requisition Number [] is [approved in the amount of \$[]]
[approved in part in the amount of \$[]] [not approved, for the reasons set forth in Annex
A attached hereto,]¹⁶ by the WIFIA Credit Provider (as defined herein) pursuant to Section 4
(Disbursement Conditions) of each of the WIFIA Credit Agreement for the Wastewater System
Portion of the Morro Bay Water Reclamation Facility and the WIFIA Credit Agreement for the
Water System Portion of the Morro Bay Water Reclamation Facility, each dated as of [date], each
by and between the CITY OF MORRO BAY (the “City”), the CITY OF MORRO BAY PUBLIC
FACILITIES CORPORATION and the UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, acting by and through the Administrator (the “WIFIA Credit Provider”).

Any determination, action or failure to act by the WIFIA Credit Provider with respect to
the Requisition set forth above, including any withholding of a disbursement, shall be at the WIFIA
Credit Provider’s sole discretion, and in no event shall the WIFIA Credit Provider be responsible
for or liable to the City for any and/or all consequence(s) which are the result thereof.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**, acting by and
through the Administrator¹⁷

By: _____
WIFIA Credit Provider’s Authorized
Representative
Name:
Title:
Date:

¹⁶ If there is any partial or full denial of approval, the WIFIA Credit Provider should provide a separate attachment
setting forth the reasons for such partial or full denial of approval.

¹⁷ To be executed by an Authorized Representative.

EXHIBIT A TO APPENDIX TWO TO EXHIBIT D

[Insert reasons for any partial or full denial of approval.]

EXHIBIT E

FORM OF NON-LOBBYING CERTIFICATE

The undersigned, on behalf of CITY OF MORRO BAY, hereby certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the City, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of the WIFIA Credit Facility.

(b) If any funds other than proceeds of the WIFIA Credit Facility have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the WIFIA Credit Facility, the City shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) The City shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the WIFIA Credit Provider entered into this Agreement. Submission of this certification is a prerequisite to the effectiveness of this Agreement imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Dated: _____

CITY OF MORRO BAY¹⁸

By: _____

Name:

Title:

¹⁸ To be executed by an Authorized Representative.

EXHIBIT F
INSTALLMENT PAYMENT SCHEDULE
(Wastewater System Portion of the Project)

[Insert]

EXHIBIT G-1

OPINIONS REQUIRED FROM COUNSEL TO THE CITY

An opinion of the counsel of the City, dated as of the Effective Date, to the effect that:

- (a) the City is a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State;
- (b) the City has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the ISA and the WIFIA Credit Agreement and all other Related Documents to which it is a party; the City has the right and power under the laws of the State, including [*cite relevant laws*], to enter into the ISA and the WIFIA Credit Agreement and all other Related Documents to which it is a party;
- (c) the execution and delivery by the City of, and the performance of its respective obligations under, the ISA and the WIFIA Credit Agreement and all other Related Documents to which it is a party, have been duly authorized by all necessary action or approval;
- (d) the City has duly executed and delivered the ISA and the WIFIA Credit Agreement and each other Related Document to which it is a party and the ISA, the WIFIA Credit Agreement and each other Related Document constitutes the legal, valid and binding obligation of such party; enforceable against the City in accordance with their respective terms;
- (e) the Resolution has been duly adopted by the City Council of the City and is in full force and effect; no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the City, nor is any public vote required, for the execution and delivery by such party of, and the performance of such party under, the ISA, the WIFIA Credit Agreement and any other Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the City;
- (f) the execution and delivery by the City of, and compliance with the provisions of, the ISA, the WIFIA Credit Agreement and each other Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of the City, (ii) violate the law of the United States of America or of the State or (ii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which the City is a party, or to the best of such counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the City is subject;
- (g) the ISA authorizes payment by the City of Installment Payments with an unpaid Principal Component of up to \$_____, plus accrued interest during the Capitalized Interest Period to be capitalized;
- (h) payment of Installment Payments in the amounts established in accordance with the ISA has been duly authorized by the City, and no referendum for approval is required. Payment of such amounts, including the Interest Component, constitute the valid and binding limited obligation of the City payable from the Pledged Collateral.

(i) pursuant to the ISA, the City's payment of Installment Payments is secured by a Lien on and security interest in the Pledged Collateral in favor of the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the WIFIA Credit Provider, as the initial Assignee), and no filing or recording is required to be done to perfect the lien on the Pledged Collateral. This Lien on the Net Revenues, WIFIA Payment Account and WIFIA Reserve Account is enforceable under the laws of the State without any further action by the City or any other Person, and ranks *pari passu* in right of payment and right of security with all Senior Obligations and are senior in right of payment and right of security to all Subordinate Obligations;

(j) the ISA creates the valid and binding assignment and pledge of the Pledged Collateral (including the Net Revenues, WIFIA Payment Account and WIFIA Reserve Account) to secure the payment of the Installment Payments under the ISA, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act;

(k) all actions by the City that are required for the application of System Revenues as required under the WIFIA Credit Agreement and the ISA have been duly and lawfully made;

(l) the City has complied with the requirements of State law to lawfully pledge the Pledged Collateral and use the System Revenues as required by the terms of the WIFIA Credit Agreement and the ISA;

(m) the City is not entitled to claim governmental immunity in any breach of contract action under the WIFIA Credit Agreement or the ISA; and

(o) to our knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the City by or before any court, arbitrator or any other Governmental Authority in connection with the ISA, the WIFIA Credit Agreement or any other Related Documents or the Project that are pending.

EXHIBIT G-2

OPINIONS REQUIRED FROM SPECIAL COUNSEL TO THE CORPORATION

An opinion of special counsel to the Corporation, dated as of the Effective Date, to the effect that:

(a) the Corporation has been duly organized and is existing as a nonprofit corporation pursuant to the laws of the State, with good right and power to enter into the ISA, the WIFIA Credit Agreement and the Assignment Agreement.

(b) the Corporation has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the ISA, the WIFIA Credit Agreement and the Assignment Agreement and all other Related Documents to which it is a party; the Corporation has the right and power under the laws of the State, including [*cite relevant laws*], to enter into the ISA, the WIFIA Credit Agreement and the Assignment Agreement and all other Related Documents to which it is a party;

(c) the execution and delivery by the Corporation of, and the performance of its respective obligations under, the ISA, the WIFIA Credit Agreement and the Assignment Agreement and all other Related Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action;

(d) the Corporation has duly executed and delivered the ISA, the WIFIA Credit Agreement and the Assignment Agreement and each other Related Document to which it is a party and the ISA, the WIFIA Credit Agreement and the Assignment Agreement and each other Related Document constitutes the legal, valid and binding obligation of such party; enforceable against the Corporation in accordance with their respective terms;

(e) the Corporation authorizing resolution has been duly adopted by the Board of Directors of the Corporation and is in full force and effect; no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the Corporation for the execution and delivery by such party of, and the performance of such party under, the ISA, the WIFIA Credit Agreement and the Assignment Agreement and any other Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Corporation;

(f) the execution and delivery by the Corporation of, and compliance with the provisions of, the ISA, the WIFIA Credit Agreement and the Assignment Agreement and each other Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of the Corporation, (ii) violate the law of the United States of America or of the State or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which the Corporation is a party, or to the best of such counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Corporation is subject;

(g) the assignment pursuant to the Assignment Agreement constitutes the legal, valid and binding assignment by the Corporation to the WIFIA Credit Provider, as the initial Assignee, of the Corporation's rights under the ISA, including the right to enforce payment of the Installment Payments from the Pledged Collateral. This assignment has been approved by the City and the Corporation, and is valid, irrespective of whether any party has notice of the assignment and without the need for any physical delivery, recordation, filing or further act.

(h) the Corporation is not entitled to claim immunity in any breach of contract action under the ISA, the WIFIA Credit Agreement or the Assignment Agreement;

(i) to our knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the Corporation by or before any court, arbitrator or any other Governmental Authority in connection with the ISA, the WIFIA Credit Agreement, the Assignment Agreement or any other Related Documents or the Project that are pending.

EXHIBIT H-1

FORM OF CITY CLOSING CERTIFICATE

Reference is made to that certain WIFIA Credit Agreement for the Wastewater System Portion of the Morro Bay Water Reclamation Facility and that certain WIFIA Credit Agreement for the Water System Portion of the Morro Bay Water Reclamation Facility (collectively, the “WIFIA Credit Agreement”), each dated as of [date], each by and between the CITY OF MORRO BAY (the “City”), the CITY OF MORRO BAY PUBLIC FACILITIES CORPORATION and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “WIFIA Credit Provider”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Credit Agreement.

In connection with Section 11(a) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Credit Agreement, the undersigned, [_____], as City’s Authorized Representative, does hereby certify on behalf of the City and not in his/her personal capacity, as of the date hereof:

(a) pursuant to Section 11(a)(viii) of the WIFIA Credit Agreement, attached hereto as Annex A is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the City to execute the Related Documents to which the City is or will be a party, and who have been appointed as a City’s Authorized Representative in accordance with Section 21 (City’s Authorized Representative) of the WIFIA Credit Agreement;

(b) pursuant to Section 11(a)(ii) of the WIFIA Credit Agreement, [the City has delivered to the WIFIA Credit Provider] [attached hereto as Annex B are] copies of each Financing Document, together with any amendments, waivers or modifications thereto, that has been entered into on or prior to the Effective Date, and each such document is complete, fully executed, and in full force and effect, and all conditions contained in such documents that are necessary to the closing of the WIFIA transactions contemplated hereby have been fulfilled;

(c) pursuant to Section 11(a)(iii) of the WIFIA Credit Agreement, [the City has delivered to the WIFIA Credit Provider][attached hereto as Annex C are] copies of each Existing Principal Project Contract, together with any amendments, waivers or modifications thereto, and each such document is complete, fully executed, and in full force and effect;

(d) pursuant to Section 11(a)(iv) of the WIFIA Credit Agreement, [the City has delivered to the WIFIA Credit Provider][attached hereto as Annex D is] a copy of the City’s Organizational Documents as in effect on the Effective Date (and certified by the Secretary of State of the State, to the extent applicable), which Organizational Documents are in full force and effect. There are no additional instruments or documents necessary for the City Related Parties to execute and deliver, or to perform its obligations under, the WIFIA Credit Documents to which it is a party and to consummate and implement the transactions contemplated by the WIFIA Credit Documents;

(e) pursuant to Section 11(a)(viii)(1) of the WIFIA Credit Agreement, the aggregate of all funds committed to the development and construction of the Project as set forth in the Base Case Financial Model and in the Project Budget are sufficient to carry out the Project, pay all Total Project Costs anticipated for the Project and achieve Substantial Completion by the Projected Substantial Completion Date;

(f) pursuant to Section 11(a)(viii)(2) of the WIFIA Credit Agreement, each City Related Party has obtained all Governmental Approvals necessary (i) as of the Effective Date in connection with the Project and (ii) to execute and deliver, and perform its obligations under the WIFIA Credit Documents, and each such Governmental Approval is final, non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);

(g) pursuant to Section 11(a)(viii)(3) of the WIFIA Credit Agreement, (i) the maximum principal amount of the WIFIA Credit Facility (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the City, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (ii) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Credit Facility (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs;

(h) pursuant to Section 11(a)(viii)(4) of the WIFIA Credit Agreement, the City is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project, and, if requested by the WIFIA Credit Provider, has provided evidence satisfactory to the WIFIA Credit Provider of such compliance;

(i) pursuant to Section 11(a)(viii)(5) of the WIFIA Credit Agreement, the City has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project during its useful life;

(j) pursuant to Section 11(a)(viii)(6) of the WIFIA Credit Agreement, (i) the City's Federal Employer Identification Number is [____], (ii) the City's Data Universal Numbering System number is [____], and (iii) the City has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), which confirmation is attached hereto as Annex [____];

(k) pursuant to Section 11(a)(viii)(8) of the WIFIA Credit Agreement, the representations and warranties of each City Related Party set forth in the WIFIA Credit Agreement and in each other Related Document to which the City is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date;

(l) pursuant to Section 11(a)(viii)(9) of the WIFIA Credit Agreement, no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since July 12, 2018;

(m) pursuant to Section 11(a)(x) of the WIFIA Credit Agreement, none of the rating letters delivered to the WIFIA Credit Provider pursuant to such Section 11(a)(x) has been reduced, withdrawn or suspended as of the Effective Date;

(n) pursuant to Section 11(a)(xi) of the WIFIA Credit Agreement, [the City has delivered to the WIFIA Credit Provider][attached hereto as Annex [] is] the Base Case Financial Model, which (i) demonstrates that projected System Revenues are sufficient to meet the Loan Amortization Schedule, (ii) demonstrates compliance with the Rate Covenant for each City Fiscal Year through the Final Installment Payment Date and a Senior Debt Service Coverage Ratio for each Payment Period through the Final Installment Payment Date that is not less than 1.30 to 1.00, (iii) reflects principal amortization and interest payment schedules acceptable to the WIFIA Credit Provider, (iv) demonstrates that the City has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project over its useful life and (v) otherwise meets the requirements of such Section 11(a)(xi);

(o) pursuant to Section 11(a)(xi) of the WIFIA Credit Agreement, attached hereto as Annex [] are certificates of insurance, and such insurance certificate is true and correct and demonstrates compliance with the requirements of Section 14(f) (Affirmative Covenants – Insurance) of the WIFIA Credit Agreement;

(p) pursuant to Section 11(a)(xv) of the WIFIA Credit Agreement, attached hereto as Annex [] is documentation demonstrating the establishment of the WIFIA Payment Account and the WIFIA Reserve Account;

(q) pursuant to Section 11(a)(xvi) of the WIFIA Credit Agreement, attached hereto as Annex [] is documentation demonstrating that any Clean Water State Revolving Fund or Drinking Water State Revolving Fund planning loans outstanding with respect to the Project have been repaid or refinanced with long-term Clean Water State Revolving Fund or Drinking Water State Revolving Fund construction loans secured on a parity basis with the Installment Payments in the ISA[; and][.]

(r) [any other attachments and provisions, as may apply to the specific WIFIA Credit Agreement].

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

CITY OF MORRO BAY¹⁹

By: _____
Name:
Title:

¹⁹ To be executed by an Authorized Representative.

ANNEX A TO EXHIBIT H-1 FORM OF CITY CLOSING CERTIFICATE

CITY INCUMBENCY CERTIFICATE

The undersigned certifies that he/she is the [City Clerk] of the City of Morro Bay, a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State of California (the "City"), and as such he/she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the City in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He/She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the WIFIA Credit Documents and/or the Financing Documents as the City's Authorized Representative (each as defined in that certain WIFIA Credit Agreement for the Wastewater System Portion of the Morro Bay Water Reclamation Facility and that certain WIFIA Credit Agreement for the Water System Portion of the Morro Bay Water Reclamation Facility, each dated as of [date], each by and between the City of Morro Bay, the City of Morro Bay Public Facilities Corporation and the United States Environmental Protection Agency, acting by and through the Administrator):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this _____ day of [____], 2020.

CITY OF MORRO BAY²⁰

By: _____
Name:
Title:

²⁰ To be executed by an Authorized Representative.

EXHIBIT H-2

FORM OF CORPORATION CLOSING CERTIFICATE

Reference is made to that certain WIFIA Credit Agreement for the Wastewater System Portion of the Morro Bay Water Reclamation Facility and that certain WIFIA Credit Agreement for the Water System Portion of the Morro Bay Water Reclamation Facility (collectively, the “WIFIA Credit Agreement”), each dated as of [date], each by and between the CITY OF MORRO BAY (the “City”), the CITY OF MORRO BAY PUBLIC FACILITIES CORPORATION (the “Corporation”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “WIFIA Credit Provider”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Credit Agreement.

In connection with Section 11(a) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Credit Agreement, the undersigned, [_____], as an authorized representative of the Corporation, does hereby certify on behalf of the Corporation and not in his/her personal capacity, as of the date hereof:

(a) the Corporation is a nonprofit public benefit corporation duly organized and validly existing under its Organizational Documents and the laws of the State, has full legal right, power and authority to do business in the State and to enter into the ISA, the Assignment Agreement and the WIFIA Credit Agreement (the “Corporation Documents”) then in existence, to execute and deliver the WIFIA Credit Agreement and the other Corporation Documents, and to carry out and consummate all transactions contemplated thereby and has duly authorized the execution, delivery and performance of the WIFIA Credit Agreement and the other Corporation Documents;

(b) the following were duly elected, qualified and acting members of the Board of Directors of the Corporation and officers of the Corporation on the dates on which the Resolution (described below) was adopted and are the duly elected, qualified and acting members and officers of the Corporation as of the date hereof:

[Insert]

(c) pursuant to Section 11(a)(viii) of the WIFIA Credit Agreement, attached hereto as Annex A is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Corporation to execute the Corporation Documents and who is an authorized representative of the Corporation;

(d) pursuant to Section 11(a)(iv) of the WIFIA Credit Agreement, [the Corporation has delivered to the WIFIA Credit Provider][attached hereto as Annex B is] a copy of the Corporation’s Organizational Documents [articles of incorporation and bylaws] as in effect on the Effective Date (and certified by the Secretary of State of the State as of a date within [_____] days prior to the date hereof, to the extent applicable), which Organizational Documents are in full force and effect, and a Certificate of Status-Domestic of the Corporation issued by the California Secretary of State as of a date within [_____] days prior to the date hereof indicating that the Corporation is authorized to exercise all of its powers, rights and privileges in the State and a Letter

of Good Standing of the Corporation from the California Franchise Tax Board as of a date within [_____] days prior to the date hereof;

(e) Resolution No. [____], adopted by the Board of Directors of the Corporation on [____], 2020 and authorizing, among other things, the Corporation to enter into the ISA, the Assignment Agreement and the WIFIA Credit Agreement (the “Resolution”) has been duly adopted by the Board of Directors of the Corporation and is in full force and effect and [the Corporation has delivered to the WIFIA Credit Provider][attached hereto as Annex C is] a complete, fully executed copy of such resolution;

(f) other than as set forth in paragraph (c) above, there are no additional instruments or documents necessary for the Corporation to execute and deliver, or to perform its obligations under, the WIFIA Credit Documents to which it is a party and to consummate and implement the transactions contemplated by the WIFIA Credit Documents;

(g) pursuant to Section 11(a)(viii)(2) of the WIFIA Credit Agreement, the Corporation has obtained all Governmental Approvals necessary to execute and deliver, and perform its obligations under the WIFIA Credit Documents, and each such Governmental Approval is final, non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);

(h) as of the date hereof, the officers of the Corporation executing (or that previously executed) the Corporation Documents, and any certifications or instruments related thereto, to which the Corporation is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same;

(i) each of the Corporation Documents in effect as of the date hereof has been duly authorized, executed and delivered by the Corporation and constitutes the legal, valid and binding agreement of the Corporation enforceable against the Corporation in accordance with its terms, except as such enforceability (i) may be limited by applicable receivership, bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law), judicial discretion and legal limitations applicable to public agencies in the State of California;

(j) the assignment pursuant to the Assignment Agreement constitutes the legal, valid and binding assignment by the Corporation to the WIFIA Credit Provider, as the initial Assignee, of the Corporation’s rights under the ISA, including the right to enforce payment of the Installment Payments from the Pledged Collateral; this assignment has been approved by the City and the Corporation, and is valid, irrespective of whether any party has notice of the assignment and without the need for any physical delivery, recordation, filing or further act;

(k) pursuant to Section 11(a)(viii)(8) of the WIFIA Credit Agreement, the representations and warranties of the Corporation set forth in the WIFIA Credit Agreement and in each other Corporation Document are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date; and

(k) [any other attachments and provisions, as may apply to the specific WIFIA Credit Agreement].

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

**CITY OF MORRO BAY PUBLIC FACILITIES
CORPORATION ²¹**

By: _____
Name:
Title:

²¹ To be executed by an authorized representative.

ANNEX A TO EXHIBIT H-2 FORM OF CORPORATION CLOSING CERTIFICATE

CORPORATION INCUMBENCY CERTIFICATE

The undersigned certifies that he/she is the [Secretary] of the City of Morro Bay Public Facilities Corporation, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation"), and as such he/she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Corporation in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He/She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the WIFIA Credit Documents and/or the Financing Documents as the Corporation's Authorized Representative (each as defined in that certain WIFIA Credit Agreement for the Wastewater System Portion of the Morro Bay Water Reclamation Facility and that certain WIFIA Credit Agreement for the Water System Portion of the Morro Bay Water Reclamation Facility, each dated as of [date], each by and between the City of Morro Bay, the City of Morro Bay Public Facilities Corporation and the United States Environmental Protection Agency, acting by and through the Administrator):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this _____ day of [____], 2020.

**CITY OF MORRO BAY PUBLIC FACILITIES
CORPORATION²²**

By: _____
Name:
Title:

²² To be executed by an authorized representative.

EXHIBIT I
FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of City]

[Date]

WIFIA Program Office
[Insert Proper Address]
Attention: Administrator

Project: Morro Bay Water Reclamation Facility Project (WIFIA – N17108CA and N17150CA)

Dear Director:

This Notice is provided pursuant to Section 16(h)(i)(A) (*Reporting Requirements – Notices – Substantial Completion*) of that certain WIFIA Credit Agreement for the Wastewater System Portion of the Morro Bay Water Reclamation Facility and that certain WIFIA Credit Agreement for the Water System Portion of the Morro Bay Water Reclamation Facility (together, the “WIFIA Credit Agreement”), each dated as of *[date]*, each by and between the City of Morro Bay (the “City”), the City of Morro Bay Public Facilities Corporation and the United States Environmental Protection Agency, acting by and through the Administrator (the “WIFIA Credit Provider”).

Unless otherwise defined herein, all capitalized terms in this Certificate have the meanings assigned to those terms in the WIFIA Credit Agreement.

I, the undersigned, in my capacity as the City’s Authorized Representative and not in my individual capacity, do hereby certify to the WIFIA Credit Provider that:

- (a) on *[Insert date Substantial Completion requirements were satisfied]*, the Project satisfied each of the requirements for Substantial Completion set forth in the *[Insert reference to the concession agreement, design-build or similar agreement for the Project]*;
- (b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and
- (c) Substantial Completion, as defined in the WIFIA Credit Agreement, has been achieved.

CITY OF MORRO BAY²³

By: _____
Name:
Title:

²³ To be executed by an Authorized Representative.

EXHIBIT J

FORM OF QUARTERLY REPORT

United States Environmental Protection Agency
WIFIA Director
WJC-W 6201A
1200 Pennsylvania Avenue NW
Washington, DC 20460
WIFIA_Portfolio@epa.gov

Re: Morro Bay Water Reclamation Facility Project (WIFIA – N17108CA and N17150CA)

This Quarterly Report for the period of [____] is provided pursuant to Section 16(d) (*Reporting Requirements – Construction Reporting*) of that certain WIFIA Credit Agreement for the Wastewater System Portion of the Morro Bay Water Reclamation Facility and that certain WIFIA Credit Agreement for the Water System Portion of the Morro Bay Water Reclamation Facility (together, the “WIFIA Credit Agreement”), each dated as of [date], each by and between the City of Morro Bay (the “City”), the City of Morro Bay Public Facilities Corporation and the United States Environmental Protection Agency, acting by and through the Administrator (the “WIFIA Credit Provider”). Unless otherwise defined herein, all capitalized terms in this Quarterly Report have the meanings assigned to those terms in the WIFIA Credit Agreement.

(i) Amount Expended

Principal Project Contract (PPC)	Original Contract Amount	Change Orders to Date	Total Estimated Costs	Estimated Costs to Complete	Costs Earned or Paid Through Previous Reporting period	Current Reporting Period Costs Earned or Paid	Total Costs Earned or Paid to date	% Costs Earned or Paid to Date
TOTAL								

(ii) Construction Progress, Governmental Approvals, Updated Schedule

Assessment of overall construction progress:

Notice of receipt of relevant Governmental Approvals since the Effective Date and since the prior Quarterly Report:

Assessment of construction progress compared to Construction Schedule provided in the prior Quarterly Report:

Principal Project Contract (PPC)	NTP Effective Date	Original Time for Completion (days)	Original Contract Completion (date)	Time Added to Date (days)	Current Contract Completion (date)	Days Elapsed	% Contract Duration

(iii) Substantial Completion Date

Current projection for the Substantial Completion Date: _____

If the current projection for the substantial completion date is later than previously reported in the prior Quarterly Report, provide a description in reasonable detail for such projected delay:

(iv) Material Problems (if any)

Detailed description of all material problems (including actual and anticipated cost and/or schedule overruns, if any), encountered or anticipated in connection with the construction of the Project during the preceding quarter, together with an assessment of how such problems may impact the Construction Schedule and the meeting of critical dates thereunder and a detailed description of the proposed solutions to any such problems:

(v) Proposed or pending change orders that exceed the threshold set out in Section 16(f) (*Modifications to Total Project Costs*) or could reasonably be expected to result in a Material Adverse Effect

(vi) Other matters related to the Project

Dated: _____

CITY OF MORRO BAY²⁴

By: _____

Name:

Title:

²⁴ To be executed by an Authorized Representative.

EXHIBIT K

FORM OF PUBLIC BENEFITS REPORT

Pursuant to [Section 11(a)(xiv))] [and] [Section 16(e)] of the WIFIA Credit Agreement, City of Morro Bay (the “City”) is providing this Public Benefits Report in connection with the Morro Bay Water Reclamation Facility (WIFIA – N17108CA and N17150CA):

- (i) **The estimated interest savings the City is realizing through the use of the WIFIA Credit Facility compared to comparable market rate financing:**

\$28,640,490

- (ii) **With respect to the report delivered [prior to the Effective Date][within ninety (90) days following the Substantial Completion Date][within ninety (90) following the fifth anniversary of the Substantial Completion Date], the number of jobs projected to be created by the Project during the period between the Effective Date and the Substantial Completion Date:**

430 jobs

- (iii) **Whether the Project will assist the City in complying with applicable regulatory requirements, and if so, a narrative description describing such enhancements:**

New plant will allow the City to meet its regulatory obligations to the California Coastal Commission and California Water Resources Board.

- (iv) **The amount by which the Project will [assist the City (measured by percent annually) in reducing levels of Nitrogen, Phosphorus, biochemical oxygen demand (BOD) and total suspended solids (TSS)][increase the volume of potable water produced (measured in MGD annually)][increase the volume of water recycled, recharged or redirected (measured in MGD annually)][increase Class [A][B] biosolids (measured in tons annually)]²⁵:**

I MGD

²⁵ Include one of the bracketed items as applicable.

*Installment Sale Agreement for Morro Bay Water System Loan
EPA/Hawkins draft 1/7/2020*

**INSTALLMENT SALE AGREEMENT
(Water System Project)**

Between

CITY OF MORRO BAY

And

CITY OF MORRO BAY PUBLIC FACILITIES CORPORATION

For the

WATER SYSTEM PROJECT

MORRO BAY WATER RECLAMATION FACILITY

Dated as of [____], 2020

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Appendix A Installment Payment Schedule

INSTALLMENT SALE AGREEMENT (Water System Project)

This INSTALLMENT SALE AGREEMENT (Water System Project) (this “Agreement”), dated as of [_____], 2020, is between the CITY OF MORRO BAY PUBLIC FACILITIES CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California, as seller (the “Corporation”), and the CITY OF MORRO BAY, a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State of California, as purchaser (the “City”).

BACKGROUND:

WHEREAS, the City wishes to finance the design and construction of the Project (as defined herein); and

WHEREAS, in connection with the City undertaking the Project, the City conducted a financial plan and rate study which showed that certain Project costs are attributable to the Wastewater System (as defined herein) and certain Project costs are attributable to the Water System (as defined herein), and the City has determined that Project costs will be allocated among the two systems in a manner consistent with that rate study; and

WHEREAS, the Water System rates and the Wastewater System rates have been increased in amounts consistent with the recommendations in the rate study to finance the Project; and

WHEREAS, the Corporation has been formed for the purpose, among others, of assisting the City in financing capital improvements for the Water System and the Wastewater System, including providing financing for the Project; and

WHEREAS, the Corporation desires to assist the City in financing the WIFIA Water System Portion of the Project (as defined herein), and to that end is entering into this Agreement, the Assignment Agreement (as defined herein) and the WIFIA Credit Agreement (as defined herein); and

WHEREAS, in order to finance the Project, the City and the Corporation have determined to enter into (i) this Agreement under which the City will purchase the WIFIA Water System Portion of the Project from the Corporation and (ii) a separate installment sale agreement under which the City will purchase the WIFIA Wastewater System Portion of the Project (as defined herein) from the Corporation; and

WHEREAS, the City has determined that installment payments due under this Agreement and payable to the Corporation or any Assignee (as defined herein) (including the WIFIA Credit Provider) reflect the costs of the WIFIA Water System Portion of the Project and will be secured by, among other things, pledged revenues of the Water System, and that installment payments due under an installment sale agreement substantially the same as this Agreement and entered into with respect to the Wastewater System Project reflect the costs of the Wastewater System Project and will be secured by, among other things, pledged revenues of the Wastewater System; and

WHEREAS, the City and the Corporation have arranged for the financing of the costs of the WIFIA Wastewater System Portion of the Project and the WIFIA Water System Portion of the Project by entering into two credit agreements, one for each of the Wastewater System Project and the Water System Project, and each among the City, the Corporation and the WIFIA Credit Provider (as defined herein); and

WHEREAS, in order to provide the funds for the acquisition, construction and installation of the WIFIA Water System Portion of the Project, the Corporation will cause the WIFIA Credit Provider to advance funds from time to time pursuant to the WIFIA Credit Agreement to the City, as agent for the Corporation, to pay the costs of the WIFIA Water System Portion of the Project; and

WHEREAS, the Corporation will appoint the City as its agent to carry out the construction of the WIFIA Water System Portion of the Project, the City will apply all funds advanced under the WIFIA Credit Agreement, to the costs of the WIFIA Water System Portion of the Project, pursuant to this Agreement, and

WHEREAS, as consideration for such advances by the WIFIA Credit Provider, the Corporation will assign all of its right, title and interest (including the right to receive Installment Payments (as defined herein)) in this Agreement (excepting only the Corporation's rights to Additional Payments under Section 4.4(f) (*Additional Payments*) and rights of indemnification under Section 5.2 (*Release and Indemnification Covenants*)) to the WIFIA Credit Provider, as the initial Assignee, pursuant to the Assignment Agreement; and

WHEREAS, the City will purchase the WIFIA Water System Portion of the Project from the Corporation pursuant to this Agreement; and

WHEREAS, following the payment in full of the Purchase Price (as defined herein) of the WIFIA Water System Portion of the Project, the City will have full and exclusive ownership of the WIFIA Water System Portion of the Project; and

WHEREAS, the Purchase Price will be payable by the City in Installment Payments (as defined herein) pursuant to this Agreement to the Corporation or any Assignee (including the WIFIA Credit Provider) of this Agreement; and

WHEREAS, the Installment Payments shall be payable from revenues of the Water System and secured by a pledge of and security interest in the Net Revenues of the Water System (and shall not be payable from any assets of the City other than those derived from the Water System); and

WHEREAS, in order to secure its obligations hereunder, including the obligation to pay the Installment Payments, the City will pledge and grant a security interest in the Pledged Collateral (as defined herein), including the Net Revenues (as defined herein); and

WHEREAS, this Agreement and the WIFIA Credit Agreement are being entered into for and relate solely to the WIFIA Water System Portion of the Project, and the funding available under this Agreement and the WIFIA Credit Agreement is exclusively for the benefit of the WIFIA Water System Portion of the Project.

AGREEMENT:

In consideration of the foregoing and the material covenants hereinafter contained, the City and the Corporation formally covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.1. Definitions. Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1.1 or as otherwise defined in this Agreement.

“Additional Payments” means the payments to be made by the City to the Corporation or to the Assignee pursuant to this Agreement (other than the Installment Payments) or the payments to be made by the City to the WIFIA Credit Provider pursuant to the WIFIA Credit Agreement, including, but not limited to, payments to be made pursuant to Section 10 (*Fees and Expenses*) of the WIFIA Credit Agreement.

“Additional Senior Obligations” means any Senior Obligations permitted under Section 5.7 (*Additional Obligations*) and under the Senior Obligation Document pursuant to which such Senior Obligations are issued or incurred after the Effective Date.

“Additional Subordinate Obligations” means any Subordinate Obligations permitted under Section 5.7 (*Additional Obligations*) and under the Subordinate Obligation Document pursuant to which such Subordinate Obligations are issued or incurred after the Effective Date.

“Assignee” means, initially, the WIFIA Credit Provider or such other entity as has been assigned the rights of the Corporation under this Agreement pursuant to the Assignment Agreement, and any further successors or assigns.

“Assignment Agreement” means the Assignment Agreement (Water System Project), dated as of the Effective Date, between the Corporation and the WIFIA Credit Provider, as the initial Assignee.

“Authorized Representative” means: (a) with respect to the Corporation, its President, Vice President, Executive Director, Treasurer or Secretary, or any other person designated as an Authorized Representative of the Corporation by a written certificate of the Corporation signed by its President, Executive Director or Treasurer and filed with the City; and (b) with respect to the City, its City Manager and Finance Director or any other Person who shall be designated as an Authorized Representative of the City pursuant to a written certificate of the City signed by its City Manager or Finance Director and filed with the Corporation and the WIFIA Credit Provider and containing specimen signatures of such persons.

“Authorizing Resolutions” means the Resolution, and each resolution that authorizes the issuance of additional Obligations or that amends the terms of the Resolution or such other resolution.

“Bankruptcy Related Event” has the meaning assigned to that term in the WIFIA Credit Agreement.

“Business Day” means any day other than a Saturday, a Sunday or a day on which offices of the United States of America and its departments and agencies or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York or the City of Morro Bay, California.

“Capitalized Interest” means an aggregate amount equal to the amount of the Interest Components of the Installment Payments accruing at the Interest Rate during the Capitalized Interest Period based on aggregate unpaid Principal Components of the Installment Payments equal to the then current amounts advanced by the WIFIA Credit Provider under the WIFIA Credit Agreement permitted to be capitalized pursuant to Section 4.4(c)(ii) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*).

“Capitalized Interest Period” means the period from (and including) the Effective Date to (but excluding) the first day of the initial Payment Period, subject to earlier termination as set forth in Section 4.4(c)(iii) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*).

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

“City Fiscal Year” means (a) as of the Effective Date, a fiscal year of the City commencing on July 1 of any calendar year and ending on June 30 of the immediately succeeding calendar year or (b) such other fiscal year as the City may hereafter adopt after giving thirty (30) days’ prior written notice to the WIFIA Credit Provider and the Assignee.

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

“Debt Service” means, with respect to any Obligations, for any period, as of any date of calculation, an amount equal to the sum of all interest and principal of Obligations accruing and payable in respect of such period or, if such Obligation is an installment sale agreement, the amount of installment payments accruing and payable in respect of such period.

“Default Rate” means an interest rate equal to the sum of the Interest Rate plus 200 basis points per annum, calculated on the basis of a three hundred sixty day (360) year of twelve (12) thirty (30) day months.

“Effective Date” means the date of this Agreement.

“Eligible Project Costs” has the meaning assigned to that term in the WIFIA Credit Agreement.

“Event of Default” means an event of default as described in Section 6.1 (*Events of Default Defined*).

“Final Installment Payment Date” means the earlier of (a) November 1, 2058 or such earlier date as is set forth in a revised Installment Payment Schedule; and (b) the Installment

Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.

“Financing Documents” means (a) this Agreement, (b) the Assignment Agreement, (c) the WIFIA Credit Agreement, (d) the Wastewater System Project Installment Sale Agreement, (e) the Wastewater System Project Assignment Agreement; (f) the Wastewater System Project Credit Agreement, (g) the Authorizing Resolutions, (h) all Senior Obligation Documents, and (i) each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing.

“GAAP” means generally accepted accounting principles for U.S. state and local governments, as established by the Government Accounting Standards Board (or any successor entity with responsibility for establishing accounting rules for U.S. state and local governments), in effect from time to time in the United States of America.

“Government Obligations” means (a) direct obligations of, or obligations on which the timely payment of principal and interest are fully and unconditionally guaranteed by, the United States of America or its departments and agencies, (b) bonds, debentures or notes issued by any of the following federal agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association or Federal Land Banks, (c) obligations issued or guaranteed by a Person controlled or supervised by and acting as an instrumentality of the United States of America or its departments and agencies pursuant to authority granted by the Congress of the United States of America, and (d) evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in clauses (a), (b) and (c) of this definition held by a bank or trust company as custodian and which underlying obligations are not available to satisfy any claim of the custodian or any Person claiming through the custodian or to whom the custodian may be obligated, in each case.

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

“Indemnitee” has the meaning set forth in Section 5.2 (*Release and Indemnification Covenants*).

“Installment Payment” individually, means with respect to any Installment Payment Date occurring on or after the Installment Payment Commencement Date, the sum of the Principal Component and the Interest Component (as adjusted to include interest at the Default Rate as set forth in Section 4.4(b) (*Installment Payments – Calculation of Interest Components*)) of such Installment Payment due and payable on such Installment Payment Date as set forth on the Installment Payment Schedule and “Installment Payments” collectively, means all payments required to be paid by the City on any date under Section 4.4 (*Installment Payments*), including

any adjustments to include interest at the Default Rate as set forth in Section 4.4(b) (*Installment Payments – Calculation of Interest Components*).

“Installment Payment Commencement Date” means the earliest to occur of: (a) November 1, 2024; (b) if the Capitalized Interest Period ends pursuant to Section 4.4(c)(iii) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*) due to the occurrence of an Event of Default, the first Installment Payment Date immediately following the end of the Capitalized Interest Period; or (c) the Installment Payment Date falling closest to, but not later than, the fifth anniversary of the Substantial Completion Date.

“Installment Payment Date” means May 1 and November 1 in each year, commencing on the Installment Payment Commencement Date.

“Installment Payment Schedule” means the Installment Payment Schedule set forth in Appendix A (*Installment Payment Schedule*), as amended from time to time in accordance with Section 4.4(c) (*Installment Payments– Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*).

“Interest Component” means (a) with respect to an Installment Payment, the interest component (as adjusted to include interest at the Default Rate as set forth in Section 4.4(b) (*Installment Payments – Calculation of Interest Components*)) of such Installment Payment due and payable on the applicable Installment Payment Date as set forth on the Installment Payment Schedule and (b) with respect to the aggregate Installment Payments, all payments of the interest components of the Installment Payments required to be paid by the City on any date under Section 4.4 (Installment Payments), as adjusted to include interest at the Default Rate as set forth in Section 4.4(b) (*Installment Payments – Calculation of Interest Components*).

“Interest Rate” means [_____] percent ([_____]%) per annum, calculated on the basis of a three hundred sixty day (360) year of twelve (12) thirty (30) day months.

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

“Material Adverse Effect” means a material adverse effect on (a) the Water System, the Project or the System Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the City, (c) the legality, validity or enforceability of any material provision of any Financing Document, (d) the ability of the City to enter into, perform or comply with any of its material obligations under any Financing Document, (e) the validity, enforceability or priority of the Liens provided under the Financing Documents on the Pledged Collateral in favor of the Secured Parties, (f) the validity and enforceability of the assignment provided by the Corporation to the WIFIA Credit Provider as initial Assignee under the Assignment Agreement,

or (g) the WIFIA Credit Provider's or the Assignee's rights or remedies available under any Financing Document.

"Maximum Funding Amount" means the maximum amount of funds to be advanced by the WIFIA Credit Provider from time to time to the City, as agent for the Corporation, pursuant to the WIFIA Credit Agreement, to pay the costs of the WIFIA Water System Portion of the Project, which amount shall not exceed \$36,516,525.66 (excluding any interest that is capitalized in accordance with the terms hereof and permitted to be added to the principal amount during the Capitalized Interest Period), except as otherwise agreed by the City and WIFIA Credit Provider.

"Net Revenues" means, for any period, an amount equal to all of the System Revenues received during such period minus the Operation and Maintenance Costs for such period.

"Obligations" means obligations, including any bonds, notes, other evidences of indebtedness, installment sale arrangements, financing lease arrangements, or similar obligations that are secured by a pledge and Lien on all or a portion of the System Revenues, including this Agreement, any other Senior Obligations, and any Subordinate Obligations.

"Operation and Maintenance Costs" means all actual maintenance and operation costs (excluding major maintenance costs and capital expenditures) incurred and paid from System Revenues (or, if applicable, forecasted to be incurred and paid from System Revenues) in connection with the operation and maintenance of the Water System in any particular time period to which said term is applicable, including payments for taxes (excluding income taxes), insurance, consumables, advertising, marketing, payments pursuant to any agreements for the management, operation or maintenance of the Water System, reasonable legal fees and expenses paid by the City in connection with the management, maintenance or operation of the Water System, fees paid in connection with obtaining, transferring, maintaining or amending any authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions or declarations of or with any Governmental Authority, fees of the paying agent, Technical and Rate Consultant and other entities relating to administration of the Financing Documents, costs incurred in connection with the performance of environmental mitigation work to be carried out by the City (but only to the extent such work has a useful life of less than twelve (12) months), amounts required for reasonable general and administrative expenses (including employee salaries and benefits, but excluding unbudgeted extraordinary payments to pension funds and post-employment benefit funds), but exclusive in all cases of rebates or grants, debt payments, noncash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature.

"Outstanding" means, with respect to: (i) this Agreement, Installment Payments that have not been paid, in full, in immediately available funds; and (ii) all other Obligations, Obligations that have not been fully repaid, cancelled or legally defeased or discharged pursuant to Section 5.15(e) (*Covenants Regarding Other Obligations – Defeasance of Other Obligations*).

"Outstanding Balance" means, with respect to the Installment Payments (i) the initial Principal Components of the Installment Payments (equal to the sum of the aggregate amount then advanced by the WIFIA Credit Provider under the WIFIA Credit Agreement plus the Capitalized Interest added thereto pursuant to Section 4.4(c)(ii) (*Installment Payments – Initial Installment*

Payment Schedule; Adjustments to Installment Payment Schedule)) minus (ii) the aggregate Principal Components of the Installment Payments paid or prepaid by the City pursuant to Article VII (*Prepayment of Installment Payments*).

“Payment Default” has the meaning set forth in Section 6.1(a) (*Events of Default Defined – Payment Default*).

“Payment Period” means the six (6) month period beginning on May 1, 2024 and ending on October 31, 2024, and each succeeding six (6) month period thereafter; provided, however, that if the Installment Payment Commencement Date occurs earlier than November 1, 2024, the first Payment Period shall be the six (6) month period ending on the date immediately prior to the Installment Payment Commencement Date.

“Permitted Investments” has the meaning assigned to that term in the WIFIA Credit Agreement.

“Permitted Liens” has the meaning assigned to that term in the WIFIA Credit Agreement.

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

“Pledged Collateral” means, collectively (a) the Net Revenues, (b) the WIFIA Payment Account and all proceeds deposited therein from time to time, (c) the WIFIA Reserve Account and all proceeds deposited therein from time to time, (d) available amounts in the Subordinate Obligation Payment Accounts, the Subordinate Obligation Reserve Accounts and the general reserve account from which the City shall make the required deposits of System Revenues as set forth in Section 4.5(c)(3) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds- Deposits in the Event of Deficiency*), and (e) such other amounts as are pledged or available as set forth in Section 4.5 (*Pledge and Application of Net Revenues – Flow of Funds*).

“Principal Component” means (a) with respect to an Installment Payment, the principal component of such Installment Payment due and payable on the applicable Installment Payment Date as set forth on the Installment Payment Schedule and (b) with respect to the aggregate Installment Payments, all payments of the principal components of the Installment Payments required to be paid by the City on any date under Section 4.4 (*Installment Payments*) and which amount is equal to the aggregate amount advanced by the WIFIA Credit Provider under the WIFIA Credit Agreement plus the Capitalized Interest permitted to be capitalized pursuant to Section 4.4(c)(ii) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*).

“Project” means the design and construction of a new water reclamation facility, sewage pump station and pipeline, new injection wells for groundwater storage, recycled water pipeline and waste discharge pipeline, located within the City and in an unincorporated area of the County of San Luis Obispo adjacent to the City boundaries.

“Project Accounts” means the accounts established and held by the City pursuant to any Senior Obligation Documents or Subordinate Obligation Documents to hold proceeds of Senior Obligations or Subordinate Obligations issued or incurred to finance costs incurred in connection with the Water System Project.

“Purchase Price” means the aggregate purchase price payable by the City to the Corporation for the purchase of the WIFIA Water System Portion of the Project, payable by the City in Installment Payments as set forth in Section 4.4 (*Installment Payments*).

“Rate Consultant” means a single individual or firm, not related to the City and considered independent with respect to the City (i.e., not an employee of the City or any affiliate of the City or having other material business relationships with the City) authorized to do business in and qualified to practice in the areas required to provide the services required of the Rate Consultant, that has expertise in the technical requirements for establishing rates and charges for governmental water or wastewater systems similar in size and scope to the Water System, selected by the City.

“Rate Covenant” has the meaning set forth in Section 5.6(b) (*Rates and Charges*).

“Resolution” means Resolution No. [____], adopted by the City Council on [____], 2019 and authorizing, among other things, the City to enter into this Agreement, the Assignment Agreement and the WIFIA Credit Agreement and to create the pledge and security interest established hereunder.

“Revenue Account” means the account so designated and established within the Water Fund pursuant to Section 4.5(c)(1) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds- Establishment of Funds and Accounts*).

“Senior Debt Service Coverage Ratio” means, for each City Fiscal Year, the ratio of: (a) Net Revenues during such City Fiscal Year to (b) Debt Service on all Outstanding Senior Obligations for such City Fiscal Year.

“Senior Obligation Documents” means, collectively, (i) this Agreement, (ii) the Assignment Agreement, (iii) the WIFIA Credit Agreement; and (iv) the indenture of trust, trust agreement, supplemental installment sale agreement, installment sale agreement, lease, loan agreement or other document (including resolutions or ordinances) authorizing the issuance of any Senior Obligations or any securities which evidence Senior Obligations.

“Senior Obligation Interest Payment Date” means, with respect to any Senior Obligation, any date on which an interest payment on the applicable bonds, or a payment of the interest component of the applicable installment sale agreement or capital lease agreement, is regularly scheduled to be paid to holders of the applicable Senior Obligation.

“Senior Obligation Payment Accounts” means the payment accounts within the Water Fund established pursuant to the Senior Obligation Documents for purposes of making payments of principal of and interest on Senior Obligations.

“Senior Obligation Payment Period” shall mean, for any Senior Obligation, (i) with respect to interest payments (or interest components of an installment payment), the number of months between the applicable Senior Obligation Interest Payment Dates and (ii) with respect to principal payments, including sinking fund installment redemptions (or the principal components of an installment payment or capital lease payment), the number of months between the applicable Senior Obligation Principal Payment Dates. With respect to the first interest payment and principal payment for any Senior Obligation, the applicable number of months determined as set forth above before the initial interest payment or principal payment, as applicable, shall also be a Senior Obligation Payment Period.

“Senior Obligation Principal Payment Date” means, with respect to any Senior Obligation, any date on which a principal payment or mandatory sinking fund redemption payment is due on the applicable bonds, or principal component of the applicable installment sale payment or capital lease payment, is regularly scheduled to be paid to holders of the applicable Senior Obligation.

“Senior Obligation Reserve Accounts” means the reserve accounts within the Water Fund established pursuant to the Senior Obligation Documents.

“Senior Obligations” means (i) all Installment Payments due under this Agreement; and (ii) Additional Senior Obligations.

“State” means the State of California.

“Subordinate Obligation Documents” means the indenture of trust, trust agreement, supplemental installment sale agreement, installment sale agreement, lease, loan agreement or other document (including resolutions or ordinances) authorizing the issuance of any Subordinate Obligations or any securities which evidence Subordinate Obligations.

“Subordinate Obligation Payment Accounts” means the payment accounts within the Water Fund established pursuant to the Subordinate Obligation Documents for purposes of making payments of principal of and interest on Subordinate Obligations.

“Subordinate Obligation Reserve Accounts” means the reserve accounts within the Water Fund established pursuant to the Subordinate Obligation Documents.

“Subordinate Obligations” means any Obligation that is fully subordinated to the City’s payment obligations under this Agreement in priority of payment (as to both principal and interest, installment payments, lease payments or similar payments due with respect to Obligations), voting and priority of security interest in the Net Revenues, including with respect to payment from revenues and reserves and payment upon default or acceleration of any such Obligations.

“Substantial Completion Date” means, with respect to the Project, the date on which the City, as agent of the Corporation, certifies to the WIFIA Credit Provider and the Assignee, with evidence satisfactory to the WIFIA Credit Provider and the Assignee, that the Project is able to perform the functions (for both the Wastewater System and the Water System) for which the Project is designed.

“System Accounts” means all funds, accounts or subaccounts holding System Revenues, including the Water Fund and the Revenue Account, Senior Obligation Payment Accounts (including the WIFIA Payment Account), the Senior Obligation Reserve Accounts (including the WIFIA Reserve Account), the Subordinate Obligation Payment Accounts, the Subordinate Obligation Reserve Accounts and the general reserve account therein and such additional funds, accounts or sub-accounts that may be established in connection with the Water System for System Revenues.

“System Revenues” means (a) all rates, fees, charges, rents, taxes or assessments dedicated to pay costs of the Water System, and other income and receipts received by the City from the ownership or operation of the Water System, (b) loss proceeds from business interruption insurance, (c) interest received on any moneys or securities held in System Accounts, and (d) the moneys and securities of any entity that is acquired by the City and that is deposited in the Revenue Account to the extent such moneys are applied to pay liabilities incurred by the acquired company prior to the date of acquisition.

System Revenues shall not include (i) proceeds of the issuance of Obligations, (ii) the proceeds for any insurance pertaining to loss or damage to persons and the property of others or to loss or damage to the Water System, or the proceeds of condemnation or the sale or other disposition of any part of the Water System, except to the extent any such proceeds are applied by the City to pay Operation and Maintenance Costs, (iii) transfers to the Revenue Account from any other fund or account, unless approved by the Assignee, (iv) any amount received or receivable from the United States or the State (or any agency of either thereof) or from any other sources as or on account of a grant or contribution for or with respect to the construction, acquisition, improvement, extension, renewal or other development of any part of the Water System, (v) customers’ deposits or any other deposits subject to refund until such deposits have become the property of the City, (vi) any proceeds of ad valorem property taxes, or (vii) any proceeds of taxes or assessments restricted by law to be used by the City to pay bonds or other obligations heretofore or hereafter issued. “System Revenues” shall not include any amounts on deposit in the general fund of the City except to the extent such amounts constitute payment for fees and charges for the services and facilities furnished by the Water System to the City.

“Technical and Rate Consultant” means a single individual or firm, or a combination of one or more individuals or firms, not related to the City and considered independent with respect to the City (i.e., not an employee of the City or any affiliate of the City or having other material business relationships with the City) authorized to do business in and qualified to practice in the areas required to provide the services required of the Technical and Rate Consultant, that together have expertise in the technical requirements for operation and maintenance of systems similar in size and scope to the Water System and delivering the services provided by the Water System, and establishing rates and charges for governmental water or wastewater systems similar in size and scope to the Water System, selected by the City and reasonably acceptable to the Assignee.

“Wastewater System” means any and all properties and assets, real and personal, tangible and intangible, of the City, now or hereafter existing, used or pertaining to the disposal or reuse of wastewater, including the Wastewater System Project, sewage treatment plants, intercepting and collecting sewers, outfall sewers, force mains, pumping stations, ejector stations, pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection,

treatment, purification or disposal of sewage, and any necessary lands, rights of way and other real or personal property useful in connection therewith, and all additions, extensions, expansions, improvements and betterments thereto and equipping thereof, including the Project.

“Wastewater System Project” means the portion of the Project that is allocable to the Wastewater System equal to 71% of the Project costs.

“Wastewater System Project Assignment Agreement” means the Assignment Agreement (Wastewater System Project), dated as of the Effective Date, between the Corporation and the WIFIA Credit Provider, as the initial assignee thereunder.

“Wastewater System Project Credit Agreement” means the WIFIA Credit Agreement, dated as of the Effective Date, by and among the WIFIA Credit Provider, the Corporation and the City relating to the WIFIA Wastewater System Portion of the Project.

“Wastewater System Project Credit Agreement Documents” means (a) the Wastewater System Project Credit Agreement, (b) the Wastewater System Project Installment Sale Agreement, (c) Wastewater System Project Assignment Agreement and (d) the Financing Documents.

“Wastewater System Project Installment Sale Agreement” means the Installment Sale Agreement (Wastewater System Project), dated as of the Effective Date, by and between the City and the Corporation entered into with respect to the WIFIA Wastewater System Portion of the Project.

“Water Fund” means the fund or funds established and held by the City with respect to the Water System.

“Water System” means [REDACTED].

“Water System Project” means the portion of the Project that is allocable to the Water System equal to 29% of the Project costs.

“WIFIA Credit Agreement” means the WIFIA Credit Agreement, dated as of the Effective Date, by and among the WIFIA Credit Provider, the Corporation and the City relating to the WIFIA Water System Portion of the Project.

“WIFIA Credit Documents” means (a) this Agreement, (b) the WIFIA Credit Agreement, and (c) the Assignment Agreement.

“WIFIA Credit Provider” means the United States Environmental Protection Agency, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency or any direct or indirect assignee of the original WIFIA Credit Provider’s interest in this Agreement.

“WIFIA Payment Account” means the account so designated and established within the Water Fund pursuant to Section 4.5(c)(1) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds – Establishment of Funds and Accounts*) and Section 4.6 (*WIFIA Payment Account*), which will be used to accumulate

Net Revenues to ensure timely payment of Installment Payments and from which Installment Payments will be paid.

“WIFIA Reserve Account” means the account so designated and established within the Water Fund pursuant to Section 4.5(c)(1) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds - Establishment of Funds and Accounts*) and Section 4.7 (*WIFIA Reserve Account*), which will be used to accumulate amounts equal to the WIFIA Reserve Account Requirement to ensure timely payment of Installment Payments.

“WIFIA Reserve Account Requirement” means, as of the date of calculation, an amount equal to fifty percent (50%) of the maximum annual aggregate amount (without duplication) of Installment Payments that will become due on any two consecutive Installment Payment Dates on the Installment Payment Schedule.

“WIFIA Reserve Event” means, as of the final day of the City Fiscal Year, failure of the City to maintain a Senior Debt Service Coverage Ratio of at least 1.30 to 1.00.

“WIFIA Wastewater System Portion of the Project” means 20% of the Eligible Project Costs, all of which Eligible Project Costs are financed by the Wastewater System Project Installment Sale Agreement and the Wastewater System Project Credit Agreement.

“WIFIA Water System Portion of the Project” means 29% of the aggregate Eligible Project Costs, all of which Eligible Project Costs are financed by this Agreement and the WIFIA Credit Agreement.

Section 1.2. Interpretation.

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

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

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

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

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

(f) The appendices to this Agreement are hereby incorporated by reference and made an integral part of this Agreement.

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

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

(i) Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 8.1 (*Notices*) and signed by a duly authorized representative of such party.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1. Representations, Covenants and Warranties of the City. The City represents, covenants and warrants to the Corporation, the Assignee and the WIFIA Credit Provider as follows:

(a) The City is a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State of California, and is empowered, among other things, to maintain and operate the Water System and to acquire in the name of the City any interest in real or personal property necessary or convenient for the operation of the Water System and to execute and deliver this Agreement, and to carry out and consummate all transactions contemplated hereby and has duly authorized the execution, delivery and performance of this Agreement.

(b) The laws of the State authorize the City to enter into this Agreement, and to enter into the transactions contemplated hereby and to carry out its obligations hereunder.

(c) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a material breach of any ordinances or other statutory or organizational documents of the City, or conflicts with or results in a material breach of any applicable law, administrative rule or regulation, any applicable court or administrative decree or order or the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound or constitutes a default under any of the foregoing.

(d) The City has duly authorized, executed and delivered this Agreement in accordance with the laws of the State of California. This Agreement is a legal, valid and binding obligation of the City, enforceable in accordance with its terms, subject only to laws related to creditor's rights, moratorium, receivership, insolvency or bankruptcy, general equitable principles, judicial discretion and legal limitations applicable to public agencies in the State of California. No consent or approval of any trustee, holder of any indebtedness of the City or any other person, and

no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the City of this Agreement, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by this Agreement or (B) the fulfillment of or compliance by the City with the terms and conditions of this Agreement, except as have been obtained or made and as are in full force and effect.

(e) There is no action, suit, proceeding, inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting (i) the Water System or the System Revenues, (ii) the ability of the City to execute, deliver and perform its obligations under this Agreement, or (iii) the City or the assets, properties or operations of the City which, solely in the case of this clause (iii), that in any case could reasonably be expected to result in a Material Adverse Effect, or (iv) the City's receipt of the System Revenues or ability to pay the Installment Payments on a timely basis. The City is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time, or both, could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any federal, state, educational or other Governmental Authority, which default could reasonably be expected to result in a Material Adverse Effect.

(f) During the term of this Agreement, the City will use the Project only for the purpose of the Wastewater System and the Water System. The allocation of the costs of the Project between the Wastewater System and the Water System is fair and reasonable, and the rates and charges payable by users of the Wastewater System and the Water System respectively, reflect such allocation of costs.

(g) The City has structured fees, estimated System Revenues and/or taken other lawful actions necessary to ensure that the pledge of and Lien on Net Revenues is sufficient to pay all Installment Payments and other Obligations when due and payable. The Pledged Collateral will be deposited in the funds and accounts as required herein and applied towards payment of all Installment Payments and other Obligations when due and payable.

(h) Section 9109(c)(2) of the California Commercial Code and Section 5451 of the California Government Code, permit the transactions contemplated by this Agreement and the City has taken all necessary action, in each case, to establish, in favor of the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee), the legal, valid, binding and enforceable Liens on the Pledged Collateral purported to be created, pledged, assigned, and granted pursuant to this Agreement, irrespective of whether any person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Liens on the Pledged Collateral are first priority senior Liens, are in full force and effect and (1) are not subordinate or junior to any other Liens in respect of the Pledged Collateral except for the Permitted Liens arising by operation of law and (2) are not *pari passu* with any obligations other than, with respect to the Liens on Net Revenues of Senior Obligations. Liens on amounts in the WIFIA Payment Account and the WIFIA Reserve Account are first priority senior Liens, are in full force and effect and are solely for the benefit of the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee). Except for Permitted Liens, neither the City or the Corporation has created, or is under any obligation to create, or has

entered into any transaction or agreement that would result in the imposition of, any Lien on this Agreement, the Installment Payments, the Pledged Collateral, the Water System, the Project, the System Revenues, the properties or assets in relation to the Project, or the properties or assets of the Corporation. All documents and instruments have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the Pledged Collateral and a legal, valid, binding, and enforceable assignment of the Corporation's rights in this Agreement pursuant to the Assignment Agreement, in both cases, in favor of the Assignee. Neither the attachment, validity, enforceability or priority of the security interest in the Pledged Collateral granted pursuant to this Agreement, or the assignment of the Corporation's right in this Agreement pursuant to the Assignment Agreement, to the Assignee, is governed by the Uniform Commercial Code.

(i) The City has an immediate need for, and expects to make immediate use of, the Project, which need is not temporary or expected to diminish during the term of this Agreement. To the extent the City is or may be required to use additional revenues or spend additional money to complete the Project or make the Project useable, the City represents, warrants and covenants to take all required actions to complete the Project and make the Project useable. The City presently intends to continue this Agreement and make all Installment Payments required hereunder for the entire term of this Agreement and until the Purchase Price is irrevocably paid in full in immediately available funds.

(j) The City acknowledges that (i) the WIFIA Credit Provider, as a party to the WIFIA Credit Agreement and as the initial Assignee of the Corporation's rights in and to this Agreement pursuant to the Assignment Agreement, is acting solely for its own account and not as a fiduciary for the City or in the capacity of broker, dealer, placement agent, municipal securities underwriter or municipal advisor, (ii) the WIFIA Credit Provider has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of the City or with respect to the Installment Payments, and (iii) the WIFIA Credit Provider has expressed no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, or the correctness of any legal interpretation made by counsel to any other party with respect to any such matters.

Section 2.2. Representations, Covenants and Warranties of the Corporation. The Corporation represents, covenants and warrants to the City, the WIFIA Credit Provider and the Assignee as follows:

(a) The Corporation is a nonprofit public benefit corporation duly organized, operating and validly existing under the laws of the State; has all requisite power and authority to execute and deliver this Agreement and the Assignment Agreement and to carry out and consummate the transactions contemplated hereby and thereby and to own and hold real and personal property and to sell the same; and has duly authorized the execution, delivery and performance of this Agreement and the Assignment Agreement.

(b) Neither the execution and delivery of this Agreement and the Assignment Agreement nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results

in a material breach of the Corporation's articles of incorporation, resolutions, bylaws or other organizational documents or conflicts with or results in a material breach of any applicable law, administrative rule or regulation, any applicable court or administrative decree or order or the terms, conditions or provisions of any restriction or any agreement or instrument to which the Corporation is now a party or by which the Corporation is bound or constitutes a default under any of the foregoing.

(c) The Corporation has good and marketable title to the WIFIA Water System Portion of the Project, which is otherwise free and clear of encumbrances, except as previously disclosed to the City, the WIFIA Credit Provider and the Assignee, sufficient to cause the acquisition, construction and installation of the WIFIA Water System Portion of the Project by the City, as agent of the Corporation, as set forth in this Agreement and to sell the WIFIA Water System Portion of the Project to the City under this Agreement.

(d) The Corporation has duly authorized, executed and delivered this Agreement and the Assignment Agreement in accordance with the laws of the State of California. This Agreement and the Assignment Agreement are each a legal, valid and binding obligation of the Corporation, enforceable in accordance with its terms, subject only to laws related to creditor's rights, moratorium, receivership, insolvency or bankruptcy, general equitable principles, judicial discretion and legal limitations applicable to public agencies in the State of California. No consent or approval of any trustee, holder of any indebtedness of the Corporation or any other person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Corporation of this Agreement and the Assignment Agreement, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by this Agreement and the Assignment Agreement or (B) the fulfillment of or compliance by the Corporation with the terms and conditions of this Agreement and the Assignment Agreement, except as have been obtained or made and as are in full force and effect.

(e) The Corporation shall cooperate fully with the Assignee at the expense of the City in filing any proof of loss with respect to any insurance policy maintained pursuant to Article V (*Covenants of the City and the Corporation*) and shall cooperate fully with the City in contesting any Lien filed or established against the WIFIA Water System Portion of the Project or the System Revenues, upon the request and at the expense of the City pursuant to Article V (*Covenants of the City and the Corporation*).

ARTICLE III

ACQUISITION AND CONSTRUCTION OF THE WIFIA WATER SYSTEM PORTION OF THE PROJECT

Section 3.1. Acquisition and Construction of the WIFIA Water System Portion of the Project. The Corporation agrees to cause the acquisition, construction and installation of the WIFIA Water System Portion of the Project by the City, as agent of the Corporation, as set forth below. In order to provide the funds for the acquisition, construction and installation of the WIFIA Water System Portion of the Project, the Corporation agrees to cause the WIFIA Credit Provider, in consideration of the assignment of the Corporation's rights hereunder pursuant to the

Assignment Agreement, to advance funds from time to time to the City, as agent for the Corporation, in an aggregate amount not to exceed the Maximum Funding Amount, subject to the terms and conditions of the WIFIA Credit Agreement. The Corporation hereby appoints the City as its agent to carry out all phases of the acquisition, construction and installation of the WIFIA Water System Portion of the Project under and in accordance with the provisions hereof. The City hereby accepts such appointment and assumes all rights, liabilities, duties and responsibilities of the Corporation regarding the acquisition, construction and installation of the WIFIA Water System Portion of the Project. As agent of the Corporation hereunder, the City shall enter into, administer and enforce all purchase orders or other contracts relating to the WIFIA Water System Portion of the Project. In constructing the WIFIA Water System Portion of the Project, the City shall comply with the obligations and covenants of the City set forth in the WIFIA Credit Agreement.

The Corporation hereby appoints the City as its agent to request funds from time to time under the WIFIA Credit Agreement. The City hereby accepts such appointment and assumes all rights, liabilities, duties and responsibilities of the Corporation under the WIFIA Credit Agreement regarding the requisition of funds from time to time under the WIFIA Credit Agreement. The City, as agent of the Corporation, shall prepare and submit all requisitions for funds to the WIFIA Credit Provider in accordance with the requirements of Exhibit D (*Requisition Procedures*) of the WIFIA Credit Agreement. The City, as agent of the Corporation, is solely responsible for meeting the conditions set forth above, and for proper preparation of and timely submission of requisitions, and any delays or denials of funding for any reason whatsoever are the sole responsibility of the City, as agent of the Corporation. The City hereby agrees to apply all amounts made available by the WIFIA Credit Provider to the City, as agent of the Corporation, for payment of Eligible Project Costs pursuant to the WIFIA Credit Agreement to Eligible Project Costs of the WIFIA Water System Portion of the Project.

The City hereby agrees to diligently supervise and provide for, or cause to be supervised and provided for, the acquisition, construction and installation of the WIFIA Water System Portion of the Project in accordance with the plans and specifications, purchase orders, construction contracts and other documents relating thereto and approved by the City under all applicable requirements of law and the WIFIA Credit Agreement. All contracts for, and all work relating to, the acquisition, construction and installation of the WIFIA Water System Portion of the Project are subject to all applicable provisions of law relating to the acquisition and construction of public works by the City. The City has the right to specify the exact scope, nature and identification of the WIFIA Water System Portion of the Project and the respective components thereof, and to modify the description of the WIFIA Water System Portion of the Project or any component thereof, subject to any limitations set forth in the WIFIA Credit Agreement.

The failure to complete the WIFIA Water System Portion of the Project by its estimated completion date does not constitute an Event of Default hereunder or a ground for termination hereof, nor will any such failure result in the diminution, abatement or extinguishment of the obligations of the City hereunder to pay the Installment Payments when due. Nothing contained herein shall be deemed to be a waiver of the Corporation's, the WIFIA Credit Provider's or the Assignee's rights and remedies should the City fail to complete the WIFIA Water System Portion of the Project and to complete other improvement and modification of the WIFIA Water System Portion of the Project as represented, warranted and covenanted herein.

ARTICLE IV

INSTALLMENT SALE OF WIFIA WATER SYSTEM PORTION OF THE PROJECT TO CITY; INSTALLMENT PAYMENTS

Section 4.1. Sale of WIFIA Water System Portion of the Project to City. In consideration for the Corporation's assistance in the acquisition, construction and installation of the WIFIA Water System Portion of the Project, the City agrees to purchase from the Corporation, and hereby purchases from the Corporation, and the Corporation agrees to sell and convey to the City, and hereby sells and conveys to the City, the WIFIA Water System Portion of the Project by paying the Purchase Price therefor to the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee). The Purchase Price for the WIFIA Water System Portion of the Project shall be payable by the City in Installment Payments as set forth in Section 4.4 (*Installment Payments*). Following the payment in full of the Purchase Price of the WIFIA Water System Portion of the Project, the City will have full and exclusive ownership of the WIFIA Water System Portion of the Project.

Section 4.2. Title; Taxes. Title to the WIFIA Water System Portion of the Project purchased and sold under this Agreement shall vest in the City on the Effective Date. The Corporation shall take all actions necessary to vest in the City all of the Corporation's rights in and title to the WIFIA Water System Portion of the Project. Such title shall be held by the City in trust for the benefit of the Assignee, pending the payment in full of the Purchase Price of the WIFIA Water System Portion of the Project under this Agreement.

The parties to this Agreement contemplate that the WIFIA Water System Portion of the Project will be used for a governmental or proprietary purpose of the City and, therefore, that the WIFIA Water System Portion of the Project will be exempt from all property taxes, including any licensing fees. The Installment Payments payable by the City under this Agreement have been established to reflect the savings resulting from this exemption from taxation. The City will take such actions necessary under applicable law to obtain said exemption. Nevertheless, if the use, possession or acquisition of the WIFIA Water System Portion of the Project is determined to be subject to taxation, or licensing fees, or later becomes subject to such taxes, or licensing fees, the City shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to the WIFIA Water System Portion of the Project.

Section 4.3. [Reserved]

Section 4.4. Installment Payments.

(a) Obligation to Pay. The City agrees to pay to the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee), the Purchase Price of the WIFIA Water System Portion of the Project, payable in Installment Payments, each consisting of a Principal Component and an Interest Component, on the Installment Payment Dates and on each other date (including the Final Installment Payment Date) and any date on which payment thereof is due by reason of the optional or mandatory prepayment of the Installment Payments) on which payment thereof is required to be made hereunder; provided, that if any such date is not a Business Day, payment shall be made on the next Business

Day following such date. Notwithstanding anything herein to the contrary, all Installment Payments and all Additional Payments then due and payable remaining unpaid as of the Final Installment Payment Date shall be due and payable in full on the Final Installment Payment Date (or on any earlier date on which the unpaid Principal Components of the Installment Payments are subject to mandatory prepayment).

The Principal Component and the Interest Component of each Installment Payment shall be calculated as set forth below and the Installment Payments shall be calculated as level payments so that each Installment Payment is approximately equal in amount in order for the aggregate unpaid Principal Components of the Installment Payments to be reduced to zero (\$0) on the Final Installment Payment Date.

The Principal Components of the Installment Payments shall be the aggregate amount set forth in the Installment Payment Schedule as the aggregate Principal Components of all of the Installment Payments. The Principal Component of each Installment Payment shall be as set forth in the Installment Payment Schedule for the applicable Installment Payment Date.

The Interest Components of the Installment Payments shall be calculated as set forth in Section 4.4(b) (*Installment Payments – Calculation of Interest Components*).

Installment Payments shall be payable as set forth in Section 4.4(g) (*Installment Payments – Manner of Payments*).

No Installment Payments shall be due and payable during the Capitalized Interest Period.

(b) Calculation of Interest Components. The Interest Components of the Installment Payments shall accrue and be calculated based on the aggregate unpaid Principal Components of the Installment Payments from time to time, at the Interest Rate on the basis of a 360-day year of twelve 30-day months; provided, that, upon the occurrence of an Event of Default, the Interest Components of the Installment Payments shall be calculated based on the unpaid Principal Components of the Installment Payments at the Default Rate for the period (i) in the case of any Payment Default, from (and including) its due date to (but excluding) the date of actual payment and (ii) in the case of any other Event of Default, from (and including) the date of occurrence of such Event of Default to (but excluding) the earlier of the date on which (x) such Event of Default has been cured (if applicable) in accordance with the terms of this Agreement and (y) the Purchase Price has been irrevocably paid in full to the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee) in immediately available funds. For the avoidance of doubt, Capitalized Interest shall accrue and be added to the unpaid Principal Components of the Installment Payments, and the Interest Component of the Installment Payments shall accrue and be calculated, only on the amounts advanced by the WIFIA Credit Provider under the WIFIA Credit Agreement as and to the extent so advanced in accordance with Section 4 (*Disbursement Conditions*) of the WIFIA Credit Agreement.

(c) Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule.

(i) The initial Installment Payment Schedule is a “projected” Installment Payment Schedule that corresponds to Exhibit F in the WIFIA Credit Agreement.

(ii) No payment of any Installment Payment is required to be made during the Capitalized Interest Period. On each May 1 and November 1 occurring during the Capitalized Interest Period, an aggregate amount equal to the Capitalized Interest in the six (6) month period ending immediately prior to such May 1 or November 1, as applicable, shall be added to the unpaid Principal Components of the Installment Payments. The Interest Components of the Installment Payments shall commence accruing on Capitalized Interest at the Interest Rate on the date such Capitalized Interest is added to the unpaid Principal Components of the Installment Payments during the Capitalized Interest Period pursuant to this Section 4.4(c)(ii). The initial Installment Payment Schedule includes such “projected” additions of Capitalized Interest.

(iii) Within thirty (30) days after the end of the Capitalized Interest Period, it is anticipated that the Assignee shall give written notice to the City stating the unpaid Principal Components of the Installment Payments, which aggregate amount shall be equal to the Outstanding Balance, in either case, as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the City under this Agreement, the WIFIA Credit Agreement or under any of the other WIFIA Credit Documents. Notwithstanding the foregoing, the Capitalized Interest Period shall end immediately upon written notification to the City by the Assignee that an Event of Default has occurred, in which case the provisions of Section 4.4(c)(ii) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*) shall no longer apply, accrued Interest Components of the Installment Payments shall no longer be permitted to be capitalized and each Installment Payment following the end of the Capitalized Interest Period shall include an Interest Component calculated as set forth in Section 4.4(b) (*Installment Payments – Calculation of Interest Components*) and Installment Payments shall be payable as set forth in Section 4.4(g) (*Installment Payments – Manner of Payments*). For purposes of this subsection, an Event of Default under Section 6.1(d) (*Events of Default Defined – Cross Default with Other Financing Documents*) shall be deemed to have occurred upon the occurrence of any nonpayment of any Obligation when due, regardless of whether the holders of the applicable Obligations, or any legal order, has waived, permitted deferral of, or forgiven any such payment. The Assignee may in its discretion at any time and from time to time, or when so requested by the City, advise the City by written notice of the amount of the unpaid Principal Components of the Installment Payments and the Outstanding Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(iv) The Assignee is hereby authorized by the City and the Corporation to modify the Installment Payment Schedule from time to time (including after a prepayment), in accordance with Section 4.4(a) (*Installment Payments – Obligation to Pay*), to reflect (A) any change to the unpaid Principal Components of the Installment Payments or the date and amount of any Installment Payment due and payable or to become due and payable by the City under this Agreement at the end of the Capitalized Interest Period (taking into account if less than

\$36,516,525.66 has been advanced by the WIFIA Credit Provider under the WIFIA Credit Agreement and the Capitalized Interest), (B) any partial prepayments of the unpaid Principal Components of the Installment Payments, and (C) such other information as the Assignee may determine is necessary for administering this Agreement. Any calculations described above shall be rounded up to the nearest whole cent. Any adjustments or revisions to the Installment Payment Schedule as a result of changes in the Outstanding Balance (due to prepayment or otherwise) shall be applied in accordance with Section 7.6 (*General Prepayment Instructions*). Absent manifest error, the Assignee's determination of such matters shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the City's obligations under this Agreement, the WIFIA Credit Agreement or any other WIFIA Credit Document. It is anticipated that the Assignee shall provide the City with a copy of the revised Installment Payment Schedule, but no failure to provide or delay in providing the City with such revised Installment Payment Schedule shall affect any of the obligations of the City under this Agreement.

(d) Rate on Overdue Payments. If the City fails to make any of the payments required in this Section on or before the due date therefor, the Installment Payment in default shall continue as an obligation of the City until the amount in default shall have been fully paid and the City agrees to pay the same with interest thereon, to the extent permitted by law, from the date thereof at the Default Rate or, if lower, the maximum rate then permitted by law.

(e) Assignment. The City understands and agrees that all Installment Payments have been assigned by the Corporation to the Assignee under the Assignment Agreement, and the City hereby assents to such assignment. The Corporation hereby directs the City, and the City hereby agrees, to pay to the Assignee all payments payable by the City under this Section and all amounts payable by the City under Article VII (*Prepayment of Installment Payments*).

(f) Additional Payments. In addition to the Installment Payments to be made by the City hereunder, the City shall pay to the Corporation, the WIFIA Credit Provider and the Assignee, as applicable, from time to time when due the Additional Payments for administering and enforcing this Agreement.

(g) Manner of Payments. Payments under this Agreement shall be made in accordance with instructions given by the person entitled to such payment, and in the case of the WIFIA Credit Provider, in accordance with Section 8 (*Payment of Installment Payments*) of the WIFIA Credit Agreement.

Section 4.5. Pledge and Application of Net Revenues – Flow of Funds.

(a) Pledge of Pledged Collateral. As security for the City's obligation to pay the Installment Payments pursuant to this Agreement, and concurrently with the issuance and delivery of this Agreement, the City hereby irrevocably grants, pledges and assigns to the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee), a Lien on and security interest in the Pledged Collateral. Such Lien and security interest hereby granted shall constitute a first and prior Lien and security interest in the Pledged Collateral and such Lien and security interest shall attach, be perfected and be valid and binding immediately without the need for any physical delivery, recordation, filing, or further act. All

organizational, regulatory or other necessary action on the part of the City and the Corporation with respect to the foregoing has been duly and validly taken. The Pledged Collateral shall not be used for any other purpose while any of the Installment Payments remain unpaid, except that out of the System Revenues there may be apportioned such sums, for such purposes, as are expressly permitted by this Agreement and the WIFIA Credit Agreement.

(b) Priority of Liens. The Lien on and security interest in the Pledged Collateral granted hereunder is in full force and effect and is not subordinate or junior to any other Lien on or security interest in the Pledged Collateral. The Lien on and security interest in the Net Revenues and the collateral described in clause (d) of the definition of “Pledged Collateral” granted hereby is on a parity with the pledge and lien which secures the payment of the Senior Obligations. The Lien on and security interest in the WIFIA Payment Account and all proceeds deposited therein from time to time and the WIFIA Reserve Account and all proceeds deposited therein from time to time is not subject to any other Lien or security interest. In addition, with respect to the Lien on and security interest in amounts in the WIFIA Payment Account and the WIFIA Reserve Account, such Lien and security interest is solely for the benefit of the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee), and the Holders of other Senior Obligations shall have no Lien on or claim to funds in the WIFIA Payment Account or the WIFIA Reserve Account following deposit therein.

(c) Deposit of System Revenues Into Revenue Account; Flow of Funds.

(1) *Establishment of Funds and Accounts.* The City has previously established the Water Fund on its books of account and records, which the City shall continue to hold and maintain for the purposes and uses set forth herein. Within the Water Fund the City shall establish the Revenue Account, the WIFIA Payment Account and the WIFIA Reserve Account. At the time of issuance of any Additional Senior Obligation, the City shall establish the related Senior Obligation Payment Account and the related Senior Obligation Reserve Account within the Water Fund for that Additional Senior Obligation. At the time of issuance of any Additional Subordinate Obligations, the City shall establish the related Subordinate Obligation Payment Account and the related Subordinate Obligation Reserve Account within the Water Fund for that Additional Subordinate Obligation.

Amounts on deposit in each Senior Obligation Payment Account shall be applied only as set forth in Section 4.5(c)(5) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds – Application of Senior Obligation Payment Accounts*) and shall be pledged only to the applicable Senior Obligation. Amounts on deposit in each Senior Obligation Reserve Account shall be applied only as set forth in Section 4.5(c)(6) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds – Application of Senior Obligation Reserve Accounts*) and shall be pledged only to the applicable Senior Obligation. Amounts on deposit in each Subordinate Obligation Payment Account shall be applied only as set forth in Section 4.5(c)(7) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds – Application of Subordinate Obligation Payment Accounts*)) and may be pledged as set forth in clause (d) of the definition of “Pledged Collateral” to Senior Obligations. Amounts on deposit in each Subordinate Obligation Reserve Account shall

be applied only as set forth in Section 4.5(c)(8) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds – Application of Subordinate Obligation Reserve Accounts*) and may be pledged as set forth in clause (d) of the definition of “Pledged Collateral” to Senior Obligations. Amounts on deposit in the general reserve account shall be applied only as set forth in Section 4.5(c)(9) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds – Application of General Reserve Account*) and may be pledged as set forth in clause (d) of the definition of “Pledged Collateral” to Senior Obligations.

(2) *Deposit of System Revenues Into Revenue Account; Flow of Funds.* Immediately upon receipt thereof by the City, the City shall deposit all System Revenues into the Revenue Account. The City shall apply amounts in the Water Fund, and the Revenue Account, the WIFIA Payment Account and the WIFIA Reserve Account therein, only as permitted by this Agreement. Amounts on deposit in the Revenue Account shall be applied by the City on the first Business Day of each month to pay the following amounts in the following order of priority:

(A) first, to pay Operation and Maintenance Costs in amounts reasonably projected to be necessary during the applicable month for the payment of Operation and Maintenance Costs;

(B) second, on a prorated basis, into each Senior Obligation Payment Account (including the WIFIA Payment Account), the amount of interest (or interest component of an installment payment or capital lease payment) and principal (or principal component of an installment payment or capital lease payment) accruing during the applicable month, assuming equal monthly accruals over the applicable number of months in the applicable Senior Obligation Payment Period, plus an amount equal to any transfer shortfalls that remain unfunded from prior months; provided, however, in the last month of a Senior Obligation Payment Period, the amount transferred shall be that amount needed to pay the amount due on the applicable Senior Obligation Interest Payment Date or Senior Obligation Principal Payment Date, and further provided, with respect to a Senior Obligation, no transfer with respect to interest on such Senior Obligation shall be made to the extent amounts have been pre-funded and are otherwise available to make the applicable interest payment;

(C) third, on a prorated basis, into the respective Senior Obligation Reserve Accounts (including the WIFIA Reserve Account) as required by the Senior Obligation Documents, in an amount equal to the amount required to be deposited therein to restore the balance in each Senior Obligation Reserve Account to the applicable reserve requirement pursuant to the terms of the Senior Obligation Documents, including, with respect to this Agreement, the amounts required to be deposited pursuant to Section 4.7 (*WIFIA Reserve Account*);

(D) fourth, any other payments required to comply with the provisions of the Senior Obligation Documents (including this Agreement and the WIFIA Credit Agreement); and

(E) fifth, to the respective Subordinate Obligation Payment Accounts as required by the applicable Subordinate Obligation Documents to pay interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the Subordinate Obligations during the applicable month; and

(F) sixth, to the respective Subordinate Obligation Reserve Accounts as required by the Subordinate Obligation Documents, in an amount equal to the amount required to be deposited therein to restore the balance in each Subordinate Obligation Reserve Account to the applicable reserve requirement pursuant to the terms of the Subordinate Obligation Documents; and

(G) seventh, to a general reserve account, to be used for any other lawful purposes of the Water System.

(3) *Deposits in the Event of Deficiency.* After the City has made any required payments described in clauses (A) through (D) above, any remaining Net Revenues in the Water Fund shall be available for any lawful purpose of the City relating to the Water System; provided, however, if there shall be a deficiency at any time in System Revenues required to make the deposits required pursuant to clauses (A), (B), (C) or (D) above, the City shall make the required deposits from available amounts in the Subordinate Obligation Payment Accounts or the Subordinate Obligation Reserve Accounts or the general reserve account, in reverse order, with transfers going first to fund requirements of clause (A), second to fund requirements of clause (B), third to fund requirements of clause (C) and fourth to fund requirements of clause (D).

(4) *Application of Water Fund Generally.* All System Revenues received shall be deposited into the Revenue Account when and as received and applied only as set forth above. The City shall not permit System Revenues or other assets of the Water System, or any funds in the Water Fund or any other System Account held by or on behalf of the City, to be paid or transferred or otherwise applied for purposes other than ownership, operation or maintenance of, or capital improvements to, the Water System.

(5) *Application of Senior Obligation Payment Accounts.* Amounts on deposit in each Senior Obligation Payment Account (including the WIFIA Payment Account) shall be applied only to the payment of interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Senior Obligation. Amounts on deposit in any Senior Obligation Payment Account (including the WIFIA Payment Account) are not available for deposits to, and may not be transferred to, any other Senior Obligation Payment Account.

(6) *Application of Senior Obligation Reserve Accounts.* Amounts on deposit in each Senior Obligation Reserve Account (including the WIFIA Reserve Account) shall be applied only as set forth in the following sentence. If on any Senior Obligation Interest Payment Date or Senior Obligation Principal Payment Date amounts in the related applicable Senior Obligation Payment Account are insufficient to pay interest on (or

interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Senior Obligation due on such Senior Obligation Interest Payment Date or Senior Obligation Principal Payment Date, as applicable, amounts in the applicable Senior Obligation Reserve Account shall be transferred to the applicable Senior Obligation Payment Account in the amount of such insufficiency. Amounts on deposit in any Senior Obligation Reserve Account (including the WIFIA Reserve Account) are not available for deposits to, and may not be transferred to, any other Senior Obligation Payment Account or any other Senior Obligation Reserve Account.

(7) *Application of Subordinate Obligation Payment Accounts.* Amounts on deposit in each Subordinate Obligation Payment Account shall be applied to the payment of interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Subordinate Obligation, but only as and to the extent due and payable. Amounts on deposit in any Subordinate Obligation Payment Account may not be transferred out of such Subordinate Obligation Payment Account to pay any such amounts more than five (5) days prior to the date any such payment is due. Amounts on deposit in any Subordinate Obligation Payment Account are also available to be applied as set forth in Section 4.5(c)(3) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds – Deposits in the Event of Deficiency*).

(8) *Application of Subordinate Obligation Reserve Account.* Amounts on deposit in each Subordinate Obligation Reserve Account shall be applied only as set forth in the following two sentences. If on any date on which interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Subordinate Obligation, amounts in the related applicable Subordinate Obligation Payment Account are insufficient to pay interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Senior Obligation due on such date, amounts in the applicable Subordinate Obligation Reserve Account shall be transferred to the applicable Subordinate Obligation Payment Account in the amount of such insufficiency. Amounts on deposit in any Subordinate Obligation Reserve Account are also available to be applied as set forth in Section 4.5(c)(3) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds – Deposits in the Event of Deficiency*).

(9) *Application of General Reserve Account.* Amounts on deposit in the general reserve account may be applied to any other lawful purposes of the Water System. Amounts on deposit in the general reserve account are available to be applied as set forth in Section 4.5(c)(3) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds – Deposits in the Event of Deficiency*).

(d) No Preference or Priority. Payment of the Installment Payments and the principal of and interest on any Senior Obligations shall be made without preference or priority. If the amount of Net Revenues on deposit in the Water Fund are at any time insufficient to enable the City to pay when due the Installment Payments and the principal of and interest on any Senior Obligations, such payments will be made on a pro rata basis.

(e) Other Uses of Net Revenues Permitted. The City shall not use System Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 4.5 and shall not apply any portion of the System Revenues in contravention of this Agreement. The City shall manage, conserve and apply the Net Revenues on deposit in the Water Fund in such a manner that all deposits required to be made under the subsection (c) will be made at the times and in the amounts so required.

(f) Budget and Appropriation of Installment Payments. The City shall adopt all necessary budgets and make all necessary appropriations of the Installment Payments and Senior Obligations from the Net Revenues. If any Installment Payment requires the adoption by the City of a supplemental budget or appropriation, the City shall promptly adopt the same. The covenants on the part of the City contained in this subsection (f) are non-cancellable obligations and duties imposed by law, and it is the duty of each and every public official of the City to take such actions and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this subsection (f).

Section 4.6. WIFIA Payment Account. The City hereby establishes for the purposes of making the Installment Payments, the WIFIA Payment Account within the Water Fund. On or before each Installment Payment Date, moneys in the WIFIA Payment Account shall be applied to pay the Installment Payment due on such Installment Payment Date.

Section 4.7. WIFIA Reserve Account. The City hereby establishes for the purposes of ensuring the timely payment of the Installment Payments in the event of an insufficiency in System Revenues, the WIFIA Reserve Account within the Water Fund, which will be funded from time to time pursuant to this Section 4.7 with Net Revenues available after making the transfers described in clauses (A) and (B) in Section 4.5(c)(2) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds - Deposit of System Revenues Into Revenue Account; Flow of Funds*). If on any Installment Payment Date amounts in the WIFIA Payment Account are insufficient to pay the Installment Payment due on such Installment Payment Date, amounts in the WIFIA Reserve Account shall be transferred to the WIFIA Payment Account in the amount of such insufficiency.

The WIFIA Reserve Account may remain unfunded until the occurrence of a WIFIA Reserve Event. Beginning with the month immediately following delivery of an updated financial model which demonstrates or discloses the occurrence of a WIFIA Reserve Event and for eleven (11) months thereafter, the City shall fund the WIFIA Reserve Account in an amount equal to one-twelfth (1/12) of the WIFIA Reserve Account Requirement. Funds shall be deposited in the WIFIA Reserve Account in accordance with clause (C) of Section 4.5(c)(2) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds - Deposit of System Revenues Into Revenue Account; Flow of Funds*). Thereafter, and

subject to the flow of funds in Section 4.5(c)(2) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds - Deposit of System Revenues Into Revenue Account; Flow of Funds*), the City shall maintain the WIFIA Reserve Account in an amount equal to the WIFIA Reserve Account Requirement.

If, after the occurrence of a WIFIA Reserve Event, the City delivers to the Assignee, for three (3) consecutive City Fiscal Years, an updated financial model which demonstrates that the Senior Debt Service Coverage Ratio for the immediately preceding City Fiscal Year was not less than 1.30 to 1.00, the City may, upon written notice to the Assignee at least ten (10) Business Days in advance, release any balance in the WIFIA Reserve Account to be applied to any Water System purpose.

Section 4.8. Special Obligation of the City; Obligations Absolute. The City's obligation to pay the Installment Payments and any other amounts coming due and payable hereunder constitute a special, limited obligation of the City payable solely from the Pledged Collateral and the other funds provided herein for the payment of the Installment Payments or for the performance of any other agreements or covenants required to be performed by it contained herein. Under no circumstances is the City required to advance moneys derived from any source of income other than the Net Revenues for the payment of the Installment Payments and such other amounts, and no other funds or property of the City are liable for the payment of the Installment Payments. The City may, however, but in no event shall be obligated to, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the City for such purpose.

Except as provided in the foregoing paragraph, the obligation of the City to pay the Installment Payments, and the obligation of the City to perform and observe the other agreements contained herein, are absolute and unconditional and are not subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach of the Corporation, the Assignee or the WIFIA Credit Provider of any obligation to the City or otherwise with respect to the Water System, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Corporation, the Assignee or the WIFIA Credit Provider. Until such time as all of the Installment Payments have been fully paid or prepaid, the City:

- (i) will not suspend or discontinue payment of any Installment Payments,
- (ii) will perform and observe all other agreements contained in this Agreement, and
- (iii) will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Water System, the sale of the Water System, the taking by eminent domain of title to or temporary use of any component of the Water System, commercial frustration of purpose, any change in the tax or other laws of the United States of America or the State of California or any political subdivision of either thereof or any failure of the Corporation to perform and observe any agreement, whether

express or implied, or any duty, liability or obligation arising out of or connected with this Agreement.

ARTICLE V

COVENANTS OF THE CITY

Section 5.1. Disclaimer of Warranties. None of the Corporation, the Assignee nor the WIFIA Credit Provider makes any 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 City of the WIFIA Water System Portion of the Project, the Water System, or any portion thereof, or any other representation or warranty with respect to any of the WIFIA Water System Portion of the Project, the Water System, or any portion thereof. In no event is the Corporation, the Assignee or the WIFIA Credit Provider liable for incidental, indirect, special or consequential damages incidental to or arising out of this Agreement or the WIFIA Water System Portion of the Project or the existence, furnishing, functioning or use of the WIFIA Water System Portion of the Project or any item or products or services comprising a portion of the WIFIA Water System Portion of the Project.

Section 5.2. Release and Indemnification Covenants. The City shall, to the extent permitted by law, indemnify the Corporation and any official, employee, agent or representative of the Corporation (each such Person being herein referred to as an “Indemnatee”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnatee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement, (b) the use, maintenance, condition or management of, or from any work or thing done on or about the Water System or the selection, construction or sale of the Project by or to the City, its employees, agents, contractors, vendors, and subcontractors, (c) any breach or default on the part of the City in the performance of any of its representation, warranties, covenants, and obligations under this Agreement, (d) any act or omission of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Water System or the Project, any act or omission of any lessee of the City with respect to the Water System or Project, (e) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters arising out of or in direct relation to the Project, or (f) any strict liability under the laws or judicial decisions of any state or the United States arising out of or in direct relation to the Project; provided, that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee. In case any action or proceeding is brought against an Indemnatee by reason of any claim with respect to which such Indemnatee is entitled to indemnification hereunder, the City shall be entitled, at its expense, to participate in the defense thereof; provided, that such Indemnatee has the right to retain its own counsel, at the City’s expense, and such participation by the City in the defense thereof shall not release the City of any

liability that it may have to such Indemnatee. Any Indemnatee against whom any indemnity claim contemplated in this Section 5.2 is made shall be entitled, after consultation with the City and upon consultation with legal counsel wherein such Indemnatee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the City for purposes of this Section 5.2. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnatee. To the extent permitted by applicable law, neither the City nor the Corporation shall assert, and each of the City and the Corporation hereby waives, any claim against any Indemnatee or the City or the Corporation, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement and the other transactions contemplated hereby, provided, that nothing in this sentence shall limit the City's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnatee is entitled to indemnification hereunder. All amounts due to any Indemnatee under this Section 5.2 shall be payable promptly upon demand therefor.

The obligations of the City under this Section 5.2 shall survive the payment or prepayment in full of the Purchase Price of the WIFIA Water System Portion of the Project or transfer of this Agreement, the enforcement of any provision of this Agreement, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 5.2) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the City hereunder.

Section 5.3. Sale or Eminent Domain of Water System; Liens on Water System.

(a) The City shall not sell, lease or assign its rights in and to the Water System or a substantial portion of the assets included in the Water System, in each case unless such sale, lease or assignment (i) could not reasonably be expected to have a Material Adverse Effect and (ii) is made by the City in the ordinary course of business. The City may not enter into any agreement which impairs the operation of the Water System or any part of it necessary to secure adequate Net Revenues to pay the Installment Payments or any Senior Obligations, or which otherwise would impair the rights of the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee) with respect to the Net Revenues.

(b) Any amounts received as awards as a result of the taking of all or any part of the Water System by the lawful exercise of eminent domain, if and to the extent that such right can be exercised against such property of the City shall, with the prior written consent of the Assignee, either (a) be used for the acquisition or construction of improvements and extension of the Water System, or (b) be applied on a pro rata basis to prepay the Installment Payments and any Senior Obligations on the next available prepayment date.

(c) Except for Permitted Liens, the City shall not create, incur, assume or permit to exist any Lien on the Water System, the Pledged Collateral, the System Revenues, or the City's respective rights therein. The Corporation shall not collaterally assign any of its rights under or pursuant to this Agreement and shall not permit a Lien to encumber the Corporation's rights or privileges under this Agreement, unless in favor of the Assignee.

Section 5.4. Insurance. The City shall at all times procure and maintain or cause to be maintained insurance on the Water System and the construction of the Project with responsible insurers in such amounts and against such risks (including damage to or destruction of the Water System) as are customarily maintained with respect to works and properties of like character against accident to, loss of or damage to such works or properties. Such insurance shall include coverage for casualty losses to the facilities constituting part of the Water System. All amounts collected from insurance against accident to or destruction of any portion of the Water System shall, with the prior written consent of the Assignee, either (a) be used to repair or rebuild such damaged or destroyed portion of the Water System, or (b) be applied on a pro rata basis to prepay the Installment Payments and any Senior Obligations on the next available prepayment date.

The City shall also maintain, with responsible insurers, worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the City, the Corporation and the Assignee.

Upon request by the Assignee and the WIFIA Credit Provider, the City shall file evidence of all insurance policies maintained under this Section at least annually with the Assignee and the WIFIA Credit Provider.

Section 5.5. Records and Accounts. So long as any Installment Payments shall remain unpaid and until five (5) years after the Purchase Price of the WIFIA Water System Portion of the Project shall have been paid in full, the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee) shall have the right, upon reasonable prior notice, to visit and inspect any portion of the System, to examine books of account and records of the City relating to the System, to make copies and extracts therefrom at the City's expense, and to discuss the City's affairs, finances and accounts relating to the Water System with, and to be advised as to the same by, its officers and employees and its independent public accountants, all at such reasonable times and intervals as the Corporation (or upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee) may request. The City agrees to pay all out-of-pocket expenses incurred by the Corporation (or upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee) in connection with the exercise of its rights under this Section 5.5 at any time when an Event of Default shall have occurred and be continuing. The City shall maintain and retain all files relating to the Project and this Agreement until five (5) years after the later of the date on which (a) all rights and duties under this Agreement have been fulfilled and (ii) any litigation relating to the Project or this Agreement is finally resolved or, if the Corporation (or upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee) have reasonable cause to extend such date, a date to be mutually agreed upon by the Assignee and the City. The City shall provide to the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee) in a timely manner all records and documentation relating to the Water Project.

Section 5.6. Rates and Charges.

(a) The City shall fix, charge, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Water System which are reasonable, fair and nondiscriminatory and which will be at least sufficient, after making allowances for

contingencies and error in the estimates, to yield System Revenues during each City Fiscal Year sufficient to pay the following amounts in the following order of priority:

- (i) all Operation and Maintenance Costs projected by the City to become due and payable in the City Fiscal Year;
- (ii) all Installment Payments and all payments of principal of and interest or installment payments on any Senior Obligations as they become due and payable during the City Fiscal Year, without preference or priority; and
- (iii) all payments required to meet any other obligations of the City which are charges, liens, encumbrances upon, or which are otherwise payable from, the System Revenues or the Net Revenues during such City Fiscal Year.

(b) In addition, the City shall fix, charge, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Water System which are reasonable, fair and nondiscriminatory and which will be at least sufficient to yield Net Revenues during each City Fiscal Year which are at least equal to (i) one hundred and twenty percent (120%) of the Debt Service payable during such City Fiscal Year with respect to all Outstanding Senior Obligations and (ii) one hundred and ten percent (110%) of the Debt Service payable during such City Fiscal Year with respect to all Outstanding Obligations (collectively, the “Rate Covenant”).

If the forecast furnished by the City in the most recent updated financial model delivered by the City demonstrates that projected Net Revenues may be inadequate to satisfy the Rate Covenant for any City Fiscal Year until the Final Installment Payment Date, or if the City fails to satisfy the Rate Covenant for the most recently ended City Fiscal Year, the City shall (x) within thirty (30) days after request by the Assignee, engage the Technical and Rate Consultant to review and analyze the operations of the Water System and recommend actions regarding revising the rates or changing the methods of operations, or any other actions to increase the Net Revenues so as to satisfy the Rate Covenant, (y) cause the Technical and Rate Consultant to issue its report, including any such recommended actions, no later than ninety (90) days following such engagement, and (z) either, within thirty (30) days (or such reasonable period of time required to do so under applicable law), (A) implement the Technical and Rate Consultant’s recommendation or (B) undertake an alternative course of action after demonstrating to the Assignee’s satisfaction that an alternative plan will generate an equivalent or greater increase to the Net Revenues so as to satisfy the Rate Covenant.

Section 5.7. Additional Obligations. Except as expressly permitted by this Section 5.7, the City shall not without the prior written consent of the Assignee, issue or incur indebtedness of any kind (including debt with respect to which the interest rate varies or may be adjusted by the City from time to time) that is payable from, secured or supported by all or any portion of the Pledged Collateral; provided further that in no event shall the City incur any indebtedness of any kind payable from, secured or supported by all or any portion of the Pledged Collateral, including indebtedness otherwise permitted by this Section 5.7, without the prior written consent of the Assignee, while an Event of Default has occurred and is continuing.

(a) No Superior Obligations. The City shall not create, incur or suffer to exist any Obligations the payments of which are senior or prior in right to the payment by the City of the Senior Obligations.

(b) No Obligations for the Project Secured by Other Collateral. The City shall not create, incur or suffer to exist any Obligations of the Project that are secured by a Lien on any assets or property of the City other than the Pledged Collateral or the pledged collateral described in the Wastewater System Project Installment Sale Agreement.

(c) No Variable Rate Obligations. The City shall not create, incur or suffer to exist any Obligations that with respect to which the interest rate varies or may be adjusted by the City from time to time.

(d) Additional Senior Obligations. The City shall not issue any Obligations the payments of, and security for, which are on parity with the Senior Obligations (the “Additional Senior Obligations”), unless: (A) the conditions set forth in the applicable Senior Obligation Document are satisfied; (B) no Event of Default has occurred and is continuing; (C) following issuance of the proposed Additional Senior Obligations, either (X) the Net Revenues for any four (4) consecutive quarters within the six (6) quarters immediately preceding the proposed issue date (such quarters relating to the City Fiscal Year) shall be sufficient to equal or exceed one hundred and twenty percent (120%) of the greatest amount of Debt Service payable on all Outstanding Senior Obligations (including the proposed Additional Senior Obligations) and shall also be sufficient to equal or exceed one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Senior Obligations), in each case in the current or any future period; or (Y) the projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date (such quarters relating to the City Fiscal Year), shall be sufficient to equal or exceed one hundred and twenty percent (120%) of the greatest amount of Debt Service payable on all Outstanding Senior Obligations (including the proposed Additional Senior Obligations) and shall also be sufficient to equal or exceed one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Senior Obligations), in each case in the current or any future period, and (D) not later than thirty (30) days prior to the proposed issue date, the City shall have provided to the Assignee a certificate signed by the City’s Authorized Representative (x) specifying the proposed issue date of such proposed Additional Senior Obligations and (y) confirming that the issuance of such proposed Additional Senior Obligations is authorized pursuant to this Section 5.7(d) and satisfies the applicable requirements of this Section 5.7(d). For purposes of the calculation for clause (C)(Y) of this Section 5.7(d) only, when calculating projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date, the City may include as System Revenues those System Revenues resulting from rate increases that have been approved and will take effect within three (3) years of such date of calculation as confirmed by the Rate Consultant.

(e) Additional Subordinate Obligations. The City shall not issue any Obligations the payments of, and security for, which are subordinated to the Senior Obligations (the “Additional Subordinate Obligations”), unless: (A) the conditions set forth in the applicable Subordinate Obligation Document are satisfied; (B) no Event of Default has occurred and is continuing; (C) following issuance of the proposed Additional Subordinate Obligations, either

(X) the Net Revenues for any four (4) consecutive quarters within the six (6) quarters immediately preceding the proposed issue date (such quarters relating to the City Fiscal Year) shall be sufficient to equal or exceed one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Subordinate Obligations) in the current or any future period or (Y) the projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date (such quarters relating to the City Fiscal Year), shall be sufficient to equal one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Subordinate Obligations) in the current or any future period; and (D) not later than thirty (30) days prior to the proposed issue date, the City shall have provided to the Assignee a certificate signed by the City's Authorized Representative (x) specifying the proposed issue date of such proposed Additional Subordinate Obligations and (y) confirming that the issuance of such proposed Additional Subordinate Obligations is authorized pursuant to this Section 5.7(e) and satisfies the applicable requirements of this Section 5.7(e). For purposes of the calculation for clause (C)(Y) of this Section 5.7(e) only, when calculating projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date, the City may include as System Revenues those System Revenues resulting from rate increases that have been approved and will take effect within three (3) years of such date of calculation as confirmed by the Rate Consultant.

Section 5.8. Operation of Water System in Efficient and Economical Manner. The City shall operate the Water System in an efficient and economical manner and maintain and preserve the Water System in good repair and working order. The City shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the approvals from Governmental Authorities and any other rights, licenses, franchises, and authorizations material to the operation of the Water System.

Section 5.9. Investments: Acquisition, Disposition and Valuation of Investments. Amounts on deposit in the Water Fund, and the Revenue Account, the Senior Obligation Payment Accounts (including the WIFIA Payment Account), the Senior Obligation Reserve Accounts (including the WIFIA Reserve Account), the Subordinate Obligation Payment Accounts, the Subordinate Obligation Reserve Accounts therein, shall be held uninvested or shall be invested only in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder at such times as may be necessary to ensure that funds will be available within the applicable account to be applied towards the purpose for which the applicable account has been established.

Section 5.10. Reserved.

Section 5.11. Access to the Water System. To the extent permitted by law, the City agrees that the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee) shall have the right at all reasonable times to enter upon and to examine and inspect the Water System.

Section 5.12. Assignment by the Corporation. In consideration for advancing funds from time to time pursuant to the WIFIA Credit Agreement for the acquisition, construction and installation of the WIFIA Water System Portion of the Project, the Corporation has assigned

pursuant to the Assignment Agreement to the Assignee, all of the Corporation's rights, title and interest under this Agreement (excepting only the Corporation's rights to Additional Payments under Section 4.4(f) (*Additional Payments*) and rights of indemnification under Section 5.2 (*Release and Indemnification Covenants*)), including but not limited to (a) the right to receive and collect all of the Installment Payments from the City; (b) the right to receive and collect any proceeds of any insurance maintained thereunder with respect to the Project, or any eminent domain award (or proceeds of sale under threat of eminent domain) paid with respect to the Project; and (c) the right to exercise such rights and remedies conferred on the Corporation under this Agreement as may be necessary or convenient (i) to enforce payment of the Installment Payments and any amounts required to be credited to the payment or prepayment thereof, or (ii) otherwise to protect the interests of the Corporation or the Assignee in the event of a default by the City under this Agreement. All necessary action or approvals on the part of the Corporation with respect to the foregoing has been duly and validly taken. The City and the Corporation shall, from time to time at the request of the Assignee, execute and deliver such further acknowledgments, agreements and instruments of assignment, transfer and assurance, and do all such further acts and things as may be necessary or appropriate in the reasonable opinion of the Assignee to give effect to the provisions of this Section 5.12 and to more perfectly confirm the rights, titles and interests assigned and transferred to the Assignee pursuant to the Assignment Agreement.

Notwithstanding the assignment described above, in no event shall the City be required to allocate any Installment Payment among more than one person or entity or make a payment to more than one address or wire transfer destination, and the person or entity to whom Installment Payments are to be made shall be authorized to give all consents and approvals to be obtained from the Corporation hereunder on behalf of and for all transferees. No further action will be required by the Corporation, any other owner of an interest therein or the City to evidence any such assignment, but the City shall acknowledge each such assignment in writing if so requested and shall keep a complete and accurate record of all such assignments. Nothing contained herein shall be deemed to be restriction on the sale or assignability of this Agreement or the rights of the WIFIA Credit Provider or the Assignee hereunder.

Section 5.13. Further Assurances; No Impairment. The City and the Corporation shall at any and all times, to the extent permitted by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens on the Pledged Collateral (whether now existing or hereafter arising) granted to the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the Assignee) pursuant to this Agreement, or intended so to be granted pursuant to this Agreement, or which the City or the Corporation may become bound to grant, and the City and the Corporation shall at all times maintain the Pledged Collateral and the Corporation's rights in this Agreement free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by this Agreement, other than as permitted by this Agreement, and all necessary action or approvals on the part of the City and the Corporation to that end shall be duly and validly taken at all times. The City and the Corporation shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Pledged Collateral and the assignment of this Agreement by the Corporation to the Assignee pursuant to the Assignment Agreement against all claims and demands of all Persons whomsoever.

Neither the City or the Corporation shall, or shall permit any person to, without the prior written consent of the Assignee, (i) extinguish the Rate Covenant, (ii) extinguish or impair the Liens on the Pledged Collateral or any dedicated source of repayment of the Installment Payments or any other Obligations (the proceeds of which are applied to fund Project costs), in each case granted pursuant to this Agreement or the Financing Documents, (iii) extinguish or impair the assignment by the Corporation of all of its right, title and interest in this Agreement to the Assignee pursuant to the Assignment Agreement, (iv) amend, modify, replace or supplement this Agreement or any other Financing Document in a manner that could adversely affect the Assignee (in the Assignee's determination) in connection with this Agreement or the WIFIA Credit Agreement or which could reasonably be expected to result in a Material Adverse Effect, (v) waive or permit a waiver of any provision of this Agreement or any other Financing Document in a manner that could adversely affect the Assignee (in the Assignee's determination) in connection with this Agreement or the WIFIA Credit Agreement or which could reasonably be expected to result in a Material Adverse Effect, or (vi) terminate, assign or replace this Agreement or any Financing Document.

Section 5.14. Reporting and Filing Requirements. The City shall make the filings and deliver the notices required by the WIFIA Credit Agreement, including but not limited to:

(a) The City shall provide to the Assignee not later than ninety (90) days after the beginning of each City Fiscal Year, an updated base case financial model reflecting the then-current and projected conditions, which shall include, *inter alia*, (i) the City's capital improvement plan, major maintenance plan, projected rates and charges, projected debt outstanding and annual debt service, projected operation and maintenance costs of the Water System, (ii) evidence of compliance with the Rate Covenant for the most recent City Fiscal Year and the projected Rate Covenant coverages through the Final Installment Payment Date, (iii) calculation of the Senior Debt Service Coverage Ratio for the most recent City Fiscal Year, (iv) a written narrative identifying any material changes to the underlying assumptions from the previous updated base case financial model and (v) a certificate signed by the City's Authorized Representative, certifying that (1) the updated financial model, including the assumptions and supporting documentation, as of its date, is accurate and reasonable to the best of the City's knowledge and belief, (2) the annual projected Net Revenues will be sufficient to meet the Installment Payment Schedule and to satisfy the Rate Covenant through the Final Installment Payment Date, (3) whether the City is in compliance with its obligations in respect of the Rate Covenant pursuant to this Agreement, and (4) whether a WIFIA Reserve Event has occurred.

(b) The City shall deliver to the Assignee, as soon as available, but no later than one hundred eighty (180) days after the end of each City Fiscal Year: (i) a copy of the audited income statement and balance sheet of the City as of the end of such City Fiscal Year, (A) setting forth in each case in comparative form the figures for the previous fiscal year, (B) certified without qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the City and (C) which shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except, with respect to the annual financial statements, for changes approved or required by the independent public accountants certifying such statements and disclosed therein), and (ii) together with each delivery of such annual audited financial statements, a certificate signed by the chief executive officer or chief financial officer of

the City or the City's Authorized Representative, stating whether or not, to the City's knowledge after reasonable investigation, during the annual period covered by such financial statements, there occurred any Default or Event of Default and, if any such Default or Event of Default shall have occurred during such period, the nature of such Default or Event of Default and the actions that the City has taken or intends to take in respect thereof.

(c) The City shall provide the Assignee with written notification at least thirty (30) days prior to instituting any increase to the aggregate total Project costs in an amount equal to or greater than five percent (5%), which notification shall set forth the nature of the proposed increase and an estimate of the impact of such increase on the capital costs and operating costs of the Water System.

(d) The City shall, within thirty (30) days after the City learns of the occurrence, give the Assignee notice of any of the events or receipt of any of the notices described in Section 16(h) (*Reporting Requirements – Notices*) of the WIFIA Credit Agreement.

(e) The City shall, at any time while the unpaid Principal Components of the Installment Payments remain unpaid and outstanding, promptly deliver to the Assignee such additional information regarding the business, financial, legal or organizational affairs of the City or regarding the WIFIA Water System Portion of the Project, the Water System or the System Revenues as the Assignee may from time to time reasonably request.

Section 5.15. Covenants Regarding Other Obligations.

(a) Proceeds. The City shall establish and maintain Project Accounts within the Water Fund into which all proceeds of Obligations (other than this Agreement and the Wastewater System Project Installment Sale Agreement) except for capitalized interest and required reserves, shall be deposited and held until expended to pay costs, or to reimburse the City for costs paid by the City, of the acquisition, construction and installation of capital improvements to the Water System for which such Obligations were incurred or issued. The City shall maintain accurate records showing all disbursements from such Project Accounts.

(b) Documents. Each Senior Obligation Document entered into by the City with respect to Additional Senior Obligations and each Subordinate Obligation Document entered into by the City with respect to Subordinate Obligations shall contain a flow of funds substantively the same as the flow of funds set forth in Section 4.5(c)(2) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds - Deposit of System Revenues Into Revenue Account; Flow of Funds*).

(c) Payment Accounts. The City shall establish each payment account for making payments of principal of or interest on any Additional Senior Obligations as a Senior Obligation Payment Account within the Water Fund. Each such Senior Obligation Payment Account shall be available only for the payment of interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), and pledged only to, the applicable Senior Obligation. The City shall establish each payment account for making payments

of principal of or interest on any Subordinate Obligations as a Subordinate Obligation Payment Account within the Water Fund.

(d) Reserve Accounts. The City shall establish each reserve account for any Additional Senior Obligations as a Senior Obligation Reserve Account within the Water Fund. Each such Senior Obligation Reserve Account shall be pledged only to the applicable Senior Obligation. Each such Senior Obligation Reserve Account shall be available only for transfer to the applicable Senior Obligation Payment Account in the amount of any insufficiency in the applicable Senior Obligation Payment Account to pay interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Senior Obligation due on such Senior Obligation Interest Payment Date or Senior Obligation Principal Payment Date, as applicable, and pledged only to the applicable Senior Obligation. The City shall establish each reserve account for any Subordinate Obligations as a Subordinate Obligation Reserve Account within the Water Fund.

(e) Defeasance of Other Obligations. If Obligations (other than this Agreement and the Wastewater System Project Installment Sale Agreement) are deemed discharged by either: (i) depositing with an escrow agent or other fiduciary, in trust, at or before the final stated maturity date, money which is fully sufficient to pay and discharge the applicable principal amount due, including all principal and interest and prepayment premium, (if any) at or before their respective due dates; (ii) depositing with an escrow agent or other fiduciary, in trust, noncallable Government Obligations in such amount as an independent certified public accountant shall determine in writing will, together with the interest to accrue thereon and without reinvestment, be fully sufficient to pay and discharge the applicable principal amount due, including all principal and interest and prepayment premium, (if any), at or before their respective due dates, and under the applicable Senior Obligation Documents or Subordinate Obligation Documents all obligations of the City with respect to the Obligations referred to above are released and discharged, such discharged Obligations shall be deemed no longer Outstanding for all purposes of this Agreement. Any defeasance of Obligations (other than this Agreement and the Wastewater System Project Installment Sale Agreement) not satisfying the requirements of clause (i) or (ii) of the preceding sentence shall be deemed to remain Outstanding for all purposes of this Agreement.

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

Section 6.1. Events of Default Defined. Any one or more of the following events shall constitute an “Event of Default” hereunder:

(a) Payment Default. The City shall fail to (i) pay when due any part of any Installment Payment due and payable under this Agreement and such failure continues for a period of five (5) days, or (ii) make any mandatory prepayment required pursuant to the provisions of Article VII (*Prepayment of Installment Payments*) when and as the payment thereof shall be required under this Agreement or on the Final Installment Payment Date (each such failure, a “Payment Default”).

(b) Covenant Default. The City shall fail to observe or perform any covenant, agreement or obligation of the City under this Agreement (other than in the case of any Payment Default or other Event of Default separately called out in this Section 6.1), and such failure shall not be cured within thirty (30) days after the earlier to occur of (i) receipt by the City from the Assignee of written notice thereof or (ii) the City's knowledge of such failure; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 6.1(b), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the City shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (i) or (ii) above, as applicable.

(c) Acceleration of Senior Obligations. With respect to any Senior Obligation, any acceleration shall occur of the maturity of that Senior Obligation, any such Senior Obligation shall not be paid in full upon the final maturity thereof, or any Holder of such Senior Obligation shall have the immediate right to accelerate such Senior Obligation.

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

(e) Bankruptcy Related Event. A Bankruptcy Related Event shall occur with respect to the City or the Corporation.

(f) Failure to Satisfy Rate Covenant. The City fails to satisfy the Rate Covenant for two (2) consecutive City Fiscal Years.

(g) Failure to Fund WIFIA Reserve Account. (i) After the occurrence of a WIFIA Reserve Event, the City fails to initially fully fund the WIFIA Reserve Account to its required balance pursuant to the requirements of this Agreement or (ii) after initial funding, the City fails to maintain the WIFIA Reserve Account in an amount equal to the WIFIA Reserve Account Requirement, with the exception of if such failure is due to a lack of receipt by the City of Net Revenues available for funding.

(h) WIFIA Credit Agreement Default. The occurrence of an Event of Default under the WIFIA Credit Agreement.

Section 6.2. Remedies on Default. Whenever any Event of Default has happened and is continuing, the Corporation shall have the right, at its option and without any further demand or notice, to:

(a) declare all principal components of the unpaid Installment Payments, together with accrued interest thereon to be immediately due and payable, whereupon the same shall become due and payable; and

(b) cease permitting accrued interest on the unpaid Principal Components of the Installment Payments to be capitalized;

(c) apply the Default Rate provisions of Section 4.4(d) (*Installment Payments - Rate on Overdue Payments*);

(d) apply to and obtain from any court of competent jurisdiction such decree or order as may be necessary to require officials of the City to charge and collect rates for services provided by the City and the Water System sufficient to meet all requirements of this Agreement; and

(e) exercise all of the remedies set forth in the WIFIA Credit Agreement; and

(f) take whatever action at law or in equity, including specific enforcement, mandamus, or any equitable remedies available, as may be desirable and permitted by law to collect the Installment Payments then due or thereafter to become due pursuant to this Agreement, or enforce performance and observance of any obligation, agreement or covenant of the City under this Agreement.

In addition, the City is liable for, and hereby agrees to pay, all reasonable legal costs and expenses, including court costs, incurred by the Corporation, the Assignee and the WIFIA Credit Provider in the enforcement of any of the remedies listed above or any other remedy available to the Corporation. So long as there has occurred and is continuing an Event of Default, the Interest Components of the unpaid Installment Payments shall be calculated at the Default Rate as provided herein.

Section 6.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission 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 thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Corporation to exercise any remedy reserved to it in this Article VI it shall not be necessary to give any notice, other than such notice as may be required in this Agreement or by law.

Section 6.4. Prosecution and Defense of Suits. The City shall promptly, upon request of the Corporation or the Assignee, from time to time take or cause to be taken such action as may be necessary or proper to remedy or cure any defect in or cloud upon the title to the Water System whether now existing or hereafter developing and shall prosecute all such suits, actions and other proceedings as may be appropriate for such purpose.

Section 6.5. No Additional Waiver Implied by One Waiver. If any agreement contained in this Agreement is breached by either party and thereafter waived by the other party, such waiver is limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

Section 6.6. Liability Limited to Pledged Collateral. Notwithstanding any provision of this Agreement, the City's liability to pay the Installment Payments and other amounts hereunder is limited solely to the Pledged Collateral as provided in Article IV (*Installment Sale Of WIFIA Water System Portion of the Project To City; Installment Payments*). If the Pledged Collateral is insufficient at any time to pay an Installment Payment in full, the City is not liable to pay or prepay such Installment Payment other than from Pledged Collateral.

Section 6.7. Rights of the Assignee. Such rights and remedies as are granted to the Corporation under this Article VI (*Events of Default and Remedies*) or under this Agreement shall be exercised by the Assignee in accordance with the provisions of the Assignment Agreement.

ARTICLE VII

PREPAYMENT OF INSTALLMENT PAYMENTS

Section 7.1. Prepayment. The City has the right to prepay the Installment Payments, but only in the manner, at the times and in all respects in accordance with the provisions of this Article VII.

Section 7.2. Mandatory Prepayment. The City shall immediately prepay one hundred percent (100%) of the unpaid Principal Components of the Installment Payments in full in immediately available funds upon the occurrence of a Bankruptcy Related Event of the City or the Corporation, the Event of Default in Section 6.1(c) (*Events of Default Defined – Acceleration of Senior Obligations*) or the Event of Default in Section 17(a)(viii) (*Events of Default and Remedies – Invalidity of WIFIA Credit Documents*) of the WIFIA Credit Agreement. Such mandatory prepayment shall include all unpaid Interest Components of the Installment Payments to be prepaid, accrued to the date of such prepayment, without penalty or premium, and concurrently therewith the City shall pay all other Additional Payments then due and payable to the WIFIA Credit Provider and the Assignee. Upon the occurrence of a Bankruptcy Related Event of the City or the Corporation or the Events of Default described above, the City shall promptly deliver to the Assignee a notice of such Bankruptcy Related Event or Event of Default; *provided*, that the City's failure to deliver such notice shall not diminish, impair or otherwise affect the City's obligation to make any such mandatory prepayment as and when the circumstances requiring such mandatory prepayment have occurred.

Section 7.3. Optional Prepayment. The City may prepay the unpaid Principal Components of the Installment Payments in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the City; provided, however, that such prepayments shall be in principal amounts of \$250,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, but not more than once annually, on an Installment Payment Date, by paying such unpaid Principal Components of the Installment Payments to be prepaid, together with the unpaid Interest Components of the Installment Payments to be prepaid, accrued to the date of such prepayment, without penalty or premium, and concurrently therewith the City shall pay all other Additional Payments then due and payable to the WIFIA Credit Provider and the Assignee. Each prepayment of the unpaid Principal Components of the Installment Payments shall be made on such prepayment date and in such Principal Component amount as shall be specified by the City in a written notice delivered to the Assignee not less than ten (10) days or more than thirty (30)

days prior to the date set for prepayment, unless otherwise agreed by the Assignee. At any time between delivery of such written notice and the applicable optional prepayment, the City may, without penalty or premium, rescind its announced optional prepayment by further written notice to the Assignee. Anything in this Section 7.3 to the contrary notwithstanding, the failure by the City to make any optional prepayment shall not constitute a breach or default under this Agreement.

Section 7.4. Prepayment From Net Proceeds of Insurance or Eminent Domain. The City may prepay the unpaid Principal Components of the Installment Payments in whole or in part, on any date, if and to the extent the City (with the prior written consent of the Assignee) determines to apply any proceeds of insurance award or condemnation award with respect to the Water System for such purpose in accordance with Sections 5.3 (*Sale or Eminent Domain of Water System; Liens on Water System*) or 5.4 (*Insurance*), at a prepayment price equal to 100% of the unpaid Principal Components of the Installment Payments to be prepaid plus the unpaid Interest Components of the Installment Payments to be prepaid, accrued to the date of such prepayment, without penalty or premium. In the event of the taking of all or any part of the Water System by the lawful exercise of eminent domain or accident to or destruction of any portion of the Water System, the City shall promptly deliver to the Assignee a notice of such taking or accident or destruction; provided, that the City's failure to deliver such notice shall not diminish, impair or otherwise affect the City's obligation to make any such mandatory prepayment as and when the circumstances requiring such mandatory prepayment have occurred.

Section 7.5. City's Certificate. Each prepayment pursuant to this Article VII shall be accompanied by a certificate signed by the City's Authorized Representative identifying the Section of this Agreement pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

Section 7.6. General Prepayment Instructions. If the City prepays only part of the unpaid Principal Components of the Installment Payment, the Assignee may make a notation on the Installment Payment Schedule indicating the amount of the unpaid Principal Components of the Installment Payments being prepaid. Absent manifest error, the Assignee's determination of such matters as set forth on the Installment Payment Schedule shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the City's obligations under this Agreement, the WIFIA Credit Agreement or any other WIFIA Credit Document. All such partial prepayments shall be applied to adjust amortization in a manner that maintains approximately equal Installment Payments. If such funds have not been so paid on the prepayment date, such unpaid Principal Components of the Installment Payments shall continue to accrue interest until payment thereof at the rate provided for in Section 4.4(b) (*Installment Payments – Calculation of Interest Components*).

Section 7.7. No Surrender of Agreement Required. No surrender of this Agreement shall ever be required as a condition for payment or otherwise.

ARTICLE VIII

MISCELLANEOUS

Section 8.1. Notices. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to the City:	The City of Morro Bay City Hall – 595 Harbor Street Morro Bay, CA 93442 Attention: Rob Livick, P.E. Email: rlivick@morrobayca.gov
If to the Corporation:	City of Morro Bay Public Facilities Corporation c/o The City of Morro Bay City Hall – 595 Harbor Street Morro Bay, CA 93442 Attention: Rob Livick, P.E. Email: rlivick@morrobayca.gov
If to the WIFIA Credit Facility Provider:	U.S. Environmental Protection Agency WJC-W 6201A 1200 Pennsylvania Avenue NW Washington, D.C. 20460 Attention: WIFIA Director Email: WIFIA_Portfolio@epa.gov

Unless otherwise instructed by the WIFIA Credit Provider, all notices to the WIFIA Credit Provider should be made by email to the email address noted above for the WIFIA Credit Provider. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a City's Authorized Representative, with respect to notices to the City, by the Assignee, with respect to notices to the Assignee, or by the WIFIA Credit Provider, with respect to notices to the WIFIA Credit Provider. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 8.1 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 8.1 (or in accordance with the latest unrevoked written direction from the receiving party); provided, that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 8.2. Third Party Beneficiary. The WIFIA Credit Provider is hereby made a third-party beneficiary under this Agreement with all rights of a third-party beneficiary.

Section 8.3. Binding Effect. This Agreement inures to the benefit of and is binding upon the Corporation and the City, and their respective successors and assigns. For avoidance of doubt,

this Agreement inures to the benefit of and is binding upon the Assignee (upon the assignment by the Corporation pursuant to the Assignment Agreement).

Section 8.4. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 8.5. Amendments Changes and Modifications. No amendment, modification, termination, or waiver of any provision of this Agreement shall in any event be effective unless signed in writing by the City and the Assignee (upon the assignment by the Corporation pursuant to the Assignment Agreement) with the written consent of the WIFIA Credit Provider.

Section 8.6. Net Contract. This Agreement shall be deemed and construed to be a “net contract” and the City hereby agrees that the Installment Payments shall be an absolute net return to the Corporation, free and clear of any expenses, charges or set-offs whatsoever.

Section 8.7. Further Assurances and Corrective Instruments. The Corporation and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project hereby sold or intended so to be or for carrying out the expressed intention of this Agreement.

Section 8.8. Execution in Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 31 (*Notices*) of the WIFIA Credit Agreement shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

Section 8.9. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 8.10. Corporation and City Representatives. Whenever under the provisions of this Agreement the approval of the Corporation or the City is required, or the Corporation or the City is required to take some action at the request of the other, such approval or such request shall be given for the Corporation by an Authorized Representative of the Corporation and for the City by a City Representative, and any party hereto shall be authorized to rely upon any such approval or request.

Section 8.11. No Defeasance of Installment Payments. The City shall have no right to defease or otherwise discharge its obligation hereunder to make Installment Payments prior to the payment in full of the Purchase Price of the WIFIA Water System Portion of the Project under this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

CITY OF MORRO BAY PUBLIC FACILITIES
CORPORATION, as Seller

By: _____
Name:
Title: Executive Director

CITY OF MORRO BAY, as Purchaser

By: _____
Name:
Title: Mayor

*[Signature Page to Morro Bay Water Reclamation Facility Project – Water System Portion
Installment Sale Agreement]*

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APPENDIX A
INSTALLMENT PAYMENT SCHEDULE

(As of the Effective Date)

<u>Installment Payment Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Aggregate Installment Payment</u>

**ASSIGNMENT AGREEMENT
(Water System Project)**

This ASSIGNMENT AGREEMENT (Water System Project) (this “Agreement”), dated as of [____], 2020, is between the CITY OF MORRO BAY PUBLIC FACILITIES CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the “Corporation” and the “Assignor”), and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency, with an address at 1200 Pennsylvania Avenue NW, Washington, DC 20460, as assignee (the “Assignee”).

BACKGROUND:

WHEREAS, the City of Morro Bay, a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State of California (the “City”) wishes to finance the design and construction of the Project (as defined in the ISA (as defined below)); and

WHEREAS, the Corporation has been formed for the purpose, among others, of assisting the City in financing capital improvements for its water and wastewater systems, including providing financing for the Project; and

WHEREAS, the Corporation desires to assist the City in financing a portion of the Project costs for the water system portion of the Project (such portion of Project costs, the “WIFIA Water System Portion of the Project”), and to that end is entering into (i) the Installment Sale Agreement (Water System Project), dated as of the Effective Date, between the City and the Corporation under which the City will purchase the WIFIA Water System Portion of the Project from the Corporation (as more particularly defined herein, the “ISA”), (ii) this Agreement and (iii) the WIFIA Credit Agreement, dated as of the Effective Date, by and among the Assignee, the Corporation and the City relating to the Water System Portion of the Morro Bay Water Reclamation Facility (WIFIA-N17108CA) (as more particularly defined herein, the “WIFIA Credit Agreement”); and

WHEREAS, in order to provide the funds for the acquisition, construction and installation of the WIFIA Water System Portion of the Project, the Corporation will cause the WIFIA Credit Provider to advance funds from time to time pursuant to the WIFIA Credit Agreement; and

WHEREAS, the Corporation will appoint the City as its agent to carry out the construction of the WIFIA Water System Portion of the Project, the City will apply all funds advanced under the WIFIA Credit Agreement, to the costs of the WIFIA Water System Portion of the Project, pursuant to the ISA; and

WHEREAS, as consideration for such advances by the WIFIA Credit Provider, the Corporation wishes to assign all of its right, title and interest (including the right to receive Installment Payments (as defined in the ISA) in the ISA (excepting only the Corporation’s rights to Additional Payments under Section 4.4(f) (*Additional Payments*) of the ISA and rights of

indemnification under Section 5.2 (*Release and Indemnification Covenants*) of the ISA) to the WIFIA Credit Provider, as the initial Assignee, as provided herein.

AGREEMENT:

In consideration of the foregoing and the material covenants hereinafter contained, the Corporation and the Assignee formally covenant, agree and bind themselves as follows:

SECTION 1. *Defined Terms.* All capitalized terms not otherwise defined herein have the respective meanings given those terms in the ISA.

SECTION 2. *Assignment.* The Corporation hereby assigns and transfers to the Assignee without recourse all of the Corporation's rights, title and interest under the ISA (excepting only the Corporation's rights to Additional Payments under Section 4.4(f) (*Additional Payments*) of the ISA and rights of indemnification under Section 5.2 (*Release and Indemnification Covenants*) of the ISA), including but not limited to:

(a) the right to receive and collect all of the Installment Payments from the City under the ISA,

(b) the right to receive and collect any proceeds of any insurance maintained with respect to the Project, or any eminent domain award (or proceeds of sale under threat of eminent domain) paid with respect to the Project, and

(c) the right to exercise such rights and remedies conferred on the Corporation under the ISA as may be necessary or convenient (i) to enforce payment of the Installment Payments and any amounts required to be credited to the payment or prepayment thereof, or (ii) otherwise to protect the interests of the Corporation in the event of a default by the City under the ISA.

All necessary action or approvals on the part of the Corporation with respect to the foregoing has been duly and validly taken.

SECTION 3. *Advances of Funds under WIFIA Credit Agreement.* In consideration of the assignment made hereunder by the Corporation to the Assignee, and subject to satisfaction of the conditions precedent set forth in Section 11(a) (*Conditions Precedent to Effectiveness*) of the WIFIA Credit Agreement, the Assignee agrees to cause the WIFIA Credit Provider to advance funds under the WIFIA Credit Agreement on the terms and conditions of the WIFIA Credit Agreement, including without limitation the conditions precedent set forth in Section 11(b) (*Conditions Precedent to Disbursements*) of the WIFIA Credit Agreement. Whenever it is provided in the WIFIA Credit Agreement that the WIFIA Credit Provider's obligation to advance funds under the WIFIA Credit Agreement shall cease or be suspended or terminated thereunder, the Assignee's obligation under this Agreement to cause the WIFIA Credit Provider to advance funds under the WIFIA Credit Agreement shall similarly cease or be suspended or terminated, as the case may be.

SECTION 4. *Corporation Representations, Warranties and Covenants.* The Corporation hereby represents, warrants and covenants to and with the Assignee that:

(a) The Corporation has all requisite power and authority to execute and deliver this Agreement and to carry out and consummate the transactions contemplated hereby and has duly authorized the execution, delivery and performance of this Agreement.

(b) Neither the execution and delivery of this Agreement nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a material breach of the Corporation's articles of incorporation, resolutions, bylaws or other organizational documents or conflicts with or results in a material breach of any applicable law, administrative rule or regulation, any applicable court or administrative decree or order or the terms, conditions or provisions of any restriction or any agreement or instrument to which the Corporation is now a party or by which the Corporation is bound or constitutes a default under any of the foregoing.

(c) The Corporation has duly authorized, executed and delivered this Agreement in accordance with the laws of the State of California. This Agreement is a legal, valid and binding obligation of the Corporation, enforceable in accordance with its terms, subject only to laws related to creditor's rights, moratorium, receivership, insolvency or bankruptcy, general equitable principles, judicial discretion and legal limitations applicable to public agencies in the State of California. No consent or approval of any trustee, holder of any indebtedness of the Corporation or any other person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Corporation of this Agreement, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by this Agreement or (B) the fulfillment of or compliance by the Corporation with the terms and conditions of this Agreement, except as have been obtained or made and as are in full force and effect.

(d) The ISA is free and clear of all claims, liens, security interests, encumbrances of any kind or character created by, through or under the Corporation, except the rights of the City thereunder, and except as contemplated in the ISA. The ISA is and shall remain free of all claims, liens, security interests and encumbrances arising through any act or omission of the Corporation.

(e) No modifications, amendments or changes have been made to the ISA.

(f) The ISA is valid, binding and enforceable in accordance with its terms.

(g) The Corporation has not previously assigned any right, title or interest in the ISA to any other party and no other party has any superior right, title or interest than such right, title and interest being assigned to the Assignee hereunder.

(h) The Corporation does not have any defenses, setoff rights, claims or other demands of any kind that can be asserted to reduce, eliminate or contravene the rights being assigned to the Assignee hereunder.

(i) The Corporation has the right to assign the ISA to the Assignee as set forth herein and the undersigned officer of the Corporation has the requisite power and authority to enter into this Agreement.

(j) The Corporation has complied with and performed all of its obligations under the ISA and all related documents and instruments.

(k) The ISA delivered to the Assignee herewith is an original and constitutes the entire writing, obligation and agreement between the Corporation and City respecting the Installment Payments due thereunder.

(l) The Corporation shall not issue or incur any obligations of any kind, including any bonds, notes, other evidences of indebtedness, installment sale arrangements, financing lease arrangements, or similar obligations, nor enter into any installment sale arrangements, financing lease arrangements, or similar arrangements with the City, except in connection with Obligations incurred by the City that are permitted pursuant to Section 5.7 (*Additional Obligations*) of the ISA or permitted pursuant to the Wastewater System Project Installment Sale Agreement.

SECTION 5. *Acceptance.* Subject to satisfaction of the conditions precedent set forth in Section 11(a) (*Conditions Precedent to Effectiveness*) of the WIFIA Credit Agreement, the Assignee hereby accepts the assignments made herein.

SECTION 6. *Further Assurances.* The Corporation shall, from time to time at the request of the Assignee, execute and deliver such further acknowledgments, agreements and instruments of assignment, transfer and assurance, and do all such further acts and things as may be necessary or appropriate in the reasonable opinion of the Assignee to give effect to the provisions hereof and to more perfectly confirm the rights, titles and interests assigned and transferred to the Assignee pursuant to this Agreement.

SECTION 7. *Sale of Rights in the ISA.* The Assignee shall not sell its rights in the ISA and this Agreement at any time prior to the Substantial Completion Date. After such date, the Assignee may sell its rights in the ISA and this Agreement to another entity or reoffer it into the capital markets only in accordance with the provisions of this Section 7. Such sale or reoffering shall be on such terms as the Assignee shall deem advisable. However, in making such sale or reoffering the Assignee shall not change the terms and conditions of the ISA without the prior written consent of the City and the Corporation in accordance with Section 24 (*Amendments and Waivers*) of the WIFIA Credit Agreement. The Assignee shall provide, at least sixty (60) days prior to any sale or reoffering of its rights in the ISA and this Agreement, written notice to the City of the Assignee's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default under the ISA. The provision of any notice pursuant to this Section shall not (x) obligate the Assignee to sell nor (y) provide the City or the Corporation with any rights or remedies in the event the Assignee for any reason, does not sell its rights in the ISA and this Agreement. Notwithstanding anything herein to the contrary, any sale of its rights in the ISA and this Agreement shall provide that the sale is in accordance with all pertinent securities laws and that the assignee has reviewed pertinent information from the City with respect to the financial condition of the City, the Net Revenues, and the Water System, and that the assignee understands the type of investment it has purchased

or has been provided the opportunity to review and receive information and has chosen not to do so.

SECTION 8. *Amendments and Waivers.* No amendment, modification, termination, or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

SECTION 9. *Execution in Counterparts.* This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

SECTION 10. *Effectiveness; Binding Effect.* This Agreement shall be effective on the Effective Date. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. The Corporation shall not assign or delegate its rights or obligations hereunder without the prior written consent of the Assignee.

SECTION 11. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**CITY OF MORRO BAY PUBLIC FACILITIES
CORPORATION,**

by its authorized representative,
as *Assignor*

By: _____

Name:

Title: Executive Director

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

By: _____
Name: Andrew R. Wheeler
Title: Administrator

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

WIFIA CREDIT AGREEMENT

With

CITY OF MORRO BAY

and

CITY OF MORRO BAY PUBLIC FACILITIES CORPORATION

For the

Water System Portion of the

**MORRO BAY WATER RECLAMATION FACILITY
(WIFIA – N17150CA)**

Dated as of [_____], 2020

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WIFIA CREDIT AGREEMENT

(Water System Portion of the
Morro Bay Water Reclamation Facility)

THIS WIFIA CREDIT AGREEMENT (this “**Agreement**”), dated as of [_____], 2020, is by and among the **CITY OF MORRO BAY**, a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State of California (the “**State**”), with an address at 595 Harbor Street, Morro Bay, CA 93442 (the “**City**”), the **CITY OF MORRO BAY PUBLIC FACILITIES CORPORATION**, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the “**Corporation**”) and the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “**Administrator**”), with an address at 1200 Pennsylvania Avenue NW, Washington, DC 20460 (the “**WIFIA Credit Provider**”).

RECITALS:

WHEREAS, the Congress of the United States of America enacted the Water Infrastructure Finance and Innovation Act, as amended by Section 1445 of the Fixing America’s Surface Transportation Act of 2015, as further amended by Section 5008 of the Water Infrastructure Improvements For the Nation Act of 2016 and by Section 4201 of America’s Water Infrastructure Act of 2018 (collectively, as the same may be amended from time to time, the “**Act**” or “**WIFIA**”), which is codified as 33 U.S.C. §§ 3901-3914;

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

WHEREAS, in connection with the City undertaking the Project (as defined herein), the City determined that certain Project costs are attributable to the City’s wastewater system and certain Project costs are attributable to the City’s water system, and the City has determined that Project costs will be allocated among the two systems accordingly;

WHEREAS, the City has requested that the WIFIA Credit Provider make proceeds available for the wastewater system portion of the Project and for the water system portion of the Project through separate agreements in a principal amount not to exceed (i) \$25,183,810.80 for the wastewater system portion of the Project and (ii) \$36,516,525.66 for the water system portion of the Project, in each case, excluding interest that is capitalized in accordance with the terms hereof and to be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Project pursuant to the application submitted by the City for WIFIA financial assistance dated July 12, 2018 (the “**Application**”);

WHEREAS, the Corporation has been formed for the purpose, among others, of assisting the City in financing capital improvements, including providing financing for the Project;

WHEREAS, in order to finance the Project (i) the City has entered into two installment sale agreements with the Corporation, pursuant to which the City will purchase part of the wastewater system portion of the Project and part of the water system portion of the Project from the Corporation and (ii) in exchange for these sales of portions of the Project, the City will pay installment payments to the Corporation, such payments being secured by, among other thing, the net revenues of the wastewater system and the water system, all as further described in the respective installment sale agreements;

WHEREAS, the City has determined that installment payments due under the ISA (as defined herein) reflect the portion of the costs of the Water System Project (as defined herein) to be funded by the WIFIA Credit Provider pursuant to this Agreement and will be secured by, among other things, Net Revenues (as defined herein) of the Water System (as defined herein);

WHEREAS, the City has determined that installment payments due under the Wastewater System Project ISA (as defined herein) reflect the portion of the costs of the Wastewater System Project (as defined herein) to be funded by the WIFIA Credit Provider pursuant to the Wastewater System Project Credit Agreement (as defined herein) and will be secured by, among other things, pledged revenues of the Wastewater System;

WHEREAS, as of the date hereof, the Administrator has approved WIFIA financial assistance for the Project to be provided in the form of this Agreement and the Wastewater System Project Credit Agreement, subject to the terms and conditions contained in this Agreement and in the Wastewater System Project Credit Agreement, respectively;

WHEREAS, based on the Application and the representations, warranties and covenants set forth herein, the WIFIA Credit Provider proposes to make funding available under this Agreement to the City Related Parties (as defined herein) by purchasing the interests of the Corporation in the ISA (as defined herein), with such purchase proceeds being made available to the City for Eligible Project Costs, and the City has structured the Installment Payments (as defined herein) paid by it pursuant to the ISA to reflect the portion of the water system portion of the Project to be funded by the WIFIA Credit Provider;

WHEREAS, in exchange for the WIFIA Credit Provider making funding available under this Agreement, the Corporation has agreed to assign all of its right, title and interest in and to the ISA (excepting only the Corporation's rights to Additional Payments under Section 4.4(f) (*Additional Payments*) of the ISA and rights of indemnification under Section 5.2 (*Release and Indemnification Covenants*) of the ISA) to the WIFIA Credit Provider, as the initial Assignee, pursuant to the Assignment Agreement (as defined herein); and

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

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

ARTICLE I DEFINITIONS AND INTERPRETATION

Section 1. Definitions.

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

“Acceptable Credit Rating” means, with respect to any Person, the rating of its unsecured, senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than (a) at the time such Person executes, delivers or issues a repurchase agreement, ‘A+’, ‘A1’ or the equivalent rating from each Nationally Recognized Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable; and (b) at any time thereafter, ‘A’, ‘A2’ or the equivalent rating from each Nationally Recognized Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable.

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

“Additional Payments” means the payments to be made by the City to the Corporation or to the Assignee pursuant to the ISA (other than the Installment Payments) or the payments to be made by the City to the WIFIA Credit Provider pursuant to this Agreement, including, but not limited to, payments to be made pursuant to Section 10 (*Fees and Expenses*).

“Additional Principal Project Contracts” means (a) any contract, agreement, letter of intent, understanding or instrument listed in Part B of **Schedule 12(n)** (*Principal Project Contracts*) and (b) any other contract, agreement, letter of intent, understanding or instrument entered into by (or on behalf of) the City after the Effective Date with respect to the design and construction of the Project, in the case of this clause (b), (i) pursuant to which the City has payment obligations in excess of two and one half percent (2.5%) of the Project Budget in the aggregate, or (ii) the termination of which could reasonably be expected to have a Material Adverse Effect, but excluding, in the case of this clause (b), any (A) insurance policies, (B) Governmental Approvals and (C) agreements, documents and instruments (1) providing for, governing or evidencing any Permitted Debt and any related Permitted Lien for such Permitted Debt, or (2) entered into to consummate any Permitted Investment.

“Additional Senior Obligations” means any Senior Obligations permitted under Section 15(a) (*Negative Covenants – Indebtedness*) and under the Financing Documents, which Senior Obligations are issued or incurred after the Effective Date.

“Additional Subordinate Obligations” means any Subordinate Obligations permitted under Section 15(a) (*Negative Covenants – Indebtedness*) and under the Financing Documents, which Subordinate Obligations are issued or incurred after the Effective Date.

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

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

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

“Anti-Corruption Laws” means all laws, rules and regulations of any jurisdiction from time to time concerning or relating to bribery or corruption.

“Anti-Money Laundering Laws” means all U.S. and other applicable laws, rules and regulations of any jurisdiction from time to time concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

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

“Assignee” means, initially, the WIFIA Credit Provider or such other entity as has been assigned the rights of the Corporation under the ISA pursuant to the Assignment Agreement, and any further successors or assigns.

“Assignment Agreement” means the Assignment Agreement (Water System Project), dated as of the Effective Date, between the Corporation and the WIFIA Credit Provider, as the initial Assignee, assigning all of the Corporation’s right, title and interest in the ISA (excepting only the Corporation’s rights to Additional Payments under Section 4.4(f) (*Additional Payments*) of the ISA and rights of indemnification under Section 5.2 (*Release and Indemnification Covenants*) of the ISA) to the WIFIA Credit Provider.

“Authorizing Resolutions” means the Resolution, and each resolution that authorizes the issuance of additional Obligations or that amends the terms of the Resolution or such other resolution.

“Bank Secrecy Act” means the Bank Secrecy Act of 1970, as amended, and the regulations promulgated thereunder.

“Bankruptcy Related Event” means, with respect to a City Related Party: (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of a City Related Party or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for a City Related Party or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered; (b) a City Related Party shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) make

a general assignment for the benefit of creditors, (iv) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (v) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief, in each case under any Insolvency Law, (vi) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (iv), inclusive, of this clause (b), or (vii) take any action for the purpose of effecting any of the foregoing, including seeking approval or legislative enactment by any Governmental Authority to authorize commencement of a voluntary proceeding under any Insolvency Law; (c) the City shall fail to make an Installment Payment in accordance with Section 8 (*Payment of Installment Payments and Additional Payments*) of this Agreement and Section 4.4 (*Installment Payments*) of the ISA and such failure is not cured within thirty (30) days following notification by the WIFIA Credit Provider of failure to make such payment; (d) (i) any Person shall commence a process pursuant to which all or a substantial part of the Pledged Collateral may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Senior Obligations, or (ii) any Person shall commence a process pursuant to which all or a substantial part of the Pledged Collateral may be sold or otherwise disposed of pursuant to a sale or disposition of such Pledged Collateral in lieu of foreclosure; or (e) any receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official shall transfer, pursuant to directions issued by the Holders, funds on deposit in any of the System Accounts upon the occurrence and during the continuation of an Event of Default under this Agreement or an event of default under the Financing Documents for application to the prepayment of any principal amount of the Senior Obligations other than in accordance with the provisions of the Financing Documents or this Agreement.

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

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

“Capital Expenditures” means expenditures made or liabilities incurred for the acquisition of any assets, improvements or replacements thereto that have a useful life of more than one (1) year and that are capitalized in accordance with GAAP.

“Capitalized Interest” means an aggregate amount equal to the amount of the Interest Components of the Installment Payments accruing at the WIFIA Interest Rate during the Capitalized Interest Period based on aggregate unpaid Principal Components of the Installment Payments equal to the then current amounts advanced by the WIFIA Credit Provider under this Agreement permitted to be capitalized pursuant to Section 4.4(c)(ii) (*Installment Payments –*

Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule) of the ISA and Section 8(c) (*Payment of Installment Payments and Additional Payments – Capitalized Interest Period*) of this Agreement.

“Capitalized Interest Period” means the period from (and including) the Effective Date to (but excluding) the first day of the initial Payment Period, subject to earlier termination as set forth in Section 8(c) (*Payment of Installment Payments and Additional Payments – Capitalized Interest Period*) of this Agreement and in Section 4.4(c)(iii) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*) of the ISA.

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

“City Fiscal Year” means (a) as of the Effective Date, a fiscal year of the City commencing on July 1 of any calendar year and ending on June 30 of the immediately succeeding calendar year or (b) such other fiscal year as the City may hereafter adopt after giving thirty (30) days’ prior written notice to the WIFIA Credit Provider in accordance with Section 15(f) (*Negative Covenants – Fiscal Year*).

“City’s Authorized Representative” means any Person who shall be designated as such pursuant to Section 21 (*City’s Authorized Representative*).

“City Related Party” means, individually or collectively, the City and the Corporation.

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

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

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

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

“Construction Schedule” means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached as **Schedule II** (*Construction Schedule*), and (b) any updates thereto included in the periodic reports submitted to the WIFIA Credit Provider pursuant to Section 16(d) (*Reporting Requirements – Construction Reporting*) most recently approved by the WIFIA Credit Provider.

“Control” means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms **“Controlling”** and **“Controlled by”** have meanings correlative to the foregoing.

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

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

“Debt Service” means, with respect to any Obligations, for any period, as of any date of calculation, an amount equal to the sum of all interest and principal of Obligations accruing and payable in respect of such period or, if such Obligation is an installment sale agreement, the amount of installment payments accruing and payable in respect of such period.

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

“Default Rate” means an interest rate equal to the sum of (a) the WIFIA Interest Rate plus (b) 200 basis points.

“Development Default” means (a) the City abandons work or fails, in the reasonable judgment of the WIFIA Credit Provider, to diligently prosecute the work related to the Project or (b) the City fails to achieve Substantial Completion of the Project within twenty-four (24) months following the Projected Substantial Completion Date, unless delayed due to Uncontrollable Force or unless the WIFIA Credit Provider has consented in writing to such delay for a period of time.

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

“Effective Date” means the date of this Agreement.

“Eligible Project Costs” means, in reference to the entire Project, amounts in the Project Budget approved by the WIFIA Credit Provider, which are paid by or for the account of the City in connection with the Project (including, as applicable, Project expenditures incurred prior to the receipt of WIFIA credit assistance), which shall arise from the following:

- (a) development-phase activities, including planning, feasibility analysis (including any related analysis necessary to carry out an eligible project), revenue forecasting, environmental review, permitting, preliminary engineering and design work and other preconstruction activities;

- (b) construction, reconstruction, rehabilitation, and replacement activities;

- (c) the acquisition of real property or an interest in real property (including water rights, land relating to the Project and improvements to land), environmental mitigation (including acquisitions pursuant to Section 3905(8) of Title 33 of the United States Code), construction contingencies, and acquisition of equipment; or

- (d) capitalized interest (with respect to Obligations other than those due to the WIFIA Credit Provider) necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction;

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

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

“End of the Validation Period” means the sixtieth (60th) day following the adoption of the Resolution by the City Council of the City on [____], 2020, which day is the last day for any interested person to bring an action in the superior court of the County [____] pursuant to California Code of Civil Procedure Section 863.

“Environmental Laws” has the meaning provided in Section 12(p) (*Representations and Warranties of the City Related Parties – Environmental Matters*).

“EPA” means the United States Environmental Protection Agency.

“Event of Default” has the meaning provided in Section 17(a) (*Events of Default and Remedies*).

“Event of Loss” means any event or series of events that causes any portion of the Water System to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a casualty, a failure of title, or any loss of such property through eminent domain.

“Existing Indebtedness” means indebtedness or other financing arrangements (including installment sale arrangements) of the City that has been issued or incurred prior to the Effective Date that are payable from System Revenues, as listed and described in **Schedule III** (*Existing Indebtedness*).

“Existing Principal Project Contract” means each contract of the City set forth in Part A of **Schedule 12(n)** (*Principal Project Contracts*).

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

“Final Disbursement Date” means the earliest of (a) the date on which amounts available under this Agreement have been disbursed in full; (b) the last anticipated date of disbursement set forth in the then-current Anticipated Disbursement Schedule; (c) the date on which the City has certified to the WIFIA Credit Provider that it will not request any further disbursements under this Agreement; (d) the date on which the WIFIA Credit Provider terminates its obligations relating to disbursements of any undisbursed amounts under this Agreement in accordance with Section 17 (*Events of Default and Remedies*); and (e) the date that is one (1) year after the Substantial Completion Date.

“Final Installment Payment Date” means the earlier of (a) November 1, 2058 or such earlier date as is set forth in a revised Installment Payment Schedule; and (b) the Installment Payment Date immediately preceding the date that is thirty-five (35) years following the Substantial Completion Date.

“Financial Statements” has the meaning provided in Section 12(t) (*Representations and Warranties of the City Related Parties – Financial Statements*).

“Financing Documents” means (a) the ISA, (b) the Assignment Agreement, (c) this Agreement, (d) the Wastewater System Project ISA, (e) the Wastewater System Project Assignment Agreement, (f) the Wastewater System Project Credit Agreement, (g) the Authorizing Resolutions, (h) all Senior Obligation Documents, and (i) each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing.

“GAAP” means generally accepted accounting principles for U.S. state and local governments, as established by the Government Accounting Standards Board (or any successor entity with responsibility for establishing accounting rules for U.S. state and local governments), in effect from time to time in the United States of America.

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

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

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

“Holder” means, when used with respect to the ISA, the WIFIA Credit Provider, as the initial Assignee (and any subsequent Assignee) and, when used with respect to any other Obligation, the obligee, holder or registered owner of such Obligation, as applicable.

“Indemnitee” has the meaning provided in Section 32 (*Indemnification*).

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

“Installment Payment” individually, means with respect to any Installment Payment Date occurring on or after the Installment Payment Commencement Date, the sum of the Principal Component and the Interest Component (as adjusted to include interest at the Default Rate as set forth in Section 6 (*Interest Rate*) of this Agreement and Section 4.4(b) (*Installment Payments – Calculation of Interest Components*) of the ISA) of such Installment Payment due and payable on such Installment Payment Date as set forth on the Installment Payment Schedule and **“Installment Payments”** collectively, means all payments required to be paid by the City on any date under Section 8 (*Payment of Installment Payments and Additional Payments*) of this Agreement and Section 4.4 (*Installment Payments*) of the ISA, including any adjustments to include interest at the

Default Rate as set forth in Section 6 (*Interest Rate*) of this Agreement and Section 4.4(b) (*Installment Payments – Calculation of Interest Components*) of the ISA).

“Installment Payment Commencement Date” means the earliest to occur of (a) November 1, 2024; (b) if the Capitalized Interest Period ends pursuant to Section 8(c) (*Payment of Installment Payments and Additional Payments – Capitalized Interest Period*) due to the occurrence of an Event of Default, the first Installment Payment Date immediately following the end of the Capitalized Interest Period; or (c) the Installment Payment Date falling closest to, but not later than, the fifth anniversary of the Substantial Completion Date.

“Installment Payment Date” means May 1 and November 1 in each year, commencing on the Installment Payment Commencement Date.

“Installment Payment Schedule” means the Installment Payment Schedule reflected in **Exhibit F** (*Installment Payment Schedule*), as amended from time to time in accordance with Section 8(f) (*Payment of Installment Payments and Additional Payments – Adjustments to Installment Payment Schedule*) of this Agreement and in **Appendix A** (*Installment Payment Schedule*) of the ISA, as amended from time to time in accordance therewith.

“Interest Component” means (a) with respect to an Installment Payment, the interest component (as adjusted to include interest at the Default Rate as set forth in Section 6 (*Interest Rate*) of this Agreement and Section 4.4(b) (*Installment Payments – Calculation of Interest Components*) of the ISA) of such Installment Payment due and payable on the applicable Installment Payment Date as set forth on the Installment Payment Schedule and (b) with respect to the aggregate Installment Payments, all payments of the interest components of the Installment Payments required to be paid by the City on any date under Section 8 (*Payment of Installment Payments and Additional Payments*) of this Agreement and Section 4.4 (*Installment Payments*) of the ISA, as adjusted to include interest at the Default Rate as set forth in Section 6 (*Interest Rate*) of this Agreement and Section 4.4(b) (*Installment Payments – Calculation of Interest Components*) of the ISA).

“Investment Grade Rating” means a public rating no lower than ‘BBB-’, ‘Baa3’, ‘BBB (low)’, or higher, from a Nationally Recognized Rating Agency.

“ISA” means that Installment Sale Agreement (Water System Project), dated as of the Effective Date, between the City and the Corporation, pursuant to which the City purchased the Water System Portion of the Project.

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

“Loss Proceeds” means any proceeds of builders’ risk or casualty insurance (other than any proceeds from any policy of business interruption insurance insuring against loss of revenues

upon the occurrence of certain casualties or events covered by such policy of insurance) or proceeds of eminent domain proceedings resulting from any Event of Loss.

“Major Maintenance” means all reasonably necessary periodic major overhaul and repair (excluding any maintenance or repair of a routine or ordinary course nature) of the Water System.

“Major Maintenance Costs” means all expenses incurred or to be incurred by the City relating to Major Maintenance and paid or to be paid from System Revenues.

“Material Adverse Effect” means a material adverse effect on (a) the Water System, the Project or the System Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects of the City, (c) the legality, validity or enforceability of any material provision of any Financing Document, (d) the ability of the City to enter into, perform or comply with any of its material obligations under any Financing Document, (e) the validity, enforceability or priority of the Liens provided under the Financing Documents on the Pledged Collateral in favor of the Secured Parties, (f) the validity and enforceability of the assignment provided by the Corporation to the WIFIA Credit Provider as initial Assignee under the Assignment Agreement, or (g) the WIFIA Credit Provider’s or the Assignee’s rights or remedies available under any Financing Document.

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

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

“NEPA Determination” means the [Finding of No Significant Impact][Categorical Exclusion][Record of Decision] for the Project issued by EPA on [____], 20[____] in accordance with NEPA.

“Net Loss Proceeds” means Loss Proceeds after excluding any proceeds of delay-in-start-up insurance and proceeds covering liability of the City to third parties.

“Net Revenues” means, for any period, an amount equal to all of the System Revenues received during such period minus the Operation and Maintenance Costs for such period.

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

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

“Obligations” means obligations, including any bonds, notes, other evidences of indebtedness, installment sale arrangements, financing lease arrangements, or similar obligations that are secured by a pledge and Lien on all or a portion of the System Revenues, including the ISA, any other Senior Obligations, and any Subordinate Obligations.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

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

“Operation and Maintenance Costs” means all actual maintenance and operation costs (excluding Major Maintenance Costs and Capital Expenditures) incurred and paid from System Revenues (or, if applicable, forecasted to be incurred and paid from System Revenues) in connection with the operation and maintenance of the Water System in any particular time period to which said term is applicable, including payments for taxes (excluding income taxes), insurance, consumables, advertising, marketing, payments pursuant to any agreements for the management, operation or maintenance of the Water System, reasonable legal fees and expenses paid by the City in connection with the management, maintenance or operation of the Water System, fees paid in connection with obtaining, transferring, maintaining or amending any Governmental Approvals, fees of the paying agent, Technical and Rate Consultant and other entities relating to administration of the Financing Documents, costs incurred in connection with the performance of environmental mitigation work to be carried out by the City (but only to the extent such work has a useful life of less than twelve (12) months), amounts required for reasonable general and administrative expenses (including employee salaries and benefits, but excluding unbudgeted extraordinary payments to pension funds and post-employment benefit funds), but exclusive in all cases of rebates or grants, debt payments, noncash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature.

“Organizational Documents” means: (a) the constitutional and statutory provisions that are the basis for the existence and authority of the City Related Parties, including any enabling statutes, ordinances or public charters and any other organic laws establishing the City Related Parties and (b) the resolutions, bylaws, code of regulations, operating procedures or other organizational documents (including any amendments, modifications or supplements thereto) of or adopted by the City Related Parties by which the City Related Parties, their powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived.

“Outstanding” means, with respect to: (i) the ISA, Installment Payments that have not been paid, in full, in immediately available funds; and (ii) all other Obligations, Obligations that have not been fully repaid, cancelled or legally defeased or discharged pursuant to Section 5.15(e) (*Covenants Regarding Other Obligations – Defeasance of Other Obligations*) of the ISA.

“Outstanding Balance” means, with respect to the Installment Payments (i) the initial Principal Components of the Installment Payments (equal to the sum of the aggregate amount then advanced by the WIFIA Credit Provider under this Agreement plus the Capitalized Interest added thereto pursuant to Section 4.4(c)(ii) (*Installment Payments – Initial Installment Payment*

Schedule; Adjustments to Installment Payment Schedule) of the ISA and Section 8(c) (*Payment of Installment Payments and Additional Payments – Capitalized Interest Period*) of this Agreement) minus (ii) the aggregate Principal Components of the Installment Payments paid or prepaid by the City pursuant to Article VII (*Prepayment of Installment Payments*) of the ISA and Section 9 (*Prepayment*) of this Agreement.

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

“Payment Default” has the meaning provided in Section 17(a)(i) (*Events of Default and Remedies – Payment Default*).

“Payment Period” means the six (6) month period beginning on May 1, 2024 and ending on October 31, 2024, and each succeeding six (6) month period thereafter; provided, however, that if the Installment Payment Commencement Date occurs earlier than November 1, 2024, the first Payment Period shall be the six (6) month period ending on the date immediately prior to the Installment Payment Commencement Date.

“Permitted Debt” means:

- (a) other Existing Indebtedness;
- (b) the ISA;
- (c) Additional Senior Obligations that satisfy the requirements of Section 15(a) (*Negative Covenants – Indebtedness*) and the Financing Documents; and
- (d) Additional Subordinate Obligations that satisfy the requirements of Section 15(a) (*Negative Covenants – Indebtedness*) and the Financing Documents.

“Permitted Investments” means any investments in which the City may invest its funds, as listed in Section 53601 of the California Government Code, in compliance with the City’s investment policy then in effect.

“Permitted Liens” means:

- (a) Liens imposed pursuant to the WIFIA Credit Documents;
- (b) Liens imposed pursuant to the Resolution Documents;
- (c) Liens imposed on Net Revenues as security for Permitted Debt;
- (d) Liens imposed by law, including Liens for taxes that are not yet due or are being contested in compliance with Section 14(j) (*Affirmative Covenants – Material Obligations*);

(e) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 14(j) (*Affirmative Covenants – Material Obligations*);

(f) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance, and other social security laws or regulations;

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

(h) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 17(a)(vi) (*Events of Default and Remedies – Material Adverse Judgment*); and

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

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

“Pledged Collateral” means, collectively, (a) the Net Revenues, (b) the WIFIA Payment Account and all proceeds deposited therein from time to time, (c) the WIFIA Reserve Account and all proceeds deposited therein from time to time, (d) available amounts in the Subordinate Obligation Payment Accounts, the Subordinate Obligation Reserve Accounts and the general reserve account from which the City shall make the required deposits of System Revenues as set forth in Section 4.5(c)(3) (*Pledge and Application of Net Revenues – Flow of Funds – Deposit of System Revenues Into Revenue Account; Flow of Funds- Deposits in the Event of Deficiency*) of the ISA, and (e) such other amounts as are pledged or available as set forth in Section 4.5 (*Pledge and Application of Net Revenues – Flow of Funds*) of the ISA.

“Principal Component” means (a) with respect to an Installment Payment, the principal component of such Installment Payment due and payable on the applicable Installment Payment Date as set forth on the Installment Payment Schedule and (b) with respect to the aggregate Installment Payments, all payments of the principal components of the Installment Payments required to be paid by the City on any date under Section 8 (*Payment of Installment Payments and Additional Payments*) of this Agreement and Section 4.4 (*Installment Payments*) of the ISA and which amount is equal to the aggregate amount then drawn pursuant to this Agreement plus the Capitalized Interest permitted to be capitalized pursuant to Section 8(c) (*Payment of Installment Payments and Additional Payments – Capitalized Interest Period*) of this Agreement and Section 4.4(c)(ii) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*) of the ISA.

“Principal Project Contracts” means the Existing Principal Project Contracts and the Additional Principal Project Contracts.

“Principal Project Party” means any Person (other than the City) party to a Principal Project Contract.

“Project” means the design and construction of a new water reclamation facility, sewage pump station and pipeline, new injection wells for groundwater storage, recycled water pipeline and waste discharge pipeline, located within the City and in an unincorporated area of the County of San Luis Obispo adjacent to the City boundaries.

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

“Projected Substantial Completion Date” means November 1, 2023, as such date may be adjusted in accordance with Section 16(d) (*Reporting Requirements – Construction Reporting*).

“Public Benefits Report” has the meaning provided in Section 16(e) (*Reporting Requirements – Public Benefits Report*).

“Purchase Price” means the aggregate purchase price payable by the City to the Corporation for the purchase of the Water System Portion of the Project, payable by the City in Installment Payments as set forth in Section 4.4 (*Installment Payments*) of the ISA.

“Rate Consultant” means a single individual or firm, not related to the City and considered independent with respect to the City (i.e., not an employee of the City or any affiliate of the City or having other material business relationships with the City) authorized to do business in and qualified to practice in the areas required to provide the services required of the Rate Consultant, that has expertise in the technical requirements for establishing rates and charges for governmental water or wastewater systems similar in size and scope to the Water System, selected by the City.

“Rate Covenant” has the meaning set forth in Section 14(a) (*Affirmative Covenants – Rate Covenant*).

“Related Documents” means the Financing Documents, the WIFIA Credit Documents and the Principal Project Contracts.

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

“Resolution” means Resolution No. [___], adopted by the City Council on [___], 2020 and authorizing, among other things, the City to enter into the ISA, the Assignment Agreement and this Agreement and to create the pledge and security interest established under the ISA.

“Resolution Documents” means (i) the Authorizing Resolutions and (ii) each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing.

“Revenue Account” means the account so designated and established within the Water Fund pursuant to the ISA.

“Sanctioned Country” means, at any time, a country or territory which is itself the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or controlled by any such Person or Persons.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered, or enforced from time to time by the Government, including those administered by OFAC or the U.S. Department of State.

“Secured Obligations” means the Senior Obligations (including the obligations of the City under this Agreement and the ISA, the Subordinate Obligations, and any other obligation secured by all or a portion of the Pledged Collateral.

“Secured Parties” means the WIFIA Credit Provider, as the initial Assignee, and any other Holders of Secured Obligations.

“Senior Debt Service Coverage Ratio” means, for each City Fiscal Year, the ratio of: (a) Net Revenues during such City Fiscal Year to (b) Debt Service on all Outstanding Senior Obligations for such City Fiscal Year.

“Senior Obligation Documents” means, collectively, (i) the ISA, (ii) the Assignment Agreement, (iii) this Agreement, and (iv) the indenture of trust, trust agreement, supplemental installment sale agreement, installment sale agreement, lease, loan agreement or other document (including resolutions or ordinances) authorizing the issuance of any Senior Obligations or any securities which evidence Senior Obligations.

“Senior Obligation Interest Payment Date” means, with respect to any Senior Obligation, any date on which an interest payment on the applicable bonds, or a payment of the interest component of the applicable installment sale agreement or capital lease agreement, is regularly scheduled to be paid to holders of the applicable Senior Obligation.

“Senior Obligation Payment Accounts” means the payment accounts within the Water Fund established pursuant to the Senior Obligation Documents for purposes of making payments of principal of and interest on Senior Obligations.

“Senior Obligation Payment Period” shall mean, for any Senior Obligation, (i) with respect to interest payments (or interest components of an installment payment), the number of months between the applicable Senior Obligation Interest Payment Dates and (ii) with respect to principal payments, including sinking fund installment redemptions (or the principal components of an installment payment or capital lease payment), the number of months between the applicable Senior Obligation Principal Payment Dates. With respect to the first interest payment and principal payment for any Senior Obligation, the applicable number of months determined as set forth above

before the initial interest payment or principal payment, as applicable, shall also be a Senior Obligation Payment Period.

“Senior Obligation Principal Payment Date” means, with respect to any Senior Obligation, any date on which a principal payment or mandatory sinking fund redemption payment is due on the applicable bonds, or principal component of the applicable installment sale payment or capital lease payment, is regularly scheduled to be paid to holders of the applicable Senior Obligation.

“Senior Obligation Reserve Accounts” means the reserve accounts within the Water Fund established pursuant to the Senior Obligation Documents.

“Senior Obligations” means (i) all Installment Payments due under the ISA, and (ii) Additional Senior Obligations.

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

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

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

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

“Subordinate Obligation Documents” means the indenture of trust, trust agreement, supplemental installment sale agreement, installment sale agreement, lease, loan agreement or other document (including resolutions or ordinances) authorizing the issuance of any Subordinate Obligations or any securities which evidence Subordinate Obligations.

“Subordinate Obligation Payment Accounts” means the payment accounts within the Water Fund established pursuant to the Subordinate Obligation Documents for purposes of making payments of principal of and interest on Subordinate Obligations.

“Subordinate Obligation Reserve Accounts” means the reserve accounts within the Water Fund established pursuant to the Subordinate Obligation Documents.

“Subordinate Obligations” means any Obligation that is fully subordinated to the City’s payment obligations under the ISA in priority of payment (as to both principal and interest, installment payments, lease payments or similar payments due with respect to Obligations), voting and priority of security interest in the Net Revenues, including with respect to payment from revenues and reserves and payment upon default or acceleration of any such Obligations.

“Substantial Completion” means, with respect to the Project, the stage at which the Project is able to perform the functions (for both the Wastewater System and the Water System) for which the Project is designed.

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

“System Accounts” means all funds, accounts or subaccounts holding System Revenues, including the Water Fund and the Revenue Account, Senior Obligation Payment Accounts (including the WIFIA Payment Account), the Senior Obligation Reserve Accounts (including the WIFIA Reserve Account), the Subordinate Obligation Payment Accounts, the Subordinate Obligation Reserve Accounts and the general reserve account therein and such additional funds, accounts or sub-accounts that may be established in connection with the Water System for System Revenues.

“System Revenues” means (a) all rates, fees, charges, rents, taxes or assessments dedicated to pay costs of the Water System, and other income and receipts received by the City from the ownership or operation of the Water System, (b) Loss Proceeds from business interruption insurance, (c) interest received on any moneys or securities held in System Accounts, and (d) the moneys and securities of any entity that is acquired by the City and that is deposited in the Revenue Account to the extent such moneys are applied to pay liabilities incurred by the acquired company prior to the date of acquisition.

System Revenues shall not include (i) proceeds of the issuance of Obligations, (ii) the proceeds for any insurance pertaining to loss or damage to persons and the property of others or to loss or damage to the Water System, or the proceeds of condemnation or the sale or other disposition of any part of the Water System, except to the extent any such proceeds are applied by the City to pay Operation and Maintenance Costs, (iii) transfers to the Revenue Account from any other fund or account, unless approved by the WIFIA Credit Provider, (iv) any amount received or receivable from the United States or the State (or any agency of either thereof) or from any other sources as or on account of a grant or contribution for or with respect to the construction, acquisition, improvement, extension, renewal or other development of any part of the Water System, (v) customers’ deposits or any other deposits subject to refund until such deposits have become the property of the City, (vi) any proceeds of ad valorem property taxes, or (vii) any proceeds of taxes or assessments restricted by law to be used by the City to pay bonds or other obligations heretofore or hereafter issued. “System Revenues” shall not include any amounts on deposit in the general fund of the City except to the extent such amounts constitute payment for fees and charges for the services and facilities furnished by the Water System to the City.

“Technical and Rate Consultant” means a single individual or firm, or a combination of one or more individuals or firms, not related to the City and considered independent with respect to the City (i.e., not an employee of the City or any affiliate of the City or having other material business relationships with the City) authorized to do business in and qualified to practice in the areas required to provide the services required of the Technical and Rate Consultant, that together have expertise in the technical requirements for operation and maintenance of systems similar in size and scope to the Water System and delivering the services provided by the Water System, and establishing rates and charges for governmental water or wastewater systems similar in size and scope to the Water System, selected by the City and reasonably acceptable to the WIFIA Credit Provider.

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

“Uncontrollable Force” means any cause beyond the control of the City, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (provided, that the City shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the City and the City does not control the administrative agency or governmental officer or body; provided, that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the City.

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

“Updated Financial Model” means the Base Case Financial Model, updated in accordance with Section 16(a) (*Reporting Requirements – Updated Financial Model*).

“Wastewater System” means any and all properties and assets, real and personal, tangible and intangible, of the City, now or hereafter existing, used or pertaining to the disposal or reuse of wastewater, including the Wastewater System Project, sewage treatment plants, intercepting and collecting sewers, outfall sewers, force mains, pumping stations, ejector stations, pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, treatment, purification or disposal of sewage, and any necessary lands, rights of way and other real or personal property useful in connection therewith, and all additions, extensions, expansions, improvements and betterments thereto and equipping thereof, including the Project.

“Wastewater System Portion of the Project” means 20% of the Eligible Project Costs, all of which Eligible Project Costs are financed by the Wastewater System Project ISA and the Wastewater System Project Credit Agreement.

“Wastewater System Project” means the portion of the Project that is allocable to the Wastewater System equal to 71% of the Project costs.

“Wastewater System Project Assignment Agreement” means the Assignment Agreement (Wastewater System Project), dated as of the Effective Date, between the Corporation and the WIFIA Credit Provider, as the initial assignee thereunder.

“Wastewater System Project Credit Agreement” means the WIFIA Credit Agreement, dated as of the Effective Date, by and among the WIFIA Credit Provider, the Corporation and the City relating to the Wastewater System Portion of the Project.

“Wastewater System Project Credit Agreement Documents” means (a) the Wastewater System Project Credit Agreement, (b) the Wastewater System Project ISA, (c) the Wastewater System Project Assignment Agreement and (d) the Financing Documents.

“Wastewater System Project ISA” means that Installment Sale Agreement (Wastewater System Project), dated as of the Effective Date, between the City and the Corporation, pursuant to which the City purchased the Wastewater System Portion of the Project.

“Water Fund” means the fund or funds established and held by the City with respect to the Water System.

“Water System” means [_____]

“Water System Portion of the Project” means 29% of the Eligible Project Costs, all of which Eligible Project Costs are financed by the ISA and this Agreement.

“Water System Project” means the portion of the Project that is allocable to the Water System equal to 29% of the Project costs.

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

“WIFIA Credit Documents” means (a) this Agreement, (b) the ISA, and (c) the Assignment Agreement.

“WIFIA Credit Facility” means the proceeds made by the WIFIA Credit Provider to the City on the terms and conditions set forth herein, pursuant to the Act, in a principal amount not to exceed \$36,516,525.66 (excluding capitalized interest), to be used in respect of Eligible Project Costs paid or incurred by the City for the Water System Project and to pay for the purchase price of the Corporation’s interests in the ISA.

“WIFIA Credit Provider” has the meaning provided in the preamble hereto.

“WIFIA Credit Provider’s Authorized Representative” means the Administrator and any other Person who shall be designated as such pursuant to Section 22 (*WIFIA Credit Provider’s Authorized Representative*).

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

“WIFIA Payment Account” means the account so designated and established within the Water Fund pursuant to the ISA, which will be used to accumulate Net Revenues to ensure timely payment of Installment Payments and from which Installment Payments will be paid.

“WIFIA Reserve Account” means the account so designated and established within the Water Fund pursuant to the ISA, which will be used to accumulate amounts equal to the WIFIA Reserve Account Requirement to ensure timely payment of Installment Payments.

“WIFIA Reserve Account Requirement” means, as of the date of calculation, an amount equal to fifty percent (50%) of the maximum annual aggregate amount (without duplication) of Installment Payments that will become due on any two consecutive Installment Payment Dates on the Installment Payment Schedule.

“WIFIA Reserve Event” means, as of the final day of the City Fiscal Year, failure of the City to maintain a Senior Debt Service Coverage Ratio of at least 1.30 to 1.00.

Section 2. Interpretation.

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

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

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

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

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

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

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

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

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

(j) Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 31 (*Notices*) and signed by a duly authorized representative of such party.

(k) Whenever this Agreement requires a change in principal amount, interest rate or payment schedule of the Installment Payments, it is intended that such change be reflected in the ISA.

ARTICLE II THE WIFIA CREDIT FACILITY

Section 3. WIFIA Credit Facility Amount. The principal amount available under this Agreement shall not exceed \$36,516,525.66 (excluding any interest that is capitalized in accordance with the terms hereof). Proceeds available to be drawn under this Agreement shall be disbursed from time to time in accordance with Section 4 (*Disbursement Conditions*) and Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*).

Section 4. Disbursement Conditions.

(a) Pursuant to the ISA, the Corporation has appointed the City as its agent to request funds from time to time under this Agreement and the City has accepted such appointment and assumed all rights, liabilities, duties and responsibilities of the Corporation under this Agreement regarding the requisition of funds from time to time under this Agreement. Subject to Section 4(d) below, proceeds shall be disbursed under this Agreement solely in respect of Eligible Project Costs paid or incurred and approved for payment by or on behalf of the City in connection with the Project and in consideration for the assignment by the Corporation of its interests in the ISA pursuant to the Assignment Agreement. If the City intends to utilize the disbursed proceeds to make progress payments for Project construction work performed under the Principal Project Contracts, the City shall demonstrate to the satisfaction of the WIFIA Credit Provider that such progress payments are commensurate with the value of the work that has been completed. Each disbursement of available amounts under this Agreement shall be made pursuant to a requisition and certification (a “**Requisition**”) in the form set forth in **Appendix One** (*Form of Requisition*) to **Exhibit D** (*Requisition Procedures*), along with all documentation and other information required thereby, submitted by the City to, and approved by, the WIFIA Credit Provider, all in accordance with the procedures of **Exhibit D** (*Requisition Procedures*) and subject to the requirements of this Section 4 and the conditions set forth in Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*); provided, that no disbursements of proceeds under this Agreement shall be made prior to the End of the Validation Period nor after the Final Disbursement Date.

(b) The City shall deliver copies of each Requisition (which shall include all costs of the Project for which the City seeks funding, whether through this Agreement or through the Wastewater System Project Credit Agreement) to the WIFIA Credit Provider on or before the first (1st) Business Day of each month for which a disbursement is requested. If the WIFIA Credit Provider shall expressly approve a Requisition or shall not expressly deny a Requisition, disbursements of funds shall be made on the fifteenth (15th) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such fifteenth (15th) day is not a Business Day. Express WIFIA Credit Provider approval or denial shall be substantially in the form annexed hereto as **Appendix Two** (*[Approval/Disapproval] of the WIFIA Credit Provider*) to **Exhibit D** (*Requisition Procedures*). In no event shall disbursements be made more than once each month.

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

(d) With respect to each Requisition (i) the Eligible Project Costs relating to the Project in its entirety shall be allocated pro rata between the Wastewater System Project and the Water System Project based on the following percentages: 40.82% for the Wastewater System Project and 59.18% for the Water System Project; and (ii) proceeds available under this Agreement shall be disbursed hereunder only if there is a concurrent disbursement under the Wastewater System Project Credit Agreement.

Section 5. Term. The term of this Agreement shall extend from the Effective Date to the Final Installment Payment Date or to such earlier date as all amounts due or to become due to the WIFIA Credit Provider hereunder have been irrevocably paid in full in immediately available funds.

Section 6. Interest Rate. The interest rate with respect to the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) (the "**WIFIA Interest Rate**") shall be [____] percent ([____]%) per annum. Interest will accrue and be computed on the Outstanding Balance (as well as on any past due interest) (and the corresponding unpaid Interest Component of the Installment Payments will accrue) from time to time on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months; provided, that, upon the occurrence of an Event of Default, the City shall pay interest on the Outstanding Balance (and the corresponding Interest Components of the Installment Payments shall be calculated based on the

unpaid Principal Components of the Installment Payments) at the Default Rate for the period (a) in the case of any Payment Default, from (and including) its due date to (but excluding) the date of actual payment and (b) in the case of any other Event of Default, from (and including) the date of occurrence of such Event of Default to (but excluding) the earlier of the date on which (i) such Event of Default has been cured (if applicable) in accordance with the terms of this Agreement and (ii) the Purchase Price has been irrevocably paid in full to the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the WIFIA Credit Provider as the initial Assignee) in immediately available funds. For the avoidance of doubt, Capitalized Interest shall accrue and be added to the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments), and interest on the Outstanding Balance (and the corresponding unpaid Interest Components of the Installment Payments) shall accrue and be calculated, only on the amounts advanced by the WIFIA Credit Provider under this Agreement as and to the extent so advanced in accordance with Section 4 (*Disbursement Conditions*).

Section 7. Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event.

(a) Pledge of Security. As security for the City's obligation to pay the Installment Payments pursuant to the ISA, and concurrently with the issuance and delivery of this Agreement, the City has granted, pledged and assigned pursuant to the ISA to the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the WIFIA Credit Provider, as the initial Assignee), a Lien on and security interest in the Pledged Collateral. The City's obligation to pay the Installment Payments is secured by the Lien on and security interest in the Net Revenues on a parity with the Senior Obligations and senior to all Subordinate Obligations. The Lien and security interest granted to the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the WIFIA Credit Provider, as the initial Assignee) in the ISA is effective, valid, binding and perfected, in all cases, irrespective of whether any Person has notice of the granting of such Lien and security interest shall attach, be perfected and be valid and binding immediately without the need for any physical delivery, recordation, filing, or further act. All organizational, regulatory or other necessary action on the part of the City and the Corporation with respect to the foregoing has been duly and validly taken. The Pledged Collateral shall not be used for any other purpose while any of the Installment Payments remain unpaid, except that out of the System Revenues there may be apportioned such sums, for such purposes, as are expressly permitted by this Agreement and the ISA. The Lien on and security interest in the Pledged Collateral is in full force and effect and is not subordinate or junior to any other Lien on or security interest in the Pledged Collateral. The Lien on and security interest in the Net Revenues and the collateral described in clause (d) of the definition of "Pledged Collateral" granted hereby is on a parity with the pledge and lien which secures the payment of the Senior Obligations. The Lien on and security interest in the WIFIA Payment Account and all proceeds deposited therein from time to time and the WIFIA Reserve Account and all proceeds deposited therein from time to time is not subject to any other Lien or security interest. In addition, with respect to the Lien on and security interest in amounts in the WIFIA Payment Account and the WIFIA Reserve Account, such Lien and security interest is solely for the benefit of the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the WIFIA Credit Provider, as the initial Assignee), and the Holders of other Senior Obligations shall have no Lien on or claim to funds in the WIFIA Payment Account or the WIFIA Reserve Account following deposit therein. The City's obligation with respect to funds drawn under this

Agreement is evidenced by the obligation of the City to pay to the Corporation the Installment Payments pursuant to the ISA. THIS AGREEMENT SHALL NOT ITSELF BE A DEBT INSTRUMENT.

(b) Priority of Liens. Except (i) for Permitted Liens and (ii) to the extent otherwise provided in Section 7(a) (*Security and Priority; Assignment by Corporation; Flow of Funds; WIFIA Reserve Event – Pledge of Security*), the Pledged Collateral will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto, that is of equal rank with or senior to the pledge of the City created under the WIFIA Credit Documents, without priority or preference and notwithstanding that Senior Obligations may be issued at different times and under different financing documentation. All necessary action or approvals on the part of the City Related Parties with respect to the foregoing has been duly and validly taken.

(c) Special Limited Obligations. The City's obligation to pay the Installment Payments and any other amounts coming due and payable hereunder constitute a special, limited obligation of the City payable solely from the Pledged Collateral and the other funds provided herein for the payment of the Installment Payments or for the performance of any other agreements or covenants required to be performed by it contained herein. Under no circumstances is the City required to advance moneys derived from any source of income other than the Net Revenues for the payment of the Installment Payments and such other amounts, and no other funds or property of the City are liable for the payment of the Installment Payments. The City may, however, but in no event shall be obligated to, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the City for such purpose. As long as the WIFIA Credit Provider, as the initial Assignee, is the Holder of the ISA, the WIFIA Credit Provider may exercise any right or remedy that may be available to the Corporation under the Financing Documents.

(d) Assignment by the Corporation. In consideration for advancing funds from time to time pursuant to this Agreement for the acquisition, construction and installation of the Water System Portion of the Project, the Corporation has assigned pursuant to the Assignment Agreement to the WIFIA Credit Provider as the initial Assignee, all of the Corporation's rights, title and interest under the ISA (excepting only the Corporation's rights to Additional Payments under Section 4.4(f) (*Additional Payments*) of the ISA and rights of indemnification under Section 5.2 (*Release and Indemnification Covenants*) of the ISA), including but not limited to (i) the right to receive and collect all of the Installment Payments from the City; (ii) the right to receive and collect any proceeds of any insurance maintained thereunder with respect to the Project, or any eminent domain award (or proceeds of sale under threat of eminent domain) paid with respect to the Project; and (iii) the right to exercise such rights and remedies conferred on the Corporation under the ISA as may be necessary or convenient (y) to enforce payment of the Installment Payments and any amounts required to be credited to the payment or prepayment thereof, or (z) otherwise to protect the interests of the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the WIFIA Credit Provider, as the initial Assignee) in the event of a default by the City under the ISA. All necessary action or approvals on the part of the Corporation with respect to the foregoing has been duly and validly taken. The City and the Corporation shall, from time to time at the request of the WIFIA Credit Provider, as the initial Assignee, execute and deliver such further acknowledgments, agreements and instruments of assignment, transfer and assurance, and do all such further acts and things as may

be necessary or appropriate in the reasonable opinion of the WIFIA Credit Provider, as the initial Assignee, to give effect to the provisions of this Section and to more perfectly confirm the rights, titles and interests assigned and transferred to the WIFIA Credit Provider, as the initial Assignee, pursuant to the Assignment Agreement.

(e) Funds Limited to System Purposes Only. The City shall not use System Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of the WIFIA Credit Documents. The City shall manage, conserve and apply the Net Revenues on deposit in the Water Fund in such a manner that all deposits required to be made under the subsection (f) will be made at the times and in the amounts so required.

(f) Flow of Funds. Immediately upon receipt thereof by the City, the City shall deposit all System Revenues into the Revenue Account. The City shall apply amounts in the Water Fund, and the Revenue Account, the WIFIA Payment Account and the WIFIA Reserve Account therein, only as permitted by the WIFIA Credit Documents. Amounts on deposit in the Revenue Account shall be applied by the City on the first Business Day of each month to pay the following amounts in the following order of priority:

(i) first, to pay Operation and Maintenance Costs in amounts reasonably projected to be necessary during the applicable month for the payment of Operation and Maintenance Costs;

(ii) second, on a prorated basis, into each Senior Obligation Payment Account (including the WIFIA Payment Account), the amount of interest (or interest component of an installment payment or capital lease payment) and principal (or principal component of an installment payment or capital lease payment) accruing during the applicable month, assuming equal monthly accruals over the applicable number of months in the applicable Senior Obligation Payment Period, plus an amount equal to any transfer shortfalls that remain unfunded from prior months; provided, however, in the last month of a Senior Obligation Payment Period, the amount transferred shall be that amount needed to pay the amount due on the applicable Senior Obligation Interest Payment Date or Senior Obligation Principal Payment Date, and further provided, with respect to a Senior Obligation, no transfer with respect to interest on such Senior Obligation shall be made to the extent amounts have been pre-funded and are otherwise available to make the applicable interest payment;

(iii) third, on a prorated basis, into the respective Senior Obligation Reserve Accounts (including the WIFIA Reserve Account) as required by the Senior Obligation Documents, in an amount equal to the amount required to be deposited therein to restore the balance in each Senior Obligation Reserve Account to the applicable reserve requirement pursuant to the terms of the Senior Obligation Documents, including, with respect to the ISA, the amounts required to be deposited pursuant to Section 7(p) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event – WIFIA Reserve Account*) of this Agreement and Section 4.7 (*WIFIA Reserve Account*) of the ISA;

(iv) fourth, any other payments required to comply with the provisions of the Senior Obligation Documents (including the ISA and this Agreement); and

(v) fifth, to the respective Subordinate Obligation Payment Accounts as required by the applicable Subordinate Obligation Documents to pay interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the Subordinate Obligations during the applicable month; and

(vi) sixth, to the respective Subordinate Obligation Reserve Accounts as required by the Subordinate Obligation Documents, in an amount equal to the amount required to be deposited therein to restore the balance in each Subordinate Obligation Reserve Account to the applicable reserve requirement pursuant to the terms of the Subordinate Obligation Documents; and

(vii) seventh, to a general reserve account, to be used for any other lawful purposes of the Water System.

(g) Deposits in the Event of Deficiency. After the City has made any required payments described in clauses (i) through (iv) above, any remaining Net Revenues in the Water Fund shall be available for any lawful purpose of the City relating to the Water System; provided, however, if there shall be a deficiency at any time in System Revenues required to make the deposits required pursuant to clauses (i), (ii), (iii) or (iv) above, the City shall make the required deposits from available amounts in the Subordinate Obligation Payment Accounts or the Subordinate Obligation Reserve Accounts or the general reserve account, in reverse order, with transfers going first to fund requirements of clause (i), second to fund requirements of clause (ii), third to fund requirements of clause (iii) and fourth to fund requirements of clause (iv).

(h) Application of Water Funds Generally. All System Revenues received shall be deposited into the Revenue Account when and as received and applied only as set forth above. The City shall not permit System Revenues or other assets of the Water System, or any funds in the Water Fund or any other System Account held by or on behalf of the City, to be paid or transferred or otherwise applied for purposes other than ownership, operation or maintenance of, or capital improvements to, the Water System.

(i) Establishment of Funds and Accounts. The City has previously established the Water Fund on its books of account and records, which the City shall continue to hold and maintain for the purposes and uses set forth herein. Within the Water Fund the City shall establish the Revenue Account, the WIFIA Payment Account and the WIFIA Reserve Account. At the time of issuance of any Additional Senior Obligation, the City shall establish the related Senior Obligation Payment Account and the related Senior Obligation Reserve Account within the Water Fund for that Additional Senior Obligation. At the time of issuance of any Additional Subordinate Obligations, the City shall establish the related Subordinate Obligation Payment Account and the related Subordinate Obligation Reserve Account within the Water Fund for that Additional Subordinate Obligation.

Amounts on deposit in each Senior Obligation Payment Account shall be applied only as set forth in Section 7(j) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event - Application of Senior Obligation Payment Accounts*) and shall be pledged only to the applicable Senior Obligation. Amounts on deposit in each Senior Obligation Reserve Account shall be applied only as set forth in Section 7(k) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event - Application of Senior Obligation Reserve Accounts*) and shall be pledged only to the applicable Senior Obligation. Amounts on deposit in each Subordinate Obligation Payment Account shall be applied only as set forth in Section 7(l) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event - Application of Subordinate Obligation Payment Accounts*)) and may be pledged as set forth in clause (d) of the definition of “Pledged Collateral” to Senior Obligations. Amounts on deposit in each Subordinate Obligation Reserve Account shall be applied only as set forth in Section 7(m) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event - Application of Subordinate Obligation Reserve Accounts*)) and may be pledged as set forth in clause (d) of the definition of “Pledged Collateral” to Senior Obligations. Amounts on deposit in the general reserve account shall be applied only as set forth in Section 7(n) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event - Application of General Reserve Account*) and may be pledged as set forth in clause (d) of the definition of “Pledged Collateral” to Senior Obligations.

(j) Application of Senior Obligation Payment Accounts. Amounts on deposit in each Senior Obligation Payment Account (including the WIFIA Payment Account) shall be applied only to the payment of interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Senior Obligation. Amounts on deposit in any Senior Obligation Payment Account (including the WIFIA Payment Account) are not available for deposits to, and may not be transferred to, any other Senior Obligation Payment Account.

(k) Application of Senior Obligation Reserve Accounts. Amounts on deposit in each Senior Obligation Reserve Account (including the WIFIA Reserve Account) shall be applied only as set forth in the following sentence. If on any Senior Obligation Interest Payment Date or Senior Obligation Principal Payment Date amounts in the related applicable Senior Obligation Payment Account are insufficient to pay interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Senior Obligation due on such Senior Obligation Interest Payment Date or Senior Obligation Principal Payment Date, as applicable, amounts in the applicable Senior Obligation Reserve Account shall be transferred to the applicable Senior Obligation Payment Account in the amount of such insufficiency. Amounts on deposit in any Senior Obligation Reserve Account (including the WIFIA Reserve Account) are not available for deposits to, and may not be transferred to, any other Senior Obligation Payment Account or any other Senior Obligation Reserve Account.

(l) Application of Subordinate Obligation Payment Accounts. Amounts on deposit in each Subordinate Obligation Payment Account shall be applied to the payment of interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment

comprising), the applicable Subordinate Obligation, but only as and to the extent due and payable. Amounts on deposit in any Subordinate Obligation Payment Account may not be transferred out of such Subordinate Obligation Payment Account to pay any such amounts more than five (5) days prior to the date any such payment is due. Amounts on deposit in any Subordinate Obligation Payment Account are also available to be applied as set forth in Section 7(g) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event – Deposits in the Event of Deficiency*).

(m) Application of Subordinate Obligation Reserve Account. Amounts on deposit in each Subordinate Obligation Reserve Account shall be applied only as set forth in the following two sentences. If on any date on which interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Subordinate Obligation, amounts in the related applicable Subordinate Obligation Payment Account are insufficient to pay interest on (or interest component of an installment payment of capital lease payment comprising) and principal of (or principal component of an installment payment or capital lease payment comprising), the applicable Senior Obligation due on such date, amounts in the applicable Subordinate Obligation Reserve Account shall be transferred to the applicable Subordinate Obligation Payment Account in the amount of such insufficiency. Amounts on deposit in any Subordinate Obligation Reserve Account are also available to be applied as set forth in Section 7(g) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event – Deposits in the Event of Deficiency*).

(n) Application of General Reserve Account. Amounts on deposit in the general reserve account may be applied to any other lawful purposes of the Water System. Amounts on deposit in the general reserve account are available to be applied as set forth in Section 7(g) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event – Deposits in the Event of Deficiency*).

(o) WIFIA Payment Account. The City shall establish, for the purposes of making the Installment Payments as required pursuant to Section 8 (*Payment of Installment Payments and Additional Payments*), a WIFIA Payment Account within the Water Fund. On or before each Installment Payment Date, moneys in the WIFIA Payment Account shall be applied to pay the Installment Payment due on such Installment Payment Date.

(p) WIFIA Reserve Account. The City shall establish, for the purposes of ensuring the timely payment of the Installment Payments in the event of an insufficiency in System Revenues, a WIFIA Reserve Account within the Water Fund, which will be funded from time to time pursuant to this Section 7(p) with Net Revenues available after making the transfers described in clauses (i) and (ii) in Section 7(f) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event – Flow of Funds*). If on any Installment Payment Date amounts in the WIFIA Payment Account are insufficient to pay the Installment Payment due on such Installment Payment Date, amounts in the WIFIA Reserve Account shall be transferred to the WIFIA Payment Account in the amount of such insufficiency.

The WIFIA Reserve Account may remain unfunded until the occurrence of a WIFIA Reserve Event. Beginning with the month immediately following delivery of an Updated

Financial Model which demonstrates or discloses the occurrence of a WIFIA Reserve Event and for eleven (11) months thereafter, the City shall fund the WIFIA Reserve Account in an amount equal to one-twelfth (1/12) of the WIFIA Reserve Account Requirement. Funds shall be deposited in the WIFIA Reserve Account in accordance with clause (iii) of Section 7(f) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event – Flow of Funds*). Thereafter, and subject to the flow of funds in Section 7(f) (*Security and Priority; Assignment by the Corporation; Flow of Funds; WIFIA Reserve Event – Flow of Funds*), the City shall maintain the WIFIA Reserve Account in an amount equal to the WIFIA Reserve Account Requirement.

If, after the occurrence of a WIFIA Reserve Event, the City delivers to the WIFIA Credit Provider, for three (3) consecutive City Fiscal Years, an Updated Financial Model which demonstrates that the Senior Debt Service Coverage Ratio for the immediately preceding City Fiscal Year was not less than 1.30 to 1.00, the City may, upon written notice to the WIFIA Credit Provider at least ten (10) Business Days in advance, release any balance in the WIFIA Reserve Account to be applied to any Water System purpose.

Section 8. Payment of Installment Payments and Additional Payments.

(a) Fixed Level Payments; Additional Payments. On each Installment Payment Date occurring on or after the Installment Payment Commencement Date, the City shall pay to the WIFIA Credit Provider, as the initial Assignee (i) the Installment Payments (each consisting of a Principal Component and an Interest Component), paid as level payments so that each payment shall be approximately equal in amount. In addition, the City shall pay from time to time when due all other obligations due and payable to the WIFIA Credit Provider pursuant to this Agreement and the ISA as Additional Payments. All such payments shall be made in accordance with Section 8(e) (*Payment of Installment Payments and Additional Payments – Manner of Payment*). All such payments shall be made on each Installment Payment Date and on each other date (including the Final Installment Payment Date and any date on which payment thereof is due by reason of the mandatory prepayment of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments)) on which payment thereof is required to be made hereunder and under the ISA; provided, that if any such date is not a Business Day, payment shall be made on the next Business Day following such date.

Payments of the Installment Payments shall be made in the amounts set forth in respect of such Installment Payment Date on the Installment Payment Schedule included in **Exhibit F** (*Installment Payment Schedule*) of this Agreement, as the same may be revised as provided in Section 8(f) (*Payment of Installment Payments and Additional Payments – Adjustments to Installment Payment Schedule*) which revisions shall be reflected on a revised Installment Payment Schedule to include as **Exhibit F** (*Installment Payment Schedule*) of this Agreement and **Appendix A** (*Installment Payment Schedule*) of the ISA. The amount of each Installment Payment shall be calculated by the WIFIA Credit Provider in such manner that each of such payments shall be approximately equal in amount, in order for the Outstanding Balance (the aggregate unpaid Principal Components of the Installment Payments) to be reduced to \$0 on the Final Installment Payment Date.

Within thirty (30) days prior to the Installment Payment Commencement Date, the WIFIA Credit Provider may (or, at the written request of the City, shall) give written notice to the

City of the amount of the Installment Payment (each of which shall be approximately equal in amount), which amount shall be deemed conclusive absent manifest error; provided, that no failure to provide or delay in providing the City with such notice shall affect any of the obligations of the City under this Agreement, the ISA or the other WIFIA Credit Documents. To the extent that any prepayments of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) shall be made, such prepayments shall be applied to the remaining Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) and the remaining Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) shall be recalculated as provided in Section 9(e) (*Prepayment – General Prepayment Instructions*) of this Agreement and reflected in a revised Installment Payment Schedule to include as **Exhibit F** (*Installment Payment Schedule*) of this Agreement and **Appendix A** (*Installment Payment Schedule*) of the ISA.

(b) Final Installment Payment Date. Notwithstanding anything herein to the contrary, all Installment Payments and all Additional Payments then due and payable remaining unpaid as of the Final Installment Payment Date shall be due and payable in full on the Final Installment Payment Date (or on any earlier date on which the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) are subject to mandatory prepayment).

(c) Capitalized Interest Period. No payment of any Installment Payment is required to be made during the Capitalized Interest Period. On each May 1 and November 1 occurring during the Capitalized Interest Period, interest accrued on the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) in the six (6) month period ending immediately prior to such date shall be capitalized and added to the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments). Interest on Capitalized Interest shall commence accruing at the WIFIA Interest Rate on the date such Capitalized Interest is added to the unpaid Principal Components of the Installment Payments during the Capitalized Interest Period pursuant to this Section 8(c) (and the corresponding Section 4.4(c) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*) of the ISA). Within thirty (30) days after the end of the Capitalized Interest Period, it is anticipated that the WIFIA Credit Provider shall give written notice to the City stating the unpaid Principal Components of the Installment Payments, which aggregate amount shall be equal to the Outstanding Balance, in either case, as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the City under this Agreement, the ISA or under any of the other WIFIA Credit Documents. Notwithstanding the foregoing, the Capitalized Interest Period shall end immediately upon written notification to the City by the WIFIA Credit Provider that an Event of Default has occurred, in which case the provisions of this Section 8(c) and the provisions of Section 4.4(c)(ii) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*) of the ISA shall no longer apply, and accrued interest on the unpaid Principal Components of the Installment Payments shall no longer be permitted to be capitalized and each Installment Payment following the end of the Capitalized Interest Period shall include an Interest Component calculated as set forth in Section 4.4(b) (*Installment Payments – Calculation of Interest Components*) of the ISA and Installment Payments shall be payable as set forth in Section 4.4(g) (*Installment Payments – Manner of Payments*) of the ISA. For purposes of this

subsection, an Event of Default under Section 17(a)(v) (*Events of Default and Remedies – Cross Default with Other Financing Documents*) shall be deemed to have occurred upon the occurrence of any nonpayment of any Obligation when due, regardless of whether the Holders of the applicable Obligations, or any legal order, has waived, permitted deferral of, or forgiven any such payment.

(d) [Reserved]

(e) Manner of Payment. Payments under the ISA and this Agreement to the WIFIA Credit Provider or a subsequent Assignee shall be made by wire transfer on or before each Installment Payment Date in Dollars and in immediately available funds (without counterclaim, offset or deduction) in accordance with the payment instructions set forth in **Schedule IV** (*WIFIA Payment Instructions*), as may be modified in writing from time to time by the WIFIA Credit Provider. The City may make any such payment or portion thereof with funds then on deposit in the WIFIA Payment Account.

(f) Adjustments to Installment Payment Schedule.

(i) The Outstanding Balance will be (A) increased on each occasion on which the WIFIA Credit Provider disburses proceeds under this Agreement, by the amount of such disbursement; (B) increased on each occasion on which interest on the unpaid Principal Components of the Installment Payments is capitalized pursuant to the provisions of Section 8(c) (*Payment of Installment Payments and Additional Payments – Capitalized Interest Period*) of this Agreement and Section 4.4(c) (*Installment Payments – Initial Installment Payment Schedule; Adjustments to Installment Payment Schedule*) of the ISA, by the amount of interest so capitalized; and (C) decreased upon each payment or prepayment of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments), by the amount of Outstanding Balance (or unpaid Principal Components) so paid or prepaid. The WIFIA Credit Provider may in its discretion at any time and from time to time, or when so requested by the City, advise the City by written notice of the amount of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(ii) The WIFIA Credit Provider is hereby authorized by the City Related Parties to modify the Installment Payment Schedule included in **Exhibit F** (*Installment Payment Schedule*) of this Agreement from time to time (including after a prepayment) and to make corresponding changes in **Appendix A** (*Installment Payment Schedule*) of the ISA from time to time (including after a prepayment), in accordance with Section 4.4(a) (*Installment Payments – Obligation to Pay*) of the ISA, to reflect (A) any change to the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) or the date and amount of any Installment Payment due and payable or to become due and payable by the City under the ISA at the end of the Capitalized Interest Period (taking into account if less than \$36,516,525.66 has been advanced by the WIFIA Credit Provider under the WIFIA Credit Agreement and the Capitalized Interest), (B) any partial prepayments of the unpaid Principal Components of the Installment Payments, and (C) such other information as the WIFIA Credit Provider may determine is necessary for administering this Agreement and the ISA. Any calculations described above shall be rounded up to the nearest whole cent. Any adjustments or revisions to the Installment Payment Schedule as a

result of changes in the Outstanding Balance (due to prepayment of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) or otherwise) shall be applied in accordance with Section 9(e) (*Prepayment – General Prepayment Instructions*). Absent manifest error, the WIFIA Credit Provider's determination of such matters as set forth on the Installment Payment Schedule included in **Exhibit F** (*Installment Payment Schedule*) of this Agreement and **Appendix A** (*Installment Payment Schedule*) of the ISA shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the City's obligations under this Agreement, the ISA or any other WIFIA Credit Document. The WIFIA Credit Provider shall provide the City with a copy of the revised Installment Payment Schedule to include as **Exhibit F** (*Installment Payment Schedule*) of this Agreement and **Appendix A** (*Installment Payment Schedule*) of the ISA, but no failure to provide or delay in providing the City with such revised Installment Payment Schedule shall affect any of the obligations of the City under this Agreement, the ISA or the other WIFIA Credit Documents.

Section 9. Prepayment.

(a) Mandatory Prepayment. The City shall immediately prepay one hundred percent (100%) of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) in full in immediately available funds upon the occurrence of a Bankruptcy Related Event of a City Related Party, the Event of Default in Section 17(a)(iv) (*Events of Default and Remedies – Acceleration of Senior Obligations*) or the Event of Default in Section 17(a)(viii) (*Events of Default and Remedies – Invalidity of WIFIA Credit Documents*). Such mandatory prepayment shall include all unpaid interest on the Outstanding Balance to be prepaid (and the corresponding Interest Components of the Installment Payments to be prepaid) accrued to the date of such prepayment, without penalty or premium, and concurrently therewith the City shall pay all other Additional Payments then due and payable to the WIFIA Credit Provider and the Assignee. Upon the occurrence of a Bankruptcy Related Event of a City Related Party or the Events of Default described above, the City shall promptly deliver to the WIFIA Credit Provider a notice of such Bankruptcy Related Event or Event of Default; provided, that the City's failure to deliver such notice shall not diminish, impair or otherwise affect the City's obligation to make any such mandatory prepayment as and when the circumstances requiring such mandatory prepayment have occurred.

(b) Optional Prepayment. The City may prepay the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the City; provided, however, that such prepayments shall be in principal amounts of \$250,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, but not more than once annually, on an Installment Payment Date, by paying such portion of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) to be prepaid, together with the unpaid interest on the Outstanding Balance to be prepaid (and the corresponding Interest Components of the Installment Payments to be prepaid) accrued to the date of such prepayment, without penalty or premium, and concurrently therewith the City shall pay all other Additional Payments then due and payable to the WIFIA Credit Provider and the Assignee. Each prepayment of Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) shall be made on such prepayment date and in such principal amount (or the

corresponding Principal Component amount) as shall be specified by the City in a written notice delivered to the WIFIA Credit Provider not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the WIFIA Credit Provider. At any time between delivery of such written notice and the applicable optional prepayment, the City may, without penalty or premium, rescind its announced optional prepayment by further written notice to the WIFIA Credit Provider. Anything in this Section 9(b) to the contrary notwithstanding, the failure by the City to make any optional prepayment shall not constitute a breach or default under this Agreement or the ISA.

(c) Prepayment From Net Proceeds of Insurance or Eminent Domain. The City may prepay the unpaid Principal Components of the Installment Payments in whole or in part, on any date, if and to the extent the City (with the prior written consent of the Assignee) determines to apply any proceeds of insurance award or condemnation award with respect to the Water System for such purpose in accordance with Section 5.3 (*Sale or Eminent Domain of Water System; Liens on Water System*) of the ISA or Section 5.4 (*Insurance*) of the ISA, at a prepayment price equal to 100% of the unpaid Principal Components of the Installment Payments to be prepaid plus the unpaid interest on the Outstanding Balance to be prepaid (and the corresponding Interest Components of the Installment Payments to be prepaid) accrued to the date of such prepayment, without penalty or premium. In the event of the taking of all or any part of the Water System by the lawful exercise of eminent domain or accident to or destruction of any portion of the Water System, the City shall promptly deliver to the Assignee a notice of such taking or accident or destruction; provided, that the City's failure to deliver such notice shall not diminish, impair or otherwise affect the City's obligation to make any such mandatory prepayment as and when the circumstances requiring such mandatory prepayment have occurred.

(d) City's Certificate. Each prepayment pursuant to this Section 9 shall be effected pursuant to **Article VII** (*Prepayment of Installment Payments*) of the ISA accompanied by a certificate signed by the City's Authorized Representative identifying the Section of the ISA pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

(e) General Prepayment Instructions. If the City prepays only part of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments), the WIFIA Credit Provider may make a notation on the Installment Payment Schedule included in **Exhibit F** (*Installment Payment Schedule*) of this Agreement and **Appendix A** (*Installment Payment Schedule*) of the ISA indicating the amount of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) being prepaid. Absent manifest error, the WIFIA Credit Provider's determination of such matters as set forth on the Installment Payment Schedule included in **Exhibit F** (*Installment Payment Schedule*) of this Agreement and **Appendix A** (*Installment Payment Schedule*) of the ISA shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the City's obligations under this Agreement, the ISA or any other WIFIA Credit Document. All such partial prepayments shall be applied to adjust amortization in a manner that maintains approximately equal Installment Payments. If such funds have not been so paid on the prepayment date, such Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) shall continue to accrue

interest until payment thereof at the rate provided for in Section 6 (*Interest Rate*) and the corresponding rate in the ISA.

Section 10. Fees and Expenses.

(a) Fees. The City shall pay the following amounts as Additional Payments under the ISA:

(i) a servicing set-up fee equal to \$5,205 (the “**Servicing Set-Up Fee**”), which shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Credit Provider with respect thereto (or, if earlier, the first disbursement date of proceeds under this Agreement);

(ii) an annual construction period servicing fee equal to \$5,205 (the “**Construction Period Servicing Fee**”), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15 during the Construction Period (including the Federal Fiscal Year during which the Substantial Completion Date occurs); provided, that the initial Construction Period Servicing Fee shall be due and payable within thirty (30) days after receipt of an invoice from the WIFIA Credit Provider with respect thereto (or, if earlier, the first disbursement date of proceeds under this Agreement), in a pro-rated amount equal to \$3,035¹; and

(iii) an annual operating period servicing fee equal to \$3,905 (the “**Operating Period Servicing Fee**”), which shall accrue on the first Business Day of the then-current Federal Fiscal Year and shall be due and payable on or prior to each November 15, beginning with the first November 15 following the end of the Federal Fiscal Year during which the Substantial Completion Date occurs, until (and including) the Final Installment Payment Date; provided, that the Operating Period Servicing Fee due and payable with respect to the Federal Fiscal Year during which the Final Installment Payment Date occurs shall be equal to the pro-rata monthly portion of the then applicable Operating Period Servicing Fee multiplied by the number of partial or whole months remaining between October 1 and the Final Installment Payment Date.

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

(c) Expenses. The City agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the WIFIA Credit Provider (payable as Additional Payments under the ISA) on demand from time to time, within thirty (30) days after receipt of any invoice from the WIFIA Credit Provider, for any and all fees, costs, charges, and expenses incurred by it (including the fees, costs, and expenses of its legal counsel, financial

¹ NTD: This amount assumes a February 2020 closing.

advisors, auditors and other consultants and advisors) in connection with the negotiation, preparation, execution, delivery, and performance of this Agreement and the other WIFIA Credit Documents and the transactions hereby and thereby contemplated, including attorneys', and engineers' fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with (i) the enforcement of or attempt to enforce, or the protection or preservation of any right or claim under, the Pledged Collateral or any provision of this Agreement or any of the other WIFIA Credit Documents or the rights of the WIFIA Credit Provider thereunder; (ii) any amendment, modification, waiver, or consent with respect to this Agreement or any other Related Document; and (iii) any work-out, restructuring, or similar arrangement of the obligations of the City under this Agreement or the other WIFIA Credit Documents, including during the pendency of any Event of Default.

(d) The obligations of the City under this Section 10 shall survive the payment or prepayment in full of all of the Installment Payments, the enforcement of any provision of this Agreement or the other WIFIA Credit Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

ARTICLE III CONDITIONS PRECEDENT

Section 11. Conditions Precedent.

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

(i) The City shall have duly executed and delivered to the WIFIA Credit Provider this Agreement, the Resolution and the ISA, each in form and substance satisfactory to the WIFIA Credit Provider.

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

(iii) The City shall have delivered to the WIFIA Credit Provider complete and fully executed copies of each Existing Principal Project Contract, together with any amendments, waivers or modifications thereto, along with a certification in the City Closing Certificate that each such document is complete, fully executed and in full force and effect.

(iv) Each City Related Party shall have delivered to the WIFIA Credit Provider (A) a copy of its Organizational Documents, as in effect on the Effective Date

(and certified by the Secretary of State of the State, to the extent applicable), along with a certification in the City Closing Certificate or the Corporation Closing Certificate, as applicable, that such Organizational Documents are in full force and effect, and (B) all further instruments and documents (including any resolutions, ordinances, and supplements) as are necessary for each City Related Party to execute and deliver, and to perform its respective obligations under, the WIFIA Credit Documents to which it is a party and to consummate and implement the transactions contemplated by the WIFIA Credit Documents.

(v) Counsel to the City shall have rendered to the WIFIA Credit Provider legal opinions satisfactory to the WIFIA Credit Provider in its sole discretion (including those opinions set forth on **Exhibit G-1** (*Opinions Required from Counsel to the City*)) and counsel to the Corporation shall have rendered to the WIFIA Credit Provider legal opinions satisfactory to the WIFIA Credit Provider in its sole discretion (including those opinions set forth on **Exhibit G-2** (*Opinions Required from Special Counsel to the Corporation*)).

(vi) Each City Related Party shall have delivered to the WIFIA Credit Provider the Non-Debarment Certificate.

(vii) The City shall have delivered to the WIFIA Credit Provider the Non-Lobbying Certificate.

(viii) The Corporation shall have delivered to the WIFIA Credit Provider a certificate, signed by the Corporation's authorized representative, substantially in the form attached hereto as **Exhibit H-2** (*Form of Corporation Closing Certificate*) (the "**Corporation Closing Certificate**") (A) designating the Corporation's authorized representative (B) confirming such person's position and incumbency, and (C) certifying as to certain other matters. The City shall have delivered to the WIFIA Credit Provider a certificate, signed by the City's Authorized Representative, substantially in the form attached hereto as **Exhibit H-1** (*Form of City Closing Certificate*) (the "**City Closing Certificate**") (A) designating the City's Authorized Representative, (B) confirming such person's position and incumbency, and (C) certifying as to the satisfaction of the following conditions precedent:

(A) the aggregate of all funds committed to the development and construction of the Project as set forth in the Base Case Financial Model and in the Project Budget are sufficient to carry out the Project, pay all Total Project Costs anticipated for the Project and achieve Substantial Completion by the Projected Substantial Completion Date;

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

(C) as of the Effective Date, (x) the maximum principal amount of proceeds available under this Agreement (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the City, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (y) the total federal assistance provided to the Project, including the maximum principal amount of proceeds available under this Agreement (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs;

(D) the City is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project, and, if requested by the WIFIA Credit Provider, has provided evidence satisfactory to the WIFIA Credit Provider of such compliance;

(E) the City has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project during its useful life;

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

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

(H) no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since July 12, 2018.

(ix) The City shall have provided evidence to the WIFIA Credit Provider's satisfaction of the assignment by at least two (2) Nationally Recognized Rating Agencies of a public Investment Grade Rating to the Senior Obligations proposed to be issued for the Project, along with a certification in the City Closing Certificate that no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(x) The City shall have delivered to the WIFIA Credit Provider a Base Case Financial Model in form and substance acceptable to the WIFIA Credit Provider, along with a certification in the City Closing Certificate that such Base Case Financial Model (A) demonstrates that projected Net Revenues are sufficient to meet the Installment Payment Schedule, (B) demonstrates compliance with the Rate Covenant for each City Fiscal Year through the Final Installment Payment Date and a Senior Debt Service

Coverage Ratio for each Payment Period through the Final Installment Payment Date that is not less than 1.30 to 1.00; (C) reflects amortization and payment schedules acceptable to the WIFIA Credit Provider and (D) demonstrates that the City has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project over the useful life of the Project.

(xi) The City, and each Principal Project Party, has obtained insurance with respect to the Project that meets the requirements of this Agreement in accordance with Section 14(f) (*Affirmative Covenants – Insurance*). The City shall have added the WIFIA Credit Provider as an additional insured to each of its liability policies for the Project (other than workers' compensation insurance).

(xii) No later than thirty (30) days prior to the Effective Date, the City shall have delivered to the WIFIA Credit Provider the Public Benefits Report.

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

(xiv) Each of the WIFIA Payment Account and the WIFIA Reserve Account shall have been created in the Water Fund.

(xv) The City shall have delivered such other agreements, documents, instruments, opinions and other items required by the WIFIA Credit Provider, all in form and substance satisfactory to the WIFIA Credit Provider.

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

(i) The City shall have provided to the WIFIA Credit Provider evidence satisfactory to the WIFIA Credit Provider that (A) the aggregate amount of all disbursements under this Agreement (including the requested disbursement but excluding any interest that is capitalized in accordance with the terms hereof) shall not exceed (1) \$36,516,525.66, (2) the amount of Eligible Project Costs paid or incurred by the City, and (3) the cumulative disbursements through the end of the current Federal Fiscal Year as set forth in the Anticipated Disbursement Schedule; (B) the City has sufficient available funds committed to the Project, which together with funds that remain available and not yet drawn under this Agreement, will be sufficient to pay the reasonably anticipated remaining Total Project Costs; and (C) the total federal assistance provided to the Project, including the maximum principal amount of proceeds available under this Agreement (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

(ii) The City shall have provided an Updated Financial Model in compliance with the requirements of Section 16(a) (*Reporting Requirements – Updated Financial Model*).

(iii) The City shall have delivered to the WIFIA Credit Provider a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*) (including satisfactory Eligible Project Costs Documentation relating to such Requisition), and the WIFIA Credit Provider shall have approved (or be deemed to have approved in accordance with Section 4(b) (*Disbursement Conditions*)) such Requisition. The City's Authorized Representative shall also certify in such Requisition that:

(A) all Governmental Approvals necessary as of the time of such disbursement for the development, construction, operation and maintenance of the Project have been issued and are in full force and effect (and are not subject to any notice of violation, breach or revocation);

(B) each of the insurance policies obtained by the City and by any applicable Principal Project Party in satisfaction of the conditions in Section 14(f) (*Affirmative Covenants – Insurance*) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider;

(C) at the time of, and immediately after giving effect to, any disbursement of proceeds under this Agreement then currently requested, (x) no Default or Event of Default hereunder shall have occurred and be continuing, (y) no event of default or default that, with the giving of notice or the passage of time or both, would constitute an event of default, in each case, under any other Related Document, shall have occurred and be continuing, and (z) no Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred since July 12, 2018;

(D) the City, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including without limitation 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products). Supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, are being maintained and are available for review upon request by the WIFIA Credit Provider; and

(E) the representations and warranties of the City Related Parties set forth in this Agreement (including Section 12 (*Representations and Warranties of the City Related Parties*)) and in each other WIFIA Credit Document shall be true and correct as of each date on which any disbursement of proceeds under this Agreement is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

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

(v) To the extent not previously delivered to the WIFIA Credit Provider, the City shall have provided copies of any Principal Project Contracts (including any amendment, modification or supplement thereto) entered into after the Effective Date, along with a certification in the Requisition that each such document is complete, fully executed and in full force and effect.

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

(vii) The End of the Validation Period has occurred.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

Section 12. Representations and Warranties of the City Related Parties. Each City Related Party hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 12(b) (*Representations and Warranties of the City Related Parties – Officers' Authorization*), Section 12(k) (*Representations and Warranties of the City Related Parties – Credit Ratings*), and the first sentence of Section 12(n) (*Representations and Warranties of the City Related Parties – Principal Project Contracts*), as of each date on which any disbursement under this Agreement is requested or made:

(a) Organization; Power and Authority. (i) The City is a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State, has full legal right, power and authority to do business in the State and to enter into the Related Documents then in existence, to execute and deliver this Agreement and the ISA, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of this Agreement, the ISA, and the Related Documents; and (ii) the Corporation is a nonprofit public benefit corporation duly organized and validly existing under its Organizational Documents and the laws of the State, has full legal right, power and authority to do business in the State and to enter into the Related Documents then in existence, to execute and deliver this Agreement, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of this Agreement and the Related Documents.

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

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

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

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

(f) Litigation. Except as set forth in **Schedule 12(f) (Litigation)**, there is no action, suit, proceeding or, to the knowledge of the City Related Parties, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending and served or, to the knowledge of the City Related Parties, threatened against the Water System or the ability of the City Related Parties to execute, deliver and perform their respective obligations under the Related Documents (including construction of the Project and increasing Water System rates as contemplated in the Base Case Financial Model). As of the Effective Date and as of each

other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the City Related Parties, any inquiry or investigation before or by any court or other Governmental Authority pending and served, or to the knowledge of the City Related Parties, threatened against the Water System, a City Related Party or the assets, properties or operations of a City Related Party, that in any case could reasonably be expected to result in a Material Adverse Effect. To the knowledge of the City Related Parties, there are no actions of the type described above pending or, threatened against any of the Principal Project Parties, except for matters arising after the Effective Date that could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) adversely affect the City's ability to receive System Revenues in amounts sufficient to meet the financial projections contained in the Base Case Financial Model (or any Updated Financial Model, to the extent any Updated Financial Model has been approved by the WIFIA Credit Provider) or to pay the Installment Payments. Neither City Related Party is in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. (i) Section 9109(c)(2) of the California Commercial Code and Section 5451 of the California Government Code, permit the Financing Documents and (ii) the City Related Parties have taken all necessary action, in each case, to establish, in favor of the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the WIFIA Credit Provider, as the initial Assignee), the legal, valid, binding and enforceable Liens on the Pledged Collateral purported to be created, pledged, assigned, and granted pursuant to and in accordance with the Financing Documents, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Liens on the Pledged Collateral are first priority senior Liens, are in full force and effect and (A) are not subordinate or junior to any other Liens in respect of the Pledged Collateral except for the Permitted Liens arising by operation of law, and (B) are not *pari passu* with any obligations other than, with respect to the Liens on Net Revenues, Senior Obligations. Liens on amounts in the WIFIA Payment Account and the WIFIA Reserve Account are first priority senior Liens, are in full force and effect and are solely for the benefit of the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the WIFIA Credit Provider, as the initial Assignee). The City is not in breach of any covenants set forth in Section 14(b) (*Affirmative Covenants – Securing Liens*) or in the Financing Documents with respect to the matters described in such Section. As of the Effective Date and as of each other date this representation and warranty is made, (i) all documents and instruments have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the Pledged Collateral and a legal, valid, binding, and enforceable assignment of the Corporation's right in the ISA, in both cases, in favor of the WIFIA Credit Provider, as the initial Assignee, upon the assignment by the Corporation pursuant to the Assignment Agreement, to the extent contemplated by the Financing Documents, and (ii) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Financing Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid. Neither the attachment, validity, enforceability or priority of the security interest in the Pledged Collateral granted pursuant to the Financing Documents to the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the WIFIA Credit

Provider, as the initial Assignee), or the assignment by the Corporation pursuant to the Assignment Agreement, is governed by the UCC.

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

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

(j) Compliance with Laws.

(i) The City, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including without limitation 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products).

(ii) To ensure such compliance, the City has included in all contracts with respect to the Project (A) the contract clauses relating to the Davis-Bacon Act requirements that are set forth in the Code of Federal Regulations, Title 29 Part 5.5 and (B) requirements that its contractor(s) (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 12(j) and follow applicable federal guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any applicable laws, rules, regulations and requirements set forth in this Section 12(j) (including without limitation with respect to the Davis-Bacon Act requirements).

(iii) No notices of violation of any applicable law have been issued, entered or received by the City or, to the City's knowledge and solely in respect of the Project or any Principal Project Contract, any Principal Project Party, other than, in each case, notices of violations that are immaterial.

(iv) None of the City Related Parties nor, to the knowledge of the City Related Parties, any Principal Project Party, is (A) a Sanctioned Person or (B) in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (1) any applicable Anti-Money Laundering Laws; (2) any applicable Sanctions; (3) any applicable Anti-Corruption Laws; or (4) any applicable anti-drug trafficking, anti-terrorism, or anti-corruption laws, civil or criminal. There are no pending or, to the knowledge of the City Related Parties, threatened claims or investigations by any Governmental Authority

against, or any internal investigations conducted by, any City Related Party or any Principal Project Party, with respect to any possible or alleged violations of any Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any anti-drug trafficking or anti-terrorism laws. No use of proceeds disbursed under this Agreement or any other transaction contemplated by this Agreement or any other Related Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(k) Credit Ratings. The Outstanding Senior Obligations have received a public Investment Grade Rating from at least two (2) Nationally Recognized Rating Agencies, and written evidence of such ratings has been provided to the WIFIA Credit Provider prior to the Effective Date, and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(l) No Defaults. No Default or Event of Default, and no default or event of default by either City Related Party under any Related Document (excluding Principal Project Contracts), has occurred and is continuing.

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

(n) Principal Project Contracts. Attached as **Schedule 12(n)** (*Principal Project Contracts*) is a list of the Existing Principal Project Contracts and all Additional Principal Project Contracts that are expected to be entered into. With respect to each Principal Project Contract executed as of any date on which this representation and warranty is made, (x) it is in full force and effect, (y) all conditions precedent to the obligations of the respective parties under each such Principal Project Contract have been satisfied, (z) the City has delivered to the WIFIA Credit Provider a fully executed, complete and correct copy of each such Principal Project Contract, including any amendments or modifications thereto and any related side letters and related credit support instruments. No event has occurred that gives the City or, to the City's knowledge, any Principal Project Party, the right to terminate any such Principal Project Contract. The City is not in breach of any material term in or in default under any of such Principal Project Contracts, and to the knowledge of the City no party to any of such agreements or contracts is in breach of any material term therein or in default thereunder.

(o) Information. The information furnished by the City to the WIFIA Credit Provider, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; provided, that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the City (including the Base Case Financial Model, any Updated Financial Model, and the assumptions therein) except that each of the Base Case Financial Model and any Updated Financial Model (i) is based on assumptions that were reasonable in all material respects when made, (ii) was prepared in good

faith and (iii) represents, in the opinion of the City, reasonable projections at the time made of the future performance of the Water System and the Project (it being understood that projections are not to be considered or regarded as facts and contain significant uncertainties and contingencies, many of which are beyond the control of the City, that actual results may differ significantly from projections and that no representation is made with respect to the accuracy of such projections).

(p) Environmental Matters. [Except as set forth in **Schedule 12(p)** (*Environmental Matters*), e][E]ach of the City and, to the City's knowledge, each Principal Project Party, is in compliance with all laws applicable to the Water System relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the Water System (collectively, the "**Environmental Laws**"). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. The City has not received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that the City is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Water System and, to the City's knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by the City with any such Environmental Law or Governmental Approval. The City has provided to the WIFIA Credit Provider all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the City regarding the City's or the Project's compliance with (A) Environmental Laws and (B) Governmental Approvals that are required for the Project and relate to Environmental Laws.

(q) Sufficient Rights. The City possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the Water System, in each case as is necessary and sufficient as of the date this representation is made for the construction, operation, maintenance and repair of the Water System. As of any date on which this representation and warranty is made, the Principal Project Contracts then in effect and the Governmental Approvals that have been obtained and are then in full force and effect create rights in the City sufficient to enable the City to own, construct, operate, maintain and repair the Water System and to perform its obligations under the Principal Project Contracts to which it is a party.

(r) Insurance. The City is in compliance with all insurance obligations required under each Principal Project Contract and the other Related Documents as of the date on which this representation and warranty is made.

(s) No Liens. Except for Permitted Liens, neither City Related Party has created, or is under any obligation to create, and has entered into any transaction or agreement that would result in the imposition of, any Lien on the ISA, the Pledged Collateral, the Installment Payments, the Water System, the Project, the System Revenues, the properties or assets in relation to the Project, or the properties or assets of the Corporation.

(t) Financial Statements. Each income statement, balance sheet and statement of operations and cash flows (collectively, “**Financial Statements**”) delivered to the WIFIA Credit Provider pursuant to Section 16(b) (*Reporting Requirements – Annual Financial Statements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the City as of the respective dates of the balance sheets included therein and the results of operations of the City for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there are no liabilities or obligations of the City of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GAAP.

(u) Securities Laws. Under existing law, the ISA may be issued and sold without registration under the Securities Act of 1933, as amended.

(v) Taxes. The City is not required to file tax returns with any Governmental Authority. The Corporation has (i) filed all tax returns required by applicable laws to be filed by it and (ii) paid all income taxes payable by it that have become due pursuant to such tax returns and all other material taxes and assessments payable by it that have become due (other than those taxes that it is contesting in good faith and by appropriate proceedings, for which adequate reserves have been established to the extent required by generally accepted accounting principles established by the Government Accounting Standards Board).

(w) Sufficient Funds. The maximum amount available for disbursement under this Agreement, when combined with all other funds committed for the development and construction of the Project as set forth under the various sources of funds in the Base Case Financial Model and the Project Budget will be sufficient to carry out the Project, pay all Total Project Costs anticipated for the development and construction of the Project and achieve Substantial Completion by the Projected Substantial Completion Date.

(x) Sovereign Immunity. The City either has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the City under any of the Related Documents to which it is a party or the transactions contemplated hereby or thereby, including the obligations of the City hereunder and thereunder, or, to the extent that the City has such immunity, the City has waived such immunity pursuant to Section 14(n) (*Affirmative Covenants – Immunity*). The Corporation either has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of the Corporation under any of the Related Documents to which it is a party or the transactions contemplated hereby or thereby, including the obligations of the Corporation hereunder and thereunder, or, to the extent that the Corporation has such immunity, the Corporation has waived such immunity pursuant to Section 14(n) (*Affirmative Covenants – Immunity*).

(y) Patriot Act. The City is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act. The Corporation is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

(z) No Federal Debt. Neither City Related Party has any delinquent federal debt (including tax liabilities but excluding any delinquencies that have been resolved with the

appropriate federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996).

Section 13. Representations and Warranties of WIFIA Credit Provider. The WIFIA Credit Provider represents and warrants that:

(a) Power and Authority. The WIFIA Credit Provider has all requisite power and authority to make the disbursement of proceeds under this Agreement and to perform all transactions contemplated by the Related Documents to which it is a party.

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

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

ARTICLE V COVENANTS

Section 14. Affirmative Covenants. Each City Related Party covenants and agrees as follows until the date the Purchase Price, Additional Payments and other obligations of the City under the ISA and this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in immediately available funds, unless the WIFIA Credit Provider waives compliance in writing:

(a) Rate Covenant. (i) The City shall fix, charge, prescribe, revise and collect rates, fees, and charges for the services and facilities furnished by the Water System which are reasonable, fair and nondiscriminatory and which will be at least sufficient to yield Net Revenues during each City Fiscal Year which are at least equal to (i) one hundred and twenty percent (120%) of the Debt Service payable during such City Fiscal Year with respect to all Outstanding Senior Obligations and (ii) one hundred and ten percent (110%) of the Debt Service payable during such City Fiscal Year with respect to all Outstanding Obligations (collectively, the “**Rate Covenant**”).

(ii) If the forecast furnished by the City in the most recent Updated Financial Model delivered by the City pursuant to Section 16(a) (*Reporting Requirements – Updated Financial Model*) demonstrates that projected Net Revenues may be inadequate to satisfy the Rate Covenant for any City Fiscal Year until the Final Installment Payment Date, or if the City fails to satisfy the Rate Covenant for the most recently ended City Fiscal Year, the City shall (x) within thirty (30) days after request by the WIFIA Credit Provider, engage the Technical and Rate Consultant to review and analyze the operations of the Water System and recommend actions regarding revising the rates or changing the methods of operations, or any other actions to increase the Net Revenues so as to satisfy the Rate Covenant, (y) cause the Technical and Rate Consultant to issue its report, including any

such recommended actions, no later than ninety (90) days following such engagement, and (z) either, within thirty (30) days (or such reasonable period of time required to do so under applicable law), (A) implement the Technical and Rate Consultant's recommendation or (B) undertake an alternative course of action after demonstrating to the WIFIA Credit Provider's satisfaction that an alternative plan will generate an equivalent or greater increase to the Net Revenues so as to satisfy the Rate Covenant.

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

(c) Use of Proceeds. The City shall use the proceeds disbursed under this Agreement for purposes permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents.

(d) Prosecution of Work; Verification Requirements.

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

(ii) The City shall ensure that each Principal Project Party complies with all applicable laws and legal or contractual requirements with respect to any performance security instrument delivered by such Principal Project Party to the City and shall ensure that any letter of credit provided pursuant to any Principal Project Contract meets the requirements therefor set forth in such Principal Project Contract.

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

(e) Operations and Maintenance. The City shall (i) operate and maintain the Water System (A) in a reasonable and prudent manner and (B) substantially in accordance with the Updated Financial Model most recently approved by the WIFIA Credit Provider (except as necessary to prevent or mitigate immediate threats to human health and safety or to prevent or mitigate physical damage to material portions of the Water System) and (ii) maintain the Water System in good repair, working order and condition and in accordance with the requirements of all applicable laws and each applicable Related Document. The City shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(f) Insurance.

(i) The City shall at all times procure and maintain or cause to be maintained insurance on the Water System and the construction of the Project, with responsible insurers in such amounts and against such risks (including damage to or destruction of the Water System) as are customarily maintained with respect to works and properties of like character against accident to, loss of, or damage to such works or properties. All policies of insurance required to be maintained herein shall, to the extent reasonably obtainable, provide that the WIFIA Credit Provider shall be given thirty (30) days written notice of any intended cancellation thereof or reduction of coverage provided thereby. The City shall cause each Principal Project Party to obtain and maintain builders risk and casualty and liability insurance in accordance with the requirements of the applicable Principal Project Contract.

(ii) The City shall (by maintaining with responsible insurers) provide for workers' compensation insurance for City's workers and insurance against public liability and property damage to the Water System to the extent reasonably necessary to protect the City and the WIFIA Credit Provider.

(iii) The City shall cause all liability insurance policies that it maintains (and, during the Construction Period, that are maintained by any Principal Project Party), other than workers' compensation insurance, to reflect the WIFIA Credit Provider as an additional insured to the extent of its insurable interest.

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

(v) The City shall comply with the insurance requirements of the Financing Documents and shall deliver to the WIFIA Credit Provider within thirty (30) days after receipt thereof any certifications or opinions provided to the City pursuant to the Financing Documents with respect to the City's program of insurance.

(g) Maintain Legal Structure. The City shall maintain its existence as a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State. The Corporation shall maintain its existence as a nonprofit public benefit corporation organized and existing under its Organizational Documents and the laws of the State.

(h) System Accounts; Permitted Investments.

(i) The City shall maintain the Revenue Account in accordance with the terms hereof and the WIFIA Credit Documents. All System Revenues received shall be deposited into the Revenue Account when and as received in trust for the benefit of the Holders of the Secured Obligations, subject to the application of System Revenues to Operation and Maintenance Expenses of the Water System.

(ii) Amounts on deposit in the System Accounts shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder at such times as may be necessary to ensure that funds will be available within the applicable account to be applied towards the purpose for which the applicable account has been established.

(i) Compliance with Laws.

(i) The City shall, and shall require its contractors and subcontractors at all tiers with respect to the Project, to comply with all applicable laws, rules, regulations and requirements, including without limitation 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products).

(ii) To ensure such compliance, the City shall include in all contracts with respect to the Project (A) the contract clauses relating to the Davis-Bacon Act requirements that are set forth in the Code of Federal Regulations, Title 29 Part 5.5 and (B) requirements that its contractor(s) (1) shall comply with all applicable laws, rules, regulations, and requirements set forth in this Section 14(i) and follow applicable federal guidance and (2) incorporate in all subcontracts (and cause all subcontractors to include in lower tier subcontracts) such terms and conditions as are required to be incorporated therein by any applicable laws, rules, regulations and requirements set forth in this Section 14(i) (including without limitation with respect to the Davis-Bacon Act requirements).

(j) Material Obligations. The City Related Parties shall pay their respective material obligations promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments and governmental charges or levies imposed upon it or upon the System Revenues or other assets of the Water System, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, might give rise to a Lien upon such properties or any part thereof or on the System

Revenues, the Pledged Collateral, the ISA or the Installment Payments; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by a City Related Party in good faith by appropriate proceedings and so long as the City Related Party shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(k) SAM Registration. The City shall (i) obtain and maintain through the Final Disbursement Date an active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) prior to the Effective Date and provide such registration information to the WIFIA Credit Provider and (ii) within sixty (60) days prior to each anniversary of the Effective Date until the Final Disbursement Date, provide to the WIFIA Credit Provider evidence of such active registration status with no active exclusions reflected in such registration.

(l) DUNS Number. The City shall (i) obtain and maintain from Dun & Bradstreet (or a successor entity) a Data Universal Numbering System Number (a “**DUNS Number**”) prior to the Effective Date and provide such number to the WIFIA Credit Provider and (ii) within sixty (60) days prior to each anniversary of the Effective Date, provide to the WIFIA Credit Provider evidence of the continuing effectiveness of such DUNS Number, in each case until the Final Installment Payment Date or to such earlier date as all amounts due or to become due to the WIFIA Credit Provider under this Agreement have been irrevocably paid in full in immediately available funds.

(m) Events of Loss; Loss Proceeds. If an Event of Loss shall occur with respect to the Water System or any part thereof, the City shall (i) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as applicable, in respect of such Event of Loss and (ii) apply all Net Loss Proceeds in respect of such Event of Loss to repair, reconstruct, and/or replace the portion of the Water System in respect of which the applicable Loss Proceeds were received. The City shall begin such repair, reconstruction or replacement promptly after such damage or destruction shall occur, and shall continue and properly complete such repair, reconstruction or replacement as expeditiously as possible, and shall pay out of such Loss Proceeds all costs and expenses in connection with such repair, reconstruction or replacement so that the same shall be completed and the Water System shall be free and clear of all claims and Liens. If such Net Loss Proceeds exceed the costs of such repair, reconstruction or replacement, then the excess Net Loss Proceeds shall be deposited in the Revenue Account and be available for other proper uses of funds deposited in the Revenue Account. If such Net Loss Proceeds are insufficient to enable the City to restore or replace the damaged portions of the Water System, the City shall provide additional funds for that purpose. If permitted by the ISA, the City may apply excess Net Loss Proceeds to redeem or prepay Senior Obligations in accordance with the terms of the Senior Obligation Documents.

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

law, the Corporation agrees that it will not assert any immunity (and hereby waives any such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the obligations of the Corporation under this Agreement or any other WIFIA Credit Document.

(o) Accounting and Audit Procedures.

(i) The City shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all (i) System Revenues, operating expenses, capital expenses, depreciation, reserves, debt issued and outstanding and debt payments and (ii) Project-related costs, Requisitions submitted hereunder, proceeds received pursuant to disbursements made under this Agreement, payments made by the City with regard to the Project, other sources of funding for the Project (including amounts paid from such sources for Project costs so that audits may be performed to ensure compliance with and enforcement of this Agreement). The City shall use accounting, audit and fiscal procedures conforming to GAAP, including, accounting of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments), Installment Payments, Additional Payments, disbursements, prepayments and calculation of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) and the calculation of interest accrued on the Outstanding Balance (and the corresponding Interest Component accrued on the amount of the unpaid Principal Components of the Installment Payments).

(ii) The City shall have a single or program-specific audit conducted in accordance with 2 C.F.R. Part 200 Subpart F and 31 U.S.C. § 7502 in 2020 and annually thereafter, except to the extent biennial audits are permitted for the City pursuant to 2 C.F.R. § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the City shall cooperate fully in the conduct of any periodic or compliance audits conducted by the WIFIA Credit Provider, or designees thereof, pursuant to 40 C.F.R. Part 35, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the financing of the Project, to the Administrator, or the designee thereof, for any such project or programmatic audit.

(p) Access; Records.

(i) So long as any Outstanding Balance shall remain outstanding and until five (5) years after the Outstanding Balance shall have been paid in full, the WIFIA Credit Provider shall have the right, upon reasonable prior notice, to visit and inspect any portion of the Water System, to examine books of account and records of the City relating to the Water System, to make copies and extracts therefrom at the City's expense, and to discuss the City's affairs, finances and accounts relating to the Water System with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the City irrevocably authorizes its independent public accountants to discuss with the WIFIA Credit Provider the affairs, finances and accounts of the City, whether or not any representative of the City is present, it being understood that nothing contained in this Section 14(p) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as

the WIFIA Credit Provider may request. The City agrees to pay all out-of-pocket expenses incurred by the WIFIA Credit Provider in connection with the WIFIA Credit Provider's exercise of its rights under this Section 14(p) at any time when an Event of Default shall have occurred and be continuing.

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

Section 15. Negative Covenants. Each City Related Party covenants and agrees as follows until the date the Purchase Price, Additional Payments and other obligations of the City under the ISA and this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in immediately available funds, unless the WIFIA Credit Provider waives compliance in writing:

(a) Indebtedness.

(i) Except for Permitted Debt, the City shall not without the prior written consent of the WIFIA Credit Provider issue or incur indebtedness of any kind (including debt with respect to which the interest rate varies or may be adjusted by the City from time to time) that is payable from, secured or supported by all or any portion of the Pledged Collateral; provided further that in no event shall the City incur any indebtedness of any kind payable from, secured or supported by all or any portion of the Pledged Collateral, including Permitted Debt, without the prior written consent of the WIFIA Credit Provider, while an Event of Default has occurred and is continuing.

(ii) The City may not create, incur or suffer to exist (A) any Obligations the payments of which are senior or prior in right to the payment by the City of the Senior Obligations or (B) any Obligations of the Project that are secured by a Lien on any assets or property of the City other than the Pledged Collateral or the pledged collateral described in the Wastewater System Project Credit Agreement.

(iii) The City shall not issue any Obligations the payments of, and security for, which are on parity with the Senior Obligations (the "**Additional Senior Obligations**"), unless: (A) the conditions set forth in the applicable Senior Obligation Document are satisfied; (B) no Event of Default has occurred and is continuing; (C) following issuance of the proposed Additional Senior Obligations, either (X) the Net Revenues for any four (4) consecutive quarters within the six (6) quarters immediately preceding the proposed issue date (such quarters relating to the City Fiscal Year) shall be sufficient to equal or exceed one hundred and twenty percent (120%) of the greatest amount of Debt Service payable on all Outstanding Senior Obligations (including the proposed

Additional Senior Obligations) and shall also be sufficient to equal or exceed one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Senior Obligations), in each case in the current or any future period; or (Y) the projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date (such quarters relating to the City Fiscal Year), shall be sufficient to equal or exceed one hundred and twenty percent (120%) of the greatest amount of Debt Service payable on all Outstanding Senior Obligations (including the proposed Additional Senior Obligations) and shall also be sufficient to equal or exceed one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Senior Obligations), in each case in the current or any future period; and (D) not later than thirty (30) days prior to the proposed issue date, the City shall have provided to the WIFIA Credit Provider a certificate signed by the City's Authorized Representative (x) specifying the proposed issue date of such proposed Additional Senior Obligations and (y) confirming that the issuance of such proposed Additional Senior Obligations is authorized pursuant to this Section 15(a)(iii) and satisfies the applicable requirements of this Section 15(a)(iii). For purposes of the calculation for clause (C)(Y) of this Section 15(a)(iii) only, when calculating projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date, the City may include as System Revenues those System Revenues resulting from rate increases that have been approved and will take effect within three (3) years of such date of calculation as confirmed by the Rate Consultant.

(iv) The City shall not issue any Obligations the payments of, and security for, which are subordinated to the Senior Obligations (the "**Additional Subordinate Obligations**"), unless: (A) the conditions set forth in the applicable Subordinate Obligation Document are satisfied; (B) no Event of Default has occurred and is continuing; (C) following issuance of the proposed Additional Subordinate Obligations, either (X) the Net Revenues for any four (4) consecutive quarters within the six (6) quarters immediately preceding the proposed issue date (such quarters relating to the City Fiscal Year) shall be sufficient to equal or exceed one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Subordinate Obligations) in the current or any future period or (Y) the projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date (such quarters relating to the City Fiscal Year), shall be sufficient to equal one hundred and ten percent (110%) of the greatest amount of Debt Service payable on all Outstanding Obligations (including the proposed Additional Subordinate Obligations) in the current or any future period; and (D) not later than thirty (30) days prior to the proposed issue date, the City shall have provided to the WIFIA Credit Provider a certificate signed by the City's Authorized Representative (x) specifying the proposed issue date of such proposed Additional Subordinate Obligations and (y) confirming that the issuance of such proposed Additional Subordinate Obligations is authorized pursuant to this Section 15(a)(iv) and satisfies the applicable requirements of this Section 15(a)(iv). For purposes of the calculation for clause (C)(Y) of this Section 15(a)(iv) only, when calculating projected Net Revenues for the four (4) full consecutive quarters immediately following the proposed issue date, the City may include as System Revenues those System Revenues resulting from rate increases that have been approved and will take effect within three (3) years of such date of calculation as confirmed by the Rate Consultant.

(v) Notwithstanding any of the foregoing clauses of this Section 15(a) or anything contained in any Financing Document, the City covenants that it will not have Outstanding at any time Obligations that with respect to which the interest rate varies or may be adjusted by the City from time to time.

(vi) The Corporation shall not issue or incur any obligations of any kind, including any bonds, notes, other evidences of indebtedness, installment sale arrangements, financing lease arrangements, or similar obligations, nor enter into any installment sale arrangements, financing lease arrangements, or similar arrangements with the City, except in connection with Obligations incurred by the City that are permitted pursuant to this Section 15(a) or permitted pursuant to the Wastewater System Project Credit Agreement Documents.

(b) No Lien Extinguishment or Adverse Amendments. Neither City Related Party shall, or shall permit any Person to, without the prior written consent of the WIFIA Credit Provider or as otherwise specifically permitted in the WIFIA Credit Documents, (i) extinguish the Rate Covenant, (ii) extinguish or impair the Liens on the Pledged Collateral or any dedicated source of repayment of the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) or any other Obligations (the proceeds of which are applied to fund Total Project Costs), in each case granted pursuant to the Financing Documents, (iii) extinguish or impair the assignment by the Corporation of all of its right, title and interest in this Agreement to the Assignee pursuant to the Assignment Agreement, (iv) amend, modify, replace or supplement any Related Document in a manner that could adversely affect the WIFIA Credit Provider (in the WIFIA Credit Provider's determination) in connection with the ISA or this Agreement or which could reasonably be expected to result in a Material Adverse Effect, (v) waive or permit a waiver of any provision of any Related Document in a manner that could adversely affect the WIFIA Credit Provider (in the WIFIA Credit Provider's determination) in connection with the ISA or this Agreement or which could reasonably be expected to result in a Material Adverse Effect, (vi) terminate, assign or replace any WIFIA Credit Document, or (vii) terminate, assign or replace any Related Document (other than as set forth in this Agreement or the replacement of any Principal Project Contract permitted under Section 17(a)(xi) (*Events of Default and Remedies – Default Under Principal Project Contracts*)) in a manner that could adversely affect the WIFIA Credit Provider or that could reasonably be expected to have a Material Adverse Effect.

(c) No Prohibited Liens. Except for Permitted Liens, the City shall not create, incur, assume or permit to exist any Lien on the Project, the Pledged Collateral, the System Revenues, or the City's respective rights therein. The City shall not collaterally assign any of its rights under or pursuant to any Principal Project Contract and shall not permit a Lien to encumber the City's rights or privileges under any Principal Project Contract, unless pursuant to the Financing Documents in favor of all Secured Parties. The Corporation shall not collaterally assign any of its rights under or pursuant to the ISA and shall not permit a Lien to encumber the Corporation's rights or privileges under the ISA other than as provided in the Assignment Agreement. Notwithstanding the previous sentence, the Corporation may collaterally assign its rights to receive payments under other installment sale agreements entered into in connection with the issuance of Permitted Debt.

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

(e) No Prohibited Sale, Lease or Assignment. The City shall not sell, lease or assign its rights in and to the Water System, a substantial portion of the assets included in the Water System, or its rights and obligations under any Principal Project Contract, in each case unless such sale, lease or assignment (i) could not reasonably be expected to have a Material Adverse Effect and (ii) is made by the City in the ordinary course of business.

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

(g) Mergers and Acquisitions. The City shall not, and shall not agree to, reorganize, consolidate with or merge into another Person unless (i) such reorganization, merger or consolidation is with or into another entity established by State law and such reorganization, merger or consolidation is mandated by State law, and in each case, does not adversely affect or impair to any extent or in any manner (A) the System Revenues or other elements of the Pledged Collateral or (B) the availability of the System Revenues for the payment and security of the obligations of the City under the ISA or this Agreement; and (ii) the City provides to the WIFIA Credit Provider, no later than sixty (60) days prior to the date of reorganization, consolidation or merger, prior written notice of such reorganization, consolidation or merger and the agreements and documents authorizing the reorganization, consolidation or merger, satisfactory in form and substance to the WIFIA Credit Provider. In addition, the City shall provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the WIFIA Credit Provider. The Corporation shall not, and shall not agree to, reorganize, consolidate with or merge into another Person.

(h) No Defeasance. Notwithstanding anything to the contrary in any Financing Document or document related thereto, the City shall have no right to defease or otherwise discharge its obligation under the ISA to make Installment Payments prior to the payment in full of the Purchase Price of the WIFIA Water System Portion of the Project under the ISA, and no Outstanding Balance shall be considered or deemed to have been paid until the payment in full in immediately available funds by the City of the Outstanding Balance (and the corresponding payment in full of the Purchase Price of the WIFIA Water System Portion of the Project under the ISA).

(i) Hedging. The City shall not enter into any swap or hedging transaction, including inflation indexed swap transactions, "cap" or "collar" transactions, futures, or any other hedging transaction with respect to, or payable from, System Revenues.

Section 16. Reporting Requirements.

(a) Updated Financial Model.

(i) The City shall provide to the WIFIA Credit Provider not later than ninety (90) days after the beginning of each City Fiscal Year, an updated Base Case Financial Model reflecting the then-current and projected conditions. The Updated Financial Model shall demonstrate to the satisfaction of the WIFIA Credit Provider that the City has developed and identified adequate revenues to implement a plan for operating, maintaining and repairing the Project over its useful life, and shall include (A) the City's capital improvement plan, major maintenance plan, projected rates and charges, projected debt outstanding and annual debt service, projected operation and maintenance costs of the Water System; (B) evidence of compliance with the Rate Covenant for the most recent City Fiscal Year and the projected Rate Covenant coverages through the Final Installment Payment Date; (C) calculation of the Senior Debt Service Coverage Ratio for the most recent City Fiscal Year; (D) a written narrative identifying any material changes to the underlying assumptions from the previous Updated Financial Model and (E) a certificate signed by the City's Authorized Representative, certifying that (1) the Updated Financial Model, including the assumptions and supporting documentation, as of its date, is accurate and reasonable to the best of the City's knowledge and belief, (2) the annual projected Net Revenues will be sufficient to meet the Installment Payment Schedule and to satisfy the Rate Covenant through the Final Installment Payment Date, (3) whether the City is in compliance with its obligations in respect of the Rate Covenant pursuant to Section 14(a) (*Affirmative Covenants – Rate Covenant*), and (4) whether a WIFIA Reserve Event has occurred.

(b) Annual Financial Statements. The City shall deliver to the WIFIA Credit Provider, as soon as available, but no later than one hundred eighty (180) days after the end of each City Fiscal Year:

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

(ii) together with each delivery of such annual audited financial statements, a certificate signed by the chief executive officer or chief financial officer of the City or the City's Authorized Representative, stating whether or not, to the City's knowledge after reasonable investigation, during the annual period covered by such financial statements, there occurred any Default or Event of Default and, if any such Default or Event of Default shall have occurred during such period, the nature of such

Default or Event of Default and the actions that the City has taken or intends to take in respect thereof.

(c) Final Design Specifications. Upon the request of the WIFIA Credit Provider, the City shall deliver to the WIFIA Credit Provider, no later than ten (10) days after the date of such request, any notice to proceed, the final designs, plans and specifications relating to the development and construction of the Project.

(d) Construction Reporting. The WIFIA Credit Provider shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development of the Project, including environmental compliance, design, and construction of the Project. The City shall be responsible for administering construction oversight of the Project in accordance with applicable federal, state and local governmental requirements. The City agrees to cooperate in good faith with the WIFIA Credit Provider in the conduct of such monitoring by promptly providing the WIFIA Credit Provider with such reports, documentation or other information as shall be requested by the WIFIA Credit Provider or its agents, including any independent engineer reports, documentation or information. During the period through Substantial Completion of the Project, the City shall furnish to the WIFIA Credit Provider, on a quarterly basis, a report on the status of the Project, substantially in the form of **Exhibit J** (*Form of Quarterly Report*). The report shall be executed by the City's Authorized Representative and, for any quarter, shall be delivered to the WIFIA Credit Provider not later than the thirtieth (30th) day of the following quarter (or if such day is not a Business Day, on the next following Business Day). If the then-current projection for the Substantial Completion Date is a date later than the Projected Substantial Completion Date, the City shall provide in such report a description in reasonable detail to the reasonable satisfaction of the WIFIA Credit Provider of the reasons for such projected delay, an estimate of the impact of such delay on the capital and operating costs of the Water System (if any), and that the new date could not reasonably be expected to result in a Material Adverse Effect.

(e) Public Benefits Report. The City shall deliver to the WIFIA Credit Provider a report, in the form of **Exhibit K** (*Form of Public Benefits Report*) (the "**Public Benefits Report**"), (i) no later than thirty (30) days prior to the Effective Date, (ii) within ninety (90) days following the Substantial Completion Date and (iii) within ninety (90) days following the fifth (5th) anniversary of the Substantial Completion Date. The City agrees that information described under this Section 16(e) may be made publicly available by the WIFIA Credit Provider at its discretion.

(f) Modifications to Total Project Costs. For the period through the Substantial Completion Date, the City shall provide the WIFIA Credit Provider with written notification at least thirty (30) days prior to instituting any increase to the aggregate Total Project Costs in an amount equal to or greater than five percent (5%), which notification shall set forth the nature of the proposed increase and an estimate of the impact of such increase on the capital costs and operating costs of the Water System. The City's notice shall demonstrate that the proposed increase is consistent with the provisions of this Agreement, is necessary or beneficial to the Project, does not materially impair the WIFIA Credit Provider's security or the City's ability to comply with its obligations under the Related Documents (including any financial ratios or covenants included therein), and could not reasonably be expected to result in a Material Adverse Effect.

(g) Operations and Maintenance. The WIFIA Credit Provider shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) the Project's operations and, as the WIFIA Credit Provider may request from time to time, to receive reporting on the operation and management of the Project, and copies of any contracts relating to the operation and maintenance of the Project. The City agrees to cooperate in good faith with the WIFIA Credit Provider in the conduct of such monitoring by promptly providing the WIFIA Credit Provider with such reports, documentation, or other information requested by the WIFIA Credit Provider. The WIFIA Credit Provider has the right, in its sole discretion, to retain such consultants or advisors, to carry out the provisions of this Section 16(g). On or prior to the Substantial Completion Date, the City shall deliver to the WIFIA Credit Provider an operations and maintenance manual with respect to the Project, in form and substance reasonably acceptable to the WIFIA Credit Provider.

(h) Notices.

(i) The City shall, within thirty (30) days after the City learns of the occurrence, give the WIFIA Credit Provider notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

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

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

(C) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against a City Related Party before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by a City Related Party in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against a City Related Party that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against a City Related Party with award amounts in excess of \$500,000 that are payable (in whole or in part) from System Revenues, either individually or in the aggregate;

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

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

(F) Amendments: except as otherwise agreed by the WIFIA Credit Provider in writing, copies of (1) any proposed amendments to the ISA, the Wastewater

System Project ISA, or the Resolution and any proposed material amendments to any other Financing Documents, in each case, at least thirty (30) days prior to the effective date thereof and (2) fully executed amendments of any Related Document within ten (10) days following execution thereof;

(G) Related Document Defaults: any material breach or default or event of default on the part of the City or any other party under any Related Document;

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

(I) Ratings Changes: any change in the rating assigned to the Senior Obligations or the WIFIA Credit Facility, in each case by any Nationally Recognized Rating Agency that has provided a public rating on such indebtedness, and any notices, reports or other written materials (other than those that are ministerial in nature) received from any such rating agencies;

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

(K) Additional Principal Project Contracts: copies of any executed Additional Principal Project Contracts (together with any related contracts, side letters or other understandings);

(L) Issuance of Obligations: copies of any final issuing instrument (together with any continuing disclosure documents, ordinances, official statement, certifications or cash flow projections in connection therewith), prepared in connection with the incurrence of any Permitted Debt (including any Additional Senior Obligations);

(M) Other Adverse Events: the occurrence of any other event or condition, including without limitation any notice of breach from a contract counterparty or any Holder of any Obligations, that could reasonably be expected to result in a Material Adverse Effect or have a material and adverse effect on the Project; and

(N) Draws on WIFIA Reserve Account: the occurrence of any draws on the WIFIA Reserve Account to fund payments of Installment Payments when due.

(ii) Within thirty (30) calendar days after the City learns of the occurrence of an event specified in clause (i) above (other than sub-clauses (A) (*Substantial Completion*), (F) (*Amendments*), (I) (*Ratings Changes*) (in the case of a ratings upgrade), (K) (*Additional Principal Project Contracts*), (L) (*Issuance of Obligations*) and (N) (*Draws on WIFIA Reserve Account*)), the City's Authorized Representative shall provide a statement to the WIFIA Credit Provider setting forth the actions the City proposes to take with respect thereto. The City shall also provide the WIFIA Credit Provider with any further information reasonably requested by the WIFIA Credit Provider from time to time concerning the matters described in clause (i) above.

(i) Requested Information. The City shall, at any time while the Outstanding Balance (and the corresponding unpaid Principal Components of the Installment Payments) remains unpaid and outstanding, promptly deliver to the WIFIA Credit Provider such additional information regarding the business, financial, legal or organizational affairs of the City or regarding the Project, the Water System or the System Revenues as the WIFIA Credit Provider may from time to time reasonably request.

ARTICLE VI EVENTS OF DEFAULT

Section 17. Events of Default and Remedies.

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

(i) Payment Default. The City shall fail to (i) pay when due any part of any Installment Payment due and payable under the ISA and such failure continues for a period of five (5) days, or (ii) make any mandatory prepayment required pursuant to the provisions of Section 9 (*Prepayment*) and Article VII (*Prepayment of Installment Payments*) of the ISA, in each case when and as the payment thereof shall be required under the ISA and this Agreement or on the Final Installment Payment Date (each such failure, a “**Payment Default**”).

(ii) Covenant Default. A City Related Party shall fail to observe or perform any covenant, agreement or obligation of that City Related Party under this Agreement, the ISA or any other WIFIA Credit Document (other than in the case of any Payment Default, any payment default under the Wastewater System Project Credit Agreement, any payment default of Obligations secured by Wastewater System revenues, any Development Default, any failure to comply with the Rate Covenant or any failure to fully fund the WIFIA Reserve Account to its required balance), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the City Related Party from the WIFIA Credit Provider of written notice thereof or (B) the City Related Party’s knowledge of such failure; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this clause (ii), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the City Related Party shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable.

(iii) Misrepresentation Default. Any of the representations, warranties or certifications of the City Related Parties made in or delivered pursuant to the WIFIA Credit Documents (or in any certificates delivered by the City Related Parties in connection with the WIFIA Credit Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided, that no Event of Default shall be deemed to have occurred under this clause (iii) if and so long as (A) such misrepresentation is not intentional, (B) such misrepresentation is not a misrepresentation in respect of Section 12(g) (*Representations and Warranties of the City Related Parties – Security Interests*), Section 12(h) (*Representations and Warranties of the City Related Parties – No Debarment*), Section 12(j) (*Representations and Warranties of the City Related Parties – Compliance with Laws*), or Section 12(y) (*Representation and Warranties of the City Related Parties –*

Patriot Act), (C) in the reasonable determination of the WIFIA Credit Provider, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect, (D) in the reasonable determination of the WIFIA Credit Provider, the underlying issue giving rise to the misrepresentation is capable of being cured, (E) the underlying issue giving rise to the misrepresentation is cured by the relevant City Related Party within thirty (30) days from the date on which the relevant City Related Party first became aware (or reasonably should have become aware) of such misrepresentation, and (F) the relevant City Related Party diligently pursues such cure during such thirty (30) day period.

(iv) Acceleration of Senior Obligations. With respect to any Senior Obligation, any acceleration shall occur of the maturity of that Senior Obligation, any such Senior Obligation shall not be paid in full upon the final maturity thereof, or any Holder of such Senior Obligation shall have the immediate right to accelerate such Senior Obligation.

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

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

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

(viii) Invalidity of WIFIA Credit Documents or Wastewater System Project Credit Agreement Documents. (A) Any WIFIA Credit Document or Wastewater System Project Credit Agreement Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or any City Related Party contests in any manner the validity or enforceability of any WIFIA Credit Document or Wastewater System Project Credit Agreement Document to which it is a party or denies it has any further liability under any WIFIA Credit Document or Wastewater System Project Credit Agreement Document to which it is a party, or purports to revoke, terminate or rescind any WIFIA Credit Document or Wastewater System Project Credit Agreement Document to which it is a party; (B) any Financing Document ceases (other than as expressly permitted thereunder) to be effective or to grant a valid and binding security interest on any material portion of the Pledged Collateral other than as a result of actions or a failure to act by, and within the control of, any Secured Party, and with the priority purported to be created thereby; (C) any event occurs that results in the material impairment in the perfection or priority of the WIFIA Credit Provider's security interest in the Pledged Collateral or in the value of such Pledged Collateral; or (D) any event occurs that results in the material impairment in the

Corporation's assignment of its rights and interests in the ISA to the WIFIA Credit Provider.

(ix) Failure to Satisfy Rate Covenant. The City fails to satisfy the Rate Covenant for two (2) consecutive City Fiscal Years.

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

(xi) Default Under Principal Project Contracts. The City shall default in the timely performance of any covenant, agreement or obligation under any Principal Project Contract or any Principal Project Contract shall be terminated prior to its scheduled expiration (unless in any case such default or termination could not reasonably be expected to have a Material Adverse Effect), and the City shall have failed to cure such default or to obtain an effective written waiver or revocation thereof prior to the expiration of the applicable grace period specified in any such Principal Project Contract, or to obtain an effective revocation of such termination (as the case may be); provided, however, that no Event of Default shall be deemed to have occurred or be continuing under this clause (xi) if, in the case of any termination of a Principal Project Contract, the City replaces such Principal Project Contract with a replacement agreement (1) entered into with another counterparty that (I) is of similar or greater creditworthiness (including credit support), technical capability and relevant experience as the counterparty being replaced was at the time the applicable Principal Project Contract was originally executed (or otherwise reasonably acceptable to the WIFIA Credit Provider), (II) is not, at the time of such replacement, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency and (III) is not, at the time of such replacement, in violation of any applicable laws, (2) on substantially the same terms and conditions as the Principal Project Contract being replaced (or otherwise reasonably acceptable to the WIFIA Credit Provider) and (3) effective as of the date of termination of the Principal Project Contract being replaced.

(xii) Cessation of System Operations. Following the Substantial Completion Date, operation of the Water System shall cease for a continuous period of not less than one hundred eighty (180) days unless (A) such cessation of operations shall occur by reason of an Uncontrollable Force that is not due to the fault of the City (and which the City could not reasonably have avoided or mitigated) or (B) the City shall have in force an insurance policy or policies under which the City is entitled to recover amounts sufficient to pay (and may use such amounts to pay), Debt Service for all Senior Obligations (including the Installment Payments) and costs and expenses of the City during such cessation of operations.

(xiii) Failure to Fund WIFIA Reserve Account. (1) After the occurrence of a WIFIA Reserve Event, the City fails to initially fully fund the WIFIA Reserve Account to its required balance pursuant to the requirements of this Agreement or (2) after initial funding, the City fails to maintain the WIFIA Reserve Account in an amount equal to the WIFIA Reserve Account Requirement, with the exception of if such failure is due to a lack of receipt of by the City of Net Revenues available for funding.

(b) Upon the occurrence of any Bankruptcy Related Event of a City Related Party, the Event of Default in Section 17(a)(iv) (*Events of Default and Remedies - Acceleration of Senior Obligations*) or the Event of Default in Section 17(a)(viii) (*Events of Default and Remedies – Invalidity of WIFIA Credit Documents*), all obligations of the WIFIA Credit Provider hereunder with respect to the disbursement of any undisbursed amounts under this Agreement shall automatically be deemed terminated, and the Installment Payments shall be subject to mandatory prepayment as set forth in Section 9 (*Prepayment – Mandatory Prepayment Upon a Bankruptcy Related Event*) and Article VII (*Prepayment of Installment Payments*) of the ISA.

(c) Upon the occurrence of any Event of Default, the WIFIA Credit Provider, by written notice to the City, may exercise any or all of the following remedies:

(i) the WIFIA Credit Provider may suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts under this Agreement;

(ii) the WIFIA Credit Provider may cease permitting accrued interest on the unpaid Principal Components of the Installment Payments to be capitalized;

(iii) the WIFIA Credit Provider may apply the Default Rate provisions of Section 6 (*Interest Rate*) and Section 4.4(d) (*Installment Payments – Rate on Overdue Payments*) of the ISA;

(iv) the WIFIA Credit Provider may suspend or debar the City from further participation in any Government program administered by the WIFIA Credit Provider and to notify other departments and agencies of such default; and/or

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

(d) No action taken pursuant to this Section 17 shall relieve either City Related Party from its obligations pursuant to this Agreement, the ISA or the other WIFIA Credit Documents, all of which shall survive any such action.

ARTICLE VII MISCELLANEOUS

Section 18. Disclaimer of Warranty. The WIFIA Credit Provider makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for a particular purpose or fitness for use of the Project or any portion thereof or any other warranty with respect thereto. In no event shall the WIFIA Credit Provider be liable for any incidental, indirect, special or consequential damages incidental to or arising out of this Agreement or the Project or the existence, furnishing, functioning or use of the Project or any item or products or services provided for in this Agreement.

Section 19. No Personal Recourse. No official, employee or agent of the WIFIA Credit Provider, the City or the Corporation or any Person executing this Agreement or any of the other WIFIA Credit Documents shall be personally liable on this Agreement or such other WIFIA Credit Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 20. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the City, the Corporation, the Government, or the WIFIA Credit Provider, solely by virtue of this Agreement, and the City agrees to indemnify and hold the WIFIA Credit Provider, the Servicer (if any), the Administrator, and the Government harmless, to the extent permitted by law and in accordance with Section 32 (*Indemnification*), from any lawsuit or claim arising in law or equity solely by reason of this Agreement, and that no third party creditor or creditors of either City Related Party shall have any right against the WIFIA Credit Provider with respect to the disbursement of proceeds made pursuant to this Agreement.

Section 21. City's Authorized Representative. The City shall at all times have appointed a City's Authorized Representative by designating such Person or Persons from time to time to act on the City's behalf pursuant to a written certificate furnished to the WIFIA Credit Provider and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the City.

Section 22. WIFIA Credit Provider's Authorized Representative. The WIFIA Credit Provider hereby appoints the Director of the WIFIA Program, whose notice details are set forth below in Section 31 (*Notices*), to serve as the WIFIA Credit Provider's Authorized Representative under this Agreement until such time as a successor or successors shall have been appointed. Thereafter, the successor in office shall serve as the WIFIA Credit Provider's Authorized Representative. The WIFIA Credit Provider shall provide notice to the City within a reasonable time period following the succession.

Section 23. Servicer. The WIFIA Credit Provider may from time to time designate another entity or entities to perform, or assist the WIFIA Credit Provider in performing, the duties of the Servicer or specified duties of the WIFIA Credit Provider under this Agreement and the ISA. The WIFIA Credit Provider shall give the City written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the WIFIA Credit Provider shall be deemed to be a reference to the Servicer with respect to any duties which the WIFIA Credit Provider shall have delegated to such Servicer. The WIFIA Credit Provider may at any time

assume the duties of any Servicer under this Agreement and the ISA. The City Related Parties shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 24. Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

Section 25. Governing Law. This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

Section 26. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 27. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. None of either City Related Party's rights or obligations hereunder nor any interest therein may be assigned or delegated by either City Related Party without the prior written consent of the WIFIA Credit Provider.

Section 28. Remedies Not Exclusive. No remedy conferred herein or reserved to the WIFIA Credit Provider is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 29. Delay or Omission Not Waiver. No delay or omission of the WIFIA Credit Provider to exercise any right or remedy provided hereunder upon a default of a City Related Party (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the WIFIA Credit Provider may be exercised from time to time, and as often as may be deemed expedient by the WIFIA Credit Provider.

Section 30. Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 31 (*Notices*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable.

Section 31. Notices. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to WIFIA Credit
Provider: Environmental Protection Agency
WJC-W 6201A
1200 Pennsylvania Avenue NW
Washington, D.C. 20460
Attention: WIFIA Director
Email: WIFIA_Portfolio@epa.gov

If to City: The City of Morro Bay
City Hall – 595 Harbor Street
Morro Bay, CA 93442
Attention: Rob Livick, P.E.
Email: rlivick@morrobayca.gov

with a copy to: City of Morro Bay Public Facilities Corporation
c/o The City of Morro Bay
City Hall – 595 Harbor Street
Morro Bay, CA 93442
Attention: Rob Livick, P.E.
Email: rlivick@morrobayca.gov

Unless otherwise instructed by the WIFIA Credit Provider's Authorized Representative, all notices to the WIFIA Credit Provider should be made by email to the email address noted above for the WIFIA Credit Provider. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a City's Authorized Representative, with respect to notices to the City, or by the WIFIA Credit Provider's Authorized Representative, with respect to notices to the WIFIA Credit Provider or the Servicer. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 31 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 31 (or in accordance with the latest unrevoked written direction from the receiving party); provided, that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 32. Indemnification. The City shall, to the extent permitted by law, indemnify the WIFIA Credit Provider and any official, employee, agent or representative of the WIFIA Credit Provider (each such Person being herein referred to as an "**Indemnatee**") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnatee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the disbursement of proceeds under this Agreement or the use of the proceeds

thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided, that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee. In case any action or proceeding is brought against an Indemnatee by reason of any claim with respect to which such Indemnatee is entitled to indemnification hereunder, the City shall be entitled, at its expense, to participate in the defense thereof; provided, that such Indemnatee has the right to retain its own counsel, at the City's expense, and such participation by the City in the defense thereof shall not release the City of any liability that it may have to such Indemnatee. Any Indemnatee against whom any indemnity claim contemplated in this Section 32 is made shall be entitled, after consultation with the City and upon consultation with legal counsel wherein such Indemnatee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the City Related Parties for purposes of this Section 32. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnatee. To the extent permitted by applicable law, neither the City, the Corporation nor the WIFIA Credit Provider shall assert, and each of the City, the Corporation and the WIFIA Credit Provider hereby waives, any claim against any Indemnatee or the City or the Corporation, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the disbursement of proceeds under this Agreement or the use of the proceeds thereof, provided, that nothing in this sentence shall limit the City's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnatee is entitled to indemnification hereunder. All amounts due to any Indemnatee under this Section 32 shall be payable promptly upon demand therefor. The obligations of the City under this Section 32 shall survive the payment or prepayment in full of the unpaid Principal Components of the Installment Payments, or transfer of the ISA, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 32) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the City hereunder or thereunder.

Section 33. Sale of Rights in the ISA. The WIFIA Credit Provider, as the initial Assignee, shall not sell its rights in the ISA and the Assignment Agreement at any time prior to the Substantial Completion Date. After such date, the WIFIA Credit Provider, as the initial Assignee, may sell its rights in the ISA and the Assignment Agreement to another entity or reoffer it into the capital markets only in accordance with the provisions of this Section 33. Such sale or reoffering shall be on such terms as the WIFIA Credit Provider, as the initial Assignee, shall deem advisable. However, in making such sale or reoffering the WIFIA Credit Provider, as the initial Assignee, shall not change the terms and conditions of this Agreement without the prior written consent of the City and the Corporation in accordance with Section 24 (*Amendments and Waivers*). The WIFIA Credit Provider, as the initial Assignee, shall provide, at least sixty (60) days prior to any sale or reoffering of its rights in the ISA and the Assignment Agreement, written notice to the

City of the WIFIA Credit Provider's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section shall not (x) obligate the WIFIA Credit Provider, as the initial Assignee, to sell nor (y) provide any City Related Party with any rights or remedies in the event the WIFIA Credit Provider, as the initial Assignee, for any reason, does not sell its rights in the ISA and the Assignment Agreement. Notwithstanding anything herein to the contrary, any sale of its rights in the ISA and the Assignment Agreement shall provide that the sale is in accordance with all pertinent securities laws and that the assignee has reviewed pertinent information from the City with respect to the financial condition of the City, the Net Revenues, and the Water System, and that the assignee understands the type of investment it has purchased or has been provided the opportunity to review and receive information and has chosen not to do so.

Section 34. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 35. Termination. This Agreement shall terminate upon the irrevocable payment in full in immediately available funds by the City of the Outstanding Balance (and the corresponding payment in full of the Purchase Price of the WIFIA Water System Portion of the Project under the ISA), together with the Additional Payments and all accrued interest, fees and expenses with respect thereto; provided, however, that the indemnification requirements of Section 32 (*Indemnification*), the reporting and record keeping requirements of Section 14(p) (*Affirmative Covenants – Access; Records*) and the payment requirements of Section 10 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such Sections.

Section 36. Integration. This Agreement constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

CITY OF MORRO BAY

By: _____
Name:
Title: Mayor

**CITY OF MORRO BAY PUBLIC
FACILITIES CORPORATION**

By: _____
Name:
Title: Executive Director

*[Signature Page to Morro Bay Water Reclamation Facility Project – Water System Portion
WIFIA Credit Agreement]*

3416188.4 043601 DRFT

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

By: _____
Name: Andrew R. Wheeler
Title: Administrator

SCHEDULE I
PROJECT BUDGET

Sources	Percent (%)	Amount (\$)
Drinking Water System WIFIA Loan	29%	\$36,516,525.66
Wastewater System WIFIA Loan	20%	\$25,183,810.80
Cleanwater SRF Loan (Wastewater System)	51%	\$64,218,717.54
Total Sources	100%	\$125,919,054.00
Project Element	Description	Estimated Costs
New Water Reclamation Facility (WRF)	0.97 million gallons per day (MGD) WRF will provide preliminary, secondary, tertiary, and advanced treatment, and will produce recycled water meeting indirect potable reuse (IPR) standards for a groundwater replenishment reuse project using subsurface application.	\$75,475,897.00
Conveyance Facilities	Includes approximately 13,000 linear feet of high-density polyethylene or fusible PVC, ranging in diameter from 12 to 20 inches as the West Alignment pipeline; a 15,000 linear feet trenchless crossing of Willow Cramp Creek Communication Conduit; approximately 16,000 linear feet of high-density polyethylene or fusible PVC, 8 inches in diameter as the Indirect Potable Reuse East pipeline; and a Dual Pump Station with a firm capacity of 14 million gallons per day	\$30,884,235.00
Recycled Water Facilities	Includes a minimum of four injection wells with a general depth of approximately 60 feet where purified water from the WRF will be pumped into the aquifer and a yet to be determined amount of monitoring wells of approximately 60-foot depth.	\$4,400,000.00
Additional Project Costs	Includes General City Costs, Program Management and Planning, Environmental, Funding Support, Property Acquisition, Public Outreach, New Electrical Services, and Planning and Permitting.	\$15,158,922.00
Total Uses		\$125,919,054.00
Total Eligible Project Costs		\$125,919,054.00
Total Project Costs		\$125,919,054.00

SCHEDULE II
CONSTRUCTION SCHEDULE

Project Element	Design Completion	Construction Start	Substantial Completion	Final Completion
WRF	12/26/19	02/03/20	04/08/22	7/05/22
Conveyance Facilities	5/01/20	7/31/20	12/07/21	2/08/22
Recycled Water Facilities	04/01/22	06/24/22	7/31/22	05/26/23

SCHEDULE III
EXISTING INDEBTEDNESS

[To be provided by City]

A. Senior Obligations

	Agreement/Series	Outstanding Principal
1.	None	

SCHEDULE IV

WIFIA PAYMENT INSTRUCTIONS

Acceptable Methods for WIFIA Payments to EPA

Option 1 PAY.GOV

Use of Pay.gov to make payments to EPA is the preferred electronic payment method. In Pay.gov, users can track their payments to EPA and schedule recurring or automatic payments. Although it is not mandatory to register for a user id to access and use Pay.Gov, registration is recommended to have access to all Pay.gov system functionality.

1. Access the Pay.gov system by going to <https://www.pay.gov> and search for WIFIA or click on the following hyperlink to directly launch the WIFIA Loan Collection & Fees Form.
2. Provide the following information on your payment to ensure proper credit:
 - Remitter's contact phone number
 - Company/Organization Name as it appears on EPA document
 - Complete address, including city, state, zip code
 - Project Name
 - Loan Number: this is EPA WIFIA Credit Facility number, NOT the remitter's number
 - From the "Payment Type" drop down menu select the type from the Fee Notice letter
 - Other Description: please note the reference number from the Fee Notice letter
3. Follow the remaining on-screen instructions to successfully process the payment to EPA.
4. Send an email to lvfc-grants@epa.gov and wifia_portfolio@epa.gov informing that a payment has been made.

Option 2 FEDWIRE

Wire transfers made through FedWire are an alternative electronic wire transfer initiated between the City and its organization's financial institution (bank) and EPA. FedWire is typically used to initiate financial institution (bank) generated "same day" electronic payments.

Cities must work within the processing guidelines established by their bank, which may include processing cutoffs, transaction fees, and other bank requirements.

Banks that do not maintain an account at a Federal Reserve Bank (FRB) must use the services of correspondent banks that do have an FRB account. To process a payment using FedWire please:

1. Send FedWire deposits as early as possible and no later than 5 p.m. ET on the desired EPA receipt date
2. Review the FedWire form Instructions provided in Attachment 1 and complete the form. It is very important that all relevant details identified in the instructions are accurate.
3. Send an email to lvfc-grants@epa.gov and wifia_portfolio@epa.gov informing that a payment has been made.

Option 3 CHECK PAYMENTS

4. Send checks to:
U.S. EPA
Las Vegas Finance Center
4220 S. Maryland Pkwy, Bldg C, Ste 503
Las Vegas NV 89119
5. Provide the following information on your check payment to ensure proper credit please:
 - Company/remitter's name (City name as it appears on EPA document)
 - Complete address, including city, state, zip
 - Remitter's point of contact person and phone number
 - EPA WIFIA Credit Facility # (NOT the remitter's number)
 - Payment Type/Reason for payment from the Fee Notice letter
 - Reference number from the Fee Notice letter.
6. Send an email to lvfc-grants@epa.gov and wifia_portfolio@epa.gov informing that a payment has been submitted.

NOTE: When checks are provided as payment, you authorize the EPA to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When the EPA uses information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.

Attachment 1 – FedWire Payment Form and Instructions

		U.S. Environmental Protection Agency FUNDS TRANSFER DEPOSIT		
PC		INSTRUCTIONS: Explicit completion and routing instructions are located on the reverse of this form. It is requested that prudent care be taken to ensure that all information is provided in the requested format. Failure to provide the information in the requested format may cause a delay in the notification of the funds transfer to EPA.		
TO 021030004	TYPE 10			
FROM	CL	REF	AMOUNT \$	
SENDER				
RECEIVER TREAS NYC/(68011233)EPA				
THIRD PARTY INFORMATION				

The above FedWire form presented to your bank (who will initiate and transmit the FedWire payment) **MUST** contain all details below: *

TO (ABA)	021030004
TYPE	10
RECEIVER	TREAS NYC/(68011233)EPA
THIRD PARTY INFORMATION	To ensure proper credit please include the following information on your payment: • Company/remitter's name (City name as it appears on EPA document) • Complete address, including city, state, zip code • Remitter's point of contact person and phone number • EPA WIFIA Credit Facility # (NOT the remitter's number) • Payment Type/Reason for payment from the Fee Notice letter • Reference number from the Fee Notice letter
Shaded Areas	Those items that are shaded on the Form are to be entered by the bank on the funds transfer message. (Depending on the Federal Reserve District, some items may not be required.)
*Important: Failure to initiate the FedWire electronic wire transaction properly with the above fields included, will result in untimely or non-receipt of funds at EPA.	

For questions about payments to EPA please contact EPA Las Vegas Finance Center:

Phone: (702)798-2485, Office Hours: 7am to 4:30pm PST. Voicemails can be left when calling outside these hours
Email: lvfc-grants@epa.gov

For questions about the WIFIA program:

Email: wifia@epa.gov

SCHEDULE 12(f)

LITIGATION

No.	Parties	Date Initiated	Description	Venue

SCHEDULE 12(n)

PRINCIPAL PROJECT CONTRACTS

A. Existing Principal Project Contracts (effective as of the date of this Agreement)

Contract	Date	Parties	Description

B. Expected Additional Principal Project Contracts (expected to either be executed, or are executed and expected to become effective, at a future date)

Contract	Expected Effective Date	Parties	Description

SCHEDULE 12(p)
ENVIRONMENTAL MATTERS

[To be provided by City]

EXHIBIT A
RESERVED

EXHIBIT B
ANTICIPATED DISBURSEMENT SCHEDULE

<u>Federal Fiscal Year</u>	<u>Amount</u>
2020	\$23,258,262.83
2021	\$13,258,262.83

EXHIBIT C

FORM OF CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The undersigned, on behalf of the [City of Morro Bay]/[City of Morro Bay Public Facilities Corporation], hereby certifies that the [City of Morro Bay]/[City of Morro Bay Public Facilities Corporation] has fully complied with its verification obligations under 2 C.F.R. § 180.320 and hereby further confirms, based on such verification, that, to its knowledge, the [City of Morro Bay]/[City of Morro Bay Public Facilities Corporation] and its principals (as defined in 2 C.F.R. § 180.995 and supplemented by 2 C.F.R. 1532.995):

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

(b) Have not within a three (3) year period preceding the Effective Date been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

Dated: _____

**[CITY OF MORRO BAY]/[CITY OF MORRO BAY
PUBLIC FACILITIES CORPORATION]²**

By: _____

Name:

Title:

² To be executed by an Authorized Representative.

EXHIBIT D

REQUISITION PROCEDURES

This **Exhibit D** sets out the procedures which the City agrees to follow in submitting Requisitions for the disbursement of proceeds under the WIFIA Credit Agreement in respect of the Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Sections 2 through 4 set out the circumstances in which the WIFIA Credit Provider may reject or correct Requisitions submitted by the City or withhold a disbursement. The City expressly agrees to the terms hereof, and further agrees that (i) the rights of the WIFIA Credit Provider contained herein are in addition to (and not in lieu of) any other rights or remedies available to the WIFIA Credit Provider under the WIFIA Credit Agreement, and (ii) nothing contained herein shall be construed to limit the rights of the WIFIA Credit Provider to take actions including administrative enforcement action and actions for breach of contract against the City if it fails to carry out its obligations under the WIFIA Credit Agreement during the term thereof.

Section 1. General Requirements. All requests by the City for the disbursement of proceeds under the WIFIA Credit Agreement shall be made by electronic mail or overnight delivery service by submission to the WIFIA Credit Provider, in accordance with Section 31 (*Notices*) of the WIFIA Credit Agreement, of a Requisition, in form and substance satisfactory to the WIFIA Credit Provider and completed and executed by the City's Authorized Representative. The form of Requisition is attached as **Appendix One** (*Form of Requisition*) to this **Exhibit D**.

Supporting documentation should be submitted with the requisition. If the City anticipates that it will draw down all or a portion of the proceeds under the WIFIA Credit Agreement to reimburse the City for Eligible Project Costs paid by or on behalf of the City prior to such disbursement of proceeds under the WIFIA Credit Agreement, whether paid from funds of the City or proceeds of Obligations issued by the City, including for the purpose of paying or redeeming such Obligations, the City shall deliver appropriate documentation, including invoices and records, evidencing such incurred or paid Eligible Project Costs (the "**Eligible Project Costs Documentation**"). The Eligible Project Costs Documentation must provide sufficient detail to enable the WIFIA Credit Provider to verify that such costs are Eligible Project Costs paid by the City, in connection with the reimbursement of such Eligible Project Costs or for the purpose of paying or redeeming, in whole or part, the portion of any such short-term interim financing in respect of which the proceeds were used to pay such documented Eligible Project Costs. The WIFIA Credit Provider shall review the Eligible Project Costs Documentation for compliance with WIFIA disbursement requirements, and any amounts approved by the WIFIA Credit Provider as Eligible Project Costs will be disbursed at such time as the City submits a Requisition in respect of such approved amounts.

The WIFIA Credit Provider agrees to promptly send to the City in accordance with Section 31 (*Notices*) of the WIFIA Credit Agreement, an acknowledgement of receipt of each Requisition in the form attached as **Appendix Two** (*[Approval/Disapproval] of the WIFIA Credit Provider*) to this **Exhibit D** setting forth the date of receipt by the WIFIA Credit Provider of such Requisition and setting forth the Business Day on which disbursement will be made absent denial by the WIFIA Credit Provider. All disbursement requests must be received by the WIFIA Credit Provider

at or before 5:00 P.M. (EST) on the first (1st) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15th) day of such calendar month or, if either such day is not a Business Day, the next succeeding Business Day. If a Requisition is approved by the WIFIA Credit Provider, the WIFIA Credit Provider will notify the City of such approval and of the amount so approved.

Section 2. Rejection. A Requisition may be rejected in whole or in part by the WIFIA Credit Provider if it is: (a) submitted without signature; (b) submitted under signature of a Person other than a City's Authorized Representative; (c) submitted after prior disbursement of all proceeds under the WIFIA Credit Agreement; (d) submitted without adequate Eligible Project Costs Documentation, including (i) copies of invoices and records evidencing the Eligible Project Costs, (ii) a summary of the progress of construction of the Project and a general description of the work done for which the funds being requisitioned are being applied (or a certification that no change has occurred since the date of the latest quarterly report provided pursuant to Section 16(d) (*Reporting Requirements – Construction Reporting*), and (iii) a copy of the most recent update to the City's risk register, if requested by the WIFIA Credit Provider.

The WIFIA Credit Provider will notify the City of any Requisition so rejected, and the reasons therefor. Any Requisition rejected for the reasons specified above (other than Section 2(c)) must be resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the WIFIA Credit Facility proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the WIFIA Credit Provider will so notify the City.

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the WIFIA Credit Provider, after telephonic or email notification to the City, and will thereafter be treated as if submitted in the corrected amount.

Section 4. Withholding. The WIFIA Credit Provider shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of proceeds under the WIFIA Credit Agreement if: (a) a Default or an Event of Default shall have occurred and be continuing; (b) the City (i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable law, in connection with the transactions contemplated hereby; (ii) prevents or materially impairs the ability of the WIFIA Credit Provider to monitor compliance by the City with applicable law pertaining to the Project or with the terms and conditions of the WIFIA Credit Agreement; (iii) fails to observe or comply with any applicable law, or any term or condition of the WIFIA Credit Agreement; (iv) fails to satisfy the conditions set forth in Section 4 (*Disbursement Conditions*) and Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*) of the WIFIA Credit Agreement; or (v) fails to deliver Eligible Project Costs Documentation satisfactory to the WIFIA Credit Provider at the times and in the manner specified by the WIFIA Credit Agreement; provided, that in such case of Section 4(v), the WIFIA Credit Provider may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

APPENDIX ONE TO EXHIBIT D

FORM OF REQUISITION

United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
WJC-W 6201A
Washington, D.C. 20460
Attention: WIFIA Director

Re: Morro Bay Water Reclamation Facility Project (WIFIA Ref N17108CA and WIFIA Ref N17150CA)

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of each of the WIFIA Credit Agreement for the Wastewater System Portion of the Morro Bay Water Reclamation Facility and the WIFIA Credit Agreement for the Water System Portion of the Morro Bay Water Reclamation Facility, each dated as of [date] (together, the “WIFIA Credit Agreements”), each by and between the CITY OF MORRO BAY (the “City”), the CITY OF MORRO BAY PUBLIC FACILITIES CORPORATION and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “WIFIA Credit Provider”), the City hereby requests disbursement in the amount set forth below in respect of Eligible Project Costs paid or incurred by the City. “WIFIA Credit Facility” collectively refers to the WIFIA Credit Facility described in each WIFIA Credit Agreement. All other capitalized terms used but not defined herein have the meaning set forth in the WIFIA Credit Agreements.

In connection with this Requisition the undersigned, as the City’s Authorized Representative, hereby represents and certifies the following:

1.	Project name	
2.	City name	
3.	WIFIA reference number (Wastewater System)	N17108CA
	WIFIA reference number (Water System)	N17150CA
4.	Requisition number	
5.	³Requested disbursement amount from the WIFIA Credit Agreement for the	\$ 40.82% of requested disbursement

³ With respect to each Requisition, (i) the Eligible Project Costs relating to the Project in its entirety shall be allocated pro rata between the Wastewater System Project and the Water System Project based on the following percentages: 40.82% for the Wastewater System Project and 59.18% for the Water System Project; and (ii) proceeds available under the WIFIA Credit Agreement shall be disbursed hereunder only if there is a concurrent disbursement under the Wastewater System Project Credit Agreement. NOTE: the last disbursement will have to adjusted slightly to account for rounding for a non-standard number.

	Wastewater System Portion & percentage of total disbursement	
	Requested disbursement amount from the WIFIA Credit Agreement for the Water System Portion & percentage of total disbursement	\$[] 59.18% of requested disbursement
	TOTAL:	\$[]
6.	Requested disbursement date (the “Disbursement Date”)	[]
7.	Total amounts previously disbursed under the WIFIA Credit Agreement for the Wastewater System Portion	\$[]
	Total amounts previously disbursed under the WIFIA Credit Agreement for the Water System Portion	\$[]
	TOTAL:	\$[]
8.	Wire instructions	[]

9. The amounts hereby requisitioned have been paid or incurred and approved for payment by or on behalf of the City for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from WIFIA Credit Facility proceeds. No portion of the amounts requisitioned will be applied to pay for Eligible Project Costs that have been previously paid, or are expected to be paid, with proceeds of debt of the City that is not the WIFIA Credit Facility (“Other Debt”).
10. The aggregate amount of all disbursements of the WIFIA Credit Facility (including the amount requested under this Requisition but excluding any interest that is capitalized in accordance with the WIFIA Credit Agreements) does not exceed (a) the amount of the WIFIA Credit Facility, (b) the amount of Eligible Project Costs paid or incurred by the City, and (c) the cumulative disbursements through the end of the current Federal Fiscal Year as set forth in the Anticipated Disbursement Schedule in each WIFIA Credit Agreement.
11. The City has sufficient available funds committed to the Project, which together with funds that remain available and not yet drawn under the WIFIA Credit Facility, will be sufficient to pay the reasonably anticipated remaining Total Project Costs.
12. The total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Credit Facility (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

13. The City has all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Credit Facility proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval has been issued and is in full force and effect (and is not subject to any notice of violation, breach or revocation).
14. Each of the insurance policies obtained by the City in satisfaction of Section 11(a)(xvi) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Credit Agreements is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
15. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of WIFIA Credit Facility proceeds), (i) no Default or Event of Default and (ii) no event of default under any other Related Document and no event that, with the giving of notice or the passage of time or both, would constitute an event of default under any Related Document, in each case, has occurred and is continuing. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since July 12, 2018.
16. The City, and each of its contractors and subcontractors at all tiers with respect to the Project, has complied with all applicable laws, rules, regulations and requirements, including without limitation 40 U.S.C. §§3141-3144, 3146, and 3147 (relating to Davis-Bacon Act requirements) (and regulations relating thereto) and 33 U.S.C. §3914 (relating to American iron and steel products). Supporting documentation, such as certified payroll records and certifications for all iron and steel products used for the Project, are being maintained and are available for review upon request by the WIFIA Credit Provider.
17. The representations and warranties of the City Related Parties set forth in the WIFIA Credit Agreements and in each other Related Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).
18. Each Financing Document and Principal Project Contract that has been delivered by the City to the WIFIA Credit Provider pursuant to Section 11(b) (*Conditions Precedent – Conditions Precedent to Disbursements*) is complete, fully executed and in full force and effect.
19. The current estimated percentage of physical completion of the Project is [____]%. The City is in compliance with Section 16(d) (*Reporting Requirements – Construction Report*) and no change has occurred since the date of the most recently delivered quarterly construction progress report that could reasonably be expected to cause a Material Adverse Effect.

20. All documentation evidencing the Eligible Project Costs to be reimbursed to the City by the above-requested disbursement has been delivered by the City to the WIFIA Credit Provider at the times and in the manner specified by the WIFIA Credit Agreements, including the details set forth [in the attachment hereto, which is in form satisfactory to the WIFIA Credit Provider]]below:

WASTEWATER SYSTEM PORTION								WIFIA USE ONLY	
Vendor or Contractor Name ⁴	Invoice Number ⁵	Invoice Date	Payment Date	Invoice Amount	WIFIA Requested Amount ⁶	Activity Type ⁷	Description of Activity ⁸	Approved Amount	Notes

WATER SYSTEM PORTION								WIFIA USE ONLY	

⁴ If seeking reimbursement for internal costs, enter “Internally financed activities.”

⁵ Vendor’s number indicated on the invoice sent to the Borrower.

⁶ If the amount requested for reimbursement by WIFIA is less than the total amount of the invoice, include an explanation for the difference.

⁷ Specify whether activity is: (a) **Development phase activity**, which includes planning, preliminary engineering, design, environmental review, revenue forecasting and other pre-construction activities; (b) **Construction**, which includes construction, reconstruction, rehabilitation and replacement activities; (c) **Acquisition of real property**, which includes acquiring an interest in real property, environmental mitigation, construction contingencies and acquisition of equipment; (d) **Carrying costs**, including capitalized interest, as necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction; (e) **WIFIA fees**, including for application and credit processing; or (f) **Other**, with an explanation in column H.

⁸ Provide a brief description of the activities included in the invoice for which WIFIA funds are being requested and any other notes that will aid in the review of the disbursement request.

Vendor or Contractor Name ⁹	Invoice Number ¹⁰	Invoice Date	Payment Date	Invoice Amount	WIFIA Requested Amount ¹¹	Activity Type ¹²	Description of Activity ¹³	Approved Amount	Notes

⁹ If seeking reimbursement for internal costs, enter “Internally financed activities.”

¹⁰ Vendor’s number indicated on the invoice sent to the Borrower.

¹¹ If the amount requested for reimbursement by WIFIA is less than the total amount of the invoice, include an explanation for the difference.

¹² Specify whether activity is: (a) **Development phase activity**, which includes planning, preliminary engineering, design, environmental review, revenue forecasting and other pre-construction activities; (b) **Construction**, which includes construction, reconstruction, rehabilitation and replacement activities; (c) **Acquisition of real property**, which includes acquiring an interest in real property, environmental mitigation, construction contingencies and acquisition of equipment; (d) **Carrying costs**, including capitalized interest, as necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction; (e) **WIFIA fees**, including for application and credit processing; or (f) **Other**, with an explanation in column H.

¹³ Provide a brief description of the activities included in the invoice for which WIFIA funds are being requested and any other notes that will aid in the review of the disbursement request.

21. The undersigned acknowledges that if the City makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Government in connection with the Project, the Government reserves the right to impose on the City the penalties of 18 U.S.C. § 1001, to the extent the Government deems appropriate.

Dated: _____

CITY OF MORRO BAY¹⁴

By: _____
Name:
Title:

¹⁴ To be executed by an Authorized Representative.

APPENDIX TWO TO EXHIBIT D

[APPROVAL/DISAPPROVAL] OF THE WIFIA CREDIT PROVIDER (To be delivered to the City)

Requisition Number [] is [approved in the amount of \$[]]
[approved in part in the amount of \$[]] [not approved, for the reasons set forth in Annex
A attached hereto,]¹⁵ by the WIFIA Credit Provider (as defined herein) pursuant to Section 4
(Disbursement Conditions) of each of the WIFIA Credit Agreement for the Wastewater System
Portion of the Morro Bay Water Reclamation Facility and the WIFIA Credit Agreement for the
Water System Portion of the Morro Bay Water Reclamation Facility, each dated as of [date], each
by and between the CITY OF MORRO BAY (the “City”), the CITY OF MORRO BAY PUBLIC
FACILITIES CORPORATION and the UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, acting by and through the Administrator (the “WIFIA Credit Provider”).

Any determination, action or failure to act by the WIFIA Credit Provider with respect to
the Requisition set forth above, including any withholding of a disbursement, shall be at the WIFIA
Credit Provider’s sole discretion, and in no event shall the WIFIA Credit Provider be responsible
for or liable to the City for any and/or all consequence(s) which are the result thereof.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**, acting by and
through the Administrator¹⁶

By: _____
WIFIA Credit Provider’s Authorized
Representative
Name:
Title:
Date:

¹⁵ If there is any partial or full denial of approval, the WIFIA Credit Provider should provide a separate attachment
setting forth the reasons for such partial or full denial of approval.

¹⁶ To be executed by an Authorized Representative.

EXHIBIT A TO APPENDIX TWO TO EXHIBIT D

[Insert reasons for any partial or full denial of approval.]

EXHIBIT E

FORM OF NON-LOBBYING CERTIFICATE

The undersigned, on behalf of CITY OF MORRO BAY, hereby certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the City, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of the WIFIA Credit Facility.

(b) If any funds other than proceeds of the WIFIA Credit Facility have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the WIFIA Credit Facility, the City shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) The City shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the WIFIA Credit Provider entered into this Agreement. Submission of this certification is a prerequisite to the effectiveness of this Agreement imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Dated: _____

CITY OF MORRO BAY¹⁷

By: _____

Name:

Title:

¹⁷ To be executed by an Authorized Representative.

EXHIBIT F
INSTALLMENT PAYMENT SCHEDULE
(Water System Portion of the Project)

[Insert]

EXHIBIT G-1

OPINIONS REQUIRED FROM COUNSEL TO THE CITY

An opinion of the counsel of the City, dated as of the Effective Date, to the effect that:

- (a) the City is a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State;
- (b) the City has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the ISA and the WIFIA Credit Agreement and all other Related Documents to which it is a party; the City has the right and power under the laws of the State, including [*cite relevant laws*], to enter into the ISA and the WIFIA Credit Agreement and all other Related Documents to which it is a party;
- (c) the execution and delivery by the City of, and the performance of its respective obligations under, the ISA and the WIFIA Credit Agreement and all other Related Documents to which it is a party, have been duly authorized by all necessary action or approval;
- (d) the City has duly executed and delivered the ISA and the WIFIA Credit Agreement and each other Related Document to which it is a party and the ISA, the WIFIA Credit Agreement and each other Related Document constitutes the legal, valid and binding obligation of such party; enforceable against the City in accordance with their respective terms;
- (e) the Resolution has been duly adopted by the City Council of the City and is in full force and effect; no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the City, nor is any public vote required, for the execution and delivery by such party of, and the performance of such party under, the ISA, the WIFIA Credit Agreement and any other Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the City;
- (f) the execution and delivery by the City of, and compliance with the provisions of, the ISA, the WIFIA Credit Agreement and each other Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of the City, (ii) violate the law of the United States of America or of the State or (ii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which the City is a party, or to the best of such counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the City is subject;
- (g) the ISA authorizes payment by the City of Installment Payments with an unpaid Principal Component of up to \$_____, plus accrued interest during the Capitalized Interest Period to be capitalized;
- (h) payment of Installment Payments in the amounts established in accordance with the ISA has been duly authorized by the City, and no referendum for approval is required. Payment of such amounts, including the Interest Component, constitute the valid and binding limited obligation of the City payable from the Pledged Collateral.

(i) pursuant to the ISA, the City's payment of Installment Payments is secured by a Lien on and security interest in the Pledged Collateral in favor of the Corporation (and upon the assignment by the Corporation pursuant to the Assignment Agreement, the WIFIA Credit Provider, as the initial Assignee), and no filing or recording is required to be done to perfect the lien on the Pledged Collateral. This Lien on the Net Revenues, WIFIA Payment Account and WIFIA Reserve Account is enforceable under the laws of the State without any further action by the City or any other Person, and ranks *pari passu* in right of payment and right of security with all Senior Obligations and are senior in right of payment and right of security to all Subordinate Obligations;

(j) the ISA creates the valid and binding assignment and pledge of the Pledged Collateral (including the Net Revenues, WIFIA Payment Account and WIFIA Reserve Account) to secure the payment of the Installment Payments under the ISA, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act;

(k) all actions by the City that are required for the application of System Revenues as required under the WIFIA Credit Agreement and the ISA have been duly and lawfully made;

(l) the City has complied with the requirements of State law to lawfully pledge the Pledged Collateral and use the System Revenues as required by the terms of the WIFIA Credit Agreement and the ISA;

(m) the City is not entitled to claim governmental immunity in any breach of contract action under the WIFIA Credit Agreement or the ISA; and

(o) to our knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the City by or before any court, arbitrator or any other Governmental Authority in connection with the ISA, the WIFIA Credit Agreement or any other Related Documents or the Project that are pending.

EXHIBIT G-2

OPINIONS REQUIRED FROM SPECIAL COUNSEL TO THE CORPORATION

An opinion of special counsel to the Corporation, dated as of the Effective Date, to the effect that:

(a) the Corporation has been duly organized and is existing as a nonprofit corporation pursuant to the laws of the State, with good right and power to enter into the ISA, the WIFIA Credit Agreement and the Assignment Agreement.

(b) the Corporation has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the ISA, the WIFIA Credit Agreement and the Assignment Agreement and all other Related Documents to which it is a party; the Corporation has the right and power under the laws of the State, including [*cite relevant laws*], to enter into the ISA, the WIFIA Credit Agreement and the Assignment Agreement and all other Related Documents to which it is a party;

(c) the execution and delivery by the Corporation of, and the performance of its respective obligations under, the ISA, the WIFIA Credit Agreement and the Assignment Agreement and all other Related Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action;

(d) the Corporation has duly executed and delivered the ISA, the WIFIA Credit Agreement and the Assignment Agreement and each other Related Document to which it is a party and the ISA, the WIFIA Credit Agreement and the Assignment Agreement and each other Related Document constitutes the legal, valid and binding obligation of such party; enforceable against the Corporation in accordance with their respective terms;

(e) the Corporation authorizing resolution has been duly adopted by the Board of Directors of the Corporation and is in full force and effect; no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the Corporation for the execution and delivery by such party of, and the performance of such party under, the ISA, the WIFIA Credit Agreement and the Assignment Agreement and any other Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Corporation;

(f) the execution and delivery by the Corporation of, and compliance with the provisions of, the ISA, the WIFIA Credit Agreement and the Assignment Agreement and each other Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of the Corporation, (ii) violate the law of the United States of America or of the State or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which the Corporation is a party, or to the best of such counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Corporation is subject;

(g) the assignment pursuant to the Assignment Agreement constitutes the legal, valid and binding assignment by the Corporation to the WIFIA Credit Provider, as the initial Assignee, of the Corporation's rights under the ISA, including the right to enforce payment of the Installment Payments from the Pledged Collateral. This assignment has been approved by the City and the Corporation, and is valid, irrespective of whether any party has notice of the assignment and without the need for any physical delivery, recordation, filing or further act.

(h) the Corporation is not entitled to claim immunity in any breach of contract action under the ISA, the WIFIA Credit Agreement or the Assignment Agreement;

(i) to our knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the Corporation by or before any court, arbitrator or any other Governmental Authority in connection with the ISA, the WIFIA Credit Agreement, the Assignment Agreement or any other Related Documents or the Project that are pending.

EXHIBIT H-1

FORM OF CITY CLOSING CERTIFICATE

Reference is made to that certain WIFIA Credit Agreement for the Wastewater System Portion of the Morro Bay Water Reclamation Facility and that certain WIFIA Credit Agreement for the Water System Portion of the Morro Bay Water Reclamation Facility (collectively, the “WIFIA Credit Agreement”), each dated as of [date], each by and between the CITY OF MORRO BAY (the “City”), the CITY OF MORRO BAY PUBLIC FACILITIES CORPORATION and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “WIFIA Credit Provider”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Credit Agreement.

In connection with Section 11(a) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Credit Agreement, the undersigned, [_____], as City’s Authorized Representative, does hereby certify on behalf of the City and not in his/her personal capacity, as of the date hereof:

(a) pursuant to Section 11(a)(viii) of the WIFIA Credit Agreement, attached hereto as Annex A is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the City to execute the Related Documents to which the City is or will be a party, and who have been appointed as a City’s Authorized Representative in accordance with Section 21 (City’s Authorized Representative) of the WIFIA Credit Agreement;

(b) pursuant to Section 11(a)(ii) of the WIFIA Credit Agreement, [the City has delivered to the WIFIA Credit Provider] [attached hereto as Annex B are] copies of each Financing Document, together with any amendments, waivers or modifications thereto, that has been entered into on or prior to the Effective Date, and each such document is complete, fully executed, and in full force and effect, and all conditions contained in such documents that are necessary to the closing of the WIFIA transactions contemplated hereby have been fulfilled;

(c) pursuant to Section 11(a)(iii) of the WIFIA Credit Agreement, [the City has delivered to the WIFIA Credit Provider][attached hereto as Annex C are] copies of each Existing Principal Project Contract, together with any amendments, waivers or modifications thereto, and each such document is complete, fully executed, and in full force and effect;

(d) pursuant to Section 11(a)(iv) of the WIFIA Credit Agreement, [the City has delivered to the WIFIA Credit Provider][attached hereto as Annex D is] a copy of the City’s Organizational Documents as in effect on the Effective Date (and certified by the Secretary of State of the State, to the extent applicable), which Organizational Documents are in full force and effect. There are no additional instruments or documents necessary for the City Related Parties to execute and deliver, or to perform its obligations under, the WIFIA Credit Documents to which it is a party and to consummate and implement the transactions contemplated by the WIFIA Credit Documents;

(e) pursuant to Section 11(a)(viii)(1) of the WIFIA Credit Agreement, the aggregate of all funds committed to the development and construction of the Project as set forth in the Base Case Financial Model and in the Project Budget are sufficient to carry out the Project, pay all Total Project Costs anticipated for the Project and achieve Substantial Completion by the Projected Substantial Completion Date;

(f) pursuant to Section 11(a)(viii)(2) of the WIFIA Credit Agreement, each City Related Party has obtained all Governmental Approvals necessary (i) as of the Effective Date in connection with the Project and (ii) to execute and deliver, and perform its obligations under the WIFIA Credit Documents, and each such Governmental Approval is final, non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);

(g) pursuant to Section 11(a)(viii)(3) of the WIFIA Credit Agreement, (i) the maximum principal amount of the WIFIA Credit Facility (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the City, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (ii) the total federal assistance provided to the Project, including the maximum principal amount of the WIFIA Credit Facility (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs;

(h) pursuant to Section 11(a)(viii)(4) of the WIFIA Credit Agreement, the City is in compliance with NEPA and any applicable federal, state or local environmental review and approval requirements with respect to the Project, and, if requested by the WIFIA Credit Provider, has provided evidence satisfactory to the WIFIA Credit Provider of such compliance;

(i) pursuant to Section 11(a)(viii)(5) of the WIFIA Credit Agreement, the City has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project during its useful life;

(j) pursuant to Section 11(a)(viii)(6) of the WIFIA Credit Agreement, (i) the City's Federal Employer Identification Number is [____], (ii) the City's Data Universal Numbering System number is [____], and (iii) the City has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), which confirmation is attached hereto as Annex [____];

(k) pursuant to Section 11(a)(viii)(8) of the WIFIA Credit Agreement, the representations and warranties of each City Related Party set forth in the WIFIA Credit Agreement and in each other Related Document to which the City is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date;

(l) pursuant to Section 11(a)(viii)(9) of the WIFIA Credit Agreement, no Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred or arisen since July 12, 2018;

(m) pursuant to Section 11(a)(x) of the WIFIA Credit Agreement, none of the rating letters delivered to the WIFIA Credit Provider pursuant to such Section 11(a)(x) has been reduced, withdrawn or suspended as of the Effective Date;

(n) pursuant to Section 11(a)(xi) of the WIFIA Credit Agreement, [the City has delivered to the WIFIA Credit Provider][attached hereto as Annex [____] is] the Base Case Financial Model, which (i) demonstrates that projected System Revenues are sufficient to meet the Loan Amortization Schedule, (ii) demonstrates compliance with the Rate Covenant for each City Fiscal Year through the Final Installment Payment Date and a Senior Debt Service Coverage Ratio for each Payment Period through the Final Installment Payment Date that is not less than 1.30 to 1.00, (iii) reflects principal amortization and interest payment schedules acceptable to the WIFIA Credit Provider, (iv) demonstrates that the City has developed, and identified adequate revenues to implement, a plan for operating, maintaining and repairing the Project over its useful life and (v) otherwise meets the requirements of such Section 11(a)(xi);

(o) pursuant to Section 11(a)(xi) of the WIFIA Credit Agreement, attached hereto as Annex [____] are certificates of insurance, and such insurance certificate is true and correct and demonstrates compliance with the requirements of Section 14(f) (Affirmative Covenants – Insurance) of the WIFIA Credit Agreement;

(p) pursuant to Section 11(a)(xv) of the WIFIA Credit Agreement, attached hereto as Annex [____] is documentation demonstrating the establishment of the WIFIA Payment Account and the WIFIA Reserve Account;

(q) pursuant to Section 11(a)(xvi) of the WIFIA Credit Agreement, attached hereto as Annex [____] is documentation demonstrating that any Clean Water State Revolving Fund or Drinking Water State Revolving Fund planning loans outstanding with respect to the Project have been repaid or refinanced with long-term Clean Water State Revolving Fund or Drinking Water State Revolving Fund construction loans secured on a parity basis with the Installment Payments in the ISA[; and][.]

(r) [any other attachments and provisions, as may apply to the specific WIFIA Credit Agreement].

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

CITY OF MORRO BAY¹⁸

By: _____
Name:
Title:

¹⁸ To be executed by an Authorized Representative.

ANNEX A TO EXHIBIT H-1 FORM OF CITY CLOSING CERTIFICATE

CITY INCUMBENCY CERTIFICATE

The undersigned certifies that he/she is the [City Clerk] of the City of Morro Bay, a municipal corporation and general law city duly organized and existing under the Constitution and laws of the State of California (the "City"), and as such he/she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the City in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He/She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the WIFIA Credit Documents and/or the Financing Documents as the City's Authorized Representative (each as defined in that certain WIFIA Credit Agreement for the Wastewater System Portion of the Morro Bay Water Reclamation Facility and that certain WIFIA Credit Agreement for the Water System Portion of the Morro Bay Water Reclamation Facility, each dated as of [date], each by and between the City of Morro Bay, the City of Morro Bay Public Facilities Corporation and the United States Environmental Protection Agency, acting by and through the Administrator):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this _____ day of [____], 2020.

CITY OF MORRO BAY¹⁹

By: _____
Name:
Title:

¹⁹ To be executed by an Authorized Representative.

EXHIBIT H-2

FORM OF CORPORATION CLOSING CERTIFICATE

Reference is made to that certain WIFIA Credit Agreement for the Wastewater System Portion of the Morro Bay Water Reclamation Facility and that certain WIFIA Credit Agreement for the Water System Portion of the Morro Bay Water Reclamation Facility (collectively, the “WIFIA Credit Agreement”), each dated as of [date], each by and between the CITY OF MORRO BAY (the “City”), the CITY OF MORRO BAY PUBLIC FACILITIES CORPORATION (the “Corporation”) and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, acting by and through the Administrator (the “WIFIA Credit Provider”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the WIFIA Credit Agreement.

In connection with Section 11(a) (*Conditions Precedent – Conditions Precedent to Effectiveness*) of the WIFIA Credit Agreement, the undersigned, [_____], as an authorized representative of the Corporation, does hereby certify on behalf of the Corporation and not in his/her personal capacity, as of the date hereof:

(a) the Corporation is a nonprofit public benefit corporation duly organized and validly existing under its Organizational Documents and the laws of the State, has full legal right, power and authority to do business in the State and to enter into the ISA, the Assignment Agreement and the WIFIA Credit Agreement (the “Corporation Documents”) then in existence, to execute and deliver the WIFIA Credit Agreement and the other Corporation Documents, and to carry out and consummate all transactions contemplated thereby and has duly authorized the execution, delivery and performance of the WIFIA Credit Agreement and the other Corporation Documents;

(b) the following were duly elected, qualified and acting members of the Board of Directors of the Corporation and officers of the Corporation on the dates on which the Resolution (described below) was adopted and are the duly elected, qualified and acting members and officers of the Corporation as of the date hereof:

[Insert]

(c) pursuant to Section 11(a)(viii) of the WIFIA Credit Agreement, attached hereto as Annex A is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Corporation to execute the Corporation Documents and who is an authorized representative of the Corporation;

(d) pursuant to Section 11(a)(iv) of the WIFIA Credit Agreement, [the Corporation has delivered to the WIFIA Credit Provider][attached hereto as Annex B is] a copy of the Corporation’s Organizational Documents [articles of incorporation and bylaws] as in effect on the Effective Date (and certified by the Secretary of State of the State as of a date within [_____] days prior to the date hereof, to the extent applicable), which Organizational Documents are in full force and effect, and a Certificate of Status-Domestic of the Corporation issued by the California Secretary of State as of a date within [_____] days prior to the date hereof indicating that the Corporation is authorized to exercise all of its powers, rights and privileges in the State and a Letter

of Good Standing of the Corporation from the California Franchise Tax Board as of a date within [_____] days prior to the date hereof;

(e) Resolution No. [____], adopted by the Board of Directors of the Corporation on [____], 2020 and authorizing, among other things, the Corporation to enter into the ISA, the Assignment Agreement and the WIFIA Credit Agreement (the “Resolution”) has been duly adopted by the Board of Directors of the Corporation and is in full force and effect and [the Corporation has delivered to the WIFIA Credit Provider][attached hereto as Annex C is] a complete, fully executed copy of such resolution;

(f) other than as set forth in paragraph (c) above, there are no additional instruments or documents necessary for the Corporation to execute and deliver, or to perform its obligations under, the WIFIA Credit Documents to which it is a party and to consummate and implement the transactions contemplated by the WIFIA Credit Documents;

(g) pursuant to Section 11(a)(viii)(2) of the WIFIA Credit Agreement, the Corporation has obtained all Governmental Approvals necessary to execute and deliver, and perform its obligations under the WIFIA Credit Documents, and each such Governmental Approval is final, non-appealable and in full force and effect (and is not subject to any notice of violation, breach or revocation);

(h) as of the date hereof, the officers of the Corporation executing (or that previously executed) the Corporation Documents, and any certifications or instruments related thereto, to which the Corporation is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same;

(i) each of the Corporation Documents in effect as of the date hereof has been duly authorized, executed and delivered by the Corporation and constitutes the legal, valid and binding agreement of the Corporation enforceable against the Corporation in accordance with its terms, except as such enforceability (i) may be limited by applicable receivership, bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law), judicial discretion and legal limitations applicable to public agencies in the State of California;

(j) the assignment pursuant to the Assignment Agreement constitutes the legal, valid and binding assignment by the Corporation to the WIFIA Credit Provider, as the initial Assignee, of the Corporation’s rights under the ISA, including the right to enforce payment of the Installment Payments from the Pledged Collateral; this assignment has been approved by the City and the Corporation, and is valid, irrespective of whether any party has notice of the assignment and without the need for any physical delivery, recordation, filing or further act;

(k) pursuant to Section 11(a)(viii)(8) of the WIFIA Credit Agreement, the representations and warranties of the Corporation set forth in the WIFIA Credit Agreement and in each other Corporation Document are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date; and

(k) [any other attachments and provisions, as may apply to the specific WIFIA Credit Agreement].

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

**CITY OF MORRO BAY PUBLIC FACILITIES
CORPORATION ²⁰**

By: _____

Name:

Title:

²⁰ To be executed by an authorized representative.

ANNEX A TO EXHIBIT H-2 FORM OF CORPORATION CLOSING CERTIFICATE

CORPORATION INCUMBENCY CERTIFICATE

The undersigned certifies that he/she is the [Secretary] of the City of Morro Bay Public Facilities Corporation, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation"), and as such he/she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of the Corporation in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He/She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the WIFIA Credit Documents and/or the Financing Documents as the Corporation's Authorized Representative (each as defined in that certain WIFIA Credit Agreement for the Wastewater System Portion of the Morro Bay Water Reclamation Facility and that certain WIFIA Credit Agreement for the Water System Portion of the Morro Bay Water Reclamation Facility, each dated as of [date], each by and between the City of Morro Bay, the City of Morro Bay Public Facilities Corporation and the United States Environmental Protection Agency, acting by and through the Administrator):

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this _____ day of [____], 2020.

**CITY OF MORRO BAY PUBLIC FACILITIES
CORPORATION²¹**

By: _____
Name:
Title:

²¹ To be executed by an authorized representative.

EXHIBIT I
FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of City]

[Date]

WIFIA Program Office
[Insert Proper Address]
Attention: Administrator

Project: Morro Bay Water Reclamation Facility Project (WIFIA – N17108CA and N17150CA)

Dear Director:

This Notice is provided pursuant to Section 16(h)(i)(A) (*Reporting Requirements – Notices – Substantial Completion*) of that certain WIFIA Credit Agreement for the Wastewater System Portion of the Morro Bay Water Reclamation Facility and that certain WIFIA Credit Agreement for the Water System Portion of the Morro Bay Water Reclamation Facility (together, the “WIFIA Credit Agreement”), each dated as of *[date]*, each by and between the City of Morro Bay (the “City”), the City of Morro Bay Public Facilities Corporation and the United States Environmental Protection Agency, acting by and through the Administrator (the “WIFIA Credit Provider”).

Unless otherwise defined herein, all capitalized terms in this Certificate have the meanings assigned to those terms in the WIFIA Credit Agreement.

I, the undersigned, in my capacity as the City’s Authorized Representative and not in my individual capacity, do hereby certify to the WIFIA Credit Provider that:

- (a) on *[Insert date Substantial Completion requirements were satisfied]*, the Project satisfied each of the requirements for Substantial Completion set forth in the *[Insert reference to the concession agreement, design-build or similar agreement for the Project]*;
- (b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and
- (c) Substantial Completion, as defined in the WIFIA Credit Agreement, has been achieved.

CITY OF MORRO BAY²²

By: _____
Name:
Title:

²² To be executed by an Authorized Representative.

EXHIBIT J

FORM OF QUARTERLY REPORT

United States Environmental Protection Agency
WIFIA Director
WJC-W 6201A
1200 Pennsylvania Avenue NW
Washington, DC 20460
WIFIA_Portfolio@epa.gov

Re: Morro Bay Water Reclamation Facility Project (WIFIA – N17108CA and N17150CA)

This Quarterly Report for the period of [____] is provided pursuant to Section 16(d) (*Reporting Requirements – Construction Reporting*) of that certain WIFIA Credit Agreement for the Wastewater System Portion of the Morro Bay Water Reclamation Facility and that certain WIFIA Credit Agreement for the Water System Portion of the Morro Bay Water Reclamation Facility (together, the “WIFIA Credit Agreement”), each dated as of [date], each by and between the City of Morro Bay (the “City”), the City of Morro Bay Public Facilities Corporation and the United States Environmental Protection Agency, acting by and through the Administrator (the “WIFIA Credit Provider”). Unless otherwise defined herein, all capitalized terms in this Quarterly Report have the meanings assigned to those terms in the WIFIA Credit Agreement.

(i) Amount Expended

Principal Project Contract (PPC)	Original Contract Amount	Change Orders to Date	Total Estimated Costs	Estimated Costs to Complete	Costs Earned or Paid Through Previous Reporting period	Current Reporting Period Costs Earned or Paid	Total Costs Earned or Paid to date	% Costs Earned or Paid to Date
TOTAL								

(ii) Construction Progress, Governmental Approvals, Updated Schedule

Assessment of overall construction progress:

Notice of receipt of relevant Governmental Approvals since the Effective Date and since the prior Quarterly Report:

Assessment of construction progress compared to Construction Schedule provided in the prior Quarterly Report:

Principal Project Contract (PPC)	NTP Effective Date	Original Time for Completion (days)	Original Contract Completion (date)	Time Added to Date (days)	Current Contract Completion (date)	Days Elapsed	% Contract Duration

(iii) Substantial Completion Date

Current projection for the Substantial Completion Date: _____

If the current projection for the substantial completion date is later than previously reported in the prior Quarterly Report, provide a description in reasonable detail for such projected delay:

(iv) Material Problems (if any)

Detailed description of all material problems (including actual and anticipated cost and/or schedule overruns, if any), encountered or anticipated in connection with the construction of the Project during the preceding quarter, together with an assessment of how such problems may impact the Construction Schedule and the meeting of critical dates thereunder and a detailed description of the proposed solutions to any such problems:

(v) Proposed or pending change orders that exceed the threshold set out in Section 16(f) (*Modifications to Total Project Costs*) or could reasonably be expected to result in a Material Adverse Effect

(vi) Other matters related to the Project

Dated: _____

CITY OF MORRO BAY²³

By: _____

Name:

Title:

²³ To be executed by an Authorized Representative.

EXHIBIT K

FORM OF PUBLIC BENEFITS REPORT

Pursuant to [Section 11(a)(xiv))] [and] [Section 16(e)] of the WIFIA Credit Agreement, City of Morro Bay (the “City”) is providing this Public Benefits Report in connection with the Morro Bay Water Reclamation Facility (WIFIA – N17108CA and N17150CA):

- (i) **The estimated interest savings the City is realizing through the use of the WIFIA Credit Facility compared to comparable market rate financing:**

\$28,640,490

- (ii) **With respect to the report delivered [prior to the Effective Date][within ninety (90) days following the Substantial Completion Date][within ninety (90) following the fifth anniversary of the Substantial Completion Date], the number of jobs projected to be created by the Project during the period between the Effective Date and the Substantial Completion Date:**

430 jobs

- (iii) **Whether the Project will assist the City in complying with applicable regulatory requirements, and if so, a narrative description describing such enhancements:**

New plant will allow the City to meet its regulatory obligations to the California Coastal Commission and California Water Resources Board.

- (iv) **The amount by which the Project will [assist the City (measured by percent annually) in reducing levels of Nitrogen, Phosphorus, biochemical oxygen demand (BOD) and total suspended solids (TSS)][increase the volume of potable water produced (measured in MGD annually)][increase the volume of water recycled, recharged or redirected (measured in MGD annually)][increase Class [A][B] biosolids (measured in tons annually)]²⁴:**

I MGD

²⁴ Include one of the bracketed items as applicable.

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AGENDA NO: C-2

MEETING DATE: January 14, 2020

Staff Report

TO: Honorable Mayor and City Council **DATE:** December 27, 2019

FROM: Scot Graham, Community Development Director

SUBJECT: Authorization for the City Manager sign a Non-Binding Memorandum of Understanding (MOU), between the Cayucos Sanitary District, Trust for Public Lands, Chevron and the City of Morro Bay, for conservation of Lots 6SW and 6NW, more commonly known as "Dog Beach"

RECOMMENDATION

Council authorize the City Manager to sign a non-binding MOU between the City of Morro Bay, Cayucos Sanitary District, Trust for Public Lands and Chevron for conservation and City ownership of Lots 6SW and 6NW (Dog Beach), as shown on Attachment A of the MOU.

ALTERNATIVES

1. The City Council could choose not to authorize City Manager signature of the MOU; or
2. A majority of Council could provide direction related to desired changes to the MOU and direct staff to negotiate for said changes

FISCAL IMPACT

There is no fiscal impact in relation to execution of the MOU other than the staff time spent preparing the associated documents. Lots 6NW and 6SW are proposed for purchase by the Trust for Public Lands and would subsequently be conveyed to the City by direct deed at no cost. Future fiscal impact would depend on whether the City allows Dog Beach to be utilized as is or whether the City chooses to provide some maintenance services to the area.

BACKGROUND/DISCUSSION

The City has been involved in discussions with Chevron, Trust for Public Lands (TPL), the Cayucos Sanitary District (CSD), the Cayucos Land Conservancy, the Land Conservancy of San Luis Obispo and San Luis Obispo County for several years looking into various conservations options for several of the Chevron Estero Marine Terminal lots. The MOU represents one of the first steps in conservation of the some of the aforementioned properties. The MOU addresses the following four items:

1. Acquisition of lot 6SW (Southern portion of Dog Beach) by the City of Morro Bay. Lot 6SW is currently owned by the CSD. TPL is proposing to purchase the property from the CSD and convey it to the City of Morro Bay through a Donation Agreement via direct deed. The purchase agreement for lot 6SW, entered into by the CSD with Chevron, includes a "Residual Rights" clause that would allow Chevron to repurchase the lot within two years if the "Panorama lots" (discussed below) are not annexed into the City by that time. The "Residual Rights" clause would transfer upon sale to TPL and subsequently transfer to the City upon conveyance from TPL.
2. Amendment of the City's Sphere of Influence (SOI) to include 5 lots above Panorama.

Prepared By: ___SG___

Dept Review: ___SG___

City Manager Review: ___SC___

City Attorney Review: _____

Those lots are owned by Chevron, and it is Chevron's intention to annex the lots into the City. Each of the lots would accommodate one single-family residence, for a total of no more than 5 single-family homes in that area. The homes would be restricted to the lower portions of each lot leaving the remainder of the hillside above Panorama undeveloped. In order for the SOI amendment to become effective, it requires Council authorization for submittal of an application to LAFCO and subsequent approval by LAFCO. Based on the proposed MOU, Chevron will terminate the "Residual Rights" clause on lot 6SW (Dog Beach), so long as the City makes its best effort to submit a timely application to LAFCO and LAFCO staff indicates support for same.

3. Detachment of lot 6NE from within the City's boundary, resulting in lot 6NE being under County jurisdiction. That process requires authorization by Council for submittal of an application for Detachment to LAFCO and subsequent approval by LAFCO. Lot 6NE is owned by the CSD and contains a sewer lift station operated by the CSD.
4. Annexation into the City of Lot 6NW (Continuation of Dog Beach). Lot 6NW is currently located in the County but is within the City's SOI. The intent behind Lot 6NW's location within the City's SOI was to facilitate its future annexation into the City for preservation of Dog Beach. Lot 6NW is currently owned by the CSD and is proposed to be purchased by TPL and conveyed to the City. The annexation requires Council authorization and subsequent approval by LAFCO.

If Council authorizes the City Manager to sign the MOU, then Staff will return at a future council meeting, likely the January 28, 2020, meeting, with an authorization request to submit the various applications to LAFCO.

CONCLUSION

Staff has been working with TPL, CSD, Chevron, the Cayucos Land conservancy, the Land Conservancy of San Luis Obispo and San Luis Obispo County for several years on preservation of some of the Chevron Estero Marine Terminal lots. This MOU represents the first step in preserving the beach portion of those properties. Staff is requesting Council authorization to enter into a non-binding MOU with TPL, CSD and Chevron that lays out the path toward the City acquiring Dog Beach and maintaining it in permanent public ownership.

ATTACHMENT

1. Memorandum of Understanding including lot map

MEMORANDUM OF UNDERSTANDING

Chevron Estero Marine Terminal, Lot 6SW

This Memorandum of Understanding (“**MOU**”), dated _____, 2020, constitutes a **non-binding** agreement among The Trust for Public Land, a California nonprofit public benefit corporation (“**TPL**”), the City of Morro Bay (“**Morro Bay**”), the Cayucos Sanitary District (“**CSD**”), and Chevron Land and Development Company, a Delaware Corporation (“**Chevron**”), each of which may individually be referred to herein as a “**Party**” and collectively as the “**Parties.**”

RECITALS

- A. The Parties are interested in achieving a common conservation goal and appropriate public ownership (“**Project**”) for Lot 6SW, as shown in Exhibit A (“**Property**”) and which has been historically used by the general public and is commonly known as “**Dog Beach.**”
- B. Chevron sold the Property to CSD on September 17, 2019 pursuant to that certain Grant Deed but also subject to that certain Memorandum of Repurchase Rights/Option recorded concurrently with the Grant Deed which Memorandum contains certain rights in favor of Chevron (“**Residual Rights**”).
- C. CSD is willing to sell the Property to TPL which will concurrently sell it to Morro Bay with the ultimate intention that the Property will continue to be used for the benefit of the public.
- D. TPL’s purchase of the Property and concurrent sale to Morro Bay will be contingent on TPL’s receipt of certain public and private funding, which funding and acquisition, in turn, is contingent on Chevron’s termination of the Residual Rights.
- E. Chevron ultimately desires to have its lots shown in Exhibit A in the Estero Marine Terminal (“**Panorama Lots**”) annexed into the City of Morro Bay. Chevron is willing to terminate its Residual Rights upon certain conditions specified below.

The Parties agree as follows:

- 1. **OPTION AGREEMENT:** TPL and CSD will negotiate in good faith to enter into an option agreement whereby TPL will have the right to purchase the Property from CSD subject to the termination of the Residual Rights and securing funding for the acquisition (“**Option Agreement**”). TPL shall remain the principal Party involved with negotiating the terms and provisions of the Option Agreement and the concurrent sale with Morro Bay.
- 2. **PUBLIC FUNDING:** TPL will use its best efforts to secure public and philanthropic funding sources to support the acquisition of the Property from CSD and concurrent sale to Morro Bay. TPL shall be solely responsible for all aspects of requesting, securing and reporting associated with the funding sources.
- 3. **OBLIGATIONS OF CHEVRON:** Chevron agrees to execute and acknowledge and deliver to

TPL and Morro Bay a document in a form satisfactory to TPL and Morro Bay to terminate or transfer the Residual Rights following Morro Bay's submission of an application to the Local Agency Formation Commission ("LAFCO") to place the Panorama Lots within the City's Sphere of Influence and the LAFCO staff indicates support for same ("**LAFCO Application**").

4. **OBLIGATIONS OF MORRO BAY:** Morro Bay shall seek City Council approval to proceed with filing the LAFCO Application. The LAFCO Application shall also seek to annex Lot 6NW into the City of Morro Bay and to de-annex Lot 6NE, both of which respective lots are shown on Exhibit A. Morro Bay will make best efforts to (i) complete the LAFCO Application such that LAFCO can make a decision at its May 2020 meeting, and (ii) file the LAFCO Application as soon as feasible but no later than April 25th, 2020. The Parties understand that nothing in this MOU commits the City Council to approve the LAFCO Application and that such decision must be made by the City Council pursuant to applicable law, including, but not **LIMITED TO, THE BROWN ACT**.
5. **OBLIGATIONS OF ALL PARTIES:** The Parties acknowledge that (i) funding for acquisition of the Property and other Estero properties planned for acquisition and public ownership are interdependent; and (ii) time is of the essence to obtain the LAFCO decision regarding the LAFCO Application. All Parties agree to make best efforts to support the LAFCO Application for review at the LAFCO May meeting or as soon thereafter as feasible.
6. **OBLIGATIONS OF CSD:** CSD agrees to negotiate the terms of the Option Agreement with TPL, which will include standard provisions for the purchase of real property including the issuance of title insurance. CSD and TPL intend that the Option Agreement will be executed by the end of January 2020.
7. **OBLIGATIONS OF MORRO BAY AND TPL:** Concurrently with the negotiations between TPL and CSD as to the Option Agreement, Morro Bay and TPL will negotiate a purchase and sale agreement ("PSA") to be consummated concurrently with TPL's acquisition of title to the Property under the Option Agreement.
8. **OPTION TERMINATION:** If the Property is not acquired by TPL pursuant to the terms of the Option Agreement (as may be extended), all Parties shall be relieved of further obligations under this MOU. In such event, TPL shall be solely responsible for returning funds that it raised for the acquisition of the Property where such funds need to be returned in the event the Property is not acquired.
9. **INTENT:** This MOU is intended to memorialize the Parties' intent and desire to work together to (i) perform the tasks required (including the Option Agreement and PSA) in connection with the acquisition of the Property by Morro Bay for continued public use free of the Residual Rights; and (ii) Morro Bay concurrently seeks City Council approval to file the LAFCO Application. Chevron intends that, after LAFCO approval of the LAFCO Application, to request that Morro Bay to annex the Panorama Lots into the City of Morro Bay ("**Annexation**"). The Parties understand that Morro Bay is not committing to approve

the Annexation as such action must be made by the City Council and compliance with applicable law including, the City of Morro Bay Municipal Code.

10. TERMINATION: Until execution of binding documents by all the Parties, this MOU is not binding and may be terminated by any Party delivering written notice to the other Parties.

11. COUNTERPART EXECUTION: The Parties may execute this MOU in counterpart which together will constitute the entire MOU.

TPL

The Trust for Public Land, a California nonprofit public benefit corporation

By: _____

Its: _____

CSD

Cayucos Sanitary District, a political subdivision of the State of California

By: _____

Its: _____

CHEVRON

Chevron Land and Development Company, a Delaware Corporation

By: _____

Its: _____

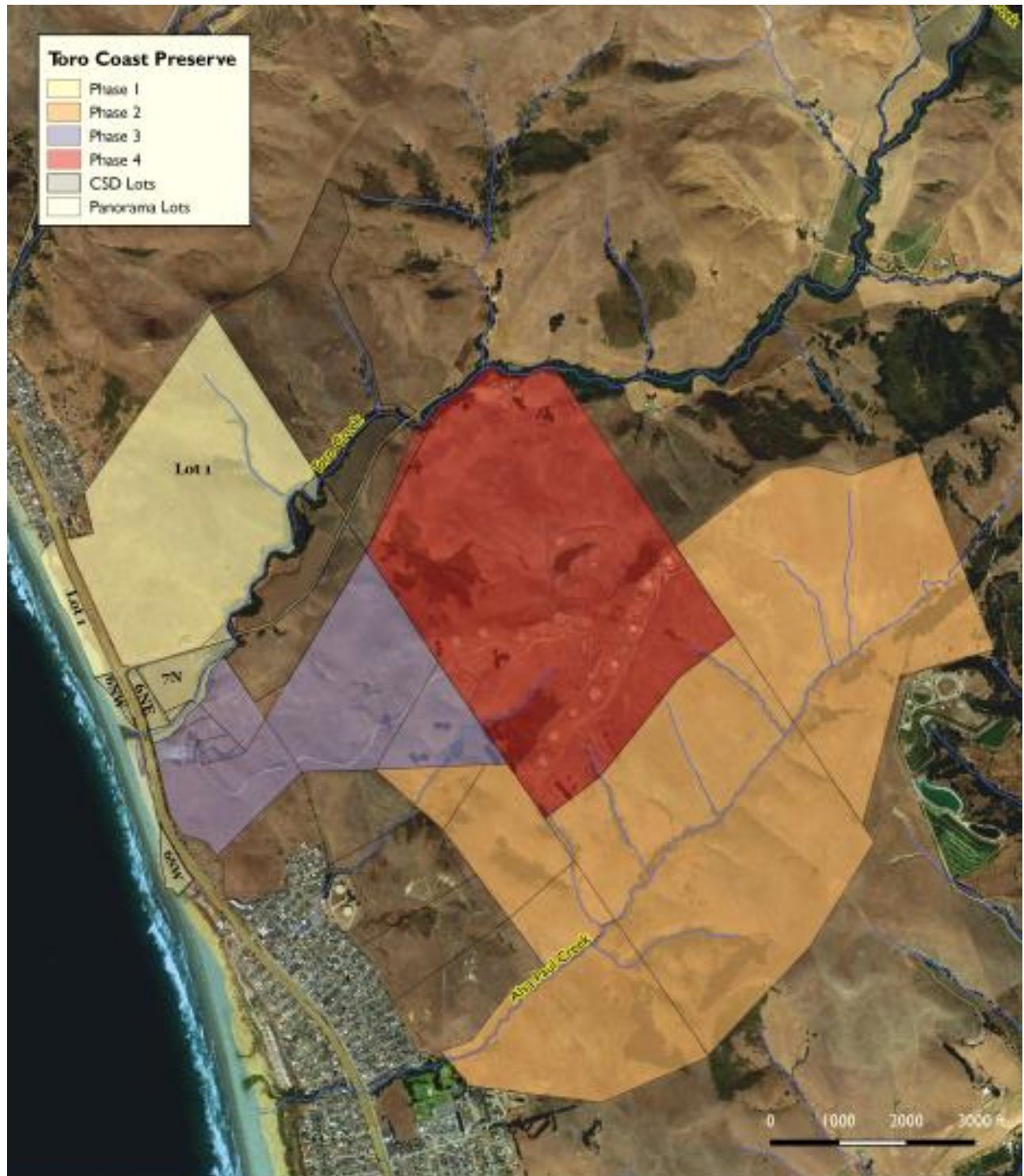
MORRO BAY

City of Morro Bay, a municipal corporation

By: _____

Its: _____

Exhibit A



Toro Coast Preserve

SAN LUIS OBISPO COUNTY, CALIFORNIA



Chevron Property MOU (C-2)

JANUARY 14, 2020

The MOU Request

Authorize City Manager to sign a NON-BINDING memorandum of understanding between Cayucos Sanitary District (CSD), Trust for Public Lands (TPL), Chevron and the City of Morro Bay for Conservation of Lots 6SW and 6NW (Dog Beach)

Background

- City has been involved for several years in discussions with The County, TPL, CSD, Cayucos Land Conservancy, The Land Conservancy of San Luis Obispo, and Chevron looking at various conservation options for a portion of the 3200 acre Chevron property
- The MOU represents one of the first steps in this conservation effort and includes **4 actions**:

MOU Action I

- I. Acquisition of lot 6SW (southern portion of Dog Beach) and 6NW by MB.
 - a) CSD owns both lots (Purchased from Chevron)
 - b) TPL will purchase 6SW and 6NW from CSD and convey to City thru donation agreement via direct deed at not cost to City
 - c) CSD/Chevron purchase agreement includes a “Residual Rights” clause for lot 6SW allowing Chevron to repurchase the lot within two years if the Panorama Lots are not annexed within 2 years



MOU Action 2

2. Amendment of City's Sphere of Influence to include 5 lots above Panorama owned by Chevron. Chevron intends to annex the 5 lots into the City
 - a) Each lot would accommodate a single house
 - b) Houses would be located toward bottom of the 5 lots preserving the hillside views behind/above the north end of the City
 - c) The SOI Amendment requires Council Authorization and LAFCO approval.
 - d) MOU indicates Chevron will terminate Residual Rights clause upon timely submittal to LAFCO and LAFCO expression of support for application.



MORRO BAY
PUT LIFE ON COAST

MOU Action 3

3. Detachment of lot 6NE from within the City boundary
 - a) 6NE moves to County jurisdiction
 - b) Lot 6NE is owned by CSD and contains their sewer lift station
 - c) Requires Council Authorization for application to LAFCO
 - d) Requires subsequent LAFCO approval

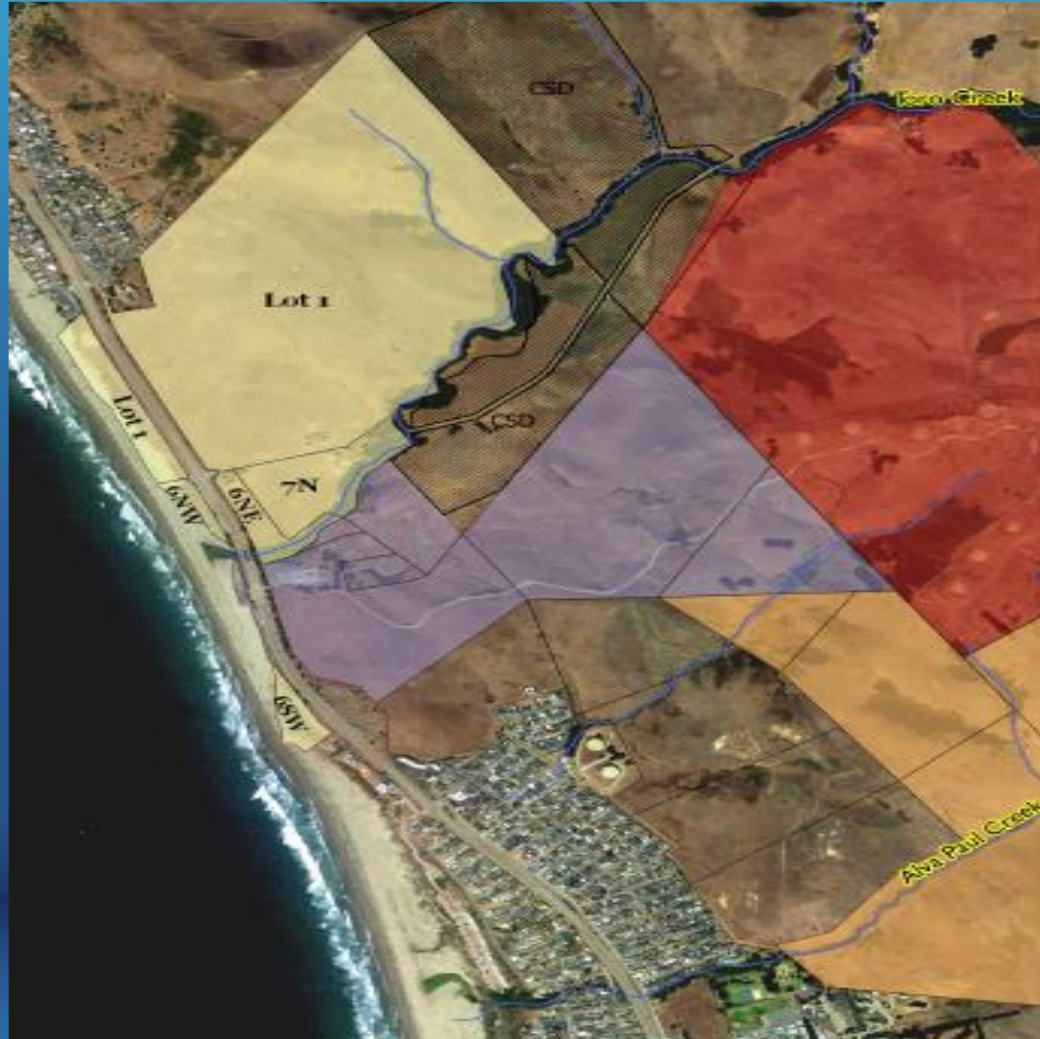


MOU Action 4

4. Annexation into City of Lot 6NW (north Dog Beach area).
 - a) Lot 6NW is currently located in the County, but is within City's SOI.
 - b) Lot 6NW is owned by the CSD and proposed for purchase by TPL
 - c) TPL upon purchase proposes to convey 6NW to City
 - d) Annexation requires Council authorization and subsequent approval by LAFCO.



The Map



Toro Coast Preserve

-  Phase 1
-  Phase 2
-  Phase 3
-  Phase 4
-  CSD Lots
-  Panoramic Lots

What Happens if Council authorizes City Manager MOU Signature?

Staff will return to Council at a future Council meeting, likely the January 28, 2020 meeting, with an authorization request to submit the various applications to LAFCO.

Recommendation

Authorize City Manager to sign the Non-Binding MOU between, TPL, CSD, Chevron and the City of Morro Bay initiating the first steps in the City acquiring Dog Beach and maintaining it in permanent public ownership.

Questions?

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AGENDA NO: C-3

MEETING DATE: January 14, 2020

Staff Report

TO: Honorable Mayor and City Council **DATE:** January 8, 2020

FROM: Scott Collins, City Manager

SUBJECT: 2019 and 2020 City Goals and Action Items Status Update

RECOMMENDATION

Receive status update from the City Manager regarding the 2019 and 2020 City Council Goals and action items.

ALTERNATIVES

None.

FISCAL IMPACT

None.

BACKGROUND

The City goals and related action items for calendar years 2019 and 2020 were formally adopted by City Council in May 2019 following community outreach (online survey, two community forums and Council to formally adopt the goals/action items). The City adopted four major goals that reflect the concerns and desires of the community, and are as follows:

- 1) Achieve Economic and Fiscal Sustainability
- 2) Improve Infrastructure and Public Spaces
- 3) Complete Updates to the City's Significant Land Use Plans and Address Affordable Housing Issues
- 4) Improve Communication and Engagement with the Community

Each of the goals have several corresponding action items which, if implemented, would help bring the Council goals into reality. In establishing the 2019 and 2020 Goals, City Council was particularly interested in establishing an achievable work plan and stated the Council Members' desire to receive regular updates as to the status of the action items. The attached spreadsheet serves as a template to review progress toward each of the Council goals and action items. For each action item, there are columns for proposed return dates to Council for further consideration/action and status updates. Council approved a total of 26 action items for 2019 and 2020. City Council Members also expressed support for a commitment to not adding new goals/action items after the goals have been adopted, without first removing or delaying an already approved goal/action item (policy adopted through recent revisions to the City Council policy handbook).

City staff committed to providing quarterly updates to City Council regarding progress on the goals and action items. This report serves as the second update to Council on the 2019 – 2020 goals.

Prepared By: SC

City Manager Review: _____ City Attorney Review: CFN

Update on 2019 and 2020 Goals and Action Items

The City has made progress on several action items. The attached spreadsheet demonstrates completed action items (highlighted in green), items with significant progress completed (yellow highlighted items), and other items that may have some work completed and will be addressed in 2020 (no highlight).

The following 2019/2020 action items have been completed:

- *“Bring forward a comprehensive set of revenue enhancement options for City Council consideration.”* City Council reviewed a set of options and directed staff in August 2019 to move forward with opinion research and outreach to the community on a potential revenue enhancement measure. A community survey was conducted in October/November 2019 and the results are posted to the City website.
- *“In support of achieving economic development goals and limiting City costs in that pursuit, contract with an outside agency to fulfill economic development Ombudsmen duties on behalf of the City.”* City Council approved a contract with the Chamber of Commerce to provide these services to the City in FY2019/20 through the annual budget process.
- *“Review opportunity to include vacation rentals and recreational vehicle parks into Tourism Business Improvement District (TBID).”* City Council reviewed options in August 2019 and directed staff to move forward with bringing vacation rentals into the TBID by early 2020.
- *“Revise the partnership policy, and related policies, in conjunction with the fee study update.”* City Council approved a revised partnership policy agreement in late 2019.

Significant progress has been made on the following 2019 and 2020 action items:

- *“Revise the short-term vacation rental policy”* – The City Manager appointed a community committee to review policy options. They will make recommendations to the Planning Commission and City Council in early 2020.
- *“Complete and implement the fee study and cost allocation plan.”* City Council approved the new fee structure in late 2019, with a few remaining fees that require their review (development impact fees, harbor fees).
- *“Establish Waterfront Lease site policies and implementation plan.”* This item will be coming back to City Council in early 2020.
- *“Complete a detailed review of the CalPERS pension liability, other post-employment benefits and health liability and determine specific actions to minimize financial impact to the City.”* City Council provided direction for a refined analysis on PERS liability paydown for certain tiers. That will come back to City Council in early 2020.
- *“WRF Implementation, which includes completing design of the facility, pipeline conveyance and injection system, permitting the project, securing financing for entire project and beginning construction.”* The City received a Coastal Development Permit for the project, is nearing completion of the WIFIA loan agreement, has purchased property for the WRF facility, has completed 60% design for the facility and pipeline conveyance system, and is targeting an early 2020 ground breaking for the WRF facility.
- *“Include local labor on major City capital improvement projects (CIP), with the WRF being the initial project.”* City Council directed staff to include local hire provisions into the conveyance and injection wells systems construction contracts. Staff will bring back pertinent documents for Council review prior to seeking bids in 2020.
- *“Complete the General Plan/Local Coastal Plan rewrite.”* Staff is working closely with the Coastal Commission staff to finalize their review of the GP/LCP, and is preparing

documents for the environmental review. Staff will bring this back to the Planning Commission and then Council as soon as that review is complete. Anticipate that will occur in mid-2020.

- *“Complete the zoning code update.”* Staff is working closely with the Coastal Commission staff to complete their review of the GP/LCP. Staff will bring this back to the Planning Commission and then Council as soon as that review is complete. Depending upon Coastal review, it may come back to the City in mid-2020.
- *“Work with San Luis Obispo County and cities therein on a regional partnership and solutions to housing issues.”* City staff will present updates on housing related issues to City Council.

And many other action items have had some work completed and staff continues to work diligently on completion. The following is a quick snapshot of those items.

- Market Street Plaza redevelopment.
- Continued work with federal agencies and elected representatives on offshore wind development.
- Continued work with the Central Coast Aquarium and Cal Poly in locating new aquarium in Morro Bay.
- Consideration of adult use cannabis retailing in Morro Bay.
- Review and make improvements to the development review permit process.
- Outreach on opportunity sites in Morro Bay.
- Assist in development of a business incubator/co-working space in Morro Bay.
- Parking management plan.
- Pursue grants for Boatyard feasibility study.
- Bring hi-speed internet to Morro Bay.
- Implementation of capital improvement projects, in particular the OneWater projects approved for funding in FY2019/20.
- Pursue grant funding for an emergency warming shelter in Morro Bay.
- Coordination with non-profits and community groups.

Goals Process Overview

The City Council goals and action items, as outlined in the strategic planning framework policy, are reviewed and approved by Council every two years (following a general election). Council will review the existing goals and action items, engage the community in that review process, and then have the opportunity to revise, add, or rewrite the goals and action items in early 2021. Until that time, staff will continue to provide quarterly updates to Council on the 2019/2020 goals and action items.

ATTACHMENTS

1. 2019 - 2020 City Council Goals and Objectives Spreadsheet
2. Staff Presentation

City Council Goals and Action Items for 2019 and 2020

These are the City Council Goals and priority action items for 2019 and 2020, constituting the main work plan for the City.

Goal #1: Achieve Financial Sustainability and Economic Sustainability					
Item #	Action Items	Departments Involved	Lead Department	Anticipated Council Date/Completion	Current Status
1)	Complete and implement the fee study and cost allocation plan.	All	Finance	City Council approved the new fee schedule in late 2019, with a few remaining fees left for Council review in early 2020.	Rate increases for majority of fees have gone into effect, as of January 1, 2020. Staff reviewing development impact fees.
2)	Review option to revise cannabis ordinance to allow for adult-use (recreational) cannabis retailing in Morro Bay.	City Manager, Police, Fire and Finance	Planning, City Attorney	City Council to review this option in early 2020.	Permitting process for medical cannabis retailers nearly complete.
3)	Redevelop the Market Street Plaza lot for visitor serving accommodations, with significant community benefit to include public improvements to the Centennial Plaza.	City Attorney, Finance	Planning, City Manager	City Council will review proposals and select a potential partner for the project sometime in 2020.	Concepts have been developed by three interested firms. Review process underway.
4)	Review and make improvements, where feasible, to the planning permit process.	City Manager, Public Works, Fire, Harbor	Chamber, Planning	City Council to receive updates on progress, and may consider policy changes depending upon recommendations that come forward.	No work done on this to date. Next step is to convene working group to review current efforts and issues. Intend to initiate review in early to mid-2020.
5)	Bring forward a comprehensive set of revenue enhancement options for City Council consideration.	All	City Manager, Finance	Will return to Council with update during FY 2020/21 Budget process.	City Council directed staff to pursue community opinion research in August, and established a Council sub-committee. Community survey completed in November 2020. Results posted to City website. More community outreach anticipated throughout 2020.
6)	Conduct outreach on the current opportunity sites within Morro Bay, including, but not limited to the decommissioned power plant.	Planning, City Manager, Harbor, Tourism	Chamber	Staff will provide updates to City Council.	On-going effort by the City and Chamber. Vistra Energy (owner of power plant) submitted initial ideas for a battery project at the power plant site in late 2019. That idea is under review by City staff.
7)	In support of achieving economic development goals and limiting City costs in that pursuit, contract with an outside agency to fulfill economic development Ombudsmen duties on behalf of the City.	Planning, Tourism, Harbor	City Manager	City Council to receive quarterly updates from the Chamber.	City Council approved contract with Chamber to provide this service to the City.
8)	Continue to pursue locating a new aquarium in the water front area, in partnership with Cal Poly and Central Coast Aquarium.	City Manager, Planning, Tourism	Harbor	Council to review progress on a quarterly basis through Spring 2020.	Staff and City Council sub-committee holding on-going meetings with Central Coast Aquarium.
9)	Establish Waterfront Lease site policies and implementation plan.	Harbor, Planning, City Manager, Finance	Harbor	Item will come to City Council in early 2020.	Ad hoc committee work on lease management policy updates continues. Group is developing draft policies.
10)	Continue to pursue offshore windfarm development, with a short-term focus on ensuring the Federal Government approves a windfarm lease site near Morro Bay.	City Manager, Planning, City Attorney	Harbor	Staff will provide updates to City Council.	City Council approved Community Benefits Agreement with Castle Wind in 2018. Staff and Council sub-committee working with State and Federal representatives.
11)	Review opportunity to include vacation rentals and recreational vehicle parks into Tourism Business Improvement District (TBID).	City Manager	Tourism	No further Council action required.	Council approved bringing VRs into the TBID. Goes into effect in mid-January 2020.

City Council Goals and Action Items for 2019 and 2020

12)	Facilitate coordination and development of a business incubator/co-working space in Morro Bay.	City Manager, Planning	Ombudsmen	Staff will provide updates to City Council.	Chamber and staff will review opportunities in 2020 for business incubation/co-worker space.
13)	Complete a detailed review of the CalPERS pension liability, other post employment benefits and health liability and determine specific actions to minimize financial impact to the City.	Finance	City Manager	Staff will bring back options to City Council in early 2020.	Council reviewed detailed report in August 2019 and directed staff to bring back refined analysis for liability paydown options.

Goal #2: Improve Public Infrastructure					
Item #	Action Items	Departments Involved	Lead Department	Anticipated Council date/Completion	Current Status
1)	WRF Implementation, which includes completing design of the facility, pipeline conveyance and injection system, permitting the project, securing financing for entire project and beginning construction.	Public Works, Planning, City Attorney	WRF Program Manager, City Manager	Next steps for Council: WIFIA loan agreement, issuance of notice to proceed on construction (early 2020).	Coastal Development Permit approved by Coastal Comm in July 2019, 60% design on WRF Facility and pipeline conveyance complete, nearing finalization of WIFIA loan, purchased property for WRF facility, and continuing working with State staff on the SRF Loan/Grant. Targeting ground breaking in early 2020.
2)	Include local labor on major City capital improvement projects (CIP), with the WRF being the initial project.	City Attorney, Public Works, Finance	WRF Program Manager, City Manager	City Council will review bidding documents in 2020.	City Council directed staff to include local hire provisions in contracts for conveyance and injection well system components of the WRF project.
3)	Complete and bring to Council a Parking Management Plan to address parking issues in the downtown and water front areas.	City Manager, Finance, Harbor	Planning, Public Works	City Council to review options and provide initial direction in 2020.	Some analysis complete on paid parking and general options developed.
4)	Harbor Advisory Board to pursue grants for an RFP for marine services facility (boatyard) feasibility study and bring forward information to City Council for next steps.	City Manager	Harbor	City Council to review options sometime in 2020.	Staff reviewing options for feasibility study (no responses to RFP in 2018), and looking at funding opportunities.
5)	Pursue a public-private partnership to increase business and residential access to hi-speed internet in Morro Bay.	All	City Manager	City Council to review options in 2020.	Staff reviewing options.
6)	Implement approved Capital Improvement Projects, including OneWater Projects.	Public Works, City Manager	Harbor	City Council to receive update in February 2020 (as part of the mid-year budget process).	Staff has developed and released RFPs to complete pre-design and environmental work on two waste water projects and one water capital project.

Goal #3: Improve Communication and Community Engagment					
Item #	Action Items	Departments Involved	Lead Department	Anticipated Council date/Completion	Current Status
1)	Work to develop stronger coordination, and processes, with community groups in support of advancing mutually beneficial initiatives and goals.	All	City Manager	Staff to provide updates to City Council. Will bring new partnership agreements for Council review in 2020.	Will be an on-going effort. Next step includes outreach to volunteer groups in Morro Bay.
2)	Revise the partnership policy, and related policies, in conjunction with the fee study update.	Finance	City Manager, Recreation, Tourism	Staff will bring new partnership agrrements to Council for review in 2020.	Council approved a revised Parntershipd Policy in late 2019.

City Council Goals and Action Items for 2019 and 2020

Goal #4: Complete Updates to the City Major Land Use Plans and Address Affordable Housing Issues					
Item #	Action Items	Departments Involved	Lead Department	Anticipated Council date/Completion	Current Status
1)	Complete the General Plan/Local Coastal Plan rewrite.	City Manager	Planning	Staff likely to bring draft plans to Planning Commission and Council for formal consideration by mid-2020 (contigent upon Coastal staff completion of review).	Coastal Commission staff has nearly completed its final review. Staff is preparing documents for the environmental review and completing revisions of the draft GP/LCP.
2)	Complete the Zoning Code update.	City Manager, Pubilc Works	Planning	Staff will likely bring proposed zoning code update to Planning Commission and City Council by mid to late 2020 (contigent upcon Coastal staff completion of review).	Coastal Commission staff is reviewing an administrative draft of the document.
3)	Revise the vacation rental policy.	City Manager, Finance, Public Works, City Attorney	Planning	Council to review policy recommendations by Spring 2020.	City Manager appointed a community committee to review policy options and make recommendations to the Planning Commission and City Council.
4)	Work with San Luis Obispo County and cities therein on a regional partnership and solutions to housing issues.	Planning, Public Works, Finance	City Manager	Staff will provide update to City Council in early Spring 2020.	Staff coordinating with County of SLO staff on housing and infrastructure planning. Staff also initiated update to Housing Element, which provides another opportunity to coordinate regionally.
5)	Pursue grant funding to develop an emergency warming shelter in Morro Bay.	Public Works, Recreation, Finance	City Manager	Staff will provide an update to City Council on the new funding opportunity during the FY 2020/21 Budget process.	City did not receive State funding (HEAP Grant). Coordinating with County on a new funding opportunity.

City Goals Update and Vacation Rental Policy Development Process

Scott Collins
City Manager

January 14, 2020

AGENDA

- **Update on City Goals and Action Items**
- **Goals process for 2021-2022**

Council Goals

- **Achieve Economic and Fiscal Sustainability**
- **Improve Infrastructure and Public Spaces**
- **Complete Update of Significant City Land Use Plans and Address Affordable Housing Issues**
- **Improve Communication and Community Engagement**

Goals Process

- **Goals and action items approved in May 2019, for remainder of 2019 and all of 2020**
 - **Fiscal and Economic Sustainability Council's top priority**
- **26 action items**
- **Staff committed to providing quarterly updates on progress to Council**

Completed Action Items

Action Item	Council Action
Revenue Enhancement Option Review	Approved opinion research and community engagement process
Ombudsmen service contract with Chamber	Approved in June 2019
Consideration of VR in TBID	Direction to add VRs into TBID by early 2020
Partnership Policy review	Approved in late 2019

Action Items with Significant Progress

Action Item	Council/City Action
Fee Study	Council reviewing final pieces in early 2020.
Waterfront Lease Mgmt Policy Review	Council review in early 2020.
Review of CalPERS and other liabilities	Council review analysis in early 2020.
Complete General Plan/Local Coastal Plan and Zoning Code Update	Council to review GP/LCP in mid-2020. Zoning Code to follow.
WRF Implementation	Begin construction in early 2020.
Local Labor consideration for WRF	Council to review in 2020.
SLO County Regional effort on affordable housing	Council to review in 2020.
Short-term vacation rental policy revision	VR Community Committee to make recommendations to PC and Council by Spring 2020.
Implement "OneWater" CIP Projects	RFP out for the first set of projects (pre-design work)

Recommendations

- **Receive the update**

Action Items Requiring More Time

Action Item	Council Action	Status
Market St. Plaza Redevelopment	To Council in 2020.	Reviewing interested firms.
Offshore Windfarm Development	Staff will provide updates to Council.	City Council approved Community Benefits Agreement with Castle Wind in 2018.
Permit process review and improvements	City Council to receive updates on progress.	No work done on this to date.
Parking Mgmt Plan	Council to review Parking in 2020.	Some progress complete on Wayfinding and parking.
Morro Bay Aquarium	Council to review in Spring 2020.	Continued on-going meetings with Central Coast Aquarium
Consider Adult Use Cannabis Retailing	Council consider after permits issued for medical cannabis.	No work done on this to date.
Hi-speed internet	Council to review in 2020.	Staff reviewing options.
Outreach on opportunity sites in Morro Bay	Staff will provide updates to Council.	On-going effort by the City and Chamber.
Grant opportunities for Winter Shelter	Staff will provide updates to Council.	City did not receive State funding. Coordinating with County on future funding.
Co-working space in Morro Bay	Staff will provide updates to Council.	Work to begin 2020.
Grant for Boatyard feasibility study	Council to review in 2020.	Staff reviewing options on feasibility study, no response to RFP in 2018.
Coordination with non-profits and comm groups	Staff provide updates to Council.	On-going effort. Next steps include outreach to volunteer groups.