### INDENTURE OF TRUST

Dated as of
1, 2022
by and between
OTAY MESA ENHANCED INFRASTRUCTURE FINANCING DISTRICT
and
[TRUSTEE], as Trustee
Relating to
\$OTAY MESA ENHANCED INFRASTRUCTURE FINANCING DISTRICT 2022 TAX ALLOCATION BONDS, SERIES A
and
\$OTAY MESA ENHANCED INFRASTRUCTURE FINANCING DISTRICT 2022 TAX ALLOCATION BONDS, SERIES B (FEDERALLY TAXABLE)

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### INDENTURE OF TRUST

This INDENTURE OF TRUST (this "Indenture") is dated as of \_\_\_\_\_\_\_\_1, 2022, by and between the OTAY MESA ENHANCED INFRASTRUCTURE FINANCING DISTRICT, a public body corporate and politic duly organized and existing under the laws of the State of California, (the "District"), and [TRUSTEE], a national banking association organized and existing under the laws of the United States of America and having a corporate trust office in Los Angeles, California, as trustee (the "Trustee");

### WITNESSETH:

WHEREAS, the District is an enhanced infrastructure financing district and a public body, corporate and politic, duly established and authorized to transact business and exercise powers under and pursuant to the provisions of Chapter 2.99 of Part 1 of Division 2 of Title 5 (commencing with Section 53398.50) of the Government Code of the State (the "EIFD Law"), including the power to issue bonds to finance capital improvements and other costs provided in the EIFD Law; and

WHEREAS, the Otay Mesa Enhanced Infrastructure Financing District Public Financing Authority (the "Public Financing Authority") was established by Resolution Number R-310938 adopted by the City Council of the City of San Diego (the "City") on February 13, 2017, and serves as governing body of the District pursuant to the EIFD Law; and

WHEREAS, the Public Financing Authority approved an Infrastructure Financing Plan (the "Infrastructure Financing Plan") for the District by Resolution Number OMPFA-2 adopted on July 24, 2017; and

WHEREAS, the primary goals of the District are to facilitate economic development and improve the quality of life of residents within the boundaries of the District set forth in the Infrastructure Financing Plan (the "EIFD Project Area"), which boundaries are coterminous with the City's Otay Mesa Community Plan Area, through the accelerated provision of needed infrastructure within the EIFD Project Area; and

WHEREAS, the Infrastructure Financing Plan provides that a portion of the property taxes generated within the EIFD Project Area will be allocated to the District and may be pledged to payment of bonds issued by the District; the portion of such property tax revenues that is available for payment of indebtedness of the District is referred to herein as "Tax Revenues"; and

WHEREAS, the Infrastructure Financing Plan identifies the public improvements and facilities described in the City of San Diego Otay Mesa Public Facilities Financing Plan (PFFP) as the public facilities and development proposed within the EIFD Project Area (the "EIFD Project") and contemplates that the District may issue bonds and incur other forms of indebtedness secured by and payable from Tax Revenues to finance the EIFD Project; and

WHEREAS, the Infrastructure Financing Plan was approved by the City Council of the City by Resolution Number R-311204 on June 26, 2017; and

WH	EREAS, the District wishes at this time to issue its \$	Otay Mesa Enhanced
Infrastructu	re Financing District 2022 Tax Allocation Bonds, Series A (th	he "Series A Bonds") and its
\$	Otay Mesa Enhanced Infrastructure Financing District 2	022 Tax Allocation Bonds,

Series B (Federally Taxable) (the "Series B Bonds"; and, together with the Series A Bonds, the "2022 Bonds") pursuant to the provisions of the EIFD Law for the purpose of providing funds to pay Project Costs (as defined herein) related to the EIFD Project; and [NOTE: Designation of Initial Series of Bonds to reflect calendar year of issuance.]

WHEREAS, the 2022 Bonds will be secured by a lien on Tax Revenues, as and to the extent set forth herein; and

WHEREAS, in order to provide for the authentication and delivery of the 2022 Bonds and any obligations issued on a parity therewith (collectively, the "Bonds"), to establish and declare the terms and conditions upon which the Bonds are to be issued and to secure the payment of the principal thereof and interest and redemption premium (if any) thereon, the District and the Trustee have duly authorized the execution and delivery of this Indenture; and

WHEREAS, the District has determined that all acts and proceedings required by law necessary to make the 2022 Bonds, when executed by the District, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal special obligations of the District, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done or taken;

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

### **ARTICLE I**

### **DEFINITIONS; RULES OF CONSTRUCTION**

**Section 1.1 Definitions.** Unless the context otherwise requires, the terms defined in this Section 1.1 shall, for all purposes of this Indenture, and of any certificate, opinion or other document herein mentioned, have the meanings herein specified.

"Additional Revenues" means, as of the date of calculation, the amount of Tax Revenues which, as shown in the report of an Independent Fiscal Consultant, are estimated to be receivable by the District within the Fiscal Year following the Fiscal Year in which such calculation is made as a result of increases in the assessed valuation of taxable property in the EIFD Project Area due to either (a) construction which has been completed but which is not then reflected on the tax rolls, or (b) transfer of ownership or any other interest in real property which has been recorded but which is not then reflected on the tax rolls. For purposes of this definition, the term "increases in the assessed valuation" means the amount by which the assessed valuation of taxable property in the EIFD Project Area is estimated to increase above the assessed valuation of taxable property in the EIFD Project Area (as evidenced in the written records of the County) as of the date on which such calculation is made.

"Annual Debt Service" means, for each Bond Year, the sum of (without duplication) the aggregate amount of principal and interest scheduled to become due and payable on the Outstanding Bonds in such Bond Year upon the maturity or mandatory redemption thereof; provided, for purposes of such calculation, (a) there shall be excluded a pro rata portion of each installment of principal of any Parity Debt, together with the interest to accrue thereon, in the event and to the extent that the proceeds of such Parity Debt are deposited in an escrow fund from which amounts may not be released to the District unless the District meets the requirements of Section 3.6 for the issuance of Parity Debt at the time of such release, taking the released proceeds into account, (b) with respect to Parity Debt which has a variable rate of interest, for any period for which the interest rate is not known, the interest component of debt service shall be assumed to be a rate equal to that rate determined in accordance with Section 3.6(f) (relating to the issuance of Parity Debt).

"Authorized Officer" and "Authorized Officers" means, individually or collectively, the Chair of the Public Financing Authority, the Vice Chair of the Public Financing Authority, the Department of Finance Director/Comptroller of the City, or the Treasurer of the Public Financing Authority, their respective written designees, and any other officer of the District or the City designated as an Authorized Officer by resolution of the Public Financing Authority.

"Bond Counsel" means (a) Stradling Yocca Carlson & Rauth, a Professional Corporation, or (b) any other attorney or firm of attorneys appointed by or acceptable to the District, of nationally-recognized experience in the issuance of obligations secured by taxes allocated to enhanced infrastructure financing districts pursuant to the California Constitution and the EIFD Law.

"Bond Year" means any twelve-month period beginning on September 2 in any year and extending to the next succeeding September 1, both dates inclusive; except that the first Bond Year shall begin on the Closing Date and end on September 1, 20[23].

"Bonds" means the 2022 Bonds and any Parity Debt issued as Bonds under this Indenture.

"Business Day" means a day of the year (other than a Saturday or Sunday) on which banks in California, or the city or cities where the Office of the Trustee is located, are not required or permitted to be closed, and on which the Federal Reserve banking system is open.

"Certificate of the District" means a certificate in writing signed by an Authorized Officer.

"City" means the City of San Diego, California, a municipal corporation and chartered city organized and existing under the laws of the State.

"Closing Date" means \_\_\_\_\_\_, 2022, being the date on which the 2022 Bonds are delivered by the District to the Original Purchaser.

"Continuing Disclosure Certificate" means the Continuing Disclosure Certificate entered into as of the Closing Date by the District, relative to the Original Purchaser's obligations under Rule 15c2-12 of the Securities and Exchange Commission relating to the 2022 Bonds.

"Costs of Issuance" means all items of expense directly or indirectly payable by or reimbursable to the District relating to the authorization, issuance, sale and delivery of the 2022 Bonds, including but not limited to printing expenses, rating agency fees, filing and recording fees, initial fees, expenses and charges of the Trustee and its counsel, including the Trustee's first annual administrative

fee, fees, charges and disbursements of attorneys, financial advisors, accounting firms, consultants and other professionals, [fees of underwriter's counsel, private placement agent counsel, or bank counsel, as applicable,] fees and charges for preparation, execution and safekeeping of the 2022 Bonds, reimbursement to the City for City staff time and expenses incurred by the City in connection with the original issuance of the 2022 Bonds, and any other cost, charge or fee in connection with the original issuance of the 2022 Bonds.

"Costs of Issuance Fund" means the fund by that name established and held by the Trustee pursuant to Section 3.3.

"County" means the County of San Diego, a county duly organized and existing under the Constitution and laws of the State.

"**Debt Service Fund**" means the fund by that name established and held by the Trustee pursuant to Section 4.3.

"Defeasance Securities" means any of the following, or any combination thereof: (1) cash, (2) non-callable direct obligations of the United States of America ("Treasuries"), (3) evidences of ownership of proportionate interests in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying Treasuries are not available to any person claiming through the custodian or to whom the custodian may be obligated, (4) [subject to the prior written consent of the 2022 Insurer,] pre-refunded municipal obligations rated "AAA" and "Aaa" by S&P and Moody's, respectively, or (5) [subject to the prior written consent of the 2022 Insurer], securities eligible for "AAA" defeasance under then existing criteria of S&P or any combination thereof, shall be used to effect defeasance of the Bonds [unless the 2022 Insurer otherwise approves].

"**Depository**" means (a) initially, DTC, and (b) any other Securities Depository acting as Depository pursuant to Section 2.9.

"Depository System Participant" means any participant in the Depository's book-entry system.

"District" means the Otay Mesa Enhanced Infrastructure Financing District.

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

**"EIFD Law"** means Chapter 2.99 of Part 1 of Division 2 of Title 5 (commencing with Section 53398.50) of the Government Code of the State, and the acts amendatory thereof and supplemental thereto.

"EIFD Project Area" means the jurisdictional boundaries of the District described in the EIFD.

"Event of Default" means any of the events described in Section 8.1.

"Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to

purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Tax Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, (iii) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the District and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of the investment.

"Federal Certificates" means evidences of indebtedness or ownership of proportionate interests in future principal and interest payments of Federal Securities, including depository receipts thereof, wherein (i) a bank or trust company acts as custodian and holds the underlying Federal Securities; (ii) the owner of the Federal Certificate is a real party in interest with the right to proceed directly and individually against the obligor of the underlying Federal Securities; and (iii) the underlying Federal Securities are held in trust in a special account, segregated from the custodian's general assets, and are not available to satisfy any claim of the custodian or any person claiming through the custodian, or any person to whom the custodian may be obligated.

"Federal Securities" means the following securities: direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and United States Treasury Obligations, State and Local Government Series) or evidence of ownership in a portion thereof (which may consist of specified portions of interest thereon and obligations of the Resolution Funding Corporation which constitute interest strips) if held by a custodian on behalf of the Trustee; obligations the principal of and interest on which are unconditionally guaranteed by the United States of America; prerefunded municipal obligations rated, at the time of purchase, by Moody's and S&P in their highest rating category; provided that "structured securities" (including flip notes, range notes, inverse floaters and step-ups) will not be considered Federal Securities; provided further that floaters (based on single, interest rate based indices) and callable securities of the above-enumerated agencies may be treated as Federal Securities.

"Financial Products Agreement" means an interest rate swap, cap, collar, option, floor, forward or other such hedging agreement, arrangement or security, however denominated, as well as any asset swap, basis swap, direct funding transaction or other derivative, however denominated, identified to the Trustee in a Certificate of the District as having been entered into by the District with respect to Parity Debt for the purpose of (1) reducing or otherwise managing the District's risk of interest rate changes or (2) effectively converting the District's interest rate exposure, in whole or in part, from a fixed rate exposure to a variable rate exposure, or from a variable rate exposure to a fixed rate exposure.

"Fiscal Year" means any twelve-month period beginning on July 1 in any year and extending to the next succeeding June 30, both dates inclusive, or any other twelve-month period selected and designated by the District as its official fiscal year period pursuant to a Certificate of the District filed with the Trustee.

"Indenture" means this Indenture of Trust by and between the District and the Trustee, as amended or supplemented from time to time pursuant to any Supplemental Indenture entered into pursuant to the provisions hereof.

"Independent Accountant" means any certified public accountant or firm of such certified public accountants duly licensed or registered or entitled to practice and practicing as such under the laws of the State, appointed by or acceptable to the District, and who, or each of whom: (a) is in fact independent and not under domination of the District; (b) does not have any substantial interest, direct or indirect, with the District; and (c) is not connected with the District as an officer or employee of the District, but who may be regularly retained to make reports to the District.

"Independent Fiscal Consultant" means any consultant or firm of such consultants appointed by or acceptable to the District and who, or each of whom: (a) is judged by the District to have substantial expertise in matters relating to the collection, estimation and projection of Tax Revenues or otherwise with respect to the financing of facilities by enhanced infrastructure financing districts or other entities that collect, allocate, or receive property tax increment revenues; (b) is in fact independent and not under domination of the District; (c) does not have any substantial interest, direct or indirect, with the District other than as the original purchaser of the 2022 Bonds or any Parity Debt, and (d) is not connected with the District as an officer or employee of the District, but who may be regularly retained to make reports to the District.

"Infrastructure Financing Plan" means the Otay Mesa Enhanced Infrastructure Financing District Infrastructure Financing Plan dated June 2017, approved by Resolution Number OMPFA-2 adopted by the Public Financing Authority on July 24, 2017, as heretofore or hereafter amended or supplemented.

"Interest Account" means the account by that name established and held by the Trustee pursuant to Section 4.3(a).

"Interest Payment Date" means, so long as any of the Bonds remain unpaid, March 1 and September 1 of each year, commencing [March 1, 2023].

"Maximum Annual Debt Service" means, as of the date of calculation, the largest amount of Annual Debt Service on all Outstanding Bonds for the current or any future Bond Year.

"Moody's" means Moody's Investors Service, of New York, New York, and its successors.

"Nominee" means (a) initially, Cede & Co., as nominee of DTC, and (b) any other nominee of the Depository designated pursuant to Section 2.9(a).

"Office" means the trust office of the Trustee in Los Angeles, California, or at such other place or places as may be designated by the Trustee from time to time in written notice filed with the District.

"Original Purchaser" means a	ıs original purc	chaser of the 2022 Bonds
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"Outstanding" when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 9.5) all Bonds except: (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Bonds paid or deemed to have been paid within the meaning of Section 9.3; and (c) Bonds in lieu of or in substitution for which other Bonds shall have been authorized, executed, issued and delivered by the District pursuant hereto.

- "Owner" means, with respect to any Bond, the person in whose name the ownership of such Bond shall be registered on the Registration Books.
- "Parity Debt" means any bonds, notes, loans, advances or other indebtedness issued or incurred by the District on a parity with the 2022 Bonds pursuant to Section 3.6.
- "Permitted Investments" means any of the following which, at the time of investment, are legal investments under the laws of the State for the moneys proposed to be invested therein and are in compliance with the City's investment policies then in effect (provided that the Trustee shall be entitled to rely upon any investment direction from the District as conclusive certification to the Trustee that investments described therein are legal and are in compliance with the City's investment policies then in effect), but only to the extent the same are acquired at Fair Market Value:
  - (1) Federal Securities or Federal Certificates;
- (2) The following listed obligations of government-sponsored agencies which are not backed by the full faith and credit of the United States of America:
- (A) Federal Home Loan Mortgage Corporation (FHLMC) senior debt obligations and Participation certificates (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts);
- (B) Farm Credit System (formerly Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives) consolidated system-wide bonds and notes;
  - (C) Federal Home Loan Banks (FHL Banks) consolidated debt obligations;
- (D) Federal National Mortgage Association (FNMA) senior debt obligations and mortgage-backed securities (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts);
- (E) The senior debt obligations of Resolution Funding Corporation (RFCO), Financing Corporation (FICO) and Tennessee Valley Authority (TVA);
- (3) Obligations of any state, territory or commonwealth of the United States of America or any political subdivision thereof or any agency or department of the foregoing, that are rated, at the time of purchase, in the highest rating category by two Rating Agencies;
- (4) United States dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development, International Finance Corporation, or Inter-American Development Bank. Investments under this subdivision shall be rated "AA" or better by a Rating Agency;
- (5) Bonds, notes, debentures or other evidences of indebtedness issued or guaranteed by any corporation which are rated, at the time of purchase, "A1/P1/F1" by two Rating Agencies or, if the term of such indebtedness is longer than one year, rated in the highest rating category by two Rating Agencies;
- (6) Taxable commercial paper or tax-exempt commercial paper with a maturity of not more than 270 days, which are rated, at the time of purchase, "A1/P1/F1" by two Rating Agencies;

- (7) Deposit accounts or certificates of deposit, whether negotiable or non-negotiable, issued by a state or national bank (including the Trustee) or a state or federal savings and loan association or a state-licensed branch of a foreign bank; provided, however, that such certificates of deposit or deposit accounts shall be either (A) continuously insured by the Federal Deposit Insurance Corporation; or (B) have maturities of not more than 365 days (including certificates of deposit) and are issued by any state or national bank or a state or federal savings and loan association, the short-term obligations of which are rated, at the time of purchase, in the highest short term rating by two Rating Agencies;
- (8) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances, which bank has short-term obligations outstanding which are rated, at the time of purchase, by two Rating Agencies in the highest short-term rating category, and which bankers acceptances mature not later than 365 days from the date of purchase;
- Any repurchase agreement: (A) with (i) any bank or trust company organized under the laws of any state of the United States or any national banking association (including the Trustee), or a state-licensed branch of a foreign bank, having a minimum permanent capital of one hundred million dollars (\$100,000,000) and having short-term debt which is rated, at the time of the purchase, by two Rating Agencies in one of the three highest short-term Rating Categories; or (ii) any government bond dealer reporting to, trading with, and recognized as a primary dealer by, the Federal Reserve Bank of New York; and (B) which agreement is secured by any one or more of the securities and obligations described in clause (1) or (2) of this definition and having maturities equal to or less than 5 years from the date of delivery, which shall have a market value (valued at least monthly) not less than 102% of the principal amount of such investment and shall be placed with the Trustee or other fiduciary, as custodian for the Trustee, by the bank, trust company, national banking association or bond dealer executing such repurchase agreement. The entity executing each such repurchase agreement required to be so secured shall furnish the Trustee with an undertaking satisfactory to the Trustee that the aggregate market value of all such obligations securing each such repurchase agreement (as valued at least monthly) will be an amount equal to 102% the principal amount of such repurchase agreement, and the Trustee shall be entitled to rely on each such undertaking;
- (10) Any cash sweep or similar account arrangement of or available to the Trustee, the investments of which are limited to investments described in clauses (1), (2), (3) and (9) of this definition and any money market fund, the entire investments of which are limited to investments described in clauses (1), (2), (3) and (9) of this definition and which money market fund is rated, at the time or purchase, by at least one Rating Agency in the highest rating category;
- ("FDAs") and forward purchase agreements ("FPAs"), with a financial institution or insurance company which has (or which is unconditionally guaranteed by a legal entity which has), at the date of execution thereof, an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims-paying ability which is rated, at the time of purchase, by two Rating Agencies in one of two highest long-term Rating Categories. Only Permitted Investments described in clause (1) and (2) of this definition and having maturities equal to or less than 30 years from their date of delivery will be considered eligible for any collateralization/delivery purposes for guaranteed investment contracts, FDAs or FPAs;
- (12) Certificates, notes, warrants, bonds or other evidence of indebtedness of the State or of any political subdivision or public agency thereof which are rated, at the time of purchase,

by two Rating Agencies in the highest short-term rating category or within one of the three highest long-term Rating Categories, but excluding securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date;

- (13) For amounts less than \$250,000, interest-bearing demand or time deposits (including certificates of deposit) in a nationally or state-chartered bank, or a state or federal savings and loan association in the State, fully insured by the Federal Deposit Insurance Corporation, including the Trustee or any affiliate thereof;
- (14) Investments in Constant Net Asset Value taxable money market funds or portfolios restricted to obligations with an average maturity of one year or less and which funds or portfolios are: (A) rated, at the time of purchase, by two Rating Agencies in one of the two highest Rating Categories; or (B) have or are portfolios guaranteed as to payment of principal and interest by the full faith and credit of the United States of America;
  - (15) Investments in the City Treasurer's pooled investment fund;
- (16) Shares of beneficial interest in diversified management companies investing exclusively in securities and obligations described in clauses (1) through (13) of this definition and which companies are: (A) rated, at the time of purchase, by two Rating Agencies in the highest rating category; or (B) have an investment advisor registered with the Securities and Exchange Commission with not less than five years' experience investing in such securities and obligations and with assets under management in excess of five hundred million dollars (\$500,000,000);
- (17) Shares in a California common law trust established pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State which consists exclusively of investments permitted by Section 53601 of Title 5, Division 2, Chapter 4 of the Government Code of the State, as it may be amended; and
- (18) Any other investment, with confirmation (or other action, satisfactory to the City) from each rating agency that has a current rating on the Bonds at the time of initial purchase thereof, that its rating on the Bonds will not be lowered or withdrawn as a result of such investment.
- "Plan Limitations" means the limitations, if any, contained or incorporated in the Infrastructure Financing Plan, on (a) the total number of dollars of taxes that may be allocated to the District pursuant to the Infrastructure Financing Plan and (b) the time limit on the existence of the District, as applicable, as such Plan Limitations may be amended or modified from time to time.
- "Principal Account" means the account by that name established and held by the Trustee pursuant to Section 4.3(b).
- "Project Costs" means (subject to the provisions of Section 5.11) all costs of financing or refinancing the EIFD Project which are paid from moneys on deposit in the Project Fund, including but not limited to:
- (a) any costs which are lawfully incurred by the District with respect to the EIFD Project under the Infrastructure Financing Plan and the EIFD Law, and which constitute lawful expenditures of amounts on deposit in the Project Fund created under this Indenture for the EIFD Project; and

- (b) any sums required to reimburse the District for advances made for any of the above items.
- "**Project Fund**" means the fund by that name established and held by the District pursuant to Section 3.4.
- "Public Financing Authority" means the Otay Mesa Enhanced Infrastructure Financing District Public Financing Authority, established to act as the governing board of the District by Resolution Number R-310938 adopted by the City Council of the City on February 13, 2017.
- "Qualified Reserve Account Credit Instrument" means (i) the 2022 Reserve Policy, and (ii) an irrevocable standby or direct-pay letter of credit, insurance policy, or surety bond issued by a commercial bank or insurance company and deposited with the Trustee with respect to other Bonds, provided that all of the following requirements are met at the time of acceptance thereof by the Trustee: (a) S&P or Moody's have assigned a long-term credit rating to such bank or insurance company at the time of issuance of such Qualified Reserve Account Credit Instrument of "A" (without regard to modifier) or higher; (b) such letter of credit, insurance policy or surety bond has a term of at least 12 months; (c) such letter of credit, insurance policy or surety bond has a stated amount at least equal to the portion of the Reserve Requirement with respect to the Bonds with respect to which it is deposited or with respect to which funds are proposed to be released; and (d) the Trustee is authorized pursuant to the terms of such letter of credit, insurance policy or surety bond to draw thereunder an amount equal to any deficiencies which may exist from time to time in the Interest Account, the Principal Account, or the Sinking Account for the purpose of making payments required pursuant to Sections 4.3(a), 4.3(b), 4.3(c) or 4.3(d) of this Indenture.
- "Rating Agency" means Moody's, S&P or any nationally recognized rating agency then maintaining a rating on the Bonds.
- "Rebate Fund" means the fund by that name established and held by the Trustee pursuant to Section 4.4.
- "Record Date" means, with respect to any Interest Payment Date, the close of business on the fifteenth (15th) calendar day of the month preceding such Interest Payment Date, whether or not such fifteenth (15th) calendar day is a Business Day.
- "Redemption Account" means the account by that name established and held by the Trustee pursuant to Section 4.3(e).
- "**Registration Books**" means the records maintained by the Trustee pursuant to Section 2.7 for the registration and transfer of ownership of the 2022 Bonds.
- "Report" means a document in writing signed by an Independent Accountant or an Independent Fiscal Consultant and including: (a) a statement that the person or firm making or giving such Report has read the pertinent provisions of this Indenture to which such Report relates; (b) a brief statement as to the nature and scope of the examination or investigation upon which the Report is based; and (c) a statement that, in the opinion of such person or firm, sufficient examination or investigation was made as is necessary to enable such person or firm to express an informed opinion with respect to the subject matter referred to in the Report.

"Request of the District" means a request in writing signed by an Authorized Officer.

"Reserve Account" means the account by that name established and held by the Trustee pursuant to Section 4.3(d).

"Reserve Requirement" means, subject to Section 4.3(d) of this Indenture, with respect to the 2022 Bonds or any series (or multiple series) of Parity Debt, and as of any date of computation, the lesser of:

- (i) 125% of the average Annual Debt Service with respect to such series (or multiple series) of Bonds then Outstanding,
- (ii) Maximum Annual Debt Service with respect to such series (or multiple series) of Bonds then Outstanding, or
- (iii) with respect to such series (or multiple series) of Bonds, 10% of the original principal amount of such series (or multiple series) of Bonds then Outstanding (or, if such series (or multiple series) of Bonds has more than a de minimis amount of original issue discount or premium, 10% of the issue price of such series (or multiple series) of Bonds);

provided, that (a) the Reserve Requirement shall be computed without regard to the portions of Parity Debt which remain as deposits in escrow funds as contemplated by subsection (e) of Section 3.6, and (b) in no event shall the District, in connection with the issuance or incurrence of Parity Debt be obligated to deposit an amount in the Reserve Account which is in excess of the amount permitted by the applicable provisions of the Tax Code to be so deposited from the proceeds of Tax-Exempt Parity Debt without having to restrict the yield of any investment purchased with any portion of such deposit and in the event the amount of any such deposit into the Reserve Account is so limited, the Reserve Requirement shall, in connection with the issuance of such Tax-Exempt Parity Debt, be increased only by the amount of such deposit as permitted by the Tax Code; and (c) provided further that the District may meet all or a portion of the Reserve Requirement by depositing a Qualified Reserve Account Credit Instrument meeting the requirements of the definition of Qualified Reserve Account Credit Instrument herein. For the avoidance of doubt, the Reserve Requirement for any Bonds may, at the option and instruction of the District, be determined on a combined or standalone basis. As of the Closing Date, the Reserve Requirement for the 2022 Bonds is \$ ; the Reserve Requirement for the 2022 Bonds shall not increase following the Closing Date except as a result of the issuance of Parity Debt which will be secured by the Reserve Account on a combined basis with the 2022 Bonds, as directed by the District.

"S&P" means S&P Global Ratings, a Standard and Poor's Financial Services LLC business, or any successor thereto.

"Securities Depository" means The Depository Trust Company, New York, New York 10041-0099, Fax-(212) 855-7232; or, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the District may designate in a Written Request of the District delivered to the Trustee.

"Series" means the Series A Bonds and the Series B Bonds, as the context requires.

- "Series A Bonds" means the Otay Mesa Enhanced Infrastructure Financing District 2022 Tax Allocation Bonds, Series A authorized by and at any time outstanding pursuant to this Indenture.
- "**Series B Bonds**" means the Otay Mesa Enhanced Infrastructure Financing District 2022 Tax Allocation Bonds, Series B (Federally Taxable) authorized by and at any time outstanding pursuant to this Indenture.
- "Sinking Account" means the account by that name established and held by the Trustee pursuant to Section 4.3(c).
- "Special Fund" means the 2022 Bonds Special Fund established and held by the District pursuant to Section 4.2.
  - "State" means the State of California.
- "Subordinate Debt" means any loans, advances, contracts or indebtedness issued or incurred by the District in accordance with the requirements of Section 3.7, which are either: (a) payable from, but not secured by a pledge of or lien upon, the Tax Revenues; or (b) secured by a pledge of or lien upon the Tax Revenues which is subordinate to the pledge of and lien upon the Tax Revenues hereunder for the security of the Bonds.
- "Supplemental Indenture" means any resolution, agreement or other instrument which amends, supplements or modifies this Indenture or provides for the issuance of Parity Debt and which has been duly adopted or entered into by the District, but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.
- "**Tax Code**" means the Internal Revenue Code of 1986, as amended. Any reference to a provision of the Tax Code shall include the applicable Tax Regulations with respect to such provision.
  - "Tax-Exempt Parity Debt" is defined in Section 5.11.
- "Tax Regulations" means temporary and permanent regulations promulgated under or with respect to Section 103 and Sections 141 through 160, inclusive, of the Tax Code.
- "Tax Revenues" means that portion of all taxes annually allocated to and received by the District from and after the Closing Date with respect to the EIFD Project Area, pursuant to Section 53398.75 of the EIFD Law (or any successor statute) and as provided in the Infrastructure Financing Plan. Amounts retained by or paid to the County as costs of collection pursuant to Chapter 466, Statutes of 1990, and Section 53398.76 of the EIFD Law (or any successor statute) shall not be considered received by the District for purposes of this definition.
- "Term Bonds" means the Series A Bonds maturing September 1, 20\_\_, the Series B Bonds maturing September 1, 20\_\_ and September 1, 20\_\_, and any Bonds designated as Term Bonds in the Supplemental Indenture related to any Parity Debt.
- "Trustee" means [TRUSTEE], a national banking association organized and existing under and by virtue of the laws of the United States of America, as trustee hereunder, or any successor thereto appointed as trustee hereunder in accordance with the provisions of Article VI.

["2022 Bond Insurance Policy" means the insurance policy issued by the 2022 Insurer guaranteeing the scheduled payment of principal of and interest on the Insured 2022 Bonds when due.]

"2022 Bonds" means collectively the Series A Bonds and the Series B Bonds authorized by and at any time Outstanding pursuant to this Indenture. [NOTE: Designation of Initial Series of Bonds to reflect calendar year of issuance.]

["2022 Insurer" means \_\_\_\_\_\_, or any successor thereto or assignee thereof.]

["2022 Reserve Policy" means the municipal bond debt service reserve insurance policy issued by the 2022 Insurer in the amount of \$\_\_\_\_\_\_ guaranteeing certain payments from the Reserve Account with respect to the 2022 Bonds as provided therein and subject to the limitations set forth therein.]

**Section 1.2 Rules of Construction**. All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture, and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

### ARTICLE II

### **AUTHORIZATION AND TERMS OF 2022 BONDS**

**Section 2.1 Authorization and Purpose of 2022 Bonds**. The District has reviewed all proceedings heretofore taken and has found, as a result of such review, and hereby finds and determines that all things, conditions and acts required by law to exist, happen or be performed precedent to and in connection with the issuance of the 2022 Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the District is now duly empowered, pursuant to each and every requirement of law, to issue the 2022 Bonds in the manner and form provided in this Indenture.

The 2022 Bonds in the aggregate principal amount of \_\_\_\_\_\_ Dollars (\$\_\_\_\_\_) are hereby authorized to be issued by the District under the EIFD Law in two series consisting of (a) the Series A Bonds in the original aggregate principal amount of \_\_\_\_\_\_ Dollars (\$\_\_\_\_\_) and designated "Otay Mesa Enhanced Infrastructure Financing District 2022 Tax Allocation Bonds, Series A" and (b) the Series B Bonds in the original aggregate principal amount of \_\_\_\_\_\_ Dollars (\$\_\_\_\_\_) and designated "Otay Mesa Enhanced Infrastructure Financing District 2022 Tax Allocation Bonds, Series B (Federally Taxable)" for the purpose of financing Project Costs. The 2022 Bonds shall be authorized and issued under, and shall be subject to the terms of, this Indenture and the EIFD Law. The District hereby determines that it is intended that the interest on the Series B Bonds shall be subject to federal income tax without regard to any exemption under Section 103 of the Tax Code.

**Section 2.2** Terms of the 2022 Bonds. The 2022 Bonds shall be dated the Closing Date, and shall be issued in fully registered form without coupons in denominations of \$5,000 or any integral multiple thereof, such that no 2022 Bond shall have more than one maturity date.

(i) The Series A Bonds shall be dated as of the Closing Date, and shall mature on September 1 in each of the years and in the amounts, and shall bear interest (calculated on the basis of a 360-day year of twelve 30-day months) at the rates, as follows:

Maturity Date	Principal	Interest Rate
(September 1)	Amount	Per Annum
	\$	%

(ii) The Series B Bonds shall be dated as of the Closing Date, and shall mature on September 1 in each of the years and in the amounts, and shall bear interest (calculated on the basis of a 360-day year of twelve 30-day months) at the rates, as follows:

Maturity Date	Principal	Interest Rate
(September 1)	Amount	Per Annum
	\$	%

Interest on the 2022 Bonds shall be payable from the Interest Payment Date next preceding the date of authentication thereof unless (i) a 2022 Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event it shall bear interest from such Interest Payment Date, (ii) a 2022 Bond is authenticated on or before the first Record Date, in which event interest thereon shall be payable from the Closing Date, or (iii) interest on any 2022 Bond is in default as of the date of authentication thereof, in which event interest thereon shall be payable from the date to which interest has been paid in full, payable on each Interest Payment Date. Interest shall be paid on each Interest Payment Date to the persons in whose names the ownership of the 2022 Bonds is registered on the Registration Books at the close of business on the immediately preceding Record Date, except as provided below. Interest on any 2022 Bond which is not punctually paid or duly provided for on any Interest Payment Date shall be payable to the person in whose name the ownership of such 2022 Bond is registered on the Registration Books at the close of business on a special record date for the payment of such defaulted interest to be fixed by the Trustee, notice of which shall be given to such Owner not less than ten (10) days prior to such special record date.

Interest on the 2022 Bonds shall be paid by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date to the Owners of the 2022 Bonds at their respective addresses shown on the Registration Books as of the close of business on the preceding Record Date; provided, however, that at the written request of the Owner of 2022 Bonds in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee as of any Record Date,

interest on such 2022 Bonds shall be paid on each succeeding Interest Payment Date by wire transfer in immediately available funds to such account within the United States of America as shall be specified in such written request. The principal of and premium (if any) on the 2022 Bonds shall be payable in lawful money of the United States of America by check of the Trustee upon presentation and surrender thereof at the Office of the Trustee.

### **Section 2.3 Redemption of 2022 Bonds.**

### (a) Optional Redemption.

- (i) Series A Bonds maturing on or before September 1, 20\_\_, are not subject to optional redemption prior to maturity. The 2022 Series A Bonds maturing on or after September 1, 20\_\_, shall be subject to redemption, at the option of the District on any date on or after September 1, 20\_\_, as a whole, or in part among such maturities as shall be determined by the District and by lot within a maturity from any available source of funds at a redemption price equal to the principal amount of the 2022 Series A Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption, without premium.
- (ii) [Series B Bonds maturing on or before September 1, 20\_\_, are not subject to optional redemption prior to maturity.] //OR// [Make-Whole call during first 10 years] The 2022 Series B Bonds maturing on or after September 1, 20\_\_, shall be subject to redemption, at the option of the District on any date on or after September 1, 20\_\_, as a whole, or in part among such maturities as shall be determined by the District and by lot within a maturity from any available source of funds at a redemption price equal to the principal amount of the 2022 Series B Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption, without premium.
- (iii) [The Series B Bonds are also subject to optional redemption, on any date prior to September 1, 20\_\_, in whole or in part, among maturities to be designated by the District, at a redemption price equal to 100% of the principal amount of such Series B Bonds plus the Make-Whole Premium (as defined below), if any, plus the accrued interest, if any, thereon to the redemption date.] [Insert Make-Whole Premium definition.]

### (b) Sinking Fund Redemption.

(i) The Series A Bonds maturing on September 1, 20\_ are subject to mandatory sinking fund redemption in part, by lot, on each September 1, from mandatory sinking fund payments, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption, without premium, in the aggregate respective principal amounts and on the dates set forth below:

### Series A Term Bonds Due September 1, 20

Payment Date (September 1)

Amount

\$

(maturity)

Provided, however, that if some but not all of such Series A Term Bonds have been redeemed pursuant to subsection (a) above, the total amount of all future sinking fund payments attributable to such Series A Term Bonds pursuant to this subsection (b) shall be reduced by the aggregate principal amount of such Series A Term Bonds so redeemed, to be allocated among such sinking fund payments on a pro rata basis or on such other basis, in integral multiples of \$5,000 as determined by the District (written notice of which determination shall be given by the District to the Trustee).

(ii) The Series B Bonds maturing on September 1, 20\_ and September 1, 20\_ are subject to mandatory sinking fund redemption in part, by lot, on each September 1, from mandatory sinking fund payments, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption, without premium, in the aggregate respective principal amounts and on the dates set forth below:

Series B Term Bonds Due September 1, 20\_\_

Payment Date (September 1)

Amount

\$

(maturity)

Series B Term Bonds Due September 1, 20

Payment Date (September 1)

Amount

\$

(maturity)

Provided, however, that if some but not all of such Series B Term Bonds have been redeemed pursuant to subsection (a) above, the total amount of all future sinking fund payments attributable to such Series B Term Bonds pursuant to this subsection (b) shall be reduced by the aggregate principal amount of such Series B Term Bonds so redeemed, to be allocated among such

sinking fund payments on a pro rata basis or on such other basis, in integral multiples of \$5,000 as determined by the District (written notice of which determination shall be given by the District to the Trustee).

In lieu of redemption of any 2022 Bonds pursuant to the preceding paragraphs, amounts on deposit in the Special Fund may also be used and withdrawn by the District at any time for the purchase of such 2022 Bonds at public or private sale as and when and at such prices (including brokerage and other charges and including accrued interest) as the District may in its discretion determine. The par amount of any of the 2022 Bonds so purchased by the District in any twelve-month period ending on July 1 in any year shall be credited towards and shall reduce the par amount of such 2022 Bonds required to be redeemed pursuant to this subsection (b) on September 1 in such year. Any 2022 Bonds purchased by the District in lieu of redemption pursuant to this paragraph shall be promptly tendered by the District to the Trustee for cancellation.

- Notice of Redemption. The District shall provide written notice to the Trustee of its intention to optionally redeem Bonds and the manner of selecting such Bonds for redemption from among the maturities thereof, at least thirty (30) days prior to the date fixed for such redemption (unless the Trustee shall accept a notice at any later time at least twenty (20) days prior to the date fixed for redemption). The Trustee on behalf and at the expense of the District shall mail (by first class mail, postage prepaid) notice of any optional redemption of Bonds at least twenty (20) but not more than sixty (60) days prior to the redemption date, to (i) the Owners of any Bonds designated for redemption at their respective addresses appearing on the Registration Books, (ii) any insurer of Bonds proposed to be redeemed, and (iii) the Securities Depository; provided, however, that such mailing shall not be a condition precedent to such redemption and neither failure to receive any such notice nor any defect therein shall affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest thereon. Such notice shall state the redemption date and the redemption price, shall designate the CUSIP number of the Bonds to be redeemed, shall state the individual number of each Bond to be redeemed or state that all Bonds between two stated numbers (both inclusive) unless all Bonds within a maturity have been called, or shall state that all of the Bonds Outstanding of one or more maturities and Series are to be redeemed, and shall require that such Bonds be then surrendered at the Office of the Trustee for redemption at the said redemption price, giving notice also that further interest on the Bonds to be redeemed will not accrue from and after the date fixed for redemption.
- (d) <u>Rescission</u>. The District shall have the right to rescind any optional redemption by written notice to the Trustee on or prior to the dated fixed for redemption. Any notice of optional redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default under the Indenture. The District and the Trustee shall have no liability to the Owners or any other party related to or arising from such rescission of redemption. The Trustee shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent.
- (e) <u>Partial Redemption of Bonds</u>. In the event only a portion of any Bond is called for redemption, then upon surrender thereof the District shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the District, a new Bond or Bonds of the same Series, interest rate and maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond to be redeemed.

- (f) <u>Effect of Redemption</u>. From and after the date fixed for redemption, if funds available for the payment of the redemption price of and interest on the Bonds so called for redemption shall have been duly deposited with the Trustee, such Bonds so called shall cease to be entitled to any benefit under this Indenture other than the right to receive payment of the redemption price and accrued interest to the redemption date, and no interest shall accrue thereon from and after the redemption date specified in such notice.
- (g) <u>Manner of Redemption</u>. Whenever provision is made in this Indenture for the redemption of less than all of the Bonds of any Series and maturity, the Trustee shall select the Bonds of such Series and maturity to be redeemed by lot in any manner which the Trustee in its sole discretion shall deem appropriate and fair. For purposes of such selection, all Bonds of such Series and maturity shall be deemed to be comprised of separate \$5,000 denominations and such separate denominations shall be treated as separate Bonds which may be separately redeemed.

**Section 2.4** Form and Execution of 2022 Bonds. The Series A Bonds and the Series B Bonds, the form of Trustee's certificate of authentication, and the form of assignment to appear thereon, shall be substantially in the respective forms set forth in Exhibit A and Exhibit B attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

The 2022 Bonds of each Series shall be executed on behalf of the District by the signature of the [Chair of the Public Financing Authority] and the signature of the Clerk of the Public Financing Authority who are in office on the date of execution and delivery of this Indenture or at any time thereafter. Either or both of such signatures may be made manually or may be affixed by facsimile thereof. If any officer whose signature appears on any 2022 Bond ceases to be such officer before the Closing Date, such signature shall nevertheless be as effective as if the officer had remained in office until the Closing Date. Any 2022 Bond may be signed and attested on behalf of the District by such persons as at the actual date of the execution of such 2022 Bond shall be the proper officers of the District, duly authorized to execute debt instruments on behalf of the District, although on the date of such 2022 Bond any such person shall not have been such officer of the District.

Only such of the 2022 Bonds as shall bear thereon a certificate of authentication in the form set forth in Exhibit A and Exhibit B, respectively, manually executed by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee shall be conclusive evidence that such 2022 Bonds have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

Section 2.5 Transfer of Bonds. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by a duly authorized attorney of such person, upon surrender of such Bond to the Trustee at its Office for cancellation, accompanied by delivery of a written instrument of transfer in a form approved by the Trustee, duly executed. The Trustee shall collect any tax or other governmental charge on the transfer of any Bonds pursuant to this Section 2.5. Whenever any Bond or Bonds shall be surrendered for transfer, the District shall execute and the Trustee shall authenticate and deliver to the transferee a new Bond or Bonds of like Series, maturity and aggregate principal amount. The Trustee may refuse to transfer, under the provisions of this Section 2.5, any Bonds selected by the Trustee for redemption pursuant to Section 2.3.

**Section 2.6 Exchange of Bonds.** The Bonds may be exchanged at the Office of the Trustee for a like aggregate principal amount of Bonds of other authorized denominations and of the same Series, tenor and maturity. The Trustee shall collect any tax or other governmental charge on the exchange of any Bonds pursuant to this Section 2.6. The Trustee may refuse to exchange, under the provisions of this Section 2.6, any Bonds selected by the Trustee for redemption pursuant to Section 2.3.

**Section 2.7 Registration Books**. The Trustee will keep or cause to be kept, at its Office, sufficient records for the registration and registration of transfer of the Bonds, which shall at all times during normal business hours, and upon reasonable notice, be open to inspection by the District; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Registration Books, Bonds as hereinbefore provided.

Section 2.8 Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the District, at the expense of the Owner of such Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like Series, maturity and tenor in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be canceled by it and delivered to, or upon the order of, the District. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence be satisfactory and indemnity satisfactory to the Trustee shall be given, the District, at the expense of the Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like Series, maturity and tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen. The Trustee may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this Section and of the expenses which may be incurred by the Trustee in connection therewith. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the District whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds issued pursuant to this Indenture.

Notwithstanding any other provision of this Section 2.8, in lieu of delivering a new Bond for which principal has or is about to become due for a Bond which has been mutilated, lost, destroyed or stolen, the Trustee may make payment of such Bond in accordance with its terms upon receipt of indemnity as provided above.

### Section 2.9 Book-Entry System.

(a) <u>Original Delivery</u>. The Bonds shall be initially delivered in the form of a separate single fully registered Bond without coupons (which may be typewritten) for each maturity of the Bonds. Upon initial delivery, the ownership of each such Bond shall be registered on the Registration Books in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Bonds shall be registered in the name of the Nominee on the Registration Books.

With respect to Bonds the ownership of which shall be registered in the name of the Nominee, neither the District nor the Trustee shall have any responsibility or obligation to any Depository System Participant or to any person on behalf of which the Depository System Participant

holds an interest in the Bonds. Without limiting the generality of the immediately preceding sentence, neither the District nor the Trustee shall have any responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any Depository System Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Depository System Participant or any other person, other than an Owner as shown in the Registration Books, of any notice with respect to the Bonds, including any notice of redemption, (iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed in the event the District elects to redeem the Bonds in part, (iv) the payment to any Depository System Participant or any other person, other than an Owner as shown in the Registration Books, of any amount with respect to principal, premium, if any, or interest on the Bonds or (v) any consent given or other action taken by the Depository as Owner of the Bonds. The District and the Trustee may treat and consider the person in whose name each Bond is registered as the absolute owner of such Bond for the purpose of payment of principal, premium and interest on such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers of ownership of such Bond, and for all other purposes whatsoever. The Trustee shall pay the principal of and interest and premium, if any, on the Bonds only to the respective Owners or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to payment of principal of and interest and premium, if any, on the Bonds to the extent of the sum or sums so paid. No person other than an Owner shall receive a Bond evidencing the obligation of the District to make payments of principal, interest and premium, if any, pursuant to this Indenture. Upon delivery by the Depository to the Nominee of written notice to the effect that the Depository has determined to substitute a new nominee in its place, and subject to the provisions herein with respect to Record Dates, such new nominee shall become the Nominee hereunder for all purposes; and upon receipt of such a notice the District shall promptly deliver a copy of the same to the Trustee.

- (b) Representation Letter. In order to qualify the Bonds for the Depository's bookentry system, the District shall execute and deliver to such Depository a letter representing such matters as shall be necessary to so qualify the Bonds. The execution and delivery of such letter shall not in any way limit the provisions of subsection (a) above or in any other way impose upon the District or the Trustee any obligation whatsoever with respect to persons having interests in the Bonds other than the Owners. The Trustee agrees to comply with all provisions in such letter with respect to the giving of notices thereunder by the Trustee. In addition to the execution and delivery of such letter, upon written request of the Depository or the Trustee, the District may take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository's book-entry program.
- (c) <u>Transfers Outside Book-Entry System</u>. In the event that either (i) the Depository determines not to continue to act as Depository for the Bonds, or (ii) the District determines to terminate the Depository as such, then the District shall thereupon discontinue the bookentry system with such Depository. In such event, the Depository shall cooperate with the District and the Trustee in the issuance of replacement Bonds by providing the Trustee with a list showing the interests of the Depository System Participants in the Bonds, and by surrendering the Bonds, registered in the name of the Nominee, to the Trustee on or before the date such replacement Bonds are to be issued. The Depository, by accepting delivery of the Bonds, agrees to be bound by the provisions of this subsection (c). If, prior to the termination of the Depository acting as such, the District fails to identify another Securities Depository to replace the Depository, then the Bonds shall no longer be required to be registered in the Registration Books in the name of the Nominee, but shall be registered in whatever name or names the Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Article II. Prior to its termination, the Depository

shall furnish the Trustee with the names and addresses of the Depository System Participants and respective ownership interests thereof.

- (d) <u>Payments to the Nominee</u>. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments with respect to principal of and interest and premium, if any, on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the letter described in subsection (b) of this Section or as otherwise instructed by the Depository.
- **Section 2.10** Applicability of Provisions to Parity Debt. Unless otherwise provided by a Supplemental Indenture, the provisions of Section 2.3, subsections (c) through (g), and Sections 2.5 through 2.9 shall apply to each series of Parity Debt issued as Bonds under a Supplemental Indenture which supplements and amends this Indenture.

### ARTICLE III

# DEPOSIT AND APPLICATION OF PROCEEDS OF 2022 BONDS; ISSUANCE OF PARITY DEBT

**Section 3.1 Issuance of 2022 Bonds**. Upon the execution and delivery of this Indenture, the District shall execute and deliver the Series A Bonds and the Series B Bonds to the Trustee and, upon receipt of a Request of the District, the Trustee shall authenticate and deliver the Series A Bonds and the Series B Bonds to the Original Purchaser.

### **Section 3.2** Deposit and Application of Proceeds.

(a) the Trustee shall be p		Closing Date, the proceeds of sale of the Series A Bonds received by e Trustee and deposited by the Trustee as follows:	
Costs of Issuance Acc	(i) ount.	The Trustee shall deposit the amount of \$ in the Series A	
	(ii)	The Trustee shall deposit \$ in the Reserve Account.	
deposit by the District	(iii) in the S	The Trustee shall pay to the District the amount of \$ for eries A Account of the Project Fund.	
(b) the Trustee shall be p		Closing Date, the proceeds of sale of the Series B Bonds received by e Trustee and deposited by the Trustee as follows:	
Costs of Issuance Acc	(i) ount.	The Trustee shall deposit the amount of \$ in the Series B	
	(ii)	The Trustee shall deposit \$ in the Reserve Account.	
deposit by the District	(iii) in the S	The Trustee shall pay to the District the amount of \$ for eries B Account of the Project Fund.	

The Trustee may, in its discretion, establish a temporary fund or account in its books and

records to facilitate such transfers.

- Section 3.3 Costs of Issuance Fund. There is hereby established a separate fund to be known as the "Costs of Issuance Fund," and accounts therein known as the "Series A Costs of Issuance Account" and the "Series B Costs of Issuance Account," each of which shall be held by the Trustee in trust. The moneys in the Costs of Issuance Fund shall be used and withdrawn by the Trustee from time to time to pay the Costs of Issuance upon submission of a Request of the District stating (a) the person to whom payment is to be made, (b) the amount to be paid, (c) the purpose for which the obligation was incurred, (d) that such payment is a proper charge against the Costs of Issuance Fund and the applicable Costs of Issuance Account of the related Series, and (e) that such amounts have not been the subject of a prior Request of the District. On the earlier of (i) \_\_\_\_\_\_\_\_\_\_1, 20[23], or (ii) the date of receipt by the Trustee of a Request of the District therefor, all amounts (if any) remaining in the Costs of Issuance Fund shall be withdrawn therefrom by the Trustee and transferred to the District for deposit to the Project Fund. Thereafter, the Costs of Issuance Fund shall be closed.
- **Section 3.4 Project Fund.** There is hereby established a separate fund to be held by the District, to be known as the "Project Fund" and accounts therein to be named the "Series A Account" and the "Series B Account." Amounts on deposit in the Project Fund shall be derived solely from the proceeds of the 2022 Bonds which are deposited therein on the Closing Date and the date on which the Costs of Issuance Fund is closed pursuant to Section 3.3, and from earnings on the investment and reinvestment of such proceeds. The District shall disburse moneys from the Project Fund and accounts therein for the purpose of paying Project Costs.

### Section 3.5 [Reserved].

- **Section 3.6** [Issuance of Parity Debt. In addition to the 2022 Bonds, the District may issue or incur Parity Debt in such principal amount as shall be determined by the District subject to the following specific conditions precedent:
- (a) Upon the issuance of such Parity Debt, there shall have occurred and be continuing no Event of Default (or other event which, once all notice and opportunity to cure have passed, would constitute an Event of Default) unless such default shall be cured upon such issuance.
- (b) The Tax Revenues to be received by the District in each Fiscal Year during the term of the Parity Debt, based on the then current year Tax Revenues, assuming no growth in assessed value, plus at the option of the District the Additional Allowance, as set forth in a Written Certificate of the District filed with the Trustee, shall be equal to \_\_\_\_\_\_% of the sum of Annual Debt Service on all Bonds and Parity Debt. For purposes of this test, Annual Debt Service on any Parity Debt the proceeds of which have been deposited into an escrow fund meeting the requirements of paragraph (e) below will be excluded. This subsection (b) shall not apply to the issuance of Parity Debt issued for the purpose of refunding Bonds or other Parity Debt, if the Annual Debt Service on the refunding Parity Debt will be less in each Bond Year than the Annual Debt Service on the Bonds or other Parity Debt being refunded.
- (c) The Supplemental Indenture providing for the issuance of such Parity Debt shall provide that, except to the extent the 2022 Insurer shall consent in writing to different payment dates, interest thereon shall not be payable on any dates other than March 1 and September 1, and principal thereof shall be payable on September 1 in any year in which principal is payable.
- (d) The Supplemental Indenture providing for the issuance of such Parity Debt shall have been adopted which shall (i) provide for the funding of the Reserve Account or a subaccount

therein in an amount equal to the Reserve Requirement for such Parity Debt and shall specify whether the Reserve Requirement for the series of Parity Debt shall be calculated on a standalone basis or on a combined basis with the 2022 Bonds and/or any other series of Parity Debt; (ii) designate accounts and subaccounts within the Debt Service Fund, including within the Reserve Account, to be used in connection with such Parity Debt; and (iii) set forth such other provisions that are appropriate or necessary and are not inconsistent with the provisions hereof.

- (e) The issuance of such Parity Debt will not cause the District to exceed any applicable Plan Limitations.
- (f) The proceeds of such Parity Debt may be deposited into an escrow fund from which amounts may be released to the District to the extent the Tax Revenues for the most recent Fiscal Year (as evidenced in the written records of the County) and Tax Revenues in each succeeding Fiscal Year during the term of the Parity Debt based on assessed value in the EIFD Project Area for the then current fiscal year as evidenced in a written document from an appropriate official of the County, as projected by an Independent Fiscal Consultant taking into account all Plan Limitations and other factors which would cause a reduction in Tax Revenues in any future Fiscal Year, at least equals \_\_\_\_\_\_% of the Annual Debt Service coming due and payable in the corresponding Fiscal Year on all Bonds and Parity Debt which will be Outstanding following the issuance of such Parity Debt.
- (g) Parity Debt may be issued at a variable rate of interest, provided for purposes of this test such Parity Debt shall be assumed to bear interest at (A) with respect to Tax-Exempt Parity Debt, the most recently published Bond Buyer "Revenue Bond Index" (or comparable index if the Revenue Bond Index is no longer published), or (B) with respect to Parity Debt that is not Tax-Exempt Parity Debt, [index to be inserted].] //OR// [In the event that such Parity Debt shall bear interest at a variable rate for purposes of meeting the requirements of the preceding clause (b) and (d), such Parity Debt shall be assumed to bear interest at a fixed rate equal to the lesser of (i) the maximum rate or rates permitted to be borne by such Parity Debt under the Supplemental Indenture providing for the issuance thereof, or (ii) such lesser rate as may be approved in writing by the 2022 Insurer taking into account payments to be made by third parties pursuant to any Financial Products Agreement, if any.
- (h) The District shall deliver to the Trustee a Certificate of the District (which may be based in part on an opinion of Bond Counsel or other counsel to the District and in part on a Report of an Independent Fiscal Consultant) certifying that the conditions precedent to the issuance of such Parity Debt set forth in the foregoing subsections (a) through (e) and, if applicable, subsections (f) and (g) of this Section 3.6 have been satisfied.]
- **Section 3.7 Issuance of Subordinate Debt**. In addition to the 2022 Bonds and any Parity Debt, from time to time the District may issue or incur Subordinate Debt in such principal amount as shall be determined by the District, provided that the issuance of such Subordinate Debt shall not cause the District to exceed any applicable Plan Limitations.
- **Section 3.8** Validity of Bonds. The validity of the authorization and issuance of the Bonds shall not be dependent upon the completion of the EIFD Project or upon the performance by any person of its obligation with respect to the Infrastructure Financing Plan or the EIFD Project.

### **ARTICLE IV**

### SECURITY OF BONDS; FLOW OF FUNDS; INVESTMENTS

### **Section 4.1 Security of Bonds; Equal Security.**

- (a) The Bonds shall be secured by a first pledge of, lien on, and security interest in, all of the Tax Revenues and all of the moneys on deposit in the Special Fund established and maintained by the District under Section 4.2 hereof. In addition, the Bonds shall be secured by a first and exclusive pledge of, lien on, and security interest in, all of the moneys in the Debt Service Fund, including, but not limited to, the Interest Account, the Principal Account, the Sinking Account, and the Redemption Account (except for the Reserve Account, which shall only secure the 2022 Bonds, and any subaccounts therein created in the future in connection with the issuance of Parity Debt, which subaccounts shall only secure such Parity Debt). Such pledges and liens shall be for the equal security of the Outstanding Bonds without preference or priority for series, issue, number, dated date, sale date, date of execution or date of delivery. Except for the Tax Revenues and such moneys, no funds or properties of the District shall be pledged to, or otherwise liable for, the payment of principal of or interest or redemption premium (if any) on the Bonds. In addition, the 2022 Bonds shall be additionally secured by amounts in the Project Fund (and accounts therein) to the limited extent described in Article VIII hereof.
- (b) THE BONDS ARE NOT A DEBT OF THE CITY OF SAN DIEGO, THE COUNTY OF SAN DIEGO, THE STATE OF CALIFORNIA, OR ANY OF ITS POLITICAL SUBDIVISIONS (OTHER THAN THE DISTRICT), AND NEITHER SAID CITY, SAID COUNTY, SAID STATE, NOR ANY OF ITS POLITICAL SUBDIVISIONS, IS LIABLE THEREON NOR IN ANY EVENT SHALL THE BONDS BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THE TAX REVENUES. THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION.

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

Section 4.2 Special Fund; Deposit of Tax Revenues. There is hereby established a special fund for the Bonds to be known as the "2022 Bonds Special Fund," which shall be held by the District. The District shall deposit all of the Tax Revenues received in any Bond Year in the Special Fund promptly upon receipt thereof by the District, until such time during such Bond Year as the amounts on deposit in the Special Fund equal the aggregate amounts required to be transferred to the Trustee for deposit into the Interest Account, the Principal Account, the Sinking Account, the Redemption Account, and the Reserve Account in such Bond Year pursuant to Section 4.3 and for deposit in such Bond Year into the funds and accounts established with respect to Parity Debt.

All Tax Revenues received by the District during any Bond Year in excess of the amount required to be deposited in the Special Fund during such Bond Year pursuant to the preceding paragraph of this Section 4.2 are available as surplus pursuant to Section 4.3(f) and may be applied by the District for any lawful purposes of the District. Prior to the payment in full of the principal of and interest and redemption premium (if any) on the Bonds, and the payment in full of all other amounts payable hereunder, the District shall not have any beneficial right or interest in the moneys on deposit in the Special Fund, except as may be provided in this Indenture.

- Section 4.3 Debt Service Fund; Transfer of Amounts to Trustee. There is hereby established a special trust fund to be known as the "Debt Service Fund," which shall be held by the Trustee hereunder in trust. Moneys in the Special Fund shall be transferred by the District to the Trustee in the following amounts at the following times, for deposit by the Trustee in the following respective accounts within the Debt Service Fund, which accounts are hereby established with the Trustee, in the following order of priority:
- (a) <u>Interest Account</u>. On or before the fifth (5th) Business Day preceding each date on which interest on the Bonds becomes due and payable, the District shall withdraw from the Special Fund and transfer to the Trustee for deposit in the Interest Account an amount which, when added to the amount then on deposit in the Interest Account, will be equal to the aggregate amount of the interest becoming due and payable on the Outstanding Bonds on such date. All moneys in the Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying the interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity pursuant to this Indenture).
- (b) <u>Principal Account</u>. On or before the fifth (5th) Business Day preceding each date on which principal of the Bonds becomes due and payable at maturity, the District shall withdraw from the Special Fund and transfer to the Trustee for deposit in the Principal Account an amount which, when added to the amount then on deposit in the Principal Account, will be equal to the amount of principal coming due and payable on such date on the Outstanding Bonds. All moneys in the Principal Account shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of the Bonds upon the maturity thereof.
- (c) <u>Sinking Account</u>. On or before the fifth (5th) Business Day preceding each date on which any Outstanding Term Bonds become subject to mandatory Sinking Account redemption, the District shall withdraw from the Special Fund and transfer to the Trustee for deposit in the Sinking Account an amount which, when added to the amount then contained in the Sinking Account, will be equal to the aggregate principal amount of the Term Bonds subject to mandatory Sinking Account redemption on such date. All moneys on deposit in the Sinking Account shall be used and withdrawn by the Trustee for the sole purpose of paying the principal of the Term Bonds as it shall become due and payable upon the mandatory Sinking Account redemption thereof.
- (d) Reserve Account. On or before each Interest Payment Date, the Trustee shall withdraw from the Special Fund and deposit in the Reserve Account (and subaccounts therein established for Parity Debt) an amount of money (if any) which shall be required to maintain in the Reserve Account (and subaccounts therein) the full amount of the applicable Reserve Requirement. All moneys in the Reserve Account (and subaccounts therein) shall be used and withdrawn by the Trustee for the sole purpose of making transfers to the Interest Account, the Principal Account and the Sinking Account, in such order, in the event of any deficiency at any time in any of such accounts or for the retirement of all of the series of Bonds then Outstanding that are secured by the Reserve

Account or applicable subaccount therein or to the Redemption Account in the event an optional or mandatory sinking fund redemption would cause a reduction in the applicable Reserve Requirement. Amounts in the Reserve Account (and subaccounts therein) may also be applied to reimburse the provider of any Qualified Reserve Account Credit Instrument issued with respect to the Bonds secured by the Reserve Account or applicable subaccount therein.

An amount equal to the Reserve Requirement shall be maintained in the Reserve Account (and subaccounts therein) at all times, and any deficiency therein shall be replenished from the first available moneys in the Special Fund following the deposits required by subsections (a), (b), and (c) of this Section 4.3. The amount required to be maintained in the Reserve Account may be increased by any Supplemental Indenture authorizing the issuance of any Parity Debt pursuant to Section 3.6 if such Supplemental Indenture provides for a combined Reserve Requirement for the 2022 Bonds and the applicable series of Parity Debt. Any amounts on deposit in the Reserve Account (and subaccounts therein) at any time in excess of the applicable Reserve Requirement shall be withdrawn from the Reserve Account or applicable subaccount by the Trustee and deposited to the Interest Account.

Anything to the contrary herein notwithstanding, the District may at any time, [with the prior written consent of the 2022 Insurer and] upon delivery to the Trustee of an opinion of Bond Counsel to the effect that neither the release of such funds nor the acceptance of such Qualified Reserve Account Credit Instrument will cause interest on the Series A Bonds or any Tax-Exempt Parity Debt to be included in gross income for purposes of federal income taxation, substitute a Qualified Reserve Account Credit Instrument for cash in the Reserve Account, and upon such substitution, the Trustee shall transfer an amount of money equal to the amount available under the deposited Qualified Reserve Account Credit Instrument from the Reserve Account, at the request of the District, either (i) to the Project Fund to be held by the District as set forth in Section 3.4, or (ii) to the District for deposit into such other funds or accounts as the District shall have established for the financing of the EIFD Project. In the event the District delivers a Qualified Reserve Account Credit Instrument, the Trustee shall hold and apply such instrument pursuant to this Indenture so as to have moneys available thereunder for the purposes and at the times required under this Indenture. Notice of the deposit of a Qualified Reserve Account Credit Instrument shall be given by the District to the Rating Agencies. Upon the expiration of any Qualified Reserve Account Credit Instrument, the District shall be obligated either (i) to replace such Qualified Reserve Account Credit Instrument with a new Qualified Reserve Account Credit Instrument, (ii) to deposit or cause to be deposited with the Trustee an amount of funds equal to the Reserve Requirement, to be derived from the first available Tax Revenues, or (iii) to draw upon the Qualified Reserve Account Credit Instrument an amount of funds equal to the stated amount thereof prior to its expiration.

Pursuant to Section 4.5, the Reserve Account may be maintained in the form of one or more separate sub-accounts which are established for the purpose of holding the proceeds of separate issues of the Bonds in conformity with applicable provisions of the Tax Code.

The initial Reserve Requirement for the 2022 Bonds is \$\_\_\_\_\_\_\_. [On the Closing Date, the Trustee shall cause the 2022 Reserve Policy to be delivered by the 2022 Insurer in a principal amount equal to the Reserve Requirement as of such date. The Reserve Policy shall be held and enforced by the Trustee in accordance with its terms, and shall be treated as a Qualified Reserve Account Credit Instrument for all purposes of this Indenture without regard to the other requirements of this Indenture for the delivery of such instruments. The District will have no obligation to replace the 2022 Reserve Policy or to fund the Reserve Account with cash if, at any time that the 2022 Bonds

are Outstanding, any rating assigned to the 2022 Insurer is downgraded, suspended or withdrawn or amounts are not available under the 2022 Reserve Policy, other than in connection with a draw on the 2022 Reserve Policy.]

The Trustee shall ascertain the necessity for a claim or draw upon the Qualified Reserve Account Credit Instrument and to provide notice to the issuer of the Qualified Reserve Account Credit Instrument in accordance with its terms not later than three days (or such longer period as may be necessary depending on the permitted time period for honoring a draw under the Qualified Reserve Account Credit Instrument) prior to each Interest Payment Date.

Cash, if any, on deposit in the Reserve Account shall be used (or investments purchased with such cash shall be liquidated and the proceeds applied as required) prior to any drawing on any Qualified Reserve Account Credit Instrument. If and to the extent that more than one Qualified Reserve Account Credit Instrument is deposited in the Reserve Account, drawings thereunder and repayments of costs associated therewith shall be made on a pro rata basis, calculated by reference to the maximum amounts available thereunder.

[Provisions regarding 2022 Reserve Policy to come.]

- (e) Redemption Account. On or before the fifth (5th) Business Day preceding any date on which Bonds are subject to redemption (other than mandatory Sinking Account redemption of Term Bonds), the District shall withdraw from the Special Fund and transfer to the Trustee for deposit in the Redemption Account an amount required to pay the principal of and premium, if any, on the Bonds to be so redeemed on such date. All moneys in the Redemption Account shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of and premium, if any, on the Bonds upon the redemption thereof, on the date set for such redemption.
- (f) <u>Surplus</u>. The District shall not be obligated to deposit or cause to be deposited in the Special Fund in any Bond Year an amount of Tax Revenues which, together with other available amounts in the Special Fund, exceeds the amounts required to be deposited into the Interest Account, the Principal Account, the Sinking Account, the Redemption Account and the Reserve Account in such Bond Year pursuant to this Section 4.3. Once such amount of Tax Revenues has been deposited in the Special Fund in any Bond Year, the remaining Tax Revenues received in such Bond Year shall be deemed surplus and shall be retained by or transferred to the District to be used for any lawful purpose under the EIFD Law.
- Section 4.4 Rebate Fund. The Trustee shall establish a separate fund designated the "Rebate Fund." Absent an opinion of Bond Counsel that the exclusion from gross income for federal income tax purposes of interest on the Series A Bonds and any Tax-Exempt Parity Debt will not be adversely affected, the District shall cause to be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to this Section and the Tax Certificate. All money at any time deposited in the Rebate Fund shall be held by the Trustee in trust, for payment to the United States Treasury. All amounts on deposit in the Rebate Fund shall be governed by this Section and the Tax Certificate, unless the District obtains and delivers to the Trustee an opinion of Bond Counsel that the exclusion from gross income of interest on the Series A Bonds and any Tax-Exempt Parity Debt will not be adversely affected for federal income tax purposes if such requirements are not satisfied. Notwithstanding anything to the contrary contained herein or in the Tax Certificate, the Trustee shall be deemed conclusively to have complied with the provisions of this Section and the Tax Certificate if the Trustee follows the directions of the District, and the Trustee shall have no independent

responsibility to or liability resulting from failure of the Trustee to enforce compliance by the District with the Tax Certificate or the provisions of this Section.

### (a) <u>Excess Investment Earnings</u>.

- (i) <u>Computation</u>. Within 55 days of the end of each fifth Bond Year with respect to the Series A Bonds and any Tax-Exempt Parity Debt, the District shall calculate or cause to be calculated the amount of rebatable arbitrage, in accordance with Section 148(f)(2) of the Tax Code and Section 1.148-3 of the Treasury Regulations (taking into account any applicable exceptions with respect to the computation of the rebatable arbitrage, described, if applicable, in the Tax Certificate (e.g. the temporary investments exception of Section 148(f)(4)(B) and the construction expenditure exception of Section 148(f)(4)(C) of the Tax Code), for this purpose treating the last day of the applicable Bond Year as a computation date, within the meaning of Section 1.148-1(b) of the Treasury Regulations (the "Rebatable Arbitrage"). The District shall obtain expert advice as to the amount of the Rebatable Arbitrage to comply with this Section.
- (ii) <u>Transfer</u>. Within 55 days of the end of each fifth Bond Year with respect to the Series A Bonds and any Tax-Exempt Parity Debt, upon the Department of Finance Director's written direction, an amount shall be deposited to the Rebate Fund by the District from any legally available funds, which may include transfer thereto from other funds and accounts established herein upon and pursuant to instruction of the District to the Trustee (and provided that such transfer is permitted by the terms hereof applicable to such other fund or account), so that the balance in the Rebate Fund shall equal the amount of Rebatable Arbitrage so calculated in accordance with clause (i) of this Section 4.4(a). In the event that immediately following the deposit or transfer required by the previous sentence, the amount then on deposit to the credit of the Rebate Fund exceeds the amount required to be on deposit therein, upon written instructions from the Department of Finance Director, the Trustee shall withdraw the excess from the Rebate Fund and then credit the excess to the Debt Service Fund.
- (iii) <u>Payment to the Treasury</u>. The District shall direct the Trustee in writing to pay to the United States Treasury, out of amounts in the Rebate Fund.
- (X) Not later than 60 days after the end of (A) the fifth Bond Year with respect to the Series A Bonds and any Tax-Exempt Parity Debt, and (B) each applicable fifth Bond Year thereafter, an amount equal to at least 90% of the Rebatable Arbitrage calculated as of the end of such Bond Year; and
- (Y) Not later than 60 days after the payment of all the Series A Bonds and any Tax-Exempt Parity Debt, an amount equal to 100% of the Rebatable Arbitrage calculated as of the end of such applicable Bond Year, and any income attributable to the Rebatable Arbitrage, computed in accordance with Section 148(f) of the Tax Code.

In the event that, prior to the time of any payment required to be made from the Rebate Fund, the amount in the Rebate Fund is not sufficient to make such payment when such payment is due, the District shall calculate or cause to be calculated the amount of such deficiency and deposit an amount received from any legally available source, including the other funds and accounts established herein, equal to such deficiency in the Rebate Fund prior to the time such payment is due. Each payment required to be made pursuant to this Section 4.4(a)(iii) shall be made to the Internal Revenue Service Center, Ogden, Utah 84201 on or before the date on which such payment is due, and shall be

accompanied by Internal Revenue Service Form 8038-T prepared by the District, or shall be made in such other manner as provided under the Tax Code.

- (b) <u>Disposition of Unexpended Funds</u>. Any funds remaining in the Rebate Fund after redemption and payment of the Series A Bonds and any Tax-Exempt Parity Debt and the payments described in Section 4.4(a)(iii), shall be transferred by the Trustee to the District at the written direction of the District and utilized in any manner by the District.
- (c) <u>Survival of Defeasance</u>. Notwithstanding anything in this Section 4.4 or this Indenture to the contrary, the obligation to comply with the requirements of this Section shall survive the defeasance of the Series A Bonds and any Tax-Exempt Parity Debt.
- (d) <u>Trustee Responsible</u>. The Trustee shall have no obligations or responsibilities under this Section other than to follow the written directions of the District. The Trustee shall have no responsibility to make any calculations of rebate or to independently review or verify such calculations.
- Section 4.5 Establishment of Sub-Accounts For Separate Series of Bonds. If directed in writing by the District, the Trustee shall establish and maintain a separate sub-account within each of the Interest Account, the Principal Account, the Sinking Account, the Reserve Account and the Rebate Account, for each separate series of Bonds. In such event, proceeds of sale of any series of Parity Debt, and amounts required to be held for the payment or security of any series of Parity Debt, shall be held solely in the respective sub-accounts established for such series of Parity Debt and shall not be commingled with amounts held in the respective sub-accounts established for any other series of Bonds. For all purposes of this Indenture the sub-accounts established within any account shall be accounted for as a part of such account.
- **Section 4.6** Investment of Moneys in Funds and Accounts. Moneys in the Debt Service Fund and the accounts therein (other than the Reserve Account) and the Costs of Issuance Fund shall be invested and reinvested by the Trustee in Permitted Investments, provided that such investments mature by their terms prior to the date on which such moneys are required to be paid out hereunder.

Moneys in the Reserve Account shall be invested by the Trustee solely in Permitted Investments (i) having a maturity not greater than 5 years or beyond the date it is anticipated that such moneys will be needed, whichever comes first or (ii) an investment agreement, repurchase agreement or forward delivery agreement which permits withdrawals or deposits without penalty at such time as such moneys will be needed or in order to replenish the Reserve Account. Such investments shall be made in specific investments meeting the requirements of this Section as directed in writing by Request of the District (such written request to be received by 12:00 noon two (2) Business Days prior to such investment) or, in the absence of such written direction, by the Trustee in Permitted Investments described in clause (10) of the definition thereof. The Trustee shall not be liable to the District or the City in acting in accordance with this Section or the District's direction.

Moneys in the Special Fund shall be invested as directed by the District by its Treasurer in any legal investment for District funds.

Moneys in the Project Fund shall be invested by the District in any legal investments for District funds, including but not limited to, Permitted Investments.

Any or all interest or gain received from such investments of moneys in any Fund or Account shall be deposited by the Trustee in the respective Fund or Account and any loss incurred in connection with such investments shall be debited against the Fund or Account from which the investment was made. The Trustee shall have no liability or responsibility for any loss resulting from any investment made in accordance with the provisions of this Section 4.6. The Trustee or its affiliates may act as principal or agent in the making or disposing of any investment and may also act as sponsor, advisor or manager in connection with any investments. For investment purposes, the Trustee may commingle the funds and accounts established hereunder but shall separately account for the amounts in such funds and accounts.

The District acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the District the right to receive brokerage confirmations of security transactions as they occur, the District will not receive such confirmations to the extent permitted by law. The Trustee will furnish the District periodic cash transaction statements which include detail for all investment transactions made by the Trustee hereunder.

**Section 4.7** Valuation and Disposition of Investments. For the purpose of determining the amount in any fund or account established under this Indenture, the value of investments credited to such fund shall be calculated at least semiannually (not later than January 1 and July 1 in each year) at the Value thereof. Notwithstanding anything to the contrary herein, in making any valuations of investments hereunder, the Trustee may utilize computerized securities pricing services that may be available to it, including those available through its regular accounting system, and rely thereon.

### ARTICLE V

### OTHER COVENANTS OF THE DISTRICT

**Section 5.1 Punctual Payment**. The District shall punctually pay or cause to be paid the principal, premium (if any) and interest to become due in respect of all the Bonds in strict conformity with the terms of the Bonds and of this Indenture. The District shall faithfully observe and perform all of the conditions, covenants and requirements of this Indenture. Nothing herein contained shall prevent the District from making advances of its own moneys howsoever derived to any of the uses or purposes referred to herein.

**Section 5.2 Limitation on Additional Indebtedness.** The District hereby covenants that it shall not issue any bonds, notes or other obligations, enter into any agreement or otherwise incur any indebtedness, which is in any case payable from all or any part of the Tax Revenues, excepting only the 2022 Bonds (including certain obligations to the 2022 Insurer or the provider of a Qualified Reserve Account Credit Instrument hereunder), any Parity Debt, any Subordinate Debt, and any obligations entered into pursuant to Section 5.10.

Section 5.3 Compliance With Plan Limitations. The District hereby covenants that it shall not issue any bonds, notes or other obligations, enter into any agreement or otherwise incur any indebtedness, which is in any case payable from all or any part of the Tax Revenues, excepting only the 2022 Bonds (including certain obligations to the 2022 Insurer or the provider of a Qualified Reserve Account Credit Instrument hereunder), any Parity Debt, any Subordinate Debt, and any obligations entered into pursuant to Section 5.10. The District shall take no action, including but not limited to the issuance of its bonds, notes or other obligations, which causes or which, with the passage of time would cause, any of the Plan Limitations to be exceeded or violated. The District shall manage its fiscal

affairs in a manner which ensures that it will have sufficient Tax Revenues available under the Plan Limitation described in clause (a) of the definition thereof (the "Increment Limit") in the amounts and at the times required to enable the District to pay the principal of and interest and premium (if any) on the Bonds when due. The District hereby agrees that the aggregate amount of Annual Debt Service remaining to be paid on all outstanding Bonds payable from Tax Revenues shall at no time exceed 95% of the aggregate amount of Tax Revenues which the District is permitted to receive under the Increment Limit. In the event that the aggregate amount of such Annual Debt Service at any time equals or exceeds 95% of Tax Revenues which the District is permitted to receive under the Increment Limit, [(a) the District shall promptly notify the 2022 Insurer of such fact in writing, (b)] all Tax Revenues thereafter received by the District shall immediately be deposited with the Trustee and deposited by the Trustee into the Debt Service Fund to be applied for the sole purpose of paying the principal of and interest on the Bonds (including redemption thereof pursuant to this Indenture and any Supplemental Indenture, as applicable), notwithstanding anything herein to the contrary, and (c) not later than July 1 of each succeeding Fiscal Year, the District shall cause to be prepared an accounting which shows the aggregate amount of Annual Debt Service remaining to be paid on all outstanding Bonds payable from Tax Revenues, and the amount of Tax Revenues which the District is permitted to receive under the Increment Limit and has not yet received.

Section 5.4 Extension of Payment of Bonds. The District shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase of such Bonds or by any other arrangement, and in case the maturity of any of the Bonds or the time of payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Outstanding Bonds and of all claims for interest thereon which shall not have been so extended. Nothing in this Section shall be deemed to limit the right of the District to issue bonds for the purpose of refunding any Outstanding Bonds, and such issuance shall not be deemed to constitute an extension of maturity of the Bonds.

**Section 5.5 Payment of Claims**. The District shall pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the properties owned by the District or upon the Tax Revenues or any part thereof, or upon any funds held by the Trustee pursuant hereto, or which might impair the security of the Bonds. Nothing herein contained shall require the District to make any such payment so long as the District in good faith shall contest the validity of said claims.

**Section 5.6 Books and Accounts.** The District shall keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the EIFD Project Area, the Tax Revenues and the Special Fund. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Owners of not less than ten percent (10%) in aggregate principal amount of the Bonds then Outstanding, or their representatives authorized in writing.

**Section 5.7 Protection of Security and Rights of Owners**. The District will preserve and protect the security of the Bonds and the rights of the Owners. From and after the date of issuance of any Bonds, such Bonds shall be incontestable by the District.

Section 5.8 Payments of Taxes and Other Charges. The District will pay and discharge, or cause to be paid and discharged, all taxes, service charges, assessments and other governmental charges which may hereafter be lawfully imposed upon the District or the properties then owned by the District in the EIFD Project Area, when the same shall become due. Nothing herein contained shall require the District to make any such payment so long as the District in good faith shall contest the validity of said taxes, assessments or charges. The District will duly observe and conform with all valid requirements of any governmental authority relative to the EIFD Project Area or any part thereof.

### Section 5.9 Reserved.

Section 5.10 Maintenance of Tax Revenues. The District shall comply with all requirements of the EIFD Law and the Infrastructure Financing Plan to insure the allocation and payment to it of the Tax Revenues. The District will not amend the Infrastructure Financing Plan in any manner which is likely to have the effect of reducing the amount of Tax Revenues otherwise available to the District for payment of the Bonds as determined by the District unless the District first obtains the report of an Independent Fiscal Consultant stating that, as of the effective date of such amendment, with respect to all Outstanding Bonds, the conditions precedent to the issuance of Parity Debt set forth in Section 3.6(b) and (e) would be met. The District will not enter into any agreement with the City, the County, or any other governmental entity, which would have the effect of reducing the amount of Tax Revenues otherwise available to the District for payment of the Bonds, unless the requirements of this Section 5.10 are met (treating such agreement or amendment as if it were an amendment to the Infrastructure Financing Plan); provided that nothing in this Section shall prevent the District from issuing or incurring Subordinate Debt.

# Section 5.11 Tax Covenants Relating to Series A Bonds and Tax-Exempt Parity Debt. In connection with the Series A Bonds, the District covenants and agrees to contest by court action or otherwise any assertion by the United States of America or any departments or agency thereof that the interest received by the Owners is includable in gross income of the recipient under federal income tax laws on the date of issuance of the Series A Bonds. Notwithstanding any other provision of this Indenture, absent an opinion of Bond Counsel that the exclusion from gross income of interest with respect to the Series A Bonds and Parity Debt the interest on which is intended to be excluded from gross income for federal tax purposes ("Tax-Exempt Parity Debt") will not be adversely affected for federal income tax purposes, the District covenants to comply with all applicable requirements of the Tax Code necessary to preserve such exclusion from gross income and specifically covenants, without limiting the generality of the foregoing, as follows:

- (a) <u>Private Activity</u>. The District will take no action or refrain from taking any action or make any use of the proceeds of the Series A Bonds or Tax-Exempt Parity Debt or of any other monies or property which would cause the Series A Bonds or Tax-Exempt Parity Debt to be "private activity bonds" within the meaning of Section 141 of the Tax Code;
- (b) <u>Arbitrage</u>. The District will make no use of the proceeds of the Series A Bonds or Tax-Exempt Parity Debt or of any other amounts or property, regardless of the source, or take any action or refrain from taking any action which will cause the Series A Bonds or Tax-Exempt Parity Debt to be "arbitrage bonds" within the meaning of Section 148 of the Tax Code;
- (c) <u>Federal Guaranty</u>. The District will make no use of the proceeds of the Series A Bonds or Tax-Exempt Parity or take or omit to take any action that would cause the Series A Bonds

or Tax-Exempt Parity Debt to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code;

- (d) <u>Information Reporting</u>. The District will take or cause to be taken all necessary action to comply with the informational reporting requirement of Section 149(e) of the Tax Code;
- (e) <u>Hedge Bonds</u>. The District will make no use of the proceeds of the Series A Bonds or Tax-Exempt Parity Debt or any other amounts or property, regardless of the source, or take any action or refrain from taking any action that would cause either any 2022 Bonds or Tax-Exempt Parity Debt to be considered "hedge bonds" within the meaning of Section 149(g) of the Tax Code unless the District takes all necessary action to assure compliance with the requirements of Section 149(g) of the Tax Code to maintain the exclusion from gross income of interest on the Series A Bonds and Tax-Exempt Parity Debt for federal income tax purposes; and
- (f) <u>Miscellaneous</u>. The District will take no action or refrain from taking any action inconsistent with its expectations stated in that certain Tax Certificate executed by the District in connection with each issuance of Series A Bonds and Tax-Exempt Parity Debt and will comply with the covenants and requirements stated therein and incorporated by reference herein.
- **Section 5.12 Further Assurances**. The District will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture, and for the better assuring and confirming unto the Trustee and the Owners the rights and benefits provided in this Indenture.
- Section 5.13 Continuing Disclosure Certificate. The District hereby covenants and agrees that it will comply with and carry out all of its obligations under the Continuing Disclosure Certificate to be executed and delivered by the District in connection with the issuance of the 2022 Bonds. Notwithstanding any other provision of this Indenture, failure of the District to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default; however, any Owner or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District to comply with its obligations under this Section 5.13. For purposes of this Section, "Beneficial Owner" means any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any 2022 Bonds (including persons holding 2022 Bonds through nominees, depositories or other intermediaries).

### **ARTICLE VI**

### THE TRUSTEE

### **Section 6.1 Duties, Immunities and Liabilities of Trustee.**

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

- (b) The District may remove the Trustee at any time, unless an Event of Default shall have occurred and then be continuing, and shall remove the Trustee (i) if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing), or (ii) if at any time the Trustee shall cease to be eligible in accordance with subsection (e) of this Section, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation. In each case such removal shall be accomplished by the giving of 30 days' written notice of such removal by the District to the Trustee, whereupon the District shall appoint a successor Trustee by an instrument in writing and shall notify the 2022 Insurer pursuant to Section 9.13.
- (c) The Trustee may at any time resign by giving written notice of such resignation to the District, and by giving the Owners notice of such resignation by first class mail, postage prepaid, at their respective addresses shown on the Registration Books. Upon receiving such notice of resignation, the District shall promptly appoint a successor Trustee by an instrument in writing and shall notify the 2022 Insurer pursuant to Section 9.13.
- Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. If no successor Trustee shall have been appointed and have accepted appointment within forty-five (45) days following giving notice of removal or notice of resignation as aforesaid, the resigning Trustee or any Owner (on behalf of himself and all other Owners) may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture shall signify its acceptance of such appointment by executing and delivering to the District and to its predecessor Trustee a written acceptance thereof, and to the predecessor Trustee an instrument indemnifying the predecessor Trustee for any costs or claims arising during the time the successor Trustee serves as Trustee hereunder, and after payment by the District of all unpaid fees and expenses of the predecessor Trustee, such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless, upon the receipt by the predecessor Trustee of the Request of the District or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the District shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confining to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the District shall mail or cause the successor Trustee to mail, by first class mail postage prepaid, a notice of the succession of such Trustee to the trusts hereunder to the 2022 Insurer, the Rating Agency and the Owners at the addresses shown on the Registration Books. If the District fails to mail such notice within fifteen (15) days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the District.

- (e) Any Trustee appointed under the provisions of this Section in succession to the Trustee shall be a trust company, association or bank having the powers of a trust company, or authorized to exercise trust powers within the State, having or in the case of an association, corporation or trust company included in a banking holding company system, the related bank holding company shall have a combined capital and surplus of at least Seventy-Five Million Dollars (\$75,000,000), subject to supervision or examination by federal or state authority. If such bank, association or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this subsection the combined capital and surplus of such bank, association or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this subsection (e), the Trustee shall resign immediately in the manner and with the effect specified in this Section.
- (f) Notwithstanding any other provision of this Indenture, no removal, resignation or termination of the Trustee shall take effect until a successor shall be appointed in accordance with this Section.
- (g) Notwithstanding any other provision of this Indenture, in determining whether the rights of the Owners will be adversely affected by any action taken pursuant to the terms and provisions of this Indenture, the Trustee shall consider the effect on the Owners as if there were no 2022 Bond Insurance Policy.
- **Section 6.2 Merger or Consolidation**. Any bank, association or trust company into which the Trustee may be merged or converted or with which either of them may be consolidated or any bank or trust company resulting from any merger, conversion or consolidation to which it shall be a party or any bank, association or trust company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such bank, association or trust company shall be eligible under subsection (e) of Section 6.1, shall be the successor to such Trustee without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

# Section 6.3 Liability of Trustee.

- (a) The recitals of facts herein and in the Bonds contained shall be taken as statements of the District, and the Trustee shall not assume responsibility for the correctness of the same, nor make any representations as to the validity or sufficiency of this Indenture or of the Bonds nor shall incur any responsibility in respect thereof, other than as expressly stated herein. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own gross negligence or willful misconduct. The Trustee shall not be liable for the acts of any agents of the Trustee selected by it with due care. The Trustee may become the Owner of any Bonds with the same rights it would have if they were not Trustee and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of the Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.
- (b) The Trustee shall not be liable for any error of judgment made by a responsible officer.

- (c) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.
- (d) The Trustee shall not be liable for any action taken by it and believed by it to be authorized or within the discretion or rights or powers conferred on it by this Indenture, except for actions arising from the negligence or willful misconduct of the Trustee. The permissive right of the Trustee to do things enumerated hereunder shall not be construed as a mandatory duty.
- (e) The Trustee shall not be deemed to have knowledge of any Event of Default hereunder unless and until it shall have actual knowledge thereof, or shall have received written notice thereof at its Office. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants or agreements herein or of any of the documents executed in connection with the Bonds, or as to the existence of an Event of Default hereunder or thereunder.
- (f) No provision in this Indenture shall require the Trustee to risk or expend its own funds or otherwise incur any financial liability hereunder. Before taking action under Article VIII hereof, the Trustee may require indemnity satisfactory to the Trustee be furnished to it to protect it against all fees and expenses, including those of its attorneys and advisors, and protect it against all liability it may incur.
- (g) The Trustee shall have no responsibility or liability with respect to any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the 2022 Bonds.
- (h) The immunities extended to the Trustee shall also extend to its officers, directors, employees and agents.
- (i) The Trustee shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay ("unavoidable delay") in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Trustee.
- (j) The Trustee agrees to accept and act upon facsimile transmission of written instructions and/or directions pursuant to this Indenture provided, however, that: (i) subsequent to such facsimile transmission of written instructions and/or directions the Trustee shall forthwith receive the originally executed instructions and/or directions, (ii) such originally executed instructions and/or directions shall be signed by a person as may be designated and authorized to sign for the party

signing such instructions and/or directions, and (iii) the Trustee shall have received a current incumbency certificate containing the specimen signature of such designated person.

**Section 6.4 Right to Rely on Documents**. The Trustee shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, facsimile transmission, electronic mail or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties, in the absence of negligence or willful misconduct by the Trustee. The Trustee may consult with counsel, including, without limitation, Bond Counsel or other counsel of or to the District, with regard to legal questions, and in the absence of gross negligence or willful misconduct by the Trustee the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Trustee hereunder in accordance therewith.

Whenever in the administration of the trusts imposed upon it by this Indenture, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Certificate of the District, which shall be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such Certificate, but in its discretion the Trustee may (but shall have no duty to), in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable. The Trustee may conclusively rely on any certificate or Report of any Independent Accountant or Independent Fiscal Consultant appointed by the District.

**Section 6.5** Preservation and Inspection of Documents. All documents received by the Trustee under the provisions of this Indenture shall be retained in its possession and shall be subject during normal business hours, and upon reasonable prior written notice, to the inspection of the District and any Owner, and their agents and representatives duly authorized in writing.

**Section 6.6** Compensation and Indemnification. The District shall pay to the Trustee from time to time compensation for all services rendered under this Indenture and also all expenses, charges, legal and consulting fees and other disbursements and those of its attorneys, agents and employees, incurred in and about the performance of its powers and duties under this Indenture pursuant to an District approved fee letter. Upon the occurrence of an Event of Default, the Trustee shall have a first lien on the Tax Revenues and all funds and accounts held by the Trustee hereunder to secure the payment to the Trustee of all reasonable fees, costs and expenses, including compensation to its experts, attorneys and counsel incurred in declaring such Event of Default and in exercising the rights and remedies set forth in Article VIII.

The District further covenants and agrees to indemnify and save the Trustee and its officers, directors, agents and employees, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise and performance of its powers and duties hereunder, including the costs and expenses of defending against any claim of liability and of enforcing any remedies hereunder and under any related documents, but excluding any and all losses, expenses and liabilities which are due to the negligence or willful misconduct of the Trustee, its officers, directors, agents or employees. The obligations of the District under this Section 6.6 shall survive resignation or removal of the Trustee under this Indenture and payment of the Bonds and discharge of this Indenture.

Section 6.7 Accounting Records and Financial Statements. The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with

corporate trust industry standards, in which complete and accurate entries shall be made of all transactions made by it relating to the proceeds of the Bonds and all funds and accounts established and held by the Trustee pursuant to this Indenture. Such books of record and account shall be available for inspection by the District at reasonable hours, during regular business hours, with reasonable prior notice and under reasonable circumstances. The Trustee shall furnish to the District, at least monthly, an accounting (which may be in the form of its customary statements) of all transactions relating to the proceeds of the Bonds and all funds and accounts held by the Trustee pursuant to this Indenture, provided that the Trustee shall not be obligated to deliver an accounting for any Fund or Account that (a) has a zero balance and (b) has not had any activity since the last report date.

Section 6.8 Appointment of Co-Trustee or Agent. It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of the State) denying or restricting the right of national banking associations or associations to transact business as Trustee in such jurisdiction. It is recognized that in the case of litigation under this Indenture, and in particular in case of the enforcement of the rights of the Trustee on default, or in the case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate co-Trustee. The following provisions of this Section 6.8 are adopted to these ends.

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

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

The Trustee may perform any of its obligations or duties hereunder and under any related documents through agents or attorneys and shall not be responsible for the acts of any such agents or attorneys appointed by it with due care.

### ARTICLE VII

### MODIFICATION OR AMENDMENT OF THIS INDENTURE

Section 7.1 Amendment With or Without the Consent of Owners. This Indenture and the rights and obligations of the District and of the Owners may be modified or amended at any time by a Supplemental Indenture which shall become binding upon adoption, but without the consent of

any Owners or the 2022 Insurer, to the extent permitted by law and only for any one or more of the following purposes -

- (a) to add to the covenants and agreements of the District contained in this Indenture, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the District, or
- (b) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Indenture, or in any other respect whatsoever as the District may deem necessary or desirable, provided under any circumstances that such modifications or amendments shall not materially adversely affect the interests of the Owners;
- (c) to provide for the delivery of a Qualified Reserve Account Credit Instrument meeting the requirements of this Indenture;
- (d) to provide for the issuance of Parity Debt pursuant to Section 3.6, and to provide the terms and conditions under which such Parity Debt may be issued, including but not limited to the establishment of special funds and accounts relating thereto and any other provisions relating solely thereto, subject to and in accordance with the provisions of Section 3.6; or
- (e) to amend any provision hereof relating to the requirements of or compliance with the Tax Code, to any extent whatsoever but only if and to the extent such amendment will not adversely affect the exclusion from gross income of interest on the Series A Bonds or any Tax-Exempt Parity Debt for federal income tax purposes, in the opinion of Bond Counsel.

Except as set forth in the preceding paragraph, this Indenture and the rights and obligations of the District and of the Owners may be modified or amended at any time by a Supplemental Indenture which shall become binding when the written consents of the [2022 Insurer (so long as the 2022 Bonds are Outstanding and the 2022 Insurer is not in default under the 2022 Bond Insurance Policy)] and the Owners of a majority in aggregate principal amount of the Bonds then Outstanding are delivered to the Trustee. The 2022 Insurer shall be deemed to be the sole Owner of the 2022 Bonds for purposes of such consent. No such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the District to pay the principal, interest or redemption premium (if any) at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of the Owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification, or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee.

Section 7.2 Effect of Supplemental Indenture. From and after the time any Supplemental Indenture becomes effective pursuant to this Article VII, this Indenture shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and all Owners, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

- Section 7.3 Endorsement or Replacement of Bonds After Amendment. After the effective date of any amendment or modification hereof pursuant to this Article VII, the District may determine that any or all of the Bonds shall bear a notation, by endorsement in form approved by the District, as to such amendment or modification and in that case upon demand of the District the Owners of such Bonds shall present such Bonds for that purpose at the Office of the Trustee, and thereupon a suitable notation as to such action shall be made on such Bonds. In lieu of such notation, the District may determine that new Bonds shall be prepared and executed in exchange for any or all of the Bonds and in that case upon demand of the District the Owners of the Bonds shall present such Bonds for exchange at the Office of the Trustee, without cost to such Owners.
- **Section 7.4** Amendment by Mutual Consent. The provisions of this Article VII shall not prevent any Owner from accepting any amendment as to the particular Bond held by such Owner, provided that due notation thereof is made on such Bond.
- **Section 7.5 Trustee's Reliance**. The Trustee may rely, and shall be protected in relying, upon a Certificate of the District and an opinion of counsel stating that all requirements of this Indenture relating to the amendment or modification hereof have been satisfied and that such amendments or modifications do not materially adversely affect the interests of the Owners.
- **Section 7.6 Notice to Rating Agency**. Upon the execution and delivery of any Supplemental Indenture pursuant to this Article VII, the District shall deliver or cause to be delivered to the Rating Agency (a) a copy of such Supplemental Indenture, as executed by the parties thereto, (b) a full transcript of all proceedings relating to the execution of such Supplemental Indenture, and (c) any other proceedings with respect to such Supplemental Indenture as shall be requested by the Rating Agency.

### **ARTICLE VIII**

# **EVENTS OF DEFAULT AND REMEDIES**

- Section 8.1 Events of Default and Acceleration of Maturities. The following events shall constitute Events of Default hereunder:
- (a) Failure to pay any installment of the principal of any Bonds when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, by acceleration, or otherwise.
- (b) Failure to pay any installment of interest on any Bonds when and as the same shall become due and payable.
- (c) Failure by the District to observe and perform any of the other covenants, agreements or conditions on its part contained in this Indenture or in the Bonds, if such failure shall have continued for a period of sixty (60) days after written notice thereof, specifying such failure and requiring the same to be remedied, shall have been given to the District by the Trustee or the 2022 Insurer, provided, however, if in the reasonable opinion of the District the failure stated in the notice can be corrected, but not within such sixty (60) day period, such failure shall not constitute an Event of Default if corrective action is instituted by the District within such sixty (60) day period and the District shall thereafter diligently and in good faith cure such failure in a reasonable period of time;

provided further, however, that such period may not extend beyond a total of sixty (60) days without the prior written consent of the 2022 Insurer.

(d) The District shall commence a voluntary case under Title 11 of the United States Code or any substitute or successor statute.

If an Event of Default has occurred and is continuing the Trustee may, subject to the 2022 Insurer's rights under Section 9.13, and shall at the direction of the Owners of a majority in aggregate principal amount of all the Bonds then Outstanding, (a) declare the principal of the Bonds, together with the accrued interest thereon, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything in this Indenture or in the Bonds to the contrary notwithstanding, and (b) exercise any other remedies available to the Trustee and the Owners in law or at equity, including suit for specific performance or mandamus. Any payments made by the 2022 Insurer under the 2022 Bond Insurance Policy shall not be deemed payments on the Bonds for the purpose of determining whether an Event of Default has occurred. Upon the occurrence of an Event of Default specified in Section 8.1(a) or (b) above, to the extent there are no other available funds held by the Trustee pursuant to this Indenture and unless the 2022 Insurer directs otherwise, any funds remaining in the Project Fund, and all accounts thereunder, shall be used to cure such default. [Notwithstanding anything to the contrary in this Section 8.1, any acceleration of the Bonds or any annulment thereof shall be subject to the prior written consent of the 2022 Insurer for as long as the 2022 Bond Insurance Policy remains in effect, provided that the 2022 Insurer has not failed to comply with its payment obligations under the 2022 Bond Insurance Policy.]

Immediately upon becoming aware of the occurrence of an Event of Default described in the preceding clauses (a) or (b), and within thirty (30) days of becoming aware of the occurrence of an Event of Default described in the preceding clauses (c) or (d) (including by reason of notice thereof by the 2022 Insurer), the Trustee shall give notice of such Event of Default to the District and the 2022 Insurer by telephone, promptly confirmed in writing. Such notice shall also state whether the principal of the Bonds shall have been declared to be or have immediately become due and payable. With respect to any Event of Default described in clauses (a) or (b) above the Trustee shall, and with respect to any Event of Default described in clauses (c) or (d) above the Trustee in its sole discretion may, also give such notice to the Owners in the same manner as provided herein for notices of redemption of the Bonds, which shall include the statement that interest on the Bonds shall cease to accrue from and after the date, if any, on which the Trustee shall have declared the Bonds to become due and payable pursuant to the preceding paragraph (but only to the extent that principal and accrued, but unpaid, interest on the Bonds is actually paid on such date).

This provision, however, is subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the District shall deposit with the Trustee a sum sufficient to pay all principal on the Bonds matured prior to such declaration and all matured installments of interest (if any) upon all the Bonds, with interest on such overdue installments of principal and interest (to the extent permitted by law) at the net effective rate then borne by the Outstanding Bonds, and the fees and expenses of the Trustee, including any fees and expenses of its attorneys, and any and all other defaults known to the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall have been made therefor, then, and in every such case, the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, by written notice to the District and to the Trustee,

may, on behalf of the Owners of all of the Bonds, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

- **Section 8.2** Application of Funds Upon Acceleration. All of the Tax Revenues and all sums in the funds and accounts established and held by the Trustee hereunder upon the date of the declaration of acceleration as provided in Section 8.1, and all sums thereafter received by the Trustee hereunder, shall be applied by the Trustee as follows and in the following order:
- (a) To the payment of any fees, costs and expenses incurred by the Trustee to protect the interests of the Owners of the Bonds; payment of the fees, costs and expenses of the Trustee (including fees and expenses of its counsel) incurred in and about the performance of its powers and duties under this Indenture and the payment of all fees, costs and expenses owing to the Trustee pursuant to Section 6.6 hereof;
- (b) To the payment of the whole amount then owing and unpaid upon the Bonds for interest and principal with interest on such overdue amounts at the respective rates of interest borne by the Outstanding Bonds, and in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid upon the Bonds, then to the payment of such interest, principal and interest on overdue amounts without preference or priority among such interest, principal and interest on overdue amounts ratably to the aggregate of such interest, principal and interest on overdue amounts.
- (c) To the payment of any amounts owing to the 2022 Insurer or any insurer of Parity Debt, and in case such moneys shall be insufficient to pay in full the amount so owing to the 2022 Insurer and the insurers of Parity Debt, then to the payment of such amount on a pro rata basis.
- (d) To the Reserve Account, to restore the balance thereof to the amount of the Reserve Requirement.
- Section 8.3 Power of Trustee to Control Proceedings. In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or at the direction of the Owners of a majority in principal amount of the Bonds then Outstanding, it shall have full power, in the exercise of its discretion for the best interests of the Owners of the Bonds, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; provided, however, that the Trustee shall not, unless there no longer continues an Event of Default, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Owners of a majority in principal amount of the Outstanding Bonds hereunder opposing such discontinuance, withdrawal, compromise, settlement, or other disposal of such litigation.
- Section 8.4 Limitation on Owners' Right to Sue. No Owner of any Bond issued hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture, unless (a) such Owner shall have previously given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of all the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said Owners shall have tendered to the Trustee indemnity reasonably acceptable to the

Trustee against the costs, expenses and liabilities to be incurred in compliance with such request; and (d) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Bonds of any remedy hereunder or under law; it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Indenture or the rights of any other Owners of Bonds, or to enforce any right under the Bonds, this Indenture or other applicable law with respect to the Bonds, except in the manner herein provided, and that all proceedings at law or in equity to enforce any such right shall be instituted, had and maintained in the manner herein provided and for the benefit and protection of all Owners of the Outstanding Bonds, subject to the provisions of this Indenture.

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

**Section 8.5 Non-waiver**. Nothing in this Article VIII or in any other provision of this Indenture or in the Bonds, shall affect or impair the obligation of the District, which is absolute and unconditional, to pay from the Tax Revenues and other amounts pledged hereunder, the principal of and interest and redemption premium (if any) on the Bonds to the respective Owners when due and payable as herein provided, or affect or impair the right of action, which is also absolute and unconditional, of the Owners to institute suit to enforce such payment by virtue of the contract embodied in the Bonds.

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

**Section 8.6** Termination of Proceedings. In case any proceedings taken by the Trustee or any one or more Bond Owners on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, or the Bond Owners, then in every such case the District, the Trustee and the Bond Owners, subject to any determination in such proceedings, shall be restored to their former positions and rights hereunder, severally and respectively, and all rights, remedies, powers and duties of the District, the Trustee and the Bond Owners shall continue as though no such proceedings had been taken.

Section 8.7 Actions by Trustee as Attorney-in-Fact. Any suit, action or proceeding which any Owner shall have the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Owners similarly situated and the Trustee is hereby appointed (and the successive respective Owners by talking and holding the Bonds shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the respective Owners for the purpose of bringing any such suit, action or proceeding and to do and perform any and

all acts and things for and on behalf of the respective Owners as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact, subject to the provisions of Article VI.

**Section 8.8** Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Owners is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by the EIFD Law or any other law.

# Section 8.9 [Rights of 2022 Insurer as to Defaults and Remedies.]

### **ARTICLE IX**

### **MISCELLANEOUS**

- **Section 9.1 Benefits Limited to Parties**. Nothing in this Indenture, expressed or implied, is intended to give to any person other than the District, the 2022 Insurer, the Trustee and the Owners, any right, remedy, claim under or by reason of this Indenture. Any covenants, stipulations, promises or agreements in this Indenture contained by and on behalf of the District shall be for the sole and exclusive benefit of the Trustee, the 2022 Insurer and the Owners.
- Section 9.2 Successor is Deemed Included in All References to Predecessor. Whenever in this Indenture or any Supplemental Indenture either the District or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the District or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.
- **Section 9.3 Defeasance of Bonds**. If the District shall pay and discharge the entire indebtedness on any Bonds in any one or more of the following ways:
- (a) by paying or causing to be paid the principal of and interest on such Bonds, as and when the same become due and payable;
- (b) by irrevocably depositing with the Trustee or another fiduciary, in trust, at or before maturity, money which, together with the available amounts then on deposit in the funds and accounts established pursuant to this Indenture, is fully sufficient to pay such Bonds, including all principal, interest and redemption premium, if any;
- (c) by irrevocably depositing with the Trustee or another fiduciary, in trust, non-callable Defeasance Securities in such amount as an Independent Accountant shall determine will, together with the interest to accrue thereon and available moneys then on deposit in any of the funds and accounts established pursuant to this Indenture, be fully sufficient to pay and discharge the indebtedness on such Bonds (including all principal, interest and redemption premium, if any) at or before maturity; or
- (d) by purchasing such Bonds prior to maturity and tendering such Bonds to the Trustee for cancellation:

and if such Bonds are to be redeemed prior to the maturity thereof notice of such redemption shall have been duly given or provision satisfactory to the Trustee shall have been made for the giving of such notice, then, at the election of the District, and notwithstanding that any such Bonds shall not have been surrendered for payment, the pledge of the Tax Revenues and other funds provided for in this Indenture and all other obligations of the Trustee and the District under this Indenture with respect to such Bonds shall cease and terminate, except only (a) the obligations of the District under Section 5.11, (b) the obligation of the Trustee to transfer and exchange Bonds hereunder, (c) the obligation of the District to pay or cause to be paid to the Owners of such Bonds, from the amounts so deposited with the Trustee, all sums due thereon, and (d) the obligations of the District to compensate and indemnify the Trustee pursuant to Section 6.6. Notice of such election shall be filed with the Trustee. Any funds thereafter held by the Trustee, which are not required for said purpose, shall be paid over to the District.

**Section 9.4 Execution of Documents and Proof of Ownership by Owners.** Any request, consent, declaration or other instrument which this Indenture may require or permit to be executed by any Owner may be in one or more instruments of similar tenor, and shall be executed by such Owner in person or by their attorneys appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Owner or his attorney of such request, declaration or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

The ownership of Bonds and the amount, maturity, number and date of ownership thereof shall be proved by the Registration Books.

Any request, consent, declaration or other instrument or writing of the Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the District or the Trustee in good faith and in accordance therewith.

**Section 9.5 Disqualified Bonds**. In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned or held by or for the account of the District or the City (but excluding Bonds held in any employees' retirement fund) shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, provided, however, that for the purpose of determining whether the Trustee shall be protected in relying on any such demand, request, direction, consent or waiver, only Bonds which the Trustee knows to be so owned or held shall be disregarded.

Section 9.6 Waiver of Personal Liability. No member, officer, agent or employee of the Public Financing Authority or the District and no person executing any Bond shall be individually or personally liable for the payment of the principal of or interest or any premium on the Bonds; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

**Section 9.7 Destruction of Canceled Bonds**. Whenever in this Indenture provision is made for the surrender to the District of any Bonds which have been paid or canceled pursuant to the

provisions of this Indenture, upon receipt by the Trustee of the Request of the District a certificate of destruction duly executed by the Trustee shall be deemed to be the equivalent of the surrender of such canceled Bonds and the District shall be entitled to rely upon any statement of fact contained in any certificate with respect to the destruction of any such Bonds therein referred to. The District shall pay all costs of microfilming the Bonds to be destroyed.

**Section 9.8** Notices. All written notices to be given under this Indenture shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) 48 hours after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The District or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

Otay Mesa Enhanced Infrastructure Financing District c/o City of San Diego 202 C Street, MS 7B San Diego, CA 92101 Attention: Department of Finance Director/Debt Management
[TRUSTEE]
Attention:Fax:
[2022 Insurer]
Attention:

**Section 9.9 Partial Invalidity.** If any Section, paragraph, sentence, clause or phrase of this Indenture shall for any reason be held illegal, invalid or unenforceable, such holding shall not affect the validity of the remaining portions of this Indenture. The District and the Trustee hereby declare that they would have entered into this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issue of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Indenture may be held illegal, invalid or unenforceable.

Section 9.10 Unclaimed Moneys. Anything contained herein to the contrary notwithstanding, any money held by the Trustee in trust for the payment and discharge of the interest or premium (if any) on or principal of the Bonds which remains unclaimed for two (2) years after the date when the payments of such interest, premium and principal have become payable, if such money was held by the Trustee at such date, or for two (2) years after the date of deposit of such money if deposited with the Trustee after the date when the interest and premium (if any) on and principal of such Bonds have become payable, shall be repaid by the Trustee to the District as its absolute property

free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Owners shall look only to the District for the payment of the principal of and interest and redemption premium (if any) on of such Bonds.

**Section 9.11 Execution in Counterparts**. This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 9.12 Governing Law**. This Indenture shall be construed and governed in accordance with the laws of the State.

Section 9.13 [Provisions Regarding the 2022 Bond Insurance Policy].

IN WITNESS WHEREOF, the Otay Mesa Enhanced Infrastructure Financing District has caused this Indenture to be signed in its name by the [Chair of the Public Financing Authority] and attested to by the Clerk of the Public Financing Authority, and [TRUSTEE], in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

OTAY MESA ENHANCED INFRASTRUCTURE

# By: Its: [Chair, Otay Mesa Enhanced Infrastructure Financing District Public Financing Authority] ATTEST: [TRUSTEE], as Trustee By:

Its:

**Authorized Officer** 

### **EXHIBIT A**

### FORM OF SERIES A BONDS

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110.71				Ψ
		UNITED STATES OF STATE OF CAL	LIFORNIA	
	OTAY MES	SA ENHANCED INFRASTR 2022 TAX ALLOCA SERIES	TION BONDS	STRICT
	Trust Company registration of the name of Corepresentative centity as is required.	nd is presented by an author, a New York corporation ("I ransfer, exchange, or paymented & Co. or in such other rof DTC (and any payment is uested by an authorized represented USE HEREOF FOR IS WRONGFUL inasmuch or est herein.	OTC"), to the District or the ont, and any Bond issued is name as is requested by an made to Cede & Co. or to esentative of DTC), ANY TO VALUE OR OTHERWIST	e Trustee for registered in authorized o such other TRANSFER, E BY OR TO
	RATE OF INTEREST	MATURITY DATE	DATED DATE	CUSIP NO.
		September 1,	, 2022	
REGIS	STERED OWNE	R: CEDE & CO.		
PRINC	CIPAL AMOUNT	Γ:	AND NO/100 I	OOLLARS

The OTAY MESA ENHANCED INFRASTRUCTURE FINANCING DISTRICT, a public body, corporate and politic, duly organized and existing under the laws of the State of California (the "District"), for value received, hereby promises to pay (but only out of the Tax Revenues and other moneys and securities hereinafter referred to) to the Registered Owner identified above or registered assigns (the "Registered Owner"), on the Maturity Date identified above, the Principal Amount identified above in lawful money of the United States of America; and to pay interest thereon at the Rate of Interest identified above in like lawful money from the date hereof, which date shall be the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Bond (unless this Bond is authenticated on or before an Interest Payment Date and after the fifteenth calendar day of the month preceding such Interest Payment Date (a "Record Date"), in which event it shall bear interest from such Interest Payment Date, or unless this Bond is authenticated on or prior to [February 15, 2023], in which event it shall bear interest from the Dated Date identified above;

No A-

provided, however, that if, at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest hereon has previously been paid or made available for payment), payable semiannually on March 1 and September 1 of each year, commencing [March 1, 2023] (each, an "Interest Payment Date") until payment of such Principal Amount in full. The Principal Amount hereof is payable upon presentation hereof at the principal corporate office of [TRUSTEE], as trustee (the "Trustee"), in [St. Paul, Minnesota]. Interest hereon is payable by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date to the Registered Owner hereof at the address of such Registered Owner as it appears on the Registration Books of the Trustee as of the preceding Record Date; provided that at the written request of the owner of at least \$1,000,000 aggregate principal amount of Bonds which written request is on file with the Trustee as of any Record Date, interest on such Bonds shall be paid on the Interest Payment Date succeeding such Record Date by wire transfer to such account as shall be specified in such written request.

Capitalized terms used herein and not defined shall have the meanings given such terms in the Indenture.

This Bond is one of a duly authorized issue of bonds of the District designated as the "Otay
Mesa Enhanced Infrastructure Financing District 2022 Tax Allocation Bonds, Series A" (the "Series A
Bonds") of an aggregate principal amount of Dollars (\$), all of like
Bonds") of an aggregate principal amount of Dollars (\$), all of like tenor and date (except for such variation, if any, as may be required to designate varying numbers,
maturities, interest rates or redemption provisions) and all issued pursuant to the provisions of
Chapter 2.99 of Part 1 of Division 2 of Title 5 (commencing with Section 53398.50) of the
Government Code of the State (the "EIFD Law"), and pursuant to an Indenture of Trust dated as of
1, 2022 (the "Indenture"), by and between the District and the Trustee.
Contemporaneously with the issuance of the Series A Bonds, the District is issuing its "Otay Mesa
Enhanced Infrastructure Financing District 2022 Tax Allocation Bonds, Series B (Federally Taxable)"
in the aggregate principal amount of Dollars (\$) (together with the
Series A Bonds of this series, collectively, the "Bonds"). The Bonds have been authorized to be issued
by the District pursuant to a resolution of the District adopted on [August 8, 2022]. The District may
issue or incur additional obligations on a parity with the Bonds, but only subject to the terms of the
Indenture. Reference is hereby made to the Indenture (copies of which are on file at the office of the
Trustee) and all supplements thereto and to the EIFD Law for a description of the terms on which the
Bonds are issued, the provisions with regard to the nature and extent of the Tax Revenues, and the
rights thereunder of the owners of the Bonds and the rights, duties and immunities of the Trustee and
the rights and obligations of the District thereunder, to all of the provisions of which the Registered
Owner of this Bond, by acceptance hereof, assents and agrees.

The Bonds have been issued by the District to: (i) finance Project Costs with respect to the EIFD Project, (ii) fund the Reserve Account for the Bonds, (iii) pay costs of issuance of the Bonds, (iv) [fund capitalized interest with respect to the Bonds], and (v) purchase a municipal bond insurance policy from \_\_\_\_\_ (the "2022 Insurer").

This Bond and the interest hereon and all other Parity Debt and the interest thereon (to the extent set forth in the Indenture) are payable from, and are secured by a charge and lien on the Tax Revenues derived by the District from the EIFD Project Area, on a parity with any Parity Debt at any time issued by the District under and in accordance with the Indenture. As and to the extent set forth in the Indenture, all of the Tax Revenues are exclusively and irrevocably pledged in accordance with the terms hereof and the provisions of the Indenture and the EIFD Law, to the payment of the principal

of and interest and premium (if any) on the Bonds and any such parity obligations. Notwithstanding the foregoing, certain amounts of Tax Revenues may be applied for other purposes as provided in the Indenture.

THIS BOND IS NOT A DEBT OF THE CITY OF SAN DIEGO, THE COUNTY OF SAN DIEGO, THE STATE OF CALIFORNIA, OR ANY OF ITS POLITICAL SUBDIVISIONS (OTHER THAN THE DISTRICT), AND NEITHER SAID CITY, SAID COUNTY, SAID STATE, NOR ANY OF ITS POLITICAL SUBDIVISIONS, IS LIABLE HEREON NOR IN ANY EVENT SHALL THIS BOND BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THE TAX REVENUES. THIS BOND DOES NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION.

No member, officer, agent or employee of the Public Financing Authority or the District and no person executing this Bond shall be individually or personally liable for the payment of the principal of or interest or any premium on this Bond; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

The rights and obligations of the District and the owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall permit a change in the terms of redemption or maturity of the principal of any outstanding Bond or of any installment of interest thereon or a reduction in the principal amount or the redemption price thereof or in the rate of interest thereon without the consent of the owner of such Bond and the consent of the 2022 Insurer so long as the 2022 Bond Insurance Policy (as such term is defined in the Indenture) is in effect, or shall reduce the percentages of the owners required to effect any such modification or amendment.

The Series A Bonds maturing on or after September 1, 20\_\_ are subject to optional redemption prior to maturity at the option of the District to the extent and on the terms set forth in the Indenture with respect to such maturities as shall be determined by the District and by lot within a maturity, from any available source of funds at a redemption price equal to the principal amount of the Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption, without premium.

The Series A Bonds maturing on September 1, 20\_\_ are subject to mandatory sinking fund redemption in part, by lot, on each September 1, from mandatory sinking fund payments, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption, without premium, in the aggregate respective principal amounts and on the dates set forth in the Indenture.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

If an Event of Default shall occur, the principal of all Bonds shall be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture, but such declaration and its consequences may be rescinded and annulled as further provided in the Indenture.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at said Office of the Trustee in [St. Paul, Minnesota], but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon

surrender and cancellation of this Bond. Upon registration of such transfer a new Bond or Bonds, of authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor.

The District and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the District and the Trustee shall not be affected by any notice to the contrary.

It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time, form and manner as required by the EIFD Law and the laws of the State of California and that the amount of this Bond, together with all other indebtedness of the District, does not exceed any limit prescribed by the EIFD Law or any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

IN WITNESS WHEREOF, the OTAY MESA ENHANCED INFRASTRUCTURE FINANCING DISTRICT has caused this Bond to be executed in its name and on its behalf with the facsimile signature of the [Chair of the Public Financing Authority] and attested to by the facsimile signature of the Clerk of the Public Financing Authority, all as of the Dated Date specified above.

# OTAY MESA ENHANCED INFRASTRUCTURE FINANCING DISTRICT

	By:
	By: [Chair of the Otay Mesa Enhanced Infrastructure
	Financing District Public Financing Authority]
ATTEST:	
Clerk	
[FORM OF TRUSTEE	'S CERTIFICATE OF AUTHENTICATION]
This is one of the Bonds describ	ped in the within-mentioned Indenture.
Dated:	[TRUSTEE],
	as Trustee
	By:
	Its: Authorized Signatory

# [FORM OF LEGAL OPINION]

I hereby certify that the following is a full, true and correct copy of the signed legal opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, on file in the office of the Otay Mesa Enhanced Infrastructure Financing District, which opinion is dated the date the Bonds were delivered and paid for.

Clerk of the Otay Mesa Enhanced Infrastructure Financing District Public Financing Authority

# [FORM OF STATEMENT OF INSURANCE]

[FORM OF ASSIGNMENT]

For value received the undersigned hereby sells, assigns and transfers unto		
(Name, Address and Tax Identification or	Social Security Number of Assignee)	
the within-mentioned Bond and hereby irrevocable	attorney,	
to transfer the same on the Registration Books of premises.	of the Trustee with full power of substitution in the	
Dated:		
Signature Guaranteed:		
Note: Signature(s) must be guaranteed by an eligible guarantor institution.	Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.	

### **EXHIBIT B**

### FORM OF SERIES B BONDS

No. D			Φ
	UNITED STATES (		
	STATE OF CAL		
	COUNTY OF SA	AN DIEGO	
OTAY ME	SA ENHANCED INFRASTR	UCTURE FINANCING DI	STRICT
	2022 TAX ALLOCA	TION BONDS	
	SERIES B (FEDERAL	LY TAXABLE)	
Trust Compangregistration of the name of Control representative entity as is required.	ond is presented by an authory, a New York corporation ("I transfer, exchange, or payment fede & Co. or in such other not be provided by an authorized representation of DTC (and any payment is nuested by an authorized representation of the WRONGFUL inasmuch are set herein.	OTC"), to the District or the ot, and any Bond issued is name as is requested by a made to Cede & Co. or to esentative of DTC), ANY TALUE OR OTHERWIS	e Trustee for registered in authorized o such other FRANSFER, E BY OR TO
RATE OF			
INTEREST	MATURITY DATE	DATED DATE	CUSIP NO.
	September 1,	, 2022	
REGISTERED OWNE	ER: CEDE & CO.		
PRINCIPAL AMOUN	T:	AND NO/100 DC	OLLARS

The OTAY MESA ENHANCED INFRASTRUCTURE FINANCING DISTRICT, a public body, corporate and politic, duly organized and existing under the laws of the State of California (the "District"), for value received, hereby promises to pay (but only out of the Tax Revenues and other moneys and securities hereinafter referred to) to the Registered Owner identified above or registered assigns (the "Registered Owner"), on the Maturity Date identified above, the Principal Amount identified above in lawful money of the United States of America; and to pay interest thereon at the Rate of Interest identified above in like lawful money from the date hereof, which date shall be the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Bond (unless this Bond is authenticated on or before an Interest Payment Date and after the fifteenth calendar day of the month preceding such Interest Payment Date (a "Record Date"), in which event it shall bear interest from such Interest Payment Date, or unless this Bond is authenticated on or prior to [February 15, 2023], in which event it shall bear interest from the Dated Date identified above;

Ma D

provided, however, that if, at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest hereon has previously been paid or made available for payment), payable semiannually on March 1 and September 1 of each year, commencing [March 1, 2023] (each, an "Interest Payment Date") until payment of such Principal Amount in full. The Principal Amount hereof is payable upon presentation hereof at the principal corporate office of [TRUSTEE], as trustee (the "Trustee"), in [St. Paul, Minnesota]. Interest hereon is payable by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date to the Registered Owner hereof at the address of such Registered Owner as it appears on the Registration Books of the Trustee as of the preceding Record Date; provided that at the written request of the owner of at least \$1,000,000 aggregate principal amount of Bonds which written request is on file with the Trustee as of any Record Date, interest on such Bonds shall be paid on the Interest Payment Date succeeding such Record Date by wire transfer to such account as shall be specified in such written request.

Capitalized terms used herein and not defined shall have the meanings given such terms in the Indenture.

This Bond is one of a duly authorized issue of bond	ds of the District desi	gnated as the "Otay
Mesa Enhanced Infrastructure Financing District 2022 Ta	x Allocation Bonds,	Series B (Federally
Taxable)" (the "Series B Bonds") of an aggregate principal	l amount of	Dollars
(\$), all of like tenor and date (except for such		
designate varying numbers, maturities, interest rates or reder	mption provisions) an	d all issued pursuant
to the provisions of Chapter 2.99 of Part 1 of Div	rision 2 of Title 5	(commencing with
Section 53398.50) of the Government Code of the State		
Indenture of Trust dated as of1, 2022 (the "Ind	denture"), by and betw	veen the District and
the Trustee. Contemporaneously with the issuance of the E		
its "Otay Mesa Enhanced Infrastructure Financing District	2022 Tax Allocation	Bonds, Series A" in
the aggregate principal amount of D	ollars (\$	) (together with the
Series B Bonds, collectively, the "Bonds"). The Bonds have b	been authorized to be i	issued by the District
pursuant to a resolution of the District adopted on [August	8, 2022]. The Distric	t may issue or incur
additional obligations on a parity with the Bonds, but on	ly subject to the term	ns of the Indenture.
Reference is hereby made to the Indenture (copies of which	are on file at the office	e of the Trustee) and
all supplements thereto and to the EIFD Law for a descript	tion of the terms on v	which the Bonds are
issued, the provisions with regard to the nature and exte	ent of the Tax Rever	nues, and the rights
thereunder of the owners of the Bonds and the rights, dutie	es and immunities of	the Trustee and the
rights and obligations of the District thereunder, to all of the	provisions of which the	ne Registered Owner
of this Bond, by acceptance hereof, assents and agrees.		

The Bonds have been issued by the District to: (i) finance Project Costs with respect to the EIFD Project, (ii) fund the Reserve Account for the Bonds, (iii) pay costs of issuance of the Bonds, (iv) [fund capitalized interest with respect to the Bonds], and (v) purchase a municipal bond insurance policy from \_\_\_\_\_ (the "2022 Insurer").

This Bond and the interest hereon and all other Parity Debt and the interest thereon (to the extent set forth in the Indenture) are payable from, and are secured by a charge and lien on the Tax Revenues derived by the District from the EIFD Project Area, on a parity with any Parity Debt at any time issued by the District under and in accordance with the Indenture. As and to the extent set forth in the Indenture, all of the Tax Revenues are exclusively and irrevocably pledged in accordance with the terms hereof and the provisions of the Indenture and the EIFD Law, to the payment of the principal

of and interest and premium (if any) on the Bonds and any such parity obligations. Notwithstanding the foregoing, certain amounts of Tax Revenues may be applied for other purposes as provided in the Indenture.

THIS BOND IS NOT A DEBT OF THE CITY OF SAN DIEGO, THE COUNTY OF SAN DIEGO, THE STATE OF CALIFORNIA, OR ANY OF ITS POLITICAL SUBDIVISIONS (OTHER THAN THE DISTRICT), AND NEITHER SAID CITY, SAID COUNTY, SAID STATE, NOR ANY OF ITS POLITICAL SUBDIVISIONS, IS LIABLE HEREON NOR IN ANY EVENT SHALL THIS BOND BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THE TAX REVENUES. THIS BOND DOES NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION.

No member, officer, agent or employee of the Public Financing Authority or the District and no person executing this Bond shall be individually or personally liable for the payment of the principal of or interest or any premium on this Bond; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

The rights and obligations of the District and the owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall permit a change in the terms of redemption or maturity of the principal of any outstanding Bond or of any installment of interest thereon or a reduction in the principal amount or the redemption price thereof or in the rate of interest thereon without the consent of the owner of such Bond and the consent of the 2022 Insurer so long as the 2022 Bond Insurance Policy (as such term is defined in the Indenture) is in effect, or shall reduce the percentages of the owners required to effect any such modification or amendment.

The Series B Bonds are subject to optional redemption prior to maturity at the option of the District to the extent and on the terms set forth in the Indenture with respect to such maturities as shall be determined by the District and by lot within a maturity, from any available source of funds at a redemption price equal to the principal amount of the Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption, plus a premium, if any, as is set forth in the Indenture.

The Series B Bonds maturing on September 1, 20\_\_ and September 1, 20\_\_ are subject to mandatory sinking fund redemption in part, by lot, on each September 1, from mandatory sinking fund payments, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption, without premium, in the aggregate respective principal amounts and on the dates set forth in the Indenture.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

If an Event of Default shall occur, the principal of all Bonds shall be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture, but such declaration and its consequences may be rescinded and annulled as further provided in the Indenture.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at said Office of the Trustee in [St. Paul, Minnesota], but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon

surrender and cancellation of this Bond. Upon registration of such transfer a new Bond or Bonds, of authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor.

The District and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the District and the Trustee shall not be affected by any notice to the contrary.

It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time, form and manner as required by the EIFD Law and the laws of the State of California and that the amount of this Bond, together with all other indebtedness of the District, does not exceed any limit prescribed by the EIFD Law or any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

IN WITNESS WHEREOF, the OTAY MESA ENHANCED INFRASTRUCTURE FINANCING DISTRICT has caused this Bond to be executed in its name and on its behalf with the facsimile signature of the [Chair of the Public Financing Authority] and attested to by the facsimile signature of the Clerk of the Public Financing Authority, all as of the Dated Date specified above.

# OTAY MESA ENHANCED INFRASTRUCTURE FINANCING DISTRICT

	By: [Chair of the Otay Mesa Enhanced Infrastructure Financing District Public Financing Authority]
ATTEST:	
Clerk	
[FORM OF TRUSTE	E'S CERTIFICATE OF AUTHENTICATION]
This is one of the Bonds descr	ribed in the within-mentioned Indenture.
Dated:	[TRUSTEE], as Trustee
	By:

### [FORM OF LEGAL OPINION]

I hereby certify that the following is a full, true and correct copy of the signed legal opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, on file in the office of the Otay Mesa Enhanced Infrastructure Financing District, which opinion is dated the date the Bonds were delivered and paid for.

Clerk of the Otay Mesa Enhanced Infrastructure Financing District Public Financing Authority

## [FORM OF STATEMENT OF INSURANCE]

[FORM OF ASSIGNMENT]

For value received the undersigned hereby sells, assigns and transfers unto

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within-mentioned Bond and hereby irrevocably constitute(s) and appoint(s)

attorney,
to transfer the same on the Registration Books of the Trustee with full power of substitution in the premises.

Dated:

Note: Signature Guaranteed:

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.