



The City of San Diego

Staff Report

DATE ISSUED: 9/11/2018
TO: Public Facilities Financing Authority
FROM: Office of the City Attorney
SUBJECT: Authorization for the Public Facilities Financing Authority of the City of San Diego to enter into Collateral Agency, Account and Assignment Agreement

Primary Contact: Bret A. Bartolotta Phone: (619) 533-5894

Council District(s): Citywide

OVERVIEW:

This resolution will authorize the Public Facilities Financing Authority of the City of San Diego (Authority) to enter into a Collateral Agency, Account and Assignment Agreement (Collateral Agreement) to, among other things, facilitate the City in obtaining a loan from the United States Environmental Protection Agency (EPA) for a loan (WIFIA Loan) of up to \$614 million under the Water Infrastructure Finance and Innovation Act (WIFIA), the proceeds of which will be utilized to assist in financing a portion of the costs of certain capital improvements to the City's water system (Water System) comprising several Pure Water Phase I Projects (Projects).

PROPOSED ACTIONS:

A resolution of the Authority authorizing its execution and delivery of the Collateral Agreement and certain other agreements and actions in connection with a WIFIA Loan of up to \$614 million from the EPA to assist in financing a portion of Water System Projects for the City's Pure Water Program.

DISCUSSION OF ITEM:

The WIFIA Loan is a direct loan to the City and the Authority is not directly involved in the transaction. However, the Authority is a party to the Collateral Agreement, which is a necessary document to the WIFIA Loan transaction. In the event of a default by the City on any obligations secured by net system revenues of the Water System, the Collateral Agreement will provide a uniform, clear path for all lenders and bondholders who are parties to the Collateral Agreement to protect their respective security interests. Please see attached Staff Report to City Council dated September 11, 2018 for further details regarding the WIFIA Loan.

Fiscal Considerations:

Please see attached Staff Report to City Council dated September 11, 2018.

City Strategic Plan Goal(s)/Objective(s):

Please see attached Staff Report to City Council dated September 11, 2018.

Environmental Impact:

Please see attached Staff Report to City Council dated September 11, 2018.

Equal Opportunity Contracting Information (if applicable):

Please see attached Staff Report to City Council dated September 11, 2018.

Previous Council and/or Committee Actions:

Please see attached Staff Report to City Council dated September 11, 2018.

Key Stakeholders and Community Outreach Efforts:

Please see attached Staff Report to City Council dated September 11, 2018.

Bret A. Bartolotta
Deputy City Attorney

PUBLIC FACILITIES FINANCING AUTHORITY
OF THE CITY OF SAN DIEGO

RESOLUTION NUMBER FA-2018-9

ADOPTED ON SEPTEMBER 25, 2018

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO APPROVING THE FORMS AND AUTHORIZING THE EXECUTION AND DELIVERY OF (A) A COLLATERAL AGENCY, ACCOUNT AND ASSIGNMENT AGREEMENT AND (B) CERTAIN OTHER AGREEMENTS AND ACTIONS IN CONNECTION WITH A LOAN TO THE CITY IN A PRINCIPAL AMOUNT NOT TO EXCEED \$614,000,000 TO FINANCE A PORTION OF THE WATER SYSTEM'S COSTS OF THE PURE WATER PHASE I PROJECTS THROUGH THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER AUTHORITY OF THE WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT.

WHEREAS, the City of San Diego, California (City), the City solely in its capacity as the designated successor agency (Successor Agency) to the former Redevelopment Agency of the City of San Diego, and the Housing Authority of the City of San Diego, are parties to a Joint Exercise of Powers Agreement establishing the Public Facilities Financing Authority of the City of San Diego (Authority), a California joint exercise of powers authority duly organized and established to finance, acquire, construct, maintain, repair, operate, and control certain capital facilities improvements for the City; and

WHEREAS, the San Diego Facilities and Equipment Leasing Corporation (Corporation) is a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California (State) that was incorporated to acquire and lease and/or sell to the City real and personal property to be used in the municipal operations of the City; and

WHEREAS, the City has applied to the United States Environmental Protection Agency (EPA) for a loan (WIFIA Loan) of up to \$614 million under the Water Infrastructure Finance and Innovation Act (WIFIA), the proceeds of which will be utilized to assist in financing a portion of the costs of certain capital improvements to the City's water system (Water System) comprising several Pure Water Phase I Projects (Projects); and

WHEREAS, the City has requested the Authority's assistance in effecting the financing of improvements to the Water System via the WIFIA Loan; and

WHEREAS, in order to facilitate the financing of improvements to the Water System (including but not limited to, the Projects), the City and the Authority propose to enter into a collateral agency, account and assignment agreement (Collateral Agency Agreement), by and between US Bank National Association, as Collateral Agent (Collateral Agent), the City, the Corporation, the Authority, US Bank National Association, as Trustee (Trustee), the California State Water Resources Control Board and the EPA, among others, under which Collateral Agency Agreement the Collateral Agent will, among other things, administer the application of Net System Revenues for the benefit of holders of various obligations of the City payable therefrom and enforce remedies against the Net System Revenues on behalf of such holders; and

WHEREAS, the Authority is authorized to undertake the actions described in this Resolution pursuant to its Joint Exercise of Powers Agreement and the Constitution and applicable laws of the State; NOW, THEREFORE,

BE IT RESOLVED by the Board of Commissioners of the Public Facilities Financing Authority of the City of San Diego (Board of Commissioners), as follows:

Section 1. The Board of Commissioners hereby finds and determines that the statements set forth above in the recitals to this Resolution are true and correct.

Section 2. The form and content of the form of Collateral Agency Agreement submitted to this meeting, a copy of which Collateral Agency Agreement is on file in the office of the Office of the Secretary of the Authority (Secretary) and submitted to this meeting, is hereby approved. The Chair and Vice-Chair of the Board of Commissioners of the Authority (each, an Authorized Officer) and each of them, acting alone, are hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver the Collateral Agency Agreement in substantially the form submitted to this meeting, with such additions, changes and amendments thereto as any Authorized Signatory shall determine are necessary or desirable and approve as being in the best interests of the Authority, and as approved as to form by the City Attorney of the City of San Diego (City Attorney), as counsel to the Authority, or her specified designee, and with such other changes that may be required or requested by outside loan counsel related to the WIFIA Loan (Loan Counsel), such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. The Authorized Officers, and each of them, acting alone, are hereby authorized and directed to take all actions and execute any and all documents necessary or advisable to in order to consummate, carry out, give effect to and comply with the terms and intent of this Resolution and the consummation of the transactions contemplated hereby. Any actions heretofore taken by such officers in furtherance of any of the transactions authorized herein are hereby ratified, confirmed, and approved.

Section 4. The Authorized Officers, and each of them, acting alone, are hereby authorized and directed, for and in the name of and on behalf of the Authority, to do any and all

things and take any and all actions, from time to time, consistent with this Resolution and the documents approved herein and other documents authorized by this Resolution, and execute and deliver any and all certificates, agreements and other documents which they, or any of them, may deem necessary or advisable to consummate the transactions evidenced by the documents referenced herein in accordance with this Resolution.

Section 5. This Resolution shall take effect immediately upon its adoption.

ADOPTED, SIGNED AND APPROVED this 25th day of September, 2018, by the following vote:

| | |
|----------|-------|
| AYES: | _____ |
| NAYS: | _____ |
| ABSENT: | _____ |
| VACANT: | _____ |
| ABSTAIN: | _____ |

PUBLIC FACILITIES FINANCING
AUTHORITY OF THE CITY OF SAN
DIEGO

Myrtle Cole, Council President
Chair, Board of Commissioners

Attest:

Secretary to Board of Commissioners



The City of San Diego

Staff Report

DATE ISSUED: 09/11/2018

TO: City Council

FROM: Debt Management Department

SUBJECT: Supplemental Staff Report regarding the Pure Water Program; authorize U.S. EPA WIFIA Loan to the Water System

REFERENCE: Staff Report dated July 12, 2018 presented to the Environment Committee meeting of July 12, 2018

Primary Contact: Brian Mandell Phone: (619) 533-4519

Secondary Contact: Lakshmi Kommi Phone: (619) 236-6928

Council District(s): Citywide

OVERVIEW:

This companion staff report should be read in conjunction with the Report to City Council dated July 12, 2018 for the *Pure Water Program; authorize U.S. EPA WIFIA Loan to the Water System* that was docketed for the Environment Committee meeting on July 12, 2018.

This companion staff report provides a summary of the loan agreement and related legal documents required to be authorized to execute the Water Infrastructure Finance and Innovation Act (WIFIA) Program Loan for Water Utility, Pure Water Program Phase 1 – North City projects.

PROPOSED ACTIONS:

1. Approve, via ordinance, a loan in a principal amount not to exceed \$614.0M to finance a portion of the Water System's costs of the Pure Water Program Phase I projects through the United States Environmental Protection Agency under the authority of the Water Infrastructure Finance and Innovation Act (WIFIA);
2. Approving forms and authorizing the execution and delivery of WIFIA Loan Agreement; Amendment to Master Installment Purchase Agreement; and Collateral Agency, Account and Assignment Agreement; and
3. Authorize CFO to establish one or more special interest-bearing accounts for the proceeds of the WIFIA Loan;

DISCUSSION OF ITEM:

Key Terms of the WIFIA Loan

Loan Amount:

The City initially requested a loan in a principal amount of \$530M from the U.S. EPA under the WIFIA Program to fund the Water System cost share of the Pure Water Program Phase 1 – North City projects at the time of the July 12, 2018 Committee report. This amount was initially established based on the assumption that a portion of the project cost would be funded by State Revolving Fund (SRF) loans. SRF timing and available funding amounts are not yet known at this time, staff is recommending locking in and maximizing the available low-cost funding source from WIFIA.

In August, the City requested a revised principal amount not to exceed \$614M, with 100% of the loan funds allocated to fund the Water System's share of the Pure Water Program Phase 1 project costs. The WIFIA Program has agreed to fund this amount. This will provide approximately 49% of the total project cost, which is the WIFIA Program statutory limit. (The current estimate for the Pure Water Program Phase 1 total project cost is \$1.25B, of which Water System's share is projected at \$746M.)

Security Structure:

The WIFIA Loan will remain a subordinated obligation which is more favorable security feature for the Water System. Since the July 12, 2018 Committee report, based on further negotiations with the U.S. EPA, the springing lien feature was eliminated in favor of a permanent subordinate lien position for the WIFIA Loan subject to the covenant that any additional debt financing for the Water System's portion of the Pure Water Program Phase 1 projects will only be issued on a subordinate lien basis.

Summary of Legal Documents

The financing Ordinance authorizes the following financing documents: a Loan Agreement; including schedules, exhibits, and the promissory note attached thereto; a First Amendment to the Amended and Restated Master Installment Purchase Agreement (MIPA); and a Collateral Agency, Account and Assignment Agreement.

I. Form of the WIFIA Loan Agreement - An agreement between the United States Environmental Protection Agency (EPA or WIFIA Lender) and the City of San Diego, for up to \$614M, specifically for the Water System Portion of Pure Water Program Phase I – North City projects. The agreement contains the terms described in the Staff Report dated July 12, 2018 with the following additional terms described below, as well as conditions precedent, covenants, compliance requirements, and other legal requirements consistent with agreements of this type.

The loan will provide financing to only the Water System's share of the Pure Water Program Phase I costs; any financial and legal covenants contained in the Loan Agreement are limited to the Water System, as Net System Revenues of the Water Utility Fund is the sole repayment source of the loan obligation. The Loan Agreement defines the project as both Water and Wastewater components, as seen in the Project Description in Schedule IV of the Loan Agreement; therefore, any reporting covenants must contain both the Water and Wastewater components.

Loan Proceeds Disbursement Process (Section 4): WIFIA Loan proceeds will be disbursed based on requisition and certification submitted by the City to the WIFIA Lender for eligible Project costs paid or incurred by the Water System. The requisition must contain all documentation and information required. The Loan Balance will increase each time the WIFIA Lender disburses loan proceeds.

Rate Covenant (Section 14(k)): Requires the City to collect rates, fees and charges for the Water System during each Fiscal Year which will be at least sufficient to yield Net System Revenues equal to A) at least 110% of aggregate annual debt service, and 2) at least 120% of annual debt service of senior/parity obligations.

The rate covenant contained in the WIFIA Loan Agreement was updated from the July 12, 2018 Committee report. This covenant adopts the calculation methods required by the Water System's outstanding bonds but requires a level of Net System Revenues consistent with the Water System's SRF loan agreements. For reference, the covenant for the outstanding bonds requires 100% of aggregate annual debt service, while the SRF loan agreements require 110% of aggregate maximum annual debt service.

Indebtedness Covenant (Section 15(a)): Requires the following conditions in order to issue additional Water System debt, similar to covenants for the Water System's outstanding bonds and loans:

- A) Net System Revenues prior to incurring additional debt shall be (i) at least 1.20 times of maximum annual debt service on all senior/parity obligations to be outstanding; and (ii) at least 1.10 times of maximum annual debt service on all obligations to be outstanding; or,
- B) Estimated Net System Revenues for the five Fiscal Years following the earlier of (i) the end interest capitalization, or the Fiscal Year in which the obligations are issued, or (ii) the date on which substantially all new components financed with such obligations are expected to commence operations, will be at least equal to 1.20 times of the maximum annual debt service for all senior/parity obligations and 1.10 times of the maximum annual debt service on all obligations to be outstanding; and
- C) The WIFIA Loan Agreement, like the State Revolving Fund loan agreements, will require an "A" credit rating on Water System senior/parity obligations as a condition to issuing additional senior/parity obligations. An exception is made for the SRF loans, which are not rated; and
- D) The City may not issue senior/parity Water System obligations where any portion of the proceeds would be used for Pure Water Program Phase 1 projects. This means only subordinated lien obligations may be issued to finance any unmet project costs.

The indebtedness covenant contained in the WIFIA Loan Agreement was updated from the July 12, 2018 Committee report. This covenant adopts the calculation methods required by the Water System's outstanding bonds but requires a level of Net System Revenues consistent with the Water System's State Revolving Fund loan agreements, as noted above.

Other Key Covenants (Sections 14 and 15): The Loan Agreement contains covenants regarding use of loan proceeds; to at all times maintain acceptable insurance on the Water System and Pure Water Program Phase 1 projects; provide prompt notice to the WIFIA Lender in the event of substantial completion of the project, in the event of default, litigation, environmental notices, ratings changes, and other adverse events; provide copies of documents; rate covenants (described above); conditions on interest rate hedging; indebtedness covenants (described above); and other covenants consistent with the Water System's outstanding bonds, among other covenants.

Default and Bankruptcy Provisions (Section 18): Upon the occurrence of a Bankruptcy Related Event specific to City Water System (as defined in the Loan Agreement), all WIFIA Obligations, including the unpaid principal amount, fees, costs, and expenses will become immediately due and payable, and any future disbursements of loan proceeds are terminated. A System Event of Default (as described in the Loan Agreement) includes payment default, covenant default, misrepresentation default, cross default, acceleration, bankruptcy or invalidity. Upon the occurrence of any System Event of Default, the WIFIA Lender, by written notice to the City, may suspend or terminate all its obligations to disburse remaining proceeds of the WIFIA Loan; and if the senior/parity or subordinate obligations have been accelerated, the WIFIA Lender can declare the unpaid principal amount, fees, costs, and expenses of the WIFIA Loan to be immediately due and payable.

Post-Issuance Compliance and Reporting (Sections 21-22): The Loan Agreement requires substantial ongoing reporting requirements including: an annual financial plan and updated financial model; annual financial statements; annual certificates; quarterly project reporting; annual single audits; and additional reporting at loan execution, after substantial completion, and five years after the Pure Water Program Phase 1 has been in operation.

As part of the quarterly project reporting requirement, the City will provide updates on total Pure Water Program Phase 1 project costs, funding sources, overall construction progress, and then-current projection for substantial completion date, among other items.

Construction costs and schedules that are included in exhibits to the form of the Loan Agreement are subject to change and will be finalized at loan closing.

Federal Contract Requirements: Projects receiving a WIFIA loan must comply with all relevant federal laws and regulations, including but not limited to: use of American Iron and Steel, Davis-Bacon Wage Requirement, National Environmental Policy Act, etc.

II. Form of the First Amendment to the Amended and Restated Master Installment Purchase Agreement (MIPA) – The MIPA is an agreement between the City and the San Diego Facilities and Equipment Leasing Corporation (FELC), which provides the legal framework for the Water System's debt obligations. The First Amendment to the MIPA will clarify the rights and remedies of owners of all Obligations (including all bonds, loans, and Water Utility commercial paper notes), clarifies the application of Net System Revenues, and creates the role of a Collateral Agent (described below).

The purpose of the Amendment is to clarify the waterfall of application of System Revenues for purpose of direct loan obligations which were not previously contemplated by the MIPA. The

creation of the role of the Collateral Agent is the mechanism through which all holders of obligations will receive application of Net System Revenues.

III. Form of the Collateral Agency, Account and Assignment Agreement - The agreement is entered by and among: U.S. Bank National Association as Collateral Agent, City of San Diego, FELC, Public Facilities Financing Authority of the City of San Diego (PFFA), U.S. Bank National Association as Trustee, United States Environmental Protection Agency, and other creditors. This agreement establishes a collateral agent arrangement and appoints U.S. Bank, National Association (currently the bond trustee) to receive the Net System Revenues and administer debt service payments for amounts due under all obligations (in accordance with the payment waterfall established in the MIPA) and enforce remedies for the benefit of holders of all secured obligations following an event of default.

Fiscal Considerations:

Estimated Repayment Costs

Terms: WIFIA guidelines permit a repayment term of up to 35 years from substantial completion of the projects, at a fixed interest rate based on U.S. Treasury rates on the date of loan closing. Debt Management staff recommends a 35-year repayment term for a not-to-exceed \$614M loan and to pay current interest during construction of the Pure Water Program Phase I - North City projects. During the construction period, the City may draw on the loan to reimburse construction costs. Interest will accrue and be payable on those amounts drawn from the established loan amount.

Repayment structure: Staff has developed a preliminary custom repayment schedule for the WIFIA Loan such that the annual levels of all Water System debt service remains balanced year to year, and debt load is spread across the fiscal years and to minimize peaks and valleys, or burdening the rate cases and Water System operating costs. In the overall debt profile of the Water System's outstanding and projected bonds and loans, Debt Management has taken Water Utility's growing debt service costs and affordability into consideration.

Assumptions: The City may begin to draw on the WIFIA Loan shortly after estimated loan closing in November 2018. The projections assume quarterly draws on the WIFIA Loan, based on the current construction expenditure projections. The estimated annualized repayment costs are described below, calculated using the indicative interest rate of 3.03% as of September 4, 2018.

Projected Debt Service: Since the July 12, 2018 Committee report, the debt service projections changed due to the increase in loan size to \$614M from \$530M and change in repayment structure.

During the anticipated construction period in FY 2019 - FY 2022, the interest-only debt service payments are estimated to be \$0.1M in FY 2019, \$5.1M in FY 2020, \$13.4M in FY 2021, and \$17.9M in FY 2022. The repayment estimates are subject to change and are based on the current projected draw schedule and projected substantial completion date of December 1, 2021 for the Pure Water Program Phase 1. This date is expected to change when the constructability review process is complete at the end of September 2018. (The

interest costs during construction are also subject to change, based on further analysis and implementation opportunity of short-term interim financing option which would delay the draw on the WIFIA Loan and would result in interest cost savings to the Water System.)

Starting in FY 2023 when principal repayment is assumed to begin, the projected WIFIA Loan debt service will be customized to consider the existing debt profile. During the peak debt service years for existing obligations, FY 2023-2040, WIFIA Loan debt payments will average \$24.6M. In FY 2041-2049, as the debt service for existing obligations will drop as several bond series are fully repaid, the WIFIA Loan debt service will increase to an average of \$48.9M so overall Water System debt service remains level; and in FY 2050-2057, the WIFIA Loan average debt service will be \$17.1M.

Compared to a traditional level debt structure, this custom repayment structure is expected to provide a lower maximum annual debt service level of approximately \$7M for the Water System in FY 2023-2040 which lowers the Net System Revenues coverage requirement, thus lowering pressures on future water rates.

The actual interest rate and the projected repayment schedule for the loan will be set at WIFIA Loan closing, projected to be in November 2018 for the purpose of the estimates above. The final repayment schedule will be established only after the City has fully drawn on the WIFIA Loan or the City certifies it will not request any further disbursements. Any movement in scheduled project construction expenditures will correspondingly impact loan disbursement and repayment schedules.

The actual annual repayment cost of not-to-exceed \$614M WIFIA Loan to the Water System may be higher or lower than the estimates above depending on 1) interest rates at the time of loan closing, 2) the actual amount drawn from the WIFIA Loan, the draw schedule based on construction costs, and schedule, 3) if short-term financing instruments such as Commercial Paper or Bond Anticipation Notes are utilized to fund construction costs of the Projects instead of drawing immediately on the WIFIA Loan, 4) the repayment structure utilized, and 5) if SRF funding is obtained during the construction period which may reduce a portion of the WIFIA Loan need.

Impact to Water Rates

The Water Utility Fund currently has a Council-approved cost-of-service study (COSS) and associated rate increases through Fiscal Year 2020. The projected rate revenue from the approved COSS allows the Water System to meet financial and legal covenant requirements on all outstanding Water System debt and also execute the proposed WIFIA and SRF loan agreements for the Pure Water Program requiring the System to meet certain additional debt affordability tests in Fiscal Year 2019-20 in tandem with the award of construction contracts for the Pure Water Program. It is expected that additional rate capacity will be needed after the expiration of the current COSS to meet Pure Water Program loan repayment obligations, Pure Water Program O&M costs, and outstanding financial obligations associated with the Water System general capital program. The level of the rate increase requirements including the imported water price increase pass-throughs will be evaluated by the Public Utilities Department under a new COSS for Fiscal Year 2021 and beyond.

Lakshmi Kommi

Debt Management Department Director

Matt Vespi

Interim Director of Public Utilities

Rolando Charvel

Chief Financial Officer

Johnnie Perkins, Jr.

Deputy Chief Operating Officer



The City of San Diego

Staff Report

DATE ISSUED: 07/12/2018

TO: City Council

FROM: Debt Management Department

SUBJECT: Pure Water Program; authorize U.S. EPA WIFIA Loan to the Water System

Primary Contact: Brian Mandell Phone: (619) 533-4519

Secondary Contact: Lakshmi Kommi Phone: (619) 236-6928

Council District(s): Citywide

OVERVIEW:

Authorize the Mayor and/or designee to take necessary actions to implement a U.S. EPA Water Infrastructure Finance and Innovation Act (WIFIA) Loan to the Water System for Pure Water Program Phase I – North City projects.

PROPOSED ACTIONS:

1. An Ordinance authorizing the Mayor or designee to implement the U.S. EPA WIFIA Loan in an amount not to exceed \$530M and any amendments or changes thereto necessary to fulfill the purpose of the Projects and the financing thereof;
2. Declare that the City dedicates and pledges the net revenues of the City Water Utility Fund for repayment of the U.S. EPA WIFIA Loan;
3. Authorize the execution of Loan Documents including, but not limited to, a Loan Agreement, Promissory Note, Amendment to the Master Installment Purchase Agreement, Supplement to the Master Installment Purchase Agreement with respect to the WIFIA Loan, an Assignment Agreement with respect to the MIPA and all other necessary documents required by the U.S. EPA (Loan Documents) for the WIFIA Loan; and,
4. Authorize CFO to establish one or more special interest-bearing accounts, if required.

See Supplemental Staff Report Dated September 11, 2018 included in docketed materials for additional information.

DISCUSSION OF ITEM:

A. Pure Water Program

The Pure Water Program Phase 1 – North City is comprised of multiple projects allocated amongst the Water and Wastewater Systems. Project costs are allocated to either Water or Wastewater System depending on the stage of treatment. Each project is integral to providing 30 million gallons per day of purified water upon completion of Phase I of the Program (estimated completion in Fiscal Year 2022).

The City Council has supported various Pure Water Program initiatives dating back to 2014:

- April 2018 Authorized as-needed construction management contracts totaling \$120 million
- April 2018 Certified Environmental Impact Report and Issued Site Development Permit
- October 2017 Authorized application and implementation of Clean Water State Revolving Fund (SRF) loans for Pure Water Program Phase I projects
- 2014 - 2017 Authorized various contracts related to design engineering services
- November 2016 Approved Program Environmental Impact Report
- November 2014 Authorized application to renew NPDES Permit for the Point Loma Wastewater Treatment Plant and the Cooperative Agreement with stakeholders in support of the Permit and Pure Water Program
- April 2014 Adopted resolution in support of the Pure Water Program

In October 2017, Debt Management and Public Utilities Departments received authorization from City Council to apply for and implement 8 Clean Water SRF Loans for Pure Water Program Phase I – North City projects: 5 Water System loans up to \$759M and 3 Wastewater System loans up to \$508M. SRF loan authorizations were based on project cost estimates provided by PUD as of September 2017, plus a contingency of 10%. Debt Management, in conjunction with the Public Utilities Department (PUD), completed Clean Water SRF loan applications for these projects in June 2018. Debt Management applied for 100% of the Program costs from the Clean Water SRF as it is the lowest cost source of funding; however, due to competition for low-cost Clean Water SRF funding, the City anticipates the need to utilize multiple funding sources.

The City will utilize all available funding sources from SRF and WIFIA to fund Pure Water Program Phase I – North City capital costs. If there are funding gaps after SRF and WIFIA funds are applied, the City will need to utilize other funding sources including pay-go funds and revenue bonds as required. PUD has additionally applied for capital grants which, if approved, would reduce the need for financed funds.

B. Water Infrastructure Finance and Innovation Act (WIFIA) Overview

The WIFIA program is a federal credit program established by the Water Infrastructure Finance and Innovation Act of 2014 and administered by the U.S. Environmental Protection Agency (EPA). The program is designed to promote certain water and wastewater infrastructure. Similar to other Federal credit programs, funds are sourced from the U.S. Treasury and utilize the EPA as the conduit lender. The City is participating in the first round of available WIFIA funding.

The City submitted a detailed letter of interest to the U.S. EPA WIFIA Loan Program in April 2017 requesting \$492M in funding for Pure Water Program Phase 1 – North City projects. In July 2017, the EPA selected the City's Pure Water Program as one of 12 projects in the nation to apply for WIFIA funding. Following discussion with EPA staff, Debt Management, in conjunction with PUD, applied for \$530M in funding solely on behalf of the Water System towards its prorated cost of Pure Water Program Phase I - North City projects.

The Wastewater System's prorated cost of the Phase I Program is expected to be funded from Clean Water SRF loans, pay-go funds and revenue bonds, if needed.

The loan application is currently in the due diligence phase. EPA WIFIA program staff and EPA consultants are performing detailed financial/credit review of the Water System's ability to repay the loan, legal review of the Water System debt structure and engineering reviews of the Pure Water Program Phase I projects. The EPA has provided a draft term sheet, the outline of which is presented in the Fiscal Considerations section below. A mutually agreeable term sheet will be presented to EPA's credit council in approximately July 2018, after which the term sheet will be presented to the EPA Administrator for loan approval and execution of the term sheet. Based on the term sheet, WIFIA program staff will finalize the terms of the WIFIA Loan and City staff will docket for council action in September 2018.

As part of the EPA's due diligence process, two credit rating agency opinions of the WIFIA Loan will be required prior to closing. At closing, the EPA Administrator and the Mayor or designee will execute a loan agreement, allowing the borrower to receive WIFIA funds for the City's Water System on an as-needed draw basis. Other loan documents (form of documents to be attached) are detailed in Section E below.

C. Financing Plan Overview

Pure Water Program Phase I – North City capital costs allocated to the Water System are estimated to total approximately \$840M per the Public Utilities Department as of May 2018. A \$530M WIFIA loan would fund approximately 38.0% of total estimated Phase I Water System costs. The remainder of funding is comprised of State Revolving Fund loans, Cash & Capacity Fees, Commercial Paper, debt proceeds from Series 2016A Revenue Bonds of \$11M and additional revenue bonds, if required. Additionally, one of the Phase I projects, the North City Renewable Energy Project, may be implemented as a public-private partnership. (The Public Utilities Department initiated the procurement process by issuing a Request for Statement of Qualifications. Responses will be evaluated by the City to determine what level of private capital, if any, may be utilized to fund capital costs of the North City Renewable Energy Project.)

WIFIA funds will be allocated to various Pure Water Program Phase I costs allocated to the Water System such as; construction, design and planning, and engineering and administrative costs. WIFIA Loan funds will be to be allocated amongst one or more of the following Water System projects:

- 1) North City Morena Blvd Pump Station & Pipeline (Water Portion) – WBS B15141
- 2) North City Water Reclamation Plant Expansion & Influent Conveyance – WBS B16140
- 3) North City Pure Water Facility – WBS B15139
- 4) North City Pure Water Pipeline – WBS B16035
- 5) North City Pure Water Pump Station – WBS B15140
- 6) Miramar Water Treatment Plant and Miramar Reservoir Pump Station Improvements – WBS B17190

Key benefits of a WIFIA Loan include:

- 1) Low interest cost relative to revenue bonds (currently estimated 3.0% for 35-year WIFIA loan versus 3.75-4.0% for 30-year revenue bonds)
- 2) Fixed interest rate locked at loan closing
- 3) City has flexibility to model principal amortization as needed over the 35 year repayment term

External financing team members include:

- 1) Municipal Advisor: Montague DeRose and Associates, LLC was selected to provide advisory services for this transaction under an existing contract for as-needed services. Services performed by the advisor include financial modeling and term sheet finalization. The fees related to the WIFIA transaction are to be paid out of WIFIA Loan proceeds.
- 2) Borrower's Counsel: The City Attorney's Office identified, via sole-source procurement, Nixon Peabody LLP to serve as borrower's counsel for as-needed legal services and opinion of bond counsel. Sole-source procurement was utilized due to Nixon Peabody's experience serving as bond counsel for the City's SRF loan transactions. The fees payable to Nixon Peabody are to be paid out of WIFIA Loan proceeds.

Interim Financing:

The WIFIA Loan allows for draws to reimburse the City for construction costs during the construction period of the projects. Under this scenario, the draws will accrue interest at the fixed interest rate described above. Interest costs may either be paid semi-annually during the construction period or deferred until after substantial project completion.

Alternatively, the City may, at its option, utilize Commercial Paper, Bond Anticipation Notes or other such short-term financing instruments to fund construction costs of the Projects, to be refunded by WIFIA Loan proceeds prior to substantial completion date. The City may choose to utilize short-term interim financing if adequate interest rate savings may be realized. An analysis is in progress to determine if an interim funding source during the construction period is optimal for the City.

D. Key Terms of the WIFIA Loan

The key anticipated terms based on the draft term sheet are outlined below. The structure of the loan and how it fits into the City's existing water utility debt structure is currently under discussion. Final terms and conditions are subject to negotiation with the U.S. EPA and execution of a mutually agreeable term sheet and loan documentation.

Amount of WIFIA Loan:

Total loan proceeds of \$530M

Repayment Term:

Repayment term up to 35 years from the date of substantial completion of the project; loan amortization approximates level payment.

Repayment Source and Security Structure:

The WIFIA Loan agreement will require repayment from Water Utility Fund revenues supported by water rates. As such the Water System is required to dedicate net revenues of the Water Utility Fund for repayment of a WIFIA Loan, which is the same source of repayment for various outstanding bonds, Commercial Paper Notes and SRF loans. The WIFIA Loan will be subordinate to the Water System's senior/parity debt obligations except in the event of bankruptcy, insolvency, liquidation, or other certain events, in which case the WIFIA Loan will "spring" to a senior/parity lien.

Interest Rate:

The indicative interest rate as of June 29, 2018 is 3.0% for a 35-year repayment term; the rate is fixed at loan closing. The interest rate by statute is equal to or greater than the yield on U.S. Treasury securities of comparable maturity on the date of execution of the credit agreement. The WIFIA program will estimate the yield on comparable Treasury securities by adding one basis point to the State and Local Government Series (SLGS) daily rate with a maturity that is closest to the weighted average life of the WIFIA Loan (calculated at 24 years based on the proposed draw and amortization schedule), measured from first disbursement.

During the construction period, the City has the option to either defer accrued interest until after substantial completion of the projects or pay accrued interest semi-annually (refer to fiscal considerations).

The financing Ordinance will authorize up to a maximum of 5.00%.

Financial Covenants:

Under the anticipated language of the future loan agreement, the Water Utility Fund will be required to authorize a rate covenant and additional debt test.

These covenants are written to match the language existing in the Master Installment Purchase Agreement.

- 1) The Rate Covenant in the MIPA generally requires the City to collect rates and charges for the Water System to be at least sufficient for 1) Net System Revenues sufficient to pay 100%

of aggregate system debt service payable in each fiscal year, and 2) Net System Revenues sufficient to pay 120% of senior/parity system debt service in each fiscal year.

- 2) The Additional Debt Test in the MIPA generally requires the City to either:
- a) Net System Revenues for any 12-consecutive month period within the prior 18 consecutive months ending immediately prior to incurring of additional obligations shall equal or exceed i) at least 120% of Maximum Annual Debt Service on all parity obligations to be outstanding immediately after issuance of the proposed obligations; and ii) at least 100% of Maximum Annual Debt Service on all obligations to be outstanding immediately after issuance of the proposed obligations; or,
 - b) Estimated Net System Revenues for the five Fiscal Years following the earlier of (i) the end of the period during which interest on those Obligations is to be capitalized or, if no interest is to be capitalized, the Fiscal Year in which the Obligations are issued, or (ii) the date on which substantially all new Components to be financed with such Obligations are expected to commence operations, will be at least equal to 120% of the Maximum Annual Debt Service for all Parity Obligations and 100% of the Maximum Annual Debt Service on all Obligations to be outstanding immediately after the issuance of the proposed Obligations.

MIPA Amendment:

The Master Installment Purchase Agreement will be amended in a mutually agreeable manner to define direct loans with respect to the payment waterfall and appoint U.S. Bank, National Association (currently the bond trustee) as the representative of holders of all Obligations for purposes of the MIPA.

Federal Contract Requirements: Projects receiving a WIFIA loan must comply with all relevant federal laws and regulations, including but not limited to; Use of American Iron and Steel, Davis-Bacon Wage Requirement, National Environmental Policy Act, etc.

E. Legal Documents

The financing Ordinance authorizes the execution of the following financing documents: a loan agreement, promissory note, Amendment to the Master Installment Purchase Agreement, Supplement to the Master Installment Purchase Agreement with respect of the WIFIA Loan, between the Borrower and the Corporation, an Assignment Agreement with respect to the MIPA, between the Corporation and U.S. Bank National Association, and all other necessary documents required by the U.S. EPA.

F. WIFIA Loan Funding Schedule

| Target Date | Item |
|-------------|--------------------------------------|
| April 2017 | Letter of Interest Submittal |
| July 2017 | Project Selection |
| May 2018 | Complete WIFIA Application Submitted |

| | |
|-------------------------|--|
| June 2018 | Project Presentation to EPA |
| July 2018 | Presentation to City Council Environment Committee |
| August 2018 | Term Sheet Execution |
| September 2018 | City Council Authorization |
| October – November 2018 | Receive Final Credit Rating Opinions (2) |
| November 2018 | Execution of Loan Documentation and Closing |
| FY 2019 | Estimated Start of Project Construction |
| FY 2022 | Estimated Completion of Project Construction |

City Strategic Plan Goal(s)/Objective(s):

Goal # 1: Provide high quality public service.

Objective # 1: Promote a customer -focused culture that prizes accessibility, consistent, and predictable delivery of services.

Fiscal Considerations:

Estimated Annual Repayment Cost

Option 1: Defer Accrued Interest During Construction Period

Based on the indicative interest rate of 3.0% as of June 29, 2018, the estimated annual repayment cost of the \$530M WIFIA Loan to the Water System is \$25.9M over a 35-year repayment period from FY2023 – FY2057. Under this option, principal and interest repayment are deferred until after the substantial completion of the Projects estimated to occur in December 2021 (per PUD as of May 2018). Repayment is estimated to begin on August 1, 2022 (FY2023).

The amount of accrued interest during the construction period is estimated to total \$31.1M based on the indicative interest rate of 3.0% as of June 29, 2018 and the anticipated draw schedule for the loan based on current construction schedule PUD assumes during the 36-month construction period. Interest will accrue and be calculated on both the principal balance and amount of deferred interest outstanding.

Option 2: Pay Accrued Interest During Construction Period

City has the option not to defer accrued interest during the construction period which will reduce the annual repayment from \$25.9 million to \$24.5 million (reduced interest cost over the life of the loan of approximately \$19.2M). Principal repayment is deferred until after substantial completion of the Projects estimated to occur in December 2021 (per PUD as of May 2018). If the City chooses to pay interest during the construction period, accrued interest will be paid semi-annually during FY2019 – FY2022. If interest is paid during the construction period, estimated annualized repayment costs are as follows and are calculated using the indicative interest rate of 3.0% as of June 29, 2018 and the anticipated draw schedule for the loan based on current construction schedule PUD assumes during the 36-month construction period.

FY2019: \$0.1M (interest only)
 FY2020: \$4.1M (interest only)
 FY2021: \$11.2M (interest only)
 FY2022: \$15.7M (interest only)
 FY2023-FY2057: \$24.5M (principal and interest)

The actual annual repayment cost of the \$530M WIFIA Loan to the Water System may be higher or lower than the estimates for both options shown above depending on 1) interest rates at the time of loan closing, 2) the draw schedule based on construction costs and 3) if short-term financing instruments such as Commercial Paper or Bond Anticipation Notes are utilized to fund construction costs of the Projects instead of the WIFIA Loan. Staff will develop an optimal repayment plan taking financing costs and water utility rate capacity and affordability into consideration. The interest rate and the repayment schedule for the loan will be set at the loan closing, anticipated in November 2018.

Estimated Sources and Uses of Funds

Estimated Sources:

| | |
|---------------------|---------------|
| WIFIA Loan Proceeds | \$530,000,000 |
| Total | \$530,000,000 |

Estimated Uses:

| | |
|--|---------------|
| Water System Pure Water Program Phase I – North City Projects: | \$529,250,000 |
| Anticipated Costs of Issuance: | 750,000 |
| Total | \$530,000,000 |

WIFIA Loan funds will be allocated amongst one or more of the following Water System projects:

- 1) North City Morena Blvd Pump Station & Pipeline (Water Portion) – WBS B15141
- 2) North City Water Reclamation Plant Expansion & Influent Conveyance – WBS B16140
- 3) North City Pure Water Facility – WBS B15139
- 4) North City Pure Water Pipeline – WBS B16035
- 5) North City Pure Water Pump Station – WBS B15140
- 6) Miramar Water Treatment Plant and Miramar Reservoir Pump Station Improvements – WBS B17190

Costs of Issuance / Ongoing Fees

Costs of Issuance: Total upfront costs of issuance of the WIFIA Loan are budgeted to be \$750,000 comprising of the following items:

\$350,000 – WIFIA Administrative Fee payable to EPA: The administrative fee is a variable fee established to cover the EPA’s internal and external costs incurred in evaluating the loan application. \$350,000 is the estimate provided by the EPA, however this amount is subject to actual costs incurred. A \$100,000 deposit was paid to the EPA in November 2017 and will be credited towards the final administrative fee. The EPA may invoice for administrative fees even if the loan does not proceed to closing.

- \$25,000 – WIFIA Setup Fee payable to EPA: Fee established to cover upfront costs of establishing loan servicing.
- \$150,000 – Estimated costs of Borrower’s Counsel fees for as-needed legal services from Nixon Peabody LLP
- \$50,000 – Estimated costs of Municipal Advisor fees for as-needed services including but not limited to financial modeling and term sheet finalization from Montague DeRose and Associates, L.L.C.
- \$145,000 – The EPA requires the City to obtain two credit rating opinions on the WIFIA obligation. Credit rating agency fees are estimated at \$85,000 for Fitch Ratings and \$60,000 for Kroll Bond Rating Agency.
- \$10,000 – Estimated trustee fees, payable to US Bank
- \$20,000 – Contingency to cover increases in the variable costs presented above

All upfront fees related to the WIFIA loan will be funded from the loan proceeds.

Ongoing Fees: The EPA will charge a servicing fee over the life of the loan. During the construction period, the annual servicing fee will be \$25,000 with the first year pro-rated based on the date of issuance during the Federal Fiscal Year. During the repayment period, the annual servicing fee will be \$7,500. The servicing fees during the life of the loan are estimated to total approximately \$265,000.

There will be an annual trustee servicing fee payable to US Bank of approximately \$1,000 but may increase depending on final loan structure and services required.

Ongoing fees will be paid by the Water Utility Fund.

Impact to Water Rates

The Water Utility Fund currently has a Council-approved cost-of-service study (COSS) and associated rate increases through Fiscal Year 2020. The projected rate revenue from the approved COSS allows the Water System to meet financial and legal covenant requirements on all outstanding Water System debt and also execute the proposed WIFIA and SRF loan agreements for the Pure Water Program requiring the System to meet certain additional debt affordability tests in Fiscal Year 2019-20 in tandem with the award of construction contracts for the Pure Water Program. It is expected that additional rate capacity will be needed after the expiration of the current COSS to meet Pure Water Program loan repayment obligations, Pure Water Program O&M costs, and outstanding financial obligations associated with the Water System general capital program. The level of the rate increase requirements including the imported water price increase pass-throughs will be evaluated under a new COSS for Fiscal Year 2021 and beyond.

Environmental Impact:

This action to adopt a resolution authorizing the Mayor and/or his designee to implement a U.S. EPA Water Infrastructure Finance and Innovation Act (WIFIA) Loan to the Water System for Pure Water Program Phase I projects is adequately addressed in the PEIR prepared for the Pure Water San

Diego Program (Project No. 438188/SCH No. 2014111068) certified on October 25, 2016, by City Council Resolution R-310760. The Pure Water San Diego Program, North City Project FEIR No. 499621 was certified on April 10, 2018 by City Council Resolution R-311671. This activity is part of a series of subsequent discretionary actions, and therefore not considered to be a separate project for the purposes of CEQA Guidelines Section 15378(c). There is no change in circumstance, additional information or project changes to warrant additional environmental review.

Equal Opportunity Contracting Information (if applicable):

Previous Council and/or Committee Actions:

On October 31, 2017, City Council authorized the following ordinances to implement Clean Water State Revolving Fund loans to the Water System for Pure Water Program Phase I projects:

- Ordinance No. 20871 North City Morena Blvd Pump Station & Pipeline Project (Water Portion)
- Ordinance No. 20867 North City Pure Water Facility Project
- Ordinance No. 20869 North City Pure Water Pipeline Project
- Ordinance No. 20868 North City Pure Water Pump Station Project
- Ordinance No. 20870 North City Water Reclamation Plant Expansion and Influent Conveyance Project.

Resolution No. 310991, adopted March 20, 2017, authorized the Mayor and/or designee to submit applications for financial assistance from the SWRCB for water projects.

This item will be heard at Environment Committee prior to City Council hearing.

Key Stakeholders and Community Outreach Efforts:

The key stakeholders are the City of San Diego and Water ratepayers who would benefit from the aforementioned Program with a low-interest WIFIA Loan.

Lakshmi Kommi _____

Debt Management Department Director

Rolando Charvel _____

Chief Financial Officer

COLLATERAL AGENCY, ACCOUNT AND ASSIGNMENT AGREEMENT

By and Among

**U.S. BANK NATIONAL ASSOCIATION,
as Collateral Agent**

CITY OF SAN DIEGO

SAN DIEGO FACILITIES AND EQUIPMENT LEASING CORPORATION

PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO

**U.S. BANK NATIONAL ASSOCIATION,
as Trustee**

[CALIFORNIA STATE WATER RESOURCES CONTROL BOARD]

And

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Dated as of _____, 2018

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COLLATERAL AGENCY, ACCOUNT AND ASSIGNMENT AGREEMENT

THIS COLLATERAL AGENCY, ACCOUNT AND ASSIGNMENT AGREEMENT (this “Agreement”) is made and entered into as of ____ __, 2018, by and among U.S. Bank National Association, as collateral agent (the “Collateral Agent”), the City of San Diego (the “Borrower” or the “City”), the San Diego Facilities and Equipment Leasing Corporation (the “Corporation”), the Public Facilities Financing Authority of the City of San Diego (the “Authority”), U.S. Bank National Association, as trustee (the “Trustee”) under the Indenture (defined below), [the California State Water Resources Control Board (the “State Water Board”),] and the United States Environmental Protection Agency, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “WIFIA Lender”). In consideration of the mutual covenants and agreements set forth herein, the parties hereto covenant and agree as follows:

1. Definitions.

“Account” means an account established under Section 6 hereof.

“Agreement” means this Collateral Agency, Account and Assignment Agreement.

“Authority” means the Public Facilities Financing Authority of the City of San Diego, a joint exercise of powers agency established and existing under the laws of the State of California.

“Borrower” means the City of San Diego, a municipal corporation organized and existing under its Charter duly adopted pursuant to the provisions of the Constitution of the State of California.

“Charter” means the Charter of the City as it now exists or may hereafter be amended, and any new or successor Charter.

“City” has the meaning provided in the preamble hereto.

“Class” means any group of Holders that, collectively, hold a single series, tranche or other identifiable category of Obligations under a single credit agreement, loan agreement, note purchase agreement, indenture or other evidence of indebtedness.

“Collateral” means all of the interests of the Borrower in (a) the Net System Revenues and (b) the Funds and the Accounts (including all subaccounts, other than any Parity Obligations Reserve Subaccount or Subordinated Obligations Reserve Subaccount) including all amounts on deposit therein or credited thereto.

“Collateral Agent” means U.S. Bank National Association, a national banking association organized under the laws of the United States of America, as Collateral Agent under this Agreement.

“Corporation” means the San Diego Facilities and Equipment Leasing Corporation, a nonprofit public benefit corporation organized and existing under and by virtue of the laws of the State of California.

“Counterpart” means a Counterpart to this Agreement in the form of Exhibit A hereto.

“Fund” means a fund established under Section 6 hereof.

“Holder Representative” means any agent, trustee or other representative appointed by a Class of Holders to act on their behalf pursuant to the terms of an Issuing Instrument relating to the Obligations held by such Class of Holders.

“Holder” or “Holders” means the holders of or lenders under Secured Obligations who have executed this Agreement (including the Trustee, [the State Water Board] and the WIFIA Lender, but excluding the Corporation and the Authority) or any such holder or lender [(including the State Water Board)] that becomes a party to this Agreement pursuant to execution of a Counterpart; provided, however, that “Holder” or “Holders” shall mean and refer to the Holder Representative for each Class which has a Holder Representative and not to the individual Holders of such Class.

“Indenture” means the Indenture, dated as of January 1, 2009, as amended and supplemented from time to time, by and between the Authority and the Trustee.

“Installment Payments” means the Installment Payments payable by the City under and pursuant to the MIPA and any supplement to the MIPA as well as any amounts payable by the City on any Obligations under and pursuant to any Issuing Instrument.

“Issuing Instrument” shall mean any indenture, trust agreement, loan agreement, lease, installment purchase agreement, including the MIPA and any supplement to the MIPA, or other instrument under which Obligations are issued or created.

“Maintenance and Operation Costs of the Water System” means (a) any Qualified Take or Pay Obligation, and (b) the reasonable and necessary costs spent or incurred by the City for maintaining and operating the Water System, calculated in accordance with generally accepted accounting principles, including, without limitation, the costs of the purchase, delivery or storage of water, the reasonable expenses of maintenance and repair and other expenses necessary to maintain and preserve the Water System in good repair and working order, and including administrative costs of the City attributable to the Water System, including the Project and the MIPA, salaries and wages of employees of the Water System, payments to such employees’ retirement systems (to the extent paid from System Revenues), overhead, taxes (if any), fees of auditors, accountants, attorneys or engineers and insurance premiums, and including all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms of the Obligations, including the MIPA, including any amounts required to be deposited in the Rebate Fund pursuant to a Tax Certificate, and fees and expenses payable to any Credit Provider (other than in repayment of a Credit Provider Reimbursement Obligation), but excluding in all cases (1) depreciation, replacement and obsolescence charges or reserves therefor, (2) amortization of intangibles or other bookkeeping entries of a similar nature, (3) costs of capital additions, replacements, betterments, extensions or improvements to the Water System which under generally accepted accounting principles are chargeable to a capital account or to a reserve for depreciation, (4) charges for the payment of principal of and interest on any general obligation bond heretofore or hereafter issued for Water System purposes, and (5) charges for the payment

of principal of and interest on any debt service on account of any Obligation on a parity with or subordinate to the Installment Payments.

“MIPA” means Amended and Restated Master Installment Purchase Agreement, dated as of January 1, 2009, as amended and supplemented, by and between the City and Corporation.

“Net System Revenues” means, for any Fiscal Year, the System Revenues for such Fiscal Year, less the Maintenance and Operation Costs of the Water System for such Fiscal Year.

“Obligations” means (a) obligations of the City for money borrowed (such as bonds, notes or other evidences of indebtedness) or as installment purchase payments under any contract (including Installment Payments), or as lease payments under any financing lease (determined to be such in accordance with generally accepted accounting principles), the principal of and interest on which are payable from Net System Revenues; (b) obligations to replenish any debt service reserve funds with respect to such obligations of the City; (c) obligations secured by or payable from any of such obligations of the City; and (d) obligations of the City payable from Net System Revenues under (1) any contract providing for payments based on levels of, or changes in, interest rates, currency exchange rates, stock or other indices, (2) any contract to exchange cash flows or a series of payments, or (3) any contract to hedge payment, currency, rate spread or similar exposure, including but not limited to interest rate cap agreements.

“Parity Obligation Holders” means the holders of or lenders under Parity Obligations.

“Parity Obligation Interest Payment Date” means the date any interest is due and payable on any Parity Obligation.

“Parity Obligation Principal Payment Date” means the date any principal or mandatory sinking fund redemptions are due and payable with respect to any Parity Obligation.

“Parity Obligations” means Obligations the payment of which is secured by a first priority lien on and pledge of Net System Revenues pursuant to MIPA Section 5.01(a) and Section 5 hereof.

“Parity Obligations Interest Account” means the account of that name established and maintained by the Collateral Agent under Section 6 hereof.

“Parity Obligations Payment Fund” means the fund of that name established and maintained by the Collateral Agent under Section 6 hereof.

“Parity Obligations Principal Account” means the account of that name established and maintained by the Collateral Agent under Section 6 hereof.

“Parity Obligations Reserve Account” means the account of that name established and maintained by the Collateral Agent under Section 6 hereof.

“Parity Obligations Reserve Subaccount” means each subaccount (if any) established in the Parity Obligations Reserve Account upon direction of the Borrower in accordance with a requirement under an Issuing Instrument.

“Payment Date” means each date that is a Parity Obligation Interest Payment Date, a Parity Obligation Principal Payment Date, a Subordinated Obligation Interest Payment Date or a Subordinated Obligation Principal Payment Date.

“Pro Rata Amount” means, with respect to any payment to be made to a Holder under Section 6(b) hereof from funds held by the Collateral Agent in the applicable Account, an amount equal to the total amount of funds held by the Collateral Agent in such Account and available to make such payment to all Holders entitled to receive such payment multiplied by the quotient of the amount of such payment due and payable on such date to such Holder divided by the amount of such payment due and payable on such date to all Holders entitled to receive such payment.

“Required Holders” has the meaning provided in Section 8 hereof.

“Reserve Requirement” means, with respect to each Parity Obligations Reserve Subaccount (if any) and each Subordinated Obligations Reserve Subaccount (if any), the amount required to be maintained therein by the Issuing Instrument under which such Parity Obligations Reserve Subaccount or Subordinated Obligations Reserve Subaccount is mandated.

“Secured Obligations” means Parity Obligations and/or Subordinated Obligations, as the context requires.

“State Water Board” means the California State Water Resources Control Board, a unit of the Environmental Protection Agency of the State of California, or any successor lender under any State Revolving Fund loan program.

“Subordinated Obligation Holders” means the holders of or lenders under Subordinated Obligations.

“Subordinated Obligation Interest Payment Date” means the date any interest is due and payable on any Subordinated Obligation.

“Subordinated Obligation Principal Payment Date” means the date any principal or mandatory sinking fund redemptions are due and payable with respect to any Subordinated Obligation.

“Subordinated Obligations” means Obligations the payment of which is secured by a second priority lien on and pledge of Net System Revenues that is junior and subordinate to the lien on and pledge of Net System Revenues securing Parity Obligations pursuant to MIPA Section 5.01(b) and Section 5 hereof.

“Subordinated Obligations Interest Account” means the account of that name established and maintained by the Collateral Agent under Section 6 hereof.

“Subordinated Obligations Payment Fund” means the fund of that name established and maintained by the Collateral Agent under Section 6 hereof.

“Subordinated Obligations Principal Account” means the account of that name established and maintained by the Collateral Agent under Section 6 hereof.

“Subordinated Obligations Reserve Account” means the account of that name established and maintained by the Collateral Agent under Section 6 hereof.

“Subordinated Obligations Reserve Subaccount” means each subaccount (if any) established in the Subordinated Obligations Reserve Account upon direction of the Borrower in accordance with a requirement under an Issuing Instrument.

“System Revenues” means all income, rents, rates, fees, charges and other moneys derived from the ownership or operation of the Water System, including, without limiting the generality of the foregoing:

(a) all income, rents, rates, fees, charges, or other moneys derived by the City from the water services or facilities, and commodities or byproducts, including hydroelectric power, sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the Water System, and including, without limitation, investment earnings on the operating reserves to the extent that the use of such earnings is limited to the Water System by or pursuant to law, and earnings on any Reserve Fund for Obligations, but only to the extent that such earnings may be utilized under the Issuing Instrument for the payment of debt service for such Obligations;

(b) standby charges and Capacity Charges* derived from the services and facilities sold or supplied through the Water System;

(c) the proceeds derived by the City directly or indirectly from the lease of a part of the Water System;

(d) any amount received from the levy or collection of taxes which are solely available and are earmarked for the support of the operation of the Water System;

(e) amounts received under contracts or agreements with governmental or private entities and designated for capital costs for the Water System* and

(f) grants for maintenance and operations received from the United States of America or from the State of California; provided, however, that System Revenues shall not include: (1) in all cases, customers’ deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the City; and (2) the proceeds of borrowings; but

(g) notwithstanding the foregoing, there shall be deducted from System Revenues any amounts transferred into a Rate Stabilization Fund as contemplated by MIPA Section 6.08(b), and any amounts transferred from current System Revenues to the Secondary Purchase Fund as contemplated by MIPA Section 6.08(c), and there shall be added to System Revenues any amounts transferred out of such Rate Stabilization Fund or the Secondary Purchase Fund to pay Maintenance and Operation Costs of the Water System.

* These items of System Revenue may not be used to pay Maintenance and Operation Costs of the Water System.

“Trustee” means U.S. Bank National Association, as successor trustee under the Indenture.

“Water System” means any and all facilities, properties, improvements and works at any time owned, controlled or operated by the City as part of the public utility system of the City for water purposes, for the development, obtaining, conservation, production, storage, treatment, transmission, furnishing and distribution of water and its other commodities or byproducts for public and private use (whether located within or without the City), and any related or incidental operations designated by the City as part of the Water System, including reclaimed and re-purified water.

“Water Utility Fund” means the fund by that name established under the Charter and held by the Borrower.

“WIFIA Lender” has the meaning provided in the preamble hereto.

2. Purpose. The Borrower and the Holders desire to establish a collateral agent arrangement in accordance with the laws of the State of California for the deposit of Net System Revenues in collateral accounts established hereunder, for the purposes set forth herein, including, the payment of amounts due under the Secured Obligations. Except as otherwise defined herein, all terms defined in the MIPA shall have the same meaning for the purposes of this Agreement as in the MIPA.

3. Appointment.

(a) U.S. Bank National Association is hereby appointed as the collateral agent for the benefit of the Holders.

(b) The Collateral Agent accepts such appointment and agrees to act as the Collateral Agent in accordance with this Agreement and the MIPA.

(c) Each of the Holders hereby authorizes and directs the Collateral Agent to act in strict accordance with the terms of this Agreement and the MIPA. Subject to the terms hereof, the Collateral Agent agrees, for the benefit of the Holders, to administer and enforce this Agreement as Collateral Agent, and, among other remedies, to foreclose upon, collect and dispose of the Collateral and to apply the proceeds therefrom, for the benefit of the Holders, as provided herein, and otherwise to perform its duties and obligations as the Collateral Agent hereunder in accordance with the terms hereof.

(d) The Collateral Agent shall be fully justified in failing or refusing to take any action hereunder unless the Collateral Agent shall first receive written direction from the Required Holders as it reasonably deems appropriate and is indemnified to its reasonable satisfaction from and against any liability or expense related thereto. Subject to the foregoing, the Collateral Agent shall act under this Agreement in accordance with any written directions by the Required Holders. The Collateral Agent shall not incur any liability for any determination made or instruction or direction given by the Required Holders.

(e) Any party that shall become a Holder after the date hereof shall be deemed to have so acknowledged and consented to the appointment, authorization and direction of the Collateral Agent by the Holders set forth in this Section 3.

4. Required Information.

(a) Promptly following the appointment of the Collateral Agent, upon the incurrence of each subsequent Obligation, and upon any change in the following, the Borrower shall provide in writing to the Collateral Agent the following information:

- (i) copies of the Issuing Instrument and related documents for each Obligation;
- (ii) a schedule of Payment Dates for each Obligation;
- (iii) a schedule of payment amounts for each Obligation;
- (iv) the outstanding principal amount of each Obligation;
- (v) the designation of each Obligation as a Parity Obligation or a Subordinated Obligation;
- (vi) the names and payment instructions of each Holder or, if applicable, the Holder Representative of each Class of Holders, with respect to each Obligation; and
- (vii) the Reserve Requirement for each Parity Obligations Reserve Subaccount and each Subordinated Obligations Reserve Subaccount.

(b) Not later than two (2) business days before each Payment Date, the Borrower shall provide in writing to the Collateral Agent the following information:

- (i) the aggregate amount of interest payable on each Parity Obligation on the upcoming Payment Date;
- (ii) the aggregate amount of principal or mandatory sinking fund redemption payable on each Parity Obligation on the upcoming Payment Date;
- (iii) the aggregate amount of interest payable on each Subordinated Obligation on the upcoming Payment Date;
- (iv) the aggregate amount of principal or mandatory sinking fund redemption payable on each Subordinated Obligation on the upcoming Payment Date;

- (v) the amount of interest payable to each Holder or Holder Representative of each Parity Obligation on the upcoming Payment Date;
- (vi) the amount of principal or mandatory sinking fund redemption payable to each Holder or Holder Representative of each Parity Obligation on the upcoming Payment Date;
- (vii) the amount of interest payable to each Holder or Holder Representative of each Subordinated Obligation on the upcoming Payment Date;
- (viii) the amount of principal or mandatory sinking fund redemption payable to each Holder or Holder Representative of each Subordinated Obligation on the upcoming Payment Date;
- (ix) copies of any invoice or statement received by the Borrower with respect to any of the foregoing;
- (x) written direction to deposit amounts in any Parity Obligations Reserve Subaccount or any Subordinated Obligations Reserve Subaccount;
- (xi) written direction to draw amounts from any Parity Obligations Reserve Subaccount or any Subordinated Obligations Reserve Subaccount and the application of any such draw; and
- (xii) in the event of any anticipated deficiency in the transfers and payments to be made by the Collateral Agent under Section 7, the calculation of the Pro Rata Amounts.

5. Lien and Pledge.

(a) All Parity Obligations, including Parity Installment Payment Obligations, shall be secured by a first priority lien on and pledge of Net System Revenues. The City does hereby grant to the Collateral Agent, for the benefit of the Holders of Parity Obligations, a first priority lien on and pledge of Net System Revenues to secure Parity Obligations. All Parity Obligations shall be of equal rank with each other without preference, priority or distinction of any Parity Obligations over any other Parity Obligations; provided that a Parity Obligation that by its terms under certain circumstances can require the full amount of the Parity Obligation to become payable in installments over not less than five years from the occurrence of the triggering event shall not be deemed to create any impermissible preference, priority or distinction as to lien or otherwise of such Parity Obligation over any other Parity Obligation.

(b) All Subordinated Obligations, including Subordinated Installment Payment Obligations, shall be secured by a second priority lien on and pledge of Net System Revenues that is junior and subordinate to the lien on and pledge of Net System Revenues securing Parity Obligations. The City does hereby grant to the Collateral Agent, for the benefit

of the Holders of Subordinated Obligations, a second priority lien on and pledge of Net System Revenues to secure Subordinated Obligations. All Subordinated Obligations shall be of equal rank with each other without preference, priority or distinction of any Subordinated Obligations over any other Subordinated Obligations; provided that a Subordinated Obligation that by its terms under certain circumstances can require the full amount of the Subordinated Obligation to become payable in installments over not less than five years from the triggering event shall not be deemed to create any impermissible preference, priority or distinction as to lien or otherwise of such Subordinated Obligation over any other Subordinated Obligation; and provided further that a Subordinated Obligation that by its terms under certain circumstances must be treated as, or becomes, a Parity Obligation shall not be deemed to create any impermissible preference, priority or distinction as to lien or otherwise of such Subordinated Obligation over any other Subordinated Obligation.

(c) The City does hereby grant to the Collateral Agent, for the benefit of the Holders of Parity Obligations, a first priority lien on and pledge of the Funds and Accounts established pursuant to Section 6 below and any and all amounts held therein, or credited thereto, to secure the Parity Obligations; provided that any amounts held in or credited to a Parity Obligations Reserve Subaccount shall be held solely for the benefit of and payment to the Holders of the Class of Obligations for which such Parity Obligations Reserve Subaccount was established pursuant to the Issuing Instrument under which such Class of Obligations was created. The City does hereby grant to the Collateral Agent, for the benefit of the Holders of Subordinated Obligations, a second priority lien on and pledge of the Funds and Accounts established pursuant to Section 6 below and any and all amounts held therein, or credited thereto, to secure the Subordinated Obligations; provided that any amounts held in or credited to a Subordinated Obligations Reserve Subaccount shall be held solely for the benefit of and payment to the Holders of the Class of Obligations for which such Subordinated Obligations Reserve Subaccount was established pursuant to the Issuing Instrument under which such Class of Obligations was created.

(d) The Collateral Agent may, but shall not be obligated to, take such action as it deems necessary to perfect or continue the perfection of the security interests on the Collateral held for the benefit of the Holders. The Collateral Agent shall not release any of the Collateral except upon payment in full of all Secured Obligations.

6. Establishment of Funds and Accounts. There are hereby established in the custody of the Collateral Agent the following Funds and Accounts to be held and maintained by the Collateral Agent for the benefit of the Holders, in accordance with this Agreement:

- (a) the Parity Obligations Payment Fund, in which there shall be established:
 - (i) the Parity Obligations Interest Account;
 - (ii) the Parity Obligations Principal Account; and
 - (iii) the Parity Obligations Reserve Account; and
- (b) the Subordinated Obligations Payment Fund, in which there shall be established:

- (i) the Subordinated Obligations Interest Account;
- (ii) the Subordinated Obligations Principal Account; and
- (iii) the Subordinated Obligations Reserve Account.

The Collateral Agent is further directed to establish within the Funds and Accounts established above such accounts and subaccounts as may be requested in writing by the Borrower for each Class of Obligations. All funds on deposit in the Accounts and the subaccounts therein, other than the Parity Obligations Reserve Account and the Subordinated Obligations Reserve Account, shall remain uninvested. Amounts held in the Parity Obligations Reserve Account and the Subordinated Obligations Reserve Account shall be invested in accordance with written directions of the Borrower. In the absence of such directions, amounts held in the Parity Obligations Reserve Account and the Subordinated Obligations Reserve Account shall be invested in [_____]. Earnings on amounts held in the Parity Obligations Reserve Account shall be transferred by the Collateral Agent upon receipt to the Parity Obligations Principal Account and earnings on amounts held in the Subordinated Obligations Reserve Account shall be transferred by the Collateral Agent upon receipt to the Subordinated Obligations Principal Account. The Collateral Agent shall not be liable for any loss on any investments of amounts held in the Parity Obligations Reserve Account and the Subordinated Obligations Reserve Account or for complying with any written direction concerning investments which the Collateral Agent reasonably believes to be authorized by the Borrower.

7. Application of Net System Revenues and Other Amounts.

(a) The Borrower shall collect and deposit all System Revenues when and as received in the Water Utility Fund and shall make each of the transfers of Net System Revenues from the Water Utility Fund to the Accounts set forth in Section 5.02 of the MIPA.

(b) The Collateral Agent shall make the following withdrawals, transfers and payments from the Accounts in the amounts, at the times and for the purposes specified in this Section 7(b).

(i) Parity Obligations Interest Account. On each Parity Obligation Interest Payment Date and on each other date on which the following amounts shall be due and payable, the Collateral Agent shall pay to the Holders of Parity Obligations, from the Parity Obligations Interest Account, the interest due and payable, including any amounts overdue and payable, on such date to Holders of Parity Obligations; provided that if the amount on deposit in the Parity Obligations Interest Account is insufficient therefor, the Collateral Agent shall pay each Parity Obligation Holder a Pro Rata Amount.

(ii) Parity Obligations Principal Account. On each Parity Obligation Principal Payment Date and on each other date on which the following amounts shall be due and payable, the Collateral Agent shall pay to the Holders of Parity Obligations, from the Parity Obligations Principal Account, the principal and mandatory sinking fund redemptions due and payable, including any amounts overdue and payable, on such date to Holders of Parity Obligations; provided that if the amount on deposit in the Parity

Obligations Principal Account is insufficient therefor, the Collateral Agent shall pay each Parity Obligation Holder a Pro Rata Amount.

(iii) Parity Obligations Reserve Account. On each Parity Obligation Interest Payment Date, the Collateral Agent shall deposit in each Parity Obligations Reserve Subaccount (if any) the amount necessary so that the balance therein equals the applicable Reserve Requirement; provided that if the amount on deposit in the Parity Obligations Reserve Account is insufficient therefor, the Collateral Agent shall deposit in each Parity Obligations Reserve Subaccount a Pro Rata Amount; and provided further that in the event of any draw on a Reserve Fund Credit Facility held in any Parity Obligations Reserve Subaccount, there shall be deemed a deficiency in such Parity Obligations Reserve Subaccount until the amount of the Reserve Fund Credit Facility is restored to its pre-draw amount.

(iv) Subordinated Obligations Interest Account. On each Subordinated Obligation Interest Payment Date and on each other date on which the following amounts shall be due and payable, the Collateral Agent shall pay to the Holders of Subordinated Obligations, from the Subordinated Obligations Interest Account, the interest due and payable, including any amounts overdue and payable, on such date to Holders of Subordinated Obligations; provided that if the amount on deposit in the Subordinated Obligations Interest Account is insufficient therefor, the Collateral Agent shall pay each Subordinated Obligation Holder a Pro Rata Amount.

(v) Subordinated Obligations Principal Account. On each Subordinated Obligation Principal Payment Date and on each other date on which the following amounts shall be due and payable, the Collateral Agent shall pay to the Holders of Subordinated Obligations, from the Subordinated Obligations Principal Account, the principal and mandatory sinking fund redemptions due and payable, including any amounts overdue and payable, on such date to Holders of Subordinated Obligations; provided that if the amount on deposit in the Subordinated Obligations Principal Account is insufficient therefor, the Collateral Agent shall pay each Subordinated Obligation Holder a Pro Rata Amount.

(vi) Subordinated Obligations Reserve Account. On each Subordinated Obligation Interest Payment Date, the Collateral Agent shall deposit in each Subordinated Obligations Reserve Subaccount (if any) the amount necessary so that the balance therein equals the applicable Reserve Requirement; provided that if the amount on deposit in the Subordinated Obligations Reserve Account is insufficient therefor, the Collateral Agent shall deposit in each Subordinated Obligations Reserve Subaccount a Pro Rata Amount; and provided further that in the event of any draw on a Reserve Fund Credit Facility held in any Subordinated Obligations Reserve Subaccount, there shall be deemed a deficiency in such Subordinated Obligations Reserve Subaccount until the amount of the Reserve Fund Credit Facility is restored to its pre-draw amount.

(c) For the avoidance of doubt nothing in this Agreement or the MIPA affects or diminishes the Holders' rights and remedies under their respective Issuing Instruments, including any right in such Issuing Instrument to accelerate amounts due under the applicable Secured Obligations.

8. Remedies. During the continuance of an Event of Default under the MIPA, (including, without limitation, any Event of Default specified in any Supplement, Authorizing Ordinance or Issuing Instrument) the Collateral Agent shall upon the written direction of the Holders of 25% or more of the aggregate principal amount of all Series of Parity Installment Obligations Outstanding, or after all Parity Installment Obligations have been paid in full, the Holders of 25% or more of the aggregate principal amount of all Series of Subordinated Obligations Outstanding (the “Required Holders”), voting collectively as a single class, by notice in writing to the City, declare the entire unpaid principal amount of all Series of Parity Installment Obligations (or all Subordinated Obligations, as the case may be) and the accrued interest thereon to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything contained herein or in the MIPA to the contrary notwithstanding; provided, that with respect to a Series of Parity Installment Obligations (or Series of Subordinated Obligations, as the case may be) which is credit enhanced by a Credit Support Instrument, acceleration shall not be effective unless the declaration is consented to by the related Credit Provider. The foregoing provisions, however, are subject to the condition that if at any time after the entire principal amount of all Parity Installment Obligations (or all Subordinated Obligations, as the case may be) and the accrued interest thereon shall have been so declared due and payable and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the City shall deposit with the Collateral Agent a sum sufficient to pay the unpaid principal amount of all such Parity Installment Obligations (or all such Subordinated Obligations, as the case may be) and the unpaid payments of any other Parity Obligations (or Subordinated Obligations, as the case may be) due prior to such declaration and the accrued interest thereon, with interest on such overdue installments at the rate or rates applicable thereto in accordance with their terms, and the reasonable fees and expenses of the Collateral Agent including, without limitation fees and expenses of the attorneys, agents and advisors of the Collateral Agent, and any and all other defaults known to the Collateral Agent (other than in the payment of the entire principal amount of the unpaid Parity Installment Obligations (or unpaid Subordinated Obligations, as the case may be) and the accrued interest thereon due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Collateral Agent or provision deemed by the Collateral Agent to be adequate shall have been made therefor, then and in every such case the Collateral Agent, by written notice to the City, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon.

Subject to this Section, the Holders of Subordinated Obligations may enforce the provisions of the MIPA or the applicable Issuing Instrument for their benefit by appropriate legal proceedings. The payment of Subordinated Obligations will be subordinated in right of payment to payment of the Parity Obligations (except for any payment in respect of Subordinated Obligations from the Reserve Fund securing such Subordinated Obligations). Upon the occurrence and during the continuance of any Event of Default, Holders of Parity Obligations will be entitled to receive payment thereof in full before the Holders of Subordinated Obligations are entitled to receive payment thereof (except for any payment in respect of Subordinated Obligations from the Reserve Fund securing such Subordinated Obligations) and the Holders of the Subordinated Obligations will become subrogated to the rights of the Holders of Parity Obligations to receive payments with respect thereto.

9. Application of Net System Revenues Upon Acceleration. After the date of the declaration of acceleration by the Collateral Agent as provided in Section 8 hereof, the City shall transfer, promptly upon receipt and after payment of Maintenance and Operation Costs of the Water System then due and payable, all Net System Revenues from the Water Utility Fund to the Collateral Agent, and the Collateral Agent shall promptly apply such Net System Revenues in the following order:

(a) First, to the payment of the fees, costs and expenses of the Collateral Agent and the Trustee, if any, in carrying out the provisions of this Agreement, including reasonable compensation to its agents, accountants and counsel;

(b) Second, to the payment of the entire principal amount of the unpaid Parity Installment Obligations and the unpaid principal amount of all other Parity Obligations and the accrued interest thereon, with interest on the overdue installments at the rate or rates of interest applicable thereto in accordance with their respective terms. In the event there are insufficient Net System Revenues to pay the entire principal amount of and accrued interest on all Parity Obligations, then accrued interest shall first be paid and any remaining amount shall be paid on account of principal, and in the event there are insufficient Net System Revenues to fully pay either interest or principal in accordance with the foregoing, then payment shall be prorated within a priority based upon the total amounts due in that priority; and

(c) Third, to the payment of the entire principal amount of the unpaid Subordinated Obligations and the accrued interest thereon, with interest on the overdue installments at the rate or rates of interest applicable thereto in accordance with their respective terms. In the event there are insufficient Net System Revenues to pay the entire principal amount of and accrued interest on all Subordinated Obligations, then accrued interest shall first be paid and any remaining amount shall be paid on account of principal, and in the event there are insufficient Net System Revenues to fully pay either interest or principal in accordance with the foregoing, then payment shall be prorated within a priority based upon the total amounts due in that priority.

10. Other Remedies of the Collateral Agent. The Collateral Agent (acting at the direction of the Required Holders) shall have the right:

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce, on behalf of the Holders, the rights of the Holders against the City or any councilmember, officer or employee thereof, and to compel the City or any such councilmember, officer or employee to perform and carry out its or his duties under the Law and the agreements and covenants required to be performed by it or him contained herein;

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

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

11. Non-Waiver.

(a) Nothing in this Agreement shall affect or impair the obligation of the City, which is absolute and unconditional, to pay the Installment Payments to the Collateral Agent at the respective due dates or upon prepayment from the Net System Revenues and the other funds herein committed for such payment, or shall affect or impair the right of the Collateral Agent, which is also absolute and unconditional, to institute suit to enforce such payment by virtue of the contract embodied herein.

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

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

12. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Collateral Agent is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by law.

13. Assignment by Corporation. The Corporation hereby irrevocably and absolutely assigns, transfers and conveys to the Collateral Agent and any successor thereto all of the rights, privileges, duties and obligations of the Corporation under Article VIII of the MIPA.

14. Rights of Corporation. Notwithstanding anything to the contrary set forth herein, the MIPA or any other Issuing Instrument, from and after the date of this Agreement, the Corporation shall not have any rights, pursuant to this Agreement, the MIPA or any other Issuing Instrument, (a) as a grantee of a pledge of Net System Revenues, (b) to accelerate or otherwise declare any Obligations immediately due and payable, (c) to exercise any remedies by or on behalf of the Holders (or Owners) or otherwise with respect to the Net System Revenues following an Event of Default or (d) to receive and/or apply any Net System Revenues to the payment of any Obligations following an Event of Default, and any provisions purporting to provide such rights to the Corporation shall be null and void. Nothing herein shall nullify or adversely affect any past, present or future assignment or pledge of the rights of the Corporation under the MIPA to the Authority or to the Trustee.

15. Statements. The Collateral Agent shall furnish monthly statements to the Borrower and, upon written request, to the Holders at the address specified in the Section entitled “Notices to the Parties,” no later than the fifth day of the following calendar month, which shall set forth in reasonable detail the account balances, receipts, disbursements, transfers, investment transactions, and accruals for each of the Accounts during such month.

16. Compensation. The Collateral Agent’s fees shall be paid by the Borrower in accordance with the Fee Schedule attached hereto as Exhibit B, as such Fee Schedule may be amended with the written agreement of the Collateral Agent and the Borrower. The Collateral Agent shall submit invoices to the Borrower at the address specified in the Section entitled “Notices to the Parties.” Following receipt of such invoices, the Borrower shall submit payment to the Collateral Agent at the address specified in the Section below entitled “Notices to the Parties.” For the avoidance of doubt, except as expressly provided herein, neither any Holder, nor any official, employee or agent thereof, shall be liable or otherwise responsible for any of the Collateral Agent’s fees or any indemnification or other obligation to the Collateral Agent hereunder.

17. Termination. This Agreement shall terminate upon the payment in full of all Obligations. Upon termination, any amount remaining in all Funds, Accounts and subaccounts hereunder shall immediately be transferred by the Collateral Agent to the Borrower or its assignees.

18. Resignation and Removal. The Collateral Agent may at any time resign by giving at least thirty (30) days written notice to the Borrower and each Holder, and the Collateral Agent may be removed by the Borrower and all Holders at any time with or without cause, but neither such resignation nor removal shall take effect until the appointment of a successor Collateral Agent. In the event of any resignation or removal of the Collateral Agent, a successor Collateral Agent shall be appointed by an instrument in writing executed by the Collateral Agent, the Borrower and each Holder. Such successor Collateral Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to the Borrower and each Holder. Upon delivery of such instrument, such successor Collateral Agent shall, without any further act or deed, be fully vested with all the powers, rights, duties and obligations of the Collateral Agent hereunder and the predecessor Collateral Agent shall deliver all moneys and securities held by it hereunder to such successor Collateral Agent.

19. Assignment by Collateral Agent. The services to be performed by the Collateral Agent are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Collateral Agent unless first approved by the Borrower and each Holder by written instrument executed and approved in the same manner as this Agreement.

20. Liability of the Collateral Agent.

(a) The Collateral Agent incurs no liability to make any disbursements pursuant to this Agreement except from funds held in the Accounts. At all times, whether or not a default by the Borrower shall have occurred and be continuing, the Collateral Agent shall perform only such actions as are expressly set forth herein, and no implied duties or responsibilities shall be imposed upon the Collateral Agent. The Collateral Agent may consult

with counsel and the advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered hereunder in good faith reliance upon and in accordance with such advice or opinion of counsel.

(b) The Collateral Agent shall not be liable with respect to any action taken, suffered or omitted by it in good faith: (i) reasonably believed by it to be authorized or within the discretion or rights or powers conferred on it by this Agreement; or (ii) in accordance with any written direction or request of the Borrower or the Holders. In the absence of willful misconduct or gross negligence on its part, the Collateral Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any requisition, note, notice, resolution, consent, facsimile, certificate, affidavit, letter, telegram, teletype message, statement, order or other document which appears on its face to be genuine and correct and to have been signed or sent by the proper person or persons.

(c) No provisions of this Agreement shall require the Collateral Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its authority. The Collateral Agent shall not be liable for losses on investments made at the direction of the Borrower or otherwise made in accordance with this Agreement. Before taking any action hereunder, the Collateral Agent shall have the right, but not the obligation, to demand any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that required as a condition to such action, deemed desirable by the Collateral Agent in establishing the necessity or appropriateness of such action. The Collateral Agent may rely and be protected in relying on any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party, and shall not be required to make any investigation into the facts or matters contained therein. If it chooses to make such inquiry, the Collateral Agent shall have access to the books, records or premises of the Borrower, personally or through agents of the Collateral Agent or attorneys, at any reasonable time upon reasonable notice.

(d) The Collateral Agent shall bear no responsibility for the recitals contained herein. The Collateral Agent may execute any of its powers or perform its duties through attorneys, agents or receivers. The Collateral Agent shall be under no obligation to exercise any of the rights or powers vested in the Collateral Agent by this Agreement unless the Collateral Agent has received from the Holders security or indemnity against the costs, expenses and liabilities which might be incurred by the Collateral Agent in compliance with such request or direction. In acting as Collateral Agent hereunder, the Collateral Agent acts solely in its capacity as Collateral Agent hereunder and not in its individual or personal capacity. The Collateral Agent shall be entitled to conclusively rely and act upon and in compliance with the written instructions or directions of the Borrower or the Holders, as applicable.

(e) To the extent permitted by law, the Borrower hereby agrees to indemnify the Collateral Agent and its respective officers, employees and agents against any loss, liability, action, suit, judgment, demand or cost (each a "Liability") and to pay or reimburse the Collateral Agent for any expense (including counsel fees and disbursements and, allocated costs of in-house counsel) which may be incurred by the Collateral Agent or any officer, employee or agent thereof by reason of, or in connection with, the Collateral Agent's appointment and its duties as

Collateral Agent, except such Liability as shall result from Collateral Agent' gross negligence or willful misconduct in the performance of its other obligations and duties hereunder. The obligation of the Borrower under this paragraph shall survive the resignation or removal of the Collateral Agent.

(f) In no event shall the Collateral Agent be liable for incidental, indirect, special, consequential or punitive damages or penalties (including, but not limited to lost profits), even if the Collateral Agent has been advised of the likelihood of such damages or penalty and regardless of the form of action, except in the case of its own negligence or willful misconduct. The Collateral Agent shall not be responsible for delays or failures in performance resulting from acts beyond its control, including without limitation, acts of God, strikes, lockouts, riots, acts or war or terror, epidemics, governmental regulations, fire, communication line failures, computer viruses, intrusions or attacks, power failures, earthquakes or other disasters.

21. Notices to the Parties. Unless otherwise indicated elsewhere in this Agreement, all notices, requests and communications sent by the parties shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, and shall be addressed as follows:

If to the Trustee: U.S. Bank National Association
633 West Fifth Street, 24th Floor
Los Angeles, CA 90071
Attention: Global Corporate Trust

If to the EPA: United States Environmental Protection Agency
WIFIA Director
WJC-W 6201A
1200 Pennsylvania Avenue NW
Washington, DC 20460
Attention: Jorianne Jernberg
Email: WIFIA@epa.gov

[If to the State Water Board: California State Water Resources Control Board]
[_____]

If to the Borrower: City of San Diego
City Administration Bldg.
202 C Street, Mail Station 9B
San Diego, California 92101
Attn: Chief Financial Officer

If to the Corporation: San Diego Facilities and Equipment Leasing Corporation
c/o Office of the City Attorney
1200 Third Street, Suite 1620, Mail Station 59
San Diego, California 92101
Attn: Deputy City Attorney for Finance and Disclosure

With a copy to: City of San Diego
202 C Street, Mail Station 9A
San Diego, California 92101
Attn: Chief Financial Officer

If to the Authority: Public Facilities Financing Authority of the City of San Diego
c/o Office of the City Attorney
1200 Third Street, Suite 1620, Mail Station 59
San Diego, California 92101
Attn: Deputy City Attorney for Finance and Disclosure

If to the Collateral Agent: U.S. Bank National Association
[_____]

Written communications to any other Holder shall be addressed to such Holder set forth in the Counterpart signed by such Holder.

Each such notice, request or communication shall be effective (i) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 21 (or in accordance with the latest unrevoked written direction from the receiving party) and (ii) if given by email, when such email is delivered to the address specified in this Section 21 (or in accordance with the latest unrevoked written direction from the receiving party).

22. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns, subject to Section 19 above in the case of the Collateral Agent.

23. Merger of Prior Agreements. The parties to this Agreement intend that this Agreement (including all of the attached exhibits, which are incorporated into this Agreement by reference) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

24. Interpretation of this Agreement. The article, section and other headings of this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

25. Non-Liability of Borrower Officials, Employees and Agents. Notwithstanding anything to the contrary in this Agreement, no council member, officer, employee or agent of the Borrower shall be personally liable to the Collateral Agent, its successors and assigns, in the event of any default or breach by Borrower or for any amount which may become due to the Collateral Agent, its successors and assigns, or for any obligation of the Borrower under this Agreement.

26. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

27. Amendment. This Agreement may not be amended except by a written instrument executed by the Collateral Agent, the Borrower, the Corporation, the Authority and each Holder.

28. Governing Law. This Agreement shall be construed in accordance with the laws of the State of California.

29. Counterparts. This Agreement may be executed in several Counterparts, each one of which shall constitute an original and all collectively shall constitute but one instrument.

30. Additional Holders. Any Holder may become a party to this Agreement upon the execution and delivery to the Collateral Agent (which shall distribute the same to each Holder) and the Borrower of a Counterpart by such Holder and the acknowledgment and acceptance of such Counterpart by the Collateral Agent and the Borrower. Upon execution and delivery to the Collateral Agent and the Borrower of a Counterpart by a Holder and the acknowledgment and acceptance of such Counterpart by the Collateral Agent and the Borrower, such Holder shall be as fully a party to this Agreement as if such Holder were an original signatory to this Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Borrower, the Corporation, the Authority, the Trustee, [the State Water Board,] the WIFIA Lender and the Collateral Agent have caused this Agreement to be executed by their duly authorized representatives.

CITY OF SAN DIEGO

U.S. BANK NATIONAL ASSOCIATION,
as the Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

CALIFORNIA STATE WATER RESOURCES
CONTROL BOARD

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: _____
Name:
Title:

By: _____
Name:
Title:

SAN DIEGO FACILITIES AND EQUIPMENT
LEASING CORPORATION

PUBLIC FACILITIES FINANCING
AUTHORITY OF THE CITY OF SAN DIEGO

By: _____
Name:
Title:

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

APPROVED AS TO FORM:
MARA W. ELLIOTT, City Attorney

By: _____
Name:
Title:

By: _____
Name: Bret A. Bartolotta
Title: Deputy City Attorney

EXHIBIT A

Form of Counterpart to Collateral Agency, Account and Assignment Agreement

IN WITNESS WHEREOF, the undersigned has caused this Counterpart dated as of [_____, 20__] (this “**Counterpart**”) to the Collateral Agency, Account and Assignment Agreement dated as of [____], 2018 (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time, the “**Agreement**”), to be duly executed and delivered by its duly authorized officer. Upon execution and delivery of this Counterpart to the Borrower and the Collateral Agent and the acknowledgment and acceptance of such Counterpart by the Borrower and the Collateral Agent, the undersigned shall be a [Holder] [Holder Representative] under the Agreement and shall be as fully a party to the Agreement as if such [Holder] [Holder Representative] were an original signatory to the Agreement.

[Name of Holder or Holder Representative]

By _____

Name _____

Title _____

Notice Address:

ACKNOWLEDGED AND ACCEPTED:

U.S. BANK NATIONAL ASSOCIATION,
as Collateral Agent

By _____

Name _____

Title _____

CITY OF SAN DIEGO,
as Borrower

By _____

Name _____

Title _____

EXHIBIT B

Fee Schedule

| Service Category | Fee |
|-------------------------|------------|
| | |
| | |
| | |
| | |
| | |

All fees shall be invoiced to the Borrower. The above fees shall include all incidental expenses of the Collateral Agent, including the costs of toll telephone calls, document binding, filing fees, express mail, delivery charges, courier service, in- and out-of-house photocopying, charges for sending facsimiles, transportation, automobile rental, taxicab fares, parking, meals, secretarial services, printing, photographs, renderings, maps, Internet, computer, overhead, administration, and other costs and charges incurred by the Collateral Agent.

Upon prior written approval of the Borrower, the Collateral Agent may invoice for extraordinary expenses and fees for the performance of services not contemplated at the time of the execution of this Agreement. Such extraordinary expenses and fees may include activities relating to default and workout situations, travel and travel-related expenses, amendments and releases. Extraordinary services shall be billed on an hourly basis at \$[___] per hour. All extraordinary expenses and fees must be approved by the Borrower prior to the expense being incurred.



The City of San Diego
Item Approvals

Item Subject: Authorization for the Public Facilities Financing Authority of the City of San Diego to enter into Collateral Agency, Account and Assignment Agreement.

| Approving Authority | Approver | Approval Date |
|--|-----------------|----------------------|
| OFFICE OF THE CITY ATTORNEY DEPARTMENT APPROVER | REISCH, KEVIN | 09/11/2018 |