

AGENDA  
BOARD OF DIRECTORS MEETING  
**OCWD PUBLIC FACILITIES CORPORATION**  
18700 Ward Street, Fountain Valley (714) 378-3200  
Wednesday, April 21, 2021, 5:20 p.m.

Computer Audio: Please click the link below to join the Zoom meeting  
<https://ocwd.zoom.us/j/95734914322>

Meeting ID: 957 3491 4322

(669) 900 9128

**Pursuant to Paragraph 11 of Executive Order N-25-20, executed by the Governor of California on March 12, 2020 as a response to mitigating the spread of Coronavirus known as COVID-19, this regular meeting of the Orange County Water District will allow members of the Board to attend the Board meeting telephonically from remote locations without requiring public access to those locations. Public participation will be afforded telephonically through the Zoom Webinar access listed above.**

**ROLL CALL**

**VISITOR PARTICIPATION**

Time has been reserved at this point in the agenda for persons wishing to comment for up to three minutes to the Board of Directors on any item that is not listed on the agenda, but within the subject matter jurisdiction of the District. By law, the Board of Directors is prohibited from taking action on such public comments. As appropriate, matters raised in these public comments will be referred to District staff or placed on the agenda of an upcoming Board meeting.

At this time, members of the public may also offer public comment for up to three minutes on any item on the Consent Calendar. While members of the public may not remove an item from the Consent Calendar for separate discussion, a Director may do so at the request of a member of the public.

**MATTERS FOR CONSIDERATION**

1. MINUTES OF PUBLIC FACILITIES CORPORATION BOARD MEETING HELD JANUARY 6, 2021

RECOMMENDATION: Approve minutes as presented

2. REPLACEMENT OF THE LETTER OF CREDIT FOR THE DISTRICT'S 2003A DEBT

RECOMMENDATION: Adopt Resolutions authorizing execution and delivery of Fee Letter, and Reimbursement Agreement for the 2003A variable rate debt

**ADJOURNMENT**

In accordance with the requirements of California Government Code Section 54954.2, this agenda has been posted in the main lobby of the Orange County Water District, 18700 Ward Street, Fountain Valley, CA not less than 72 hours prior to the meeting date and time above. All written materials relating to each agenda item are available for public inspection in the office of the District Secretary. Backup material for the Agenda is available at the District offices for public review and can be viewed online at the District's website: [www.ocwd.com](http://www.ocwd.com).

Pursuant to the Americans with Disabilities Act, persons with a disability who require a disability-related modification or accommodation in order to participate in a meeting, including auxiliary aids or services, may request such modification or accommodation from the District Secretary at (714) 378-3233, by email at [jdurant@ocwd.com](mailto:jdurant@ocwd.com) by fax at (714) 378-3373. Notification 24 hours prior to the meeting will enable District staff to make reasonable arrangements to assure accessibility to the meeting.

As a general rule, agenda reports or other written documentation has been prepared or organized with respect to each item of business listed on the agenda, and can be reviewed at [www.ocwd.com](http://www.ocwd.com). Copies of these materials and other disclosable public records distributed to all or a majority of the members of the Board of Directors in connection with an open session agenda item are also on file with and available for inspection at the Office of the District Secretary, 18700 Ward Street, Fountain Valley, California, during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday. If such writings are distributed to members of the Board of Directors on the day of a Board meeting, the writings will be available at the entrance to the Board of Directors meeting room at the Orange County Water District office



BOARD OF DIRECTORS, OCWD PUBLIC FACILITIES CORPORATION  
January 6, 2021, 5:25 p.m.

The OCWD Public Facilities Corporation Annual Board of Directors meeting was called to order on Zoom at 5:25 pm on January 6, 2021.

PFC Directors/Officers

Stephen R. Sheldon, President (absent)  
Cathy Green, Vice President  
Tri Ta, Secretary  
Randy Fick, Chief Financial Officer  
Jeremy Jungreis, General Counsel

OCWD Staff

Michael R. Markus, General Manager  
Janice Durant, District Secretary

1. Minutes of Public Facilities Corporation Board Meeting

MOTION NO. PFC-114  
APPROVING MINUTES OF BOARD OF DIRECTORS MEETING

Upon motion by Director Green, seconded by Director Ta and carried [2-0], the Minutes of the OCWD Public Facilities Corporation Board of Directors meeting held May 22, 2019 are hereby approved as presented.

Ayes: Green, Ta  
Absent: Sheldon

2. Elect Officers of the Public Facilities Corporation

The Board took the following action electing officers in accordance with the PFC Bylaws that provide for the PFC Board to consist of the persons serving as the President, First Vice President, Second Vice President of the Board of Directors and reappointing the Chief Financial Officer and General Counsel of the Orange County Water District.

MOTION NO. PFC-115  
RE-ELECTING PUBLIC FACILITIES CORPORATION OFFICERS

Upon motion by Director Green, seconded by Director Ta and carried [2-0], the following officers are hereby elected to the OCWD Public Facilities Corporation:

Ayes: Green, Ta  
Absent: Sheldon

- Stephen R. Sheldon - President
- Cathy Green - Vice President
- Tri Ta - Secretary
- Randy Fick - Chief Financial Officer
- Jeremy Jungreis – General Counsel

ADJOURNMENT

There being no further business to come before the PFC Board, the meeting was adjourned at 5:27 p.m.

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Janice Durant, OCWD District Secretary



## AGENDA ITEM SUBMITTAL

**Meeting Date:** April 21, 2021

**To:** OCWD Public Facilities Corporation  
Board of Directors

**From:** Mike Markus

**Staff Contact:** R. Fick

**Budgeted:** N/A

**Budgeted Amount:** N/A

**Cost Estimate:** N/A

**Funding Source:** N/A

**Program/Line Item No.:** N/A

**General Counsel Approval:** N/A

**Engineers/Feasibility Report:** NA

**CEQA Compliance:** N/A

**Subject: REPLACEMENT OF THE LETTER OF CREDIT FOR THE DISTRICT'S  
2003A DEBT**

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### SUMMARY

On March 11, 2021, staff presented to the Administration/Finance Issues Committee the need to replace Citibank as the Letter of Credit provider and remarketing agent for the District's 2003A variable rate debt. Preparation of the necessary documents to secure a Letter of Credit with Bank of America and Morgan Stanley as the remarketing agent was approved at the March 17, 2021 Board meeting. The documents have been prepared and will be presented at the PFC meeting.

#### Attachment(s):

- Resolution – OCWD Public Facilities Corporation
- Fee Letter
- Reimbursement Agreement

### RECOMMENDATION

Adopt Resolutions authorizing execution and delivery of Fee Letter, and Reimbursement Agreement for the 2003A variable rate debt.

### BACKGROUND/ANALYSIS

The Board approved the preparation of documents needed to secure a Letter of Credit with Bank of America as a result of the current Citibank Letter of Credit expiring on May 24, 2021. The Board also approved the preparation of documents necessary to replace Citibank with Morgan Stanley as the remarketing agent for the District's 2003A variable rate debt.

A draft of the documents has been prepared for Board review and approval and a summary of these documents to execute this transaction is provided below:

- Fee Letter. Established terms and conditions between the District and Bank of America, N.A. for the issuance of the letter of credit and terms and conditions for changes to fees and termination.

- Reimbursement Agreement. Establishes terms and conditions between the District and Bank of America, N.A. for the issuance and maintenance of the Bank of America, N.A. letter of credit.

Moving forward, the 2003A variable rate debt will be remarketed before May 24, 2021, the expiration date of the current Citibank Letter of Credit.

## **PRIOR BOARD ACTION**

3/17/21 21-3-54 – Authorize Preparation and Execution of Documents Necessary to Replace Citibank with Morgan Stanley as the Remarketing Agent for the District's Adjustable-Rate Revenue Certificates of Participation, Series 2003A, consistent with the term sheet provided by Morgan Stanley, and authorize payment for the costs not to exceed \$24,628.

05/18/11 R11-5-78 – Authorize an Alternate Liquidity Facility and approve the execution and delivery of Certain Documents to replace the Lloyds SCPA with a Letter of Credit issued pursuant to a Letter of Credit Reimbursement Agreement (the "LCRA") by and among the District, the OCWD Public Facilities Corporation and Citibank, N.A. on or before the scheduled termination date of the Lloyds SCPA of June 9, 2011

4/20/11 R11-4-60 – Approve and authorize the Preparation and Execution of Documents Necessary to Secure a Letter of Credit and Reimbursement Agreement with Citibank, N.A. for the 2003a Variable Rate Debt, for a Term of 3 Years Consistent with the Term Sheet Provided By Citibank, And Authorize Payment For The Costs Of Issuance Not To Exceed \$163,500

04/19/06 R06-4-41: Authorize execution and delivery of an Amendment to a Standby Certificate Purchase Agreement relating to the Adjustable-Rate Revenue Certificates of Participation, Series 2003A with Lloyds TSB Bank PLC

04/23/03 R03-4-58: Certificates of Participation to \$150,000,000, and authorize the financing and refinancing of the acquisition of certain facilities, the refinancing of such commercial paper notes, the financing of the acquisition of real property and to approve forms of the Preliminary Official Statement, the Standby Certificate Purchase Agreement and certain required documents



**RESOLUTION NO. C-\_\_-\_\_**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
OCWD PUBLIC FACILITIES CORPORATION APPROVING  
THE EXECUTION AND DELIVERY OF CERTAIN  
DOCUMENTS AND AUTHORIZING CERTAIN ACTIONS IN  
CONNECTION WITH AN ALTERNATE CREDIT FACILITY**

WHEREAS, the OCWD Public Facilities Corporation is a nonprofit public benefit corporation organized and existing under the laws of the State of California (the "Corporation") with the authority to assist in the financing of certain facilities on behalf of the Orange County Water District (the "District"); and

WHEREAS, the Board of Directors of the Corporation (the "Board") has previously assisted the District with respect to the execution and delivery of certificates of participation (the "2003A Certificates") to finance certain facilities of the District, and has previously authorized the execution of certain agreements in connection therewith; and

WHEREAS, the District and the Corporation previously entered into a Letter of Credit Reimbursement Agreement, dated June 1, 2011 (the "Citibank Reimbursement Agreement"), with Citibank, N.A., pursuant to which Citibank, N.A. delivered a letter of credit (the "Citibank Letter of Credit") to provide support for the payment of principal and interest evidenced by the 2003A Certificates; and

WHEREAS, the District has determined that it is in the best interest of the District to replace the Citibank Letter of Credit with a letter of credit issued pursuant to a Reimbursement Agreement (the "BANA Reimbursement Agreement") by and among the District, the Corporation and Bank of America, N.A. on or before the scheduled expiration date of the Citibank Letter of Credit of May 24, 2021;

NOW, THEREFORE, the Board does hereby resolve as follows:

SECTION 1. Replacement of Citibank Letter of Credit. The President or Vice President or the designee thereof is hereby authorized and directed to take such actions and execute such documents as are required to replace the Citibank Letter of Credit.

SECTION 2. BANA Reimbursement Agreement and Fee Letter. The BANA Reimbursement Agreement, and a related Fee Letter (the "Fee Letter"), in substantially the form attached hereto as Exhibit A and, upon execution as authorized below, made a part hereof as though set forth in full herein, is hereby approved. The President or Vice President or the designee thereof is hereby authorized and directed to execute and deliver the BANA Reimbursement Agreement and the Fee Letter with such changes, insertions and omissions as may be approved by the officers executing the same, said execution being conclusive evidence of such approval.

SECTION 3. Good Faith Estimates. The Board acknowledges that the good faith estimates required by Section 5852.1 of the California Government Code are disclosed in Exhibit B attached to this Resolution and are available to the public at the meeting at which this Resolution is approved.

SECTION 4. Other Actions. The President, Vice President, Chief Financial Officer, Secretary, Assistant Secretary and such other officers of the Corporation are authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which such officers may deem necessary or advisable in order to consummate the replacement of the Citibank Letter of Credit and the transactions contemplated by the BANA Reimbursement Agreement and the Fee Letter and otherwise effectuate the purposes of this Resolution, and such actions previously taken by such officers are hereby ratified, confirmed and approved.

SECTION 4. Effect. This Resolution shall take effect immediately.

I DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. C-\_\_\_\_-\_\_\_\_ adopted by the Board of Directors of the OCWD Public Facilities Corporation on April 21, 2021.

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Corporation Secretary

EXHIBIT A  
REIMBURSEMENT AGREEMENT AND FEE LETTER

## EXHIBIT B

### GOOD FAITH ESTIMATES

Set forth below are good faith estimates of Fieldman, Rolapp & Associates, Inc., the municipal advisor, as required under Section 5852.1 of the California Government Code (the “Code”), related to the Reimbursement Agreement:

- (a) The true interest cost relating to the Reimbursement Agreement is estimated at 2.85%, calculated as provided in Section 5852.1(a)(1)(A) of the Code and assuming the District’s swap rate.
- (b) The finance charge relating to the Reimbursement Agreement, including all fees and charges paid to third parties, estimated at \$236,200.
- (c) Proceeds expected to be received by the District as a result of the execution and delivery of the Reimbursement Agreement, less the finance charge described in (b) above and any capitalized interest or reserves paid from proceeds received as a result of the execution and delivery of the Reimbursement Agreement (if any), is equal to \$129,815,000.
- (d) The total payment amount calculated as provided in Section 5852.1(a)(1)(D) of the Code is estimated at \$196,075,617.

The foregoing are estimates and the final costs will depend on market conditions and can be expected to vary from the estimated amounts set forth above. It is the purpose of this Exhibit B to disclose the required information, which has been obtained in accordance with law.

**FEE LETTER  
DATED MAY 17, 2021**

Reference is hereby made to (i) that certain Reimbursement Agreement dated as of May 1, 2021 (the “*Agreement*”), by and among ORANGE COUNTY WATER DISTRICT (the “*District*”), OCWD PUBLIC FACILITIES CORPORATION (the “*Corporation*”) and BANK OF AMERICA, N.A. (the “*Bank*”), relating to the District’s Adjustable Rate Revenue Certificates of Participation Series 2003A (the “*Certificates*”), and (ii) that certain Irrevocable Transferable Letter of Credit dated May 17, 2021, issued pursuant to the Agreement, supporting the Certificates. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

The purpose of this Fee Letter is to confirm the agreement between the Bank, the District and the Corporation with respect to the Letter of Credit Fee (as defined below) and certain other fees and expenses payable by the District to the Bank pursuant to the Agreement. This Fee Letter is the Fee Letter referenced in the Agreement. This Fee Letter and the Agreement are to be construed as one agreement by and among the District, the Corporation and the Bank, and all obligations hereunder are to be construed as obligations thereunder payable solely from the sources set forth in the Agreement. All references to amounts due and payable under the Agreement will be deemed to include all amounts, fees and expenses payable under this Fee Letter.

ARTICLE I. DEFINITIONS.

As used in this Fee Letter:

- (a) “*Letter of Credit Fee*” has the meaning set forth in Section 2.1 hereof.
- (b) “*Letter of Credit Fee Rate*” has the meaning set forth in Section 2.1 hereof.
- (c) “*Quarterly Payment Date*” has the meaning set forth in Section 2.1 hereof.

Any capitalized terms used herein that are not specifically defined herein shall have the same meanings herein as in the Agreement.

ARTICLE II. FEES.

*Section 2.1. Letter of Credit Fee.* The District agrees to pay or cause to be paid to the Bank on July 1, 2021, for the period commencing on the Closing Date and ending on June 30, 2021, and in arrears on the first Business Day of each October, January, April and July (each such date referred to herein as a “*Quarterly Payment Date*”) occurring thereafter to the Termination Date, and on the Termination Date, a non-refundable Letter of Credit Fee (the “*Letter of Credit Fee*”) in an amount equal to the product of (x) the applicable rate per annum for each day associated with the applicable Rating (as defined below) and corresponding Level specified in the pricing matrix below for each such day during the related fee period (the “*Letter*

of Credit Fee Rate”) and (y) the Stated Amount of the Letter of Credit (without regard to any temporary reductions thereof) for each such day during the related fee period:

LEVEL	MOODY’S RATING	S&P RATING	FITCH RATING	FACILITY FEE RATE
1	Aa1 or above	AA+ or above	AA+ or above	0.34%
2	Aa2	AA	AA	0.49%
3	Aa3	AA-	AA-	0.64%
4	A1	A+	A+	0.79%
5	A2	A	A	0.94%
6	A3	A-	A-	1.09%
7	Baa1	BBB+	BBB+	1.24%

The term “Rating” as used above shall mean the Obligor Rating assigned by any of Moody’s, S&P or Fitch (without regard to any form of credit enhancement). For the avoidance of doubt, in the event of split Ratings (i.e., one or more of the Rating Agency’s Ratings is at a different level than any other Rating by either of the other Rating Agencies), the Letter of Credit Fee Rate shall be based upon the Level in which the lowest such Rating appears. Any change in the Letter of Credit Fee Rate resulting from a change in the Rating shall be and become effective as of and on the date of the announcement of the change in the Rating. The District acknowledges that as of the Closing Date the Letter of Credit Fee Rate is that specified above for Level 1. In the event that any relevant rating is suspended, withdrawn or otherwise unavailable from any Rating Agency, and for so long as such relevant rating remains so suspended, withdrawn or otherwise unavailable, or upon the occurrence and during the continuance of any Default or Event of Default, in each such case, the Letter of Credit Fee Rate shall, immediately and automatically and without notice to the District, increase by an additional 1.50% per annum above that set forth in Level 7. The Letter of Credit Fee shall be payable in immediately available funds and computed on the basis of a year of 360 days and the actual number of days elapsed.

*Section 2.2. Draw Fees.* The District agrees to pay to the Bank a non-refundable drawing fee equal to \$295 for each Drawing under the Letter of Credit.

*Section 2.3. Transfer Fee.* As a condition precedent to each transfer of the Letter of Credit in accordance with its terms or the appointment of a successor Trustee, the District agrees to pay the Bank a non-refundable fee of \$2,500, and to reimburse the Bank for its actual costs and expenses associated with such transfer or appointment (including, without limitation, the reasonable fees and expenses of counsel to the Bank).

*Section 2.4. Amendment, Waiver Fee and Other Fees and Expenses.* As a condition precedent thereto, the District agrees to pay to the Bank in connection with each amendment, supplement, or modification to the Agreement (or any Related Document, the amendment, supplement or modification of which requires the consent of the Bank), or execution of any standard waiver or consent, a non-refundable fee equal to \$2,500 (the “Amendment Fee”), or such other fee as may be agreed to between the District and the Bank, plus, in each case, the

reasonable fees and expenses of counsel to the Bank; *provided, however*, that the Amendment Fee for any non-standard waiver or consent shall be in an amount as may be agreed to between the District and the Bank determined at the time such non-standard waiver or consent is requested by the District.

*Section 2.5. Termination Fee; Reduction Fee.* (a) Notwithstanding anything set forth herein or in the Agreement to the contrary, the District agrees not to terminate or replace, or cause the termination or replacement of, the Letter of Credit prior to the one-year anniversary of the Closing Date, except upon (i) the payment by the District to the Bank of a termination fee (the "*Termination Fee*"), in an amount equal to the product of (1) the Letter of Credit Fee Rate in effect on the date of such termination or replacement, (2) the Stated Amount in effect on the date of such termination or replacement (without regard to any temporary reduction thereof) and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such termination or replacement to and including the first anniversary of the Closing Date and the denominator of which is 360 and (ii) compliance with the provisions of the Agreement; *provided, however*, that no Termination Fee shall become payable if the Letter of Credit is terminated or replaced as a result of (x) a refunding or refinancing of the Notes with long-term bonds that requires neither credit or liquidity support nor a purchase by another bank or institutional buyer pursuant to a direct purchase transaction, or (y) the downgrade of any of the short term ratings of the Bank below P-1, A-1 or F1, by any two of Moody's, S&P or Fitch, respectively. No termination of the Agreement shall become effective unless all amounts payable by the District to the Bank pursuant to this Section 2.5 have been paid in full.

(b) Notwithstanding anything set forth herein or in the Agreement to the contrary, the District agrees not to permanently reduce the Stated Amount of the Letter of Credit prior to the one-year anniversary of the Closing Date, without the payment by the District to the Bank of a reduction fee (the "*Reduction Fee*") in connection with each and every permanent reduction of the Stated Amount in an amount equal to the product of (A) the Letter of Credit Fee Rate in effect on the date of such reduction, (B) the difference between the Stated Amount prior to such permanent reduction and the Stated Amount after such permanent reduction and (C) a fraction, the numerator of which is equal to the number of days from and including the date of such reduction to and including the first anniversary of the Closing Date, and the denominator of which is 360 and (ii) compliance with the provisions of the Agreement; *provided, however*, that no Reduction Fee shall become payable if the Stated Amount is reduced as a result of (x) a refunding or refinancing of the Notes with long-term bonds that requires neither credit or liquidity support nor a purchase by another bank or institutional buyer pursuant to a direct purchase transaction, or (y) the downgrade of any of the short term ratings of the Bank below P-1, A-1 or F1, by any two of Moody's, S&P or Fitch, respectively. No permanent reduction of the Agreement shall become effective unless all amounts payable by the District to the Bank pursuant to this Section 2.5 have been paid in full.

*Section 2.6. Payment Office.* For purposes of the Agreement, "*Payment Office*" means Bank of America N.A., ABA #: 026009593, Account Number: 1365840632100, Reference: Orange County WD, Attn: BL Operations, or such other account as the Bank may designate from time to time.

*Section 2.7. Payment Due Date and Default Rate.* To the extent any fee payable under this Fee Letter is not paid when due, such fee shall accrue interest from the date payment is due until payment in full at a per annum rate of interest equal to the Default Rate to the extent allowed by law.

ARTICLE III. MISCELLANEOUS.

*Section 3.1. Fees and Expenses.* The District shall pay to the Bank the reasonable fees of domestic counsel to the Bank in an amount not to exceed \$47,500, plus disbursements, payable in accordance with this Fee Letter. The reasonable fees of counsel to the Bank shall be paid directly to the Bank.

*Section 3.2. Amendments.* No amendment to this Fee Letter shall become effective without the prior written consent of the District, the Corporation and the Bank.

*Section 3.3. Governing Law.* THIS FEE LETTER AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS FEE LETTER AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK; *PROVIDED* THAT THE OBLIGATIONS OF THE DISTRICT HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA.

*Section 3.4. Counterparts.* This Fee Letter may be executed in two or more counterparts, each of which shall constitute an original but both or all of which, when taken together, shall constitute but one instrument; and any of the parties hereto may execute this Fee Letter by signing such counterpart. This Fee Letter may be delivered by the exchange of signed signature pages by facsimile transmission or by attaching a pdf copy to an email, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page.

*Section 3.5. Severability.* Any provision of this Fee Letter which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

*Section 3.6. Confidentiality.* This Fee Letter is delivered to the District and the Corporation on the understanding that neither this Fee Letter nor any of its terms shall be disclosed, directly or indirectly, to any other Person except (a) to the District's and the Corporation's officers, directors, employees, accountants, attorneys, agents and advisors who are directly involved in the consideration of this matter on a confidential and need-to-know basis and for whose breach of this confidentiality undertaking the District and the Corporation shall be responsible or (b) under compulsion of law (whether by interrogatory, subpoena, civil investigative demand, open records request or otherwise) or by order of any court or governmental or regulatory body; *provided* that, to the extent lawful, the District and the Corporation shall give the Bank reasonable prior notice of such disclosure.



[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Fee Letter to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

ORANGE COUNTY WATER DISTRICT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

OCWD PUBLIC FACILITIES CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BANK OF AMERICA, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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REIMBURSEMENT AGREEMENT

dated as of May 1, 2021,

by and among

ORANGE COUNTY WATER DISTRICT,

OCWD PUBLIC FACILITIES CORPORATION

and

BANK OF AMERICA, N.A.

relating to:

Orange County Water District  
Adjustable Rate Revenue Certificates of Participation  
Series 2003A

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## REIMBURSEMENT AGREEMENT

This REIMBURSEMENT AGREEMENT dated as of May 1, 2021 (as amended, modified or restated from time to time, this "*Agreement*"), is by and among the ORANGE COUNTY WATER DISTRICT (the "*District*"), OCWD PUBLIC FACILITIES CORPORATION (the "*Corporation*") and BANK OF AMERICA, N.A.

### WITNESSETH:

WHEREAS, pursuant to the Amended and Restated Trust Agreement dated as of May 1, 2011 (together with such further amendments, modifications and supplements permitted pursuant to the terms thereof, the "*Trust Agreement*"), made and entered into among the District, the Corporation and U.S. Bank National Association, as successor to MUFG Union Bank, N.A., f/k/a/ Union Bank, N.A. (the "*Trustee*"), the District has previously caused \$129,815,000 in aggregate principal amount of its Adjustable Rate Revenue Certificates of Participation, Series 2003A (the "*Certificates*") to be executed and delivered;

WHEREAS, simultaneously with the execution and delivery of the Certificates, pursuant to the Assignment Agreement dated as of December 1, 2002 (the "*Assignment Agreement*"), by and between the Corporation and the Trustee, the Corporation assigned and transferred to the Trustee, for the benefit of the owners of the Certificates, all of its rights, title and interest in and to the Installment Purchase Agreement (as hereinafter defined), including, without limitation its right to receive the Installment Payments (as hereinafter defined) excepting only those rights expressly reserved in the Assignment Agreement;

WHEREAS, the District (such term and each other capitalized term used herein having the meaning set forth in Article One hereof) desires to secure a source of funds to be devoted exclusively to the payment by the Trustee, when and as due, of the principal of or portion of the purchase price corresponding to the principal of the Certificates and interest on the Certificates, and has applied to the Bank for the issuance by the Bank of the Letter of Credit in the original stated amount of \$[\_\_\_\_\_];

WHEREAS, the Bank has been requested by the District to provide a liquidity facility in the form of a Liquidity Drawing under the Letter of Credit; and

WHEREAS, the Bank has agreed to issue the Letter of Credit and to provide such liquidity facility in the following manner and subject to the following terms and conditions. Accordingly, the District, the Corporation and the Bank hereby agree as follows:

## ARTICLE I

### DEFINITIONS AND ACCOUNTING TERMS

*Section 1.01. Defined Terms.* In addition to the terms defined in the Trust Agreement, the following terms shall have the meanings set forth below:

“*Act*” means the Orange County Water District Act, Chapter 924 of the California Statutes of 1933, as amended to the date hereof and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, and in each case all laws heretofore and hereafter amendatory thereof or supplemental thereto.

“*Affiliate*” means, with respect to any Person, any Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person. A Person shall be deemed to control another Person for the purposes of this definition if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

“*Agreement*” has the meaning set forth in the introductory paragraph hereof.

“*Alternate Credit Facility*” means any replacement credit facility meeting the requirements of an Alternate Credit Facility pursuant to Section 2.18 of the Trust Agreement.

“*Applicable Law(s)*” means, collectively, the Constitutions of the United States and the State of California, all applicable common law and principles of equity and all international, foreign, federal, state and local laws, statutes, treaties, codes, acts, rules, regulations, guidelines, ordinances, resolutions, orders, judgments, decrees, injunctions, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all administrative orders, directed duties, requests, licenses, certificates, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law, that are applicable now or are applicable at any time hereafter to (a) the District or (b) the Facilities or any other assets, property, operations or facilities (including the Project) of the District or (c) the Transactions.

“*Assignment Agreement*” has the meaning set forth in the recitals hereto.

“*Audited Financial Statements*” means the financial statements described in Section 5.01(i) hereof.

“*Authorized Corporation Representative*” means the President, First Vice President or Second Vice President of the Corporation and any other officer or employee of the Corporation authorized to perform the specific acts or duties to be performed by resolution duly adopted by the Corporation and of whom another Authorized Corporation Representative gives written notice to the Bank; *provided, however*, that in each case for which a certification or other

statement of fact or condition is required to be submitted by an Authorized Corporation Representative pursuant to the terms of this Agreement, such certificate or statement shall be executed only by an Authorized Corporation Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement. Any document or certificate hereunder that is executed by an Authorized Corporation Representative shall be deemed to have been authorized by all necessary action by the Corporation.

*“Authorized District Representative”* means the General Manager or Chief Financial Officer/Treasurer of the District and any other officer or employee of the District authorized to perform the specific acts or duties to be performed by resolution duly adopted by the District and of whom another Authorized District Representative gives written notice to the Bank; *provided, however,* that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized District Representative pursuant to the terms of this Agreement, such certificate or statement shall be executed only by an Authorized District Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement. Any document or certificate hereunder that is executed by an Authorized District Representative shall be deemed to have been authorized by all necessary action by the District.

*“Available Amount”* has the meaning set forth in the Letter of Credit.

*“Available Moneys”* means (i) moneys which have been paid to the Trustee or the Bank and have been on deposit with the Trustee or the Bank for at least 367 days during and prior to which no Event of Bankruptcy shall have occurred, (ii) any other moneys, if, in the opinion of nationally recognized counsel experienced in bankruptcy matters (and *provided* such opinion is acceptable to the Bank), the application of such moneys will not constitute a voidable preference in the event of the occurrence of an Event of Bankruptcy, and (iii) investment earnings on any of the moneys described in clauses (i) and (ii) of this definition.

*“Bank”* means Bank of America, N.A., and its successors and assigns.

*“Bank Agreement”* means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement (such as a continuing covenant agreement or supplemental bondholder’s agreement), bond purchase agreement, or other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertake(s) (i) to make or provide funds to make, payment of, (ii) to purchase or (iii) to provide credit enhancement for bonds, notes or other obligations of the District secured by or payable from Revenues or Net Revenues.

*“Bank Certificate CUSIP Number”* means [684421DR8]<sup>1</sup> with respect to the Bank Certificates.

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<sup>1</sup> TBD if still applicable.

“*Bank Certificates*” means Certificates which have been purchased with the proceeds of a Liquidity Drawing on the Letter of Credit, until such Certificates no longer constitute Bank Certificates pursuant to the terms of this Agreement.

“*Bank Disclosure*” means the information provided by the Bank and included in Appendix F of the Third Supplement to Official Statement entitled “Information Regarding Bank of America, N.A.”

“*Bank Rate*” means the rate of interest per annum with respect to a Liquidity Advance (i) for any day commencing on the date such Liquidity Advance is made up to and including the earlier of (x) the 90th day next succeeding the date such Liquidity Advance was made or (y) the Term Loan Commencement Date, equal to the Base Rate from time to time in effect, and (ii) for any day commencing on or after the earlier of (x) the 91st day next succeeding the date such Liquidity Advance was made or (y) the Term Loan Commencement Date and at all times thereafter, equal to the Term Loan Rate; *provided, however*, that immediately and automatically upon the occurrence of an Event of Default (and without any notice given with respect thereto) and during the continuance of such Event of Default, “*Bank Rate*” shall mean the Default Rate; *provided, further*, that in no event shall the Bank Rate be less than the applicable rate on any Certificates which are not Bank Certificates.

“*Base Rate*” means, for any day, a fluctuating rate of interest per annum equal to the greatest of (i) the Prime Rate in effect at such time *plus* one percent (1.00%), (ii) the Federal Funds Rate in effect at such time *plus* two percent (2.00%), and (iii) seven percent (7.00%).

“*Bonds*” has the meaning assigned to that term in the Installment Purchase Agreement.

“*Book Entry Certificates*” means the Certificates so long as the book entry system with the Securities Depository is used for determining beneficial ownership of the Certificates.

“*Business Day*” has the meaning set forth in the Letter of Credit.

“*Certificates*” has the meaning set forth in the recitals hereto and shall include, unless the context otherwise requires, all Bank Certificates.

“*Change in Law*” means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “*Change in Law*”, regardless of the date enacted, adopted or issued.

“*Closing Date*” has the meaning set forth in Section 4.01(a) hereof.

“*Code*” means the Internal Revenue Code of 1986, as amended, and, where appropriate any statutory predecessor or any successor thereto.

“*Collateral*” has the meaning set forth in Section 2.03(f) hereof.

“*Compliance Certificate*” means a certificate substantially in form of Exhibit A hereto.

“*Contracts*” has the meaning assigned to that term in the Installment Purchase Agreement.

“*Conversion Date*” means the date on which the interest rate borne by the Certificates is converted to a rate other than the Weekly Rate.

“*Corporation*” means the OCWD Public Facilities Corporation.

“*Corporation Act*” means the Nonprofit Public Benefits Corporation Law (Part 2 of Division 2 of Title 1 of the Corporations Code of the State, as amended).

“*Covered Rate*” means the Weekly Rate.

“*Credit Facility*” has the meaning assigned to that term in the Trust Agreement.

“*Credit Facility Agreement*” has the meaning assigned to that term in the Trust Agreement.

“*Credit Facility Provider*” has the meaning assigned to that term in the Trust Agreement.

“*Custody Agreement*” means that certain Custody Agreement dated as of the Closing Date between the Bank and the Trustee in substantially the form of Appendix II hereto.

“*Date of Issuance*” means May 17, 2021, on which date the Bank will, subject to the satisfaction of the conditions in Section 4.01 hereof, issue the Letter of Credit.

“*Debt*” of any Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements, bank agreements or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business and not past due for more than 60 days after the date on which such trade account was created), (d) all obligations of such Person as lessee under capital leases, (e) all Debt of others secured by a lien on any asset of such Person, whether or not such Debt is assumed by such Person, (f) all Guarantees by such Person of Debt of other Persons, (g) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank

guaranties, surety bonds and similar instruments and (h) all net obligations of such Person under any Hedge Agreement.

“*Debtor Relief Laws*” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“*Debt Service Payments*” means payments of “Debt Service” as such term is defined in the Installment Purchase Agreement.

“*Default*” means any event or condition that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“*Default Rate*” means, for any day, a rate of interest per annum equal to the sum of the Base Rate in effect on such day plus four percent (4.00%).

“*Designated Jurisdiction*” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“*Determination Counsel*” means a firm of attorneys of nationally recognized standing in matters pertaining to the validity of and tax-exempt nature of interest on bonds and other debt instruments issued by states and their political subdivisions, designated by the District and acceptable to the Bank in its reasonable discretion.

“*Determination of Taxability*” means a determination that the interest payable on the Certificates does not qualify as interest which is excludable from gross income of the recipient thereof for federal income tax purposes under Section 103 of the Code (“*Exempt Interest*”) for any reason, which determination shall be deemed to have been made upon the first to occur of any of the following:

(a) the date on which (i) the Internal Revenue Service issues a proposed or final determination of taxability, a Notice of Proposed Issue (IRS Form 5701-TEB), a notice of deficiency or similar notice, or any other notice, determination or decision, in each case, to the effect that the interest payable on the Certificates or any portion thereof does not qualify as Exempt Interest, or (ii) a court of competent jurisdiction has rendered any final ruling or decision to the effect that the interest payable on the Certificates or any portion thereof does not qualify as Exempt Interest;

(b) the date when the District files any statement, supplemental statement, or other tax schedule, return or document, which is in any respect inconsistent with interest payable on the Certificates or any portion thereof continuing to qualify as Exempt Interest;

(c) the date of any sale, lease or other deliberate action within the meaning of Treas. Reg. § 1.141-2(d), if prior to such action the District and the Bank have not

received an unqualified opinion of Determination Counsel to the effect that such action will not cause interest on the Certificates to become includable in the gross income of the recipient for federal income tax purposes; or

(d) (i) the date that circumstances relating to the District or the Project or any portion thereof have occurred or changed, or any federal tax law or regulation, or any public or private final ruling, technical advice memorandum or any other written communication by the Internal Revenue Service is adopted or issued, or any final ruling or decision of a court of competent jurisdiction is rendered or any other set of circumstances has occurred, in any such case, which may adversely affect the excludability of the Exempt Interest from the gross income of the recipient for federal income tax purposes; and thereafter (ii) Determination Counsel is notified by the Bank in writing, with a copy to the District, or by the District, with a copy to the Bank, that Determination Counsel is requested to deliver an updated approving tax-exempt opinion in form and substance acceptable to the Bank in its sole discretion (“*Approving Opinion*”) during the 45-day period after receipt of the request and is assured as to the payment of its fees and expenses for such services; and (iii) within 45 days after such notice has been received by Determination Counsel, either (A) the Bank and the District have received written communication from Determination Counsel to the effect that, based upon an analysis of the facts and applicable law, it is unable to render an updated Approving Opinion, or (B) Determination Counsel has not delivered an Approving Opinion.

“*District*” means the Orange County Water District, a political subdivision duly organized and existing under and by virtue of the laws of the State of California.

“*District Certificates*” means (i) Certificates owned or held by the District or held by the Trustee, or its agents, for the account of the District or (ii) Certificates which the District has notified the Trustee in writing, or which the Trustee actually knows, were purchased by another Person for the account of the District with moneys furnished by the District.

“*DTC*” means The Depository Trust Company.

“*Early Termination Payment*” means, with respect to a Permitted Swap Agreement, any payment obligation of the District thereunder due upon the early termination of any transaction governed by such Permitted Swap Agreement.

“*Eligible Certificates*” means Tendered Certificates which have not been remarketed pursuant to Section 2.24 of the Trust Agreement, other than any such Certificate which (a) is a Bank Certificate or (b) is owned by or on behalf of or is held for the account or for the benefit of the District, the Corporation or any Affiliate of the District or the Corporation.

“*Environmental Claim*” shall mean any and all administrative, regulatory or judicial investigations, proceedings, actions, suits, demand letters, claims, liens, notices of noncompliance or violation, relating in any way to any Environmental Law (“*claims*”) or any permit issued under any such Environmental Law, including without limitation (a) any and all



claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial, or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

*“Environmental Law(s)”* means any and all federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to air, water or land pollution, wetlands or the protection of the environment or to emissions, discharges or releases of Hazardous Materials into the environment, including, without limitation, ambient air, surface water, groundwater, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials or the cleanup or other remediation thereof.

*“Environmental Liability”* means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the District or any of its Affiliates directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, presence, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

*“ERISA”* means the Employee Retirement Income Security Act of 1974.

*“ERISA Affiliate”* means any trade or business (whether or not incorporated) under common control with the District within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

*“Event of Bankruptcy”* means any of the following events:

(a) the District (or any other Person obligated, as guarantor or otherwise, to make payments with respect to the Certificates or under this Agreement, the Trust Agreement, or any of the Installment Payments) shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of the District (or any such other Person) or of all or any substantial part of their respective property, (ii) commence a voluntary case under the Bankruptcy Code, or (iii) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts; or

(b) a proceeding or case shall be commenced, without the application or consent of the District (or any other Person obligated, as guarantor or otherwise, to make payments on the Certificates or under this Agreement, the Trust Agreement or any of the Obligations) in any court of competent jurisdiction, seeking (i) the liquidation,

reorganization, dissolution, winding-up, or composition or adjustment of debts, of the District (or any such other Person), (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of or for the District (or any such other Person) or of all or any substantial part of their respective property, or (iii) similar relief in respect of the District (or any such other Person) under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts.

“*Event of Default*” with respect to this Agreement has the meaning set forth in Section 8.01 of this Agreement and, with respect to any Related Document, has the meaning assigned therein.

“*Event of Insolvency*” means, with respect to any Person, the occurrence of one or more of the following events:

(a) the issuance, under the laws of any state or under the laws of the United States of America, of an order of rehabilitation, liquidation or dissolution of such Person;

(b) the commencement by or against such Person of a case or other proceeding seeking liquidation, reorganization or other relief with respect to such Person or its debts under any bankruptcy, insolvency or other similar state or federal law now or hereafter in effect, including, without limitation, the appointment of a trustee, receiver, liquidator, custodian or other similar official for such Person or any substantial part of its property or there shall be appointed or designated with respect to it, an entity such as an organization, board, commission, authority, agency or body to monitor, review, oversee, recommend or declare a financial emergency or similar state of financial distress with respect to it or there shall be declared or introduced or proposed for consideration by it or by any legislative or regulatory body with competent jurisdiction over it, the existence of a state of financial emergency or similar state of financial distress in respect of it;

(c) the making of an assignment for the benefit of creditors by such Person;

(d) the failure of such Person to generally pay its debts as they become due;

(e) a debt moratorium, debt adjustment, debt restructuring or comparable restriction with respect to the payment of any Debt of such Person is declared or imposed by such Person or by any Governmental Authority having jurisdiction over such Person;

(f) such Person shall admit in writing its inability to pay its debts when due;  
or

(g) in the case of the District or the Corporation, the initiation of any actions to authorize or consent to any of the foregoing by or on behalf of the District or the Corporation.

“*Excess Interest*” has the meaning set forth in Section 2.12 thereof.

*“Existing Subordinate Debt”* means the Debt issued or incurred by the District and listed on Schedule 5.01(x) attached hereto and made a part hereto as such Debt exists on the Date of Issuance.

*“Existing Swaps”* means (a) the ISDA Master Agreement and Confirmation entered into on February 5, 2007, by and between the District and Citibank, N.A. (the *“Original 2005A Swap Agreement”*) as amended and restated on April 1, 2008 (as amended and restated, the *“2005A Swap Agreement”*) with an original and current notional amount of \$58,800,000 and (b) the ISDA Master Agreement and Confirmation entered into on February 5, 2007, by and between the District and Citibank, N.A. (the *“Original 2007B Swap Agreement”*) as amended and restated on April 1, 2008 (as amended and restated, the *“2007B Swap Agreement”*) with an original and current notional amount of \$23,750,000.<sup>2</sup>

*“Exposure”* means, for any date with respect to a Person and any Hedge Agreement, the amount of any Settlement Amount that would be payable by such Person if such Hedge Agreement were terminated as of such date. Exposure shall be determined in accordance with the standard methods of calculating such Exposure under similar arrangements as prescribed from time to time by the Bank, taking into account the methodology for calculating amounts due upon early termination as set forth in the related Hedge Agreement and the notional principal amount, term and other relevant provisions thereof.

*“Facilities”* means the groundwater percolation facilities, groundwater replenishment system, recycled water project, recharge facilities and such other and additional facilities owned or leased by the District from time to time.

*“Federal Funds Rate”* means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Bank on such day on such transactions as reasonably determined by the Bank.

*“Fee Letter”* means that certain Fee Letter dated the Closing Date between the Bank and the District.

*“Fiscal Year”* means the fiscal year of the District ending on June 30 of each calendar year.

*“Fitch”* means Fitch Ratings, Inc., and any successor-rating agency.

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<sup>2</sup> To be updated as needed.

“*FRB*” means the Board of Governors of the Federal Reserve System of the United States, together with any successors thereof.

“*Fund(s)*” means, collectively, the funds and accounts established under and pursuant to the Trust Agreement.

“*General Manager*” means the general manager of the District.

“*Generally Accepted Accounting Principles*” or “*GAAP*” means generally accepted accounting principles in effect from time to time in the United States and applicable to entities such as the District, including, without limitation, those principles set forth in the statements and pronouncement of the Government Accounting Standards Board.

“*Governmental Approval*” means an authorization, consent, approval, permit, license, certificate of occupancy or an exemption of, a registration or filing with, or a report to any Governmental Authority.

“*Governmental Authority*” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including, without limitation, the Financial Conduct Authority, the Prudential Regulation Authority and any supra-national bodies such as the European Union or the European Central Bank).

“*Guarantee*” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation payable or performable by another Person (the “*primary obligor*”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Debt or other obligation of the payment or performance of such Debt or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Debt or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Debt or other obligation of any other Person, whether or not such Debt or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Debt to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “*Guarantee*” as a verb has a corresponding meaning.

*“Hazardous Materials”* means all explosive or radioactive substances or wastes and all hazardous or toxic substances, contaminants, chemicals, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

*“Hedge Agreement”* means any rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap, credit default swap or any other similar transaction (including any option with respect to any of these transactions) and any other agreement or option involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions.

*“Indemnitee”* has the meaning set forth in Section 9.04 hereof.

*“Ineligible Certificates”* means Bank Certificates, District Certificates or Certificates bearing interest at a rate other than the Weekly Rate.

*“Installment Payments”* has the meaning assigned to the term “Parity Installment Payments” in the Installment Purchase Agreement.

*“Installment Purchase Agreement”* means the Installment Purchase Agreement, dated as of December 1, 2002, by and between the District and the Corporation and relating to the Certificates, as amended by the Installment Purchase Agreement Amendment, and as further amended or supplemented from time to time in accordance with its terms.

*“Installment Purchase Agreement Amendment”* means Amendment No. 1 to Installment Purchase Agreement, dated as of May 1, 2011, by and between the District and the Corporation.

*“Interest Payment Date”* has the meaning set forth in the Trust Agreement.

*“Investment Policy”* has the meaning assigned to that term in Section 7.17.

*“Investor CUSIP Number”* means 684421CB4.

*“Laws”* means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“*Letter of Credit*” means the irrevocable direct pay letter of credit supporting the Certificates issued by the Bank for the account of the District in favor of the Trustee pursuant to this Agreement in the form of Appendix I hereto with appropriate insertions, as amended from time to time.

“*Letter of Credit Fee*” has the meaning set forth in the Fee Letter.

“*Lien*” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“*Liquidity Advance*” has the meaning set forth in Section 2.03(a) hereof.

“*Liquidity Drawing*” means a drawing under the Letter of Credit to pay the purchase price and accrued interest of Certificates tendered to purchase that have not been successfully remarketing or for which the purchase price has not been received by the Trustee.

“*Margin Stock*” has the meaning ascribed to such term in Regulation U promulgated by the FRB, as now and hereafter from time to time in effect.

“*Material Adverse Change*” means the occurrence of any event or change which, in the sole reasonable discretion of the Bank, results in a material and adverse change in the business, condition (financial or otherwise), operations or prospects of the District since the last day of the period reported in the audited annual financial statements of the District dated as of June 30, 2020, or which in the sole reasonable discretion of the Bank materially and adversely affects (a) the enforceability of this Agreement or any of the other Related Documents, (b) the ability of the District to perform its obligations hereunder or thereunder or (c) the rights of, or benefits or remedies available to, the Bank under the Trust Agreement, this Agreement or any other Related Document.

“*Material Adverse Effect*” means: (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the District; (b) a material impairment of the ability of the District to perform its obligations under any Related Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the District of any Related Document to which it is a party or the rights, security, interests or remedies of the Bank hereunder or under any other Related Document.

“*Material Contract(s)*” means any contract, agreement or other arrangement, now existing or hereafter entered into and relating to the Facilities or the operations of the District, the termination, cancellation, non-renewal, impairment, invalidation or modification of which could (i) materially reduce the supply or availability of water or the access to water drainage and thereby expose the District to materially greater risk or cost, (ii) in any manner impair or

adversely affect the ability of the District to pay the Series 2003A Installment Payments or the Parity Installment Payments or (iii) otherwise have a Material Adverse Effect on the District.

*“Material Litigation”* shall have the meaning assigned in Section 5.01(g).

*“Maturity Date”* has the meaning assigned to that term in the Trust Agreement.

*“Maximum Bank Interest Rate”* means the lesser of (a) 25% per annum and (b) the Maximum Lawful Rate.

*“Maximum Certificate Rate”* means twelve percent (12%) per annum.

*“Maximum Interest Rate”* means (i) with respect to the Certificates, the Maximum Certificate Rate, and (ii) with respect to Bank Certificates and any other Reimbursement Obligation, the Maximum Bank Interest Rate.

*“Maximum Lawful Rate”* means the respective maximum, non-usurious, lawful rate of interest that may be contracted for, charged or received in connection with the Reimbursement Obligations under this Agreement, under Applicable Law presently in effect or, to the extent permitted by law, under Applicable Law that may hereafter be in effect and that allows a higher maximum and non-usurious rate of interest than Applicable Law now allows.

*“Moody’s”* means Moody’s Investors Service, Inc., and any successor rating agency.

*“Most Favored Nations Provision”* means any provision in any Bank Agreement that provides for the incorporation by reference of, or provides for the entering into any amendment to incorporate, or provides that a party to such Bank Agreement has the benefit of, different or more restrictive covenants, different or more restrictive events of default, and/or greater rights or remedies than are set forth herein.

*“Net Revenues”* has the meaning assigned to that term in the Installment Purchase Agreement.

*“Non-Covered Interest Rate”* means a rate of interest represented by the Certificates other than a Covered Rate or the Bank Rate.

*“Non-Scheduled Payments”* means any payments under any Permitted Swap Agreement that are not Regularly Scheduled Payments, including but not limited to Early Termination Payments, indemnification payments, tax gross-up payments, expenses and default interest payments.

*“Obligations”* means the Bank Certificates, the Liquidity Advances, the Term Loans, the Letter of Credit Fees, the Reimbursement Obligations and all other obligations of the District to the Bank arising under or in relation to this Agreement or any other Related Document.

“*Obligor Rating*” shall mean any rating by a Rating Agency on any Debt of the District payable from and secured by a pledge of and Lien on the Pledged Revenues on a parity with the Series 2003A Installment Payments and that is not guaranteed by any other Person or subject to any third-party credit enhancement.

“*OFAC*” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“*Official Statement*” means the Official Statement relating to the Certificates, dated June 10, 2003 (including the cover page and all summary statements, appendices and other materials included or incorporated by reference or attached thereto), as amended or supplemented, including, without limitation, the Third Supplement to Official Statement, and any other preliminary or final official statement of the District or prospectus used with respect to the remarketing of the Certificates or supplement to the Official Statement.

“*Operation and Maintenance Costs*” has the meaning assigned to that term in the Installment Purchase Agreement.

“*Original Stated Amount*” has the meaning set forth in the Letter of Credit.

“*Outstanding*” has the meaning set forth in the Trust Agreement.

“*Outstanding Certificates*” means, as of the time in question, all Certificates authenticated and delivered under the Trust Agreement and Outstanding (as defined in the Trust Agreement) thereunder.

“*Owner*” means the registered owner of a Certificate or, if the Certificates are Book Entry Certificates, the beneficial owner of such Certificate and has the meaning assigned to the term “Owner” in the Trust Agreement.

“*Paired Obligation(s)*” means any Certificate or Contract (or portion thereof) designated as a Paired Obligation in the resolution, indenture or other document authorizing the issuance or execution and delivery thereof, which is simultaneously issued or executed and delivered (i) the principal of which is of equal amount maturing and to be redeemed or prepaid (or cancelled after acquisition thereof) on the same dates and in the same amounts, and (ii) the interest rates which, taken together, result in an irrevocably fixed interest rate obligation of the District for the term of such Certificate or Contract and which complies with the provisions of Section 6.22.

“*Paired Obligation Provider*” means a party to a Paired Obligation other than the District.

“*Patriot Act*” has the meaning set forth in Section 9.17 hereof.

“*Pension Plan*” means any “employee pension benefit plan” which is maintained by the District or to which the District contributes or has an obligation to contribute, or has made contributions at any time during the immediately preceding six (6) plan years.



*“Permitted Investments”* has the meaning assigned to such term in the Trust Agreement.

*“Permitted Liens”* shall mean Liens which are permitted under the Installment Purchase Agreement and under this Agreement.

*“Permitted Parity Indebtedness”* means, collectively, the Debt evidenced by this Agreement and the Installment Purchase Agreement, (a) Certificates issued in accordance with the provisions of this Agreement, the Installment Purchase Agreement and the other Related Documents and (b) Contracts which (i) constitute installment purchase agreements, Qualifying Swap Agreements or loan agreements, and expressly excluding any other “Contracts,” as defined in the Installment Purchase Agreement and (ii) are entered into in accordance with the provisions of this Agreement, the Installment Purchase Agreement and the other Related Documents.

*“Permitted Swap Agreement”* means a Hedge Agreement under which all Non-Scheduled Payments constitute Subordinated Payments and which are (a) entered into with a financial institution counterparty with a minimum liquidity rating of A1+ by S&P and P1 by Moody’s and a long-term rating equal to or exceeding “Aa3” by Moody’s and “AA-” by S&P or (b) an Existing Swap.

*“Person”* means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

*“Pledge”* has the meaning set forth in Section 2.16 hereof.

*“Pledged Revenues”* means the Revenues, the Revenue Fund and all amounts on deposit therein and the other Funds and all amounts on deposit therein (other than the Rebate Fund and the Certificate Purchase Fund).

*“Preceding Liquidity Agreement”* means that certain Letter of Credit Reimbursement Agreement dated June 1, 2011, by and among the District, the Corporation and the Preceding Liquidity Provider.

*“Preceding Liquidity Provider”* means Citibank, N.A.

*“Prime Rate”* means on any day, the rate of interest in effect for such day as publicly announced from time to time by the Bank as its “prime rate.” The “*prime rate*” is a rate set by the Bank based upon various factors including the Bank’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by the Bank shall take effect at the opening of business on the day specified in the public announcement of such change.

*“Project”* has the meaning assigned to that term in the Installment Purchase Agreement.

*“Qualifying Swap Agreement”* means a Permitted Swap Agreement (a) which is entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates,

from one floating rate to another floating rate or otherwise) in connection with any other Permitted Parity Indebtedness of the District and (b) under which the Regularly Scheduled Payments are secured on a parity with the Permitted Parity Indebtedness to which they relate.

*“Rating Agency”* means any of Fitch, Moody’s or S&P, as applicable.

*“Recipient”* means the Bank or any other recipient of any payment to be made by or on account of any obligation of the District hereunder.

*“Regularly Scheduled Payments”* means any payments on a Permitted Swap Agreement scheduled (at the time such Permitted Swap Agreement is executed) for payment on dates related to interest payment dates in respect of the Certificates (or other Debt of the District) and which are intended to be “interest like” when the interest in respect of the Certificates (or other Debt of the District) and such payments are reviewed together.

*“Reimbursement Obligations”* means, collectively, any and all obligations of the District to reimburse the Bank for any drawings under the Letter of Credit and all obligations to repay the Bank for any Liquidity Advance or Term Loan, including in each instance all interest accrued thereon.

*“Related Documents”* means this Agreement, the Trust Agreement, the Resolutions, the Certificates, the Installment Purchase Agreement, the Installment Purchase Agreement Amendment, the Remarketing Agreement, the Custody Agreement, the Letter of Credit, the Fee Letter, the Assignment Agreement, the Official Statement and any other documents related to any of the foregoing or executed in connection therewith, and any and all future renewals and extensions or restatements of, or amendments or supplements to, any of the foregoing permitted hereunder and thereunder.

*“Related Parties”* means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

*“Remarketing Agent”* means Morgan Stanley & Co. LLC, in its capacity as Remarketing Agent under the Remarketing Agreement, or any successor designated pursuant to the Trust Agreement.

*“Remarketing Agreement”* means the Remarketing Agreement between the District and the Remarketing Agent dated as of May 1, 2021, and any similar agreement between the District and any successor Remarketing Agent, including, in each case, such amendments, modifications or supplements permitted pursuant to its terms and the terms hereof.

*“Resolutions”* means the 2003 Resolution and the 2021 Resolution.

*“Revenue Fund”* has the meaning assigned to that term in the Installment Purchase Agreement.

“*Revenues*” has the meaning assigned to that term in the Installment Purchase Agreement.

“*Sanction(s)*” means any international economic sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“*Securities Depository*” means The Depository Trust Company or such other securities depository which may be designated by the District pursuant to the Trust Agreement, subject to the consent of the Bank, not to be unreasonably withheld.

“*Securities Depository Disclosure*” means the disclosure provided by the Securities Depository for inclusion in the Official Statement and included in the Official Statement in Appendix E.

“*Series 2003A Installment Payments*” means the “Installment Payments” as such term is defined in the Installment Purchase Agreement.

“*Settlement Amount*” means, with respect to a Person and any Hedge Agreement, any amount payable by such Person under the terms of such Hedge Agreement in respect of, or intended to compensate the other party for, the value of such Hedge Agreement upon early termination thereof.

“*S&P*” means S&P Global Ratings, and any successor rating agency.

“*State*” means the State of California.

“*Stated Expiration Date*” has the meaning set forth in the Letter of Credit.

“*Subordinate Obligation*” has the meaning assigned to such term in Section 7.09(a).

“*Subordinated Payment*” means a payment obligation that is junior and subordinate in right of payment and security to the Permitted Parity Indebtedness and which satisfies the requirements of Section 7.09(c)(ii) and (iii), as applied to such payment obligation, *mutatis mutandis*, including without limitation the requirement that all Operation and Maintenance Costs which are due and payable and all Permitted Parity Indebtedness at any time due and owing, whether by reason of scheduled payment of principal or interest, by acceleration, required prepayment, upon maturity or for any other reason, shall be paid in full, with interest in respect thereof (including default interest), prior to the payment of such subordinated payment obligation.

“*Tender Agent*” shall mean, initially, the Trustee, or any successor tender agent which may at any time be substituted in its place as provided in the Trust Agreement.

*“Tendered Certificates”* means any Certificates Outstanding under and entitled to the benefits of the Trust Agreement which bear interest at a Covered Rate and that are tendered or deemed to have been tendered for purchase to the Trustee pursuant to Section 2.16 of the Trust Agreement.

*“Term Loan”* has the meaning set forth in Section 2.03(b) hereof.

*“Term Loan Commencement Date”* has the meaning set forth in Section 2.03(b) hereof.

*“Term Loan Maturity Date”* means, with respect to any Term Loan, the earliest to occur of: (i) the 3rd anniversary of the related Term Loan Commencement Date, (ii) the 3rd anniversary of the Stated Expiration Date as in effect on the date on which the related Term Loan was made, (iii) the date on which an Alternate Credit Facility becomes effective with respect to the Certificates, and (iv) the date on which the Original Stated Amount is permanently reduced to zero or the Letter of Credit is otherwise terminated prior to the Stated Expiration Date, including as a result of the occurrence of an Event of Default.

*“Term Loan Rate”* means, for each date of determination with respect to all Term Loans made hereunder, a fluctuating rate per annum equal to the Base Rate plus one percent (1.00%); *provided, however* that immediately and automatically upon the occurrence of an Event of Default (and without any notice given with respect thereto) and during the continuance of such Event of Default, the *“Term Loan Rate”* shall mean the Default Rate.

*“Termination Date”* has the meaning set forth in the Letter of Credit.

*“Third Supplement to Official Statement”* means that certain Third Supplement to Official Statement which amends, supplements and restates the Official Statement of the District dated June 10, 2003, as previously supplemented by the Supplement to Official Statement dated May 31, 2011, and the Second Supplement to Official Statement dated May 31, 2011.

*“Transactions”* means the execution and delivery of the Certificates, the execution and delivery by the District of this Agreement and the other Related Documents, the performance by the District of its obligations (including payment obligations) hereunder and thereunder, the advance of the Drawings under the Letter of Credit and the use of the proceeds thereof.

*“Trust Agreement”* has the meaning assigned to such term in the recitals hereto.

*“Trustee”* has the meaning assigned to such term in the recitals hereto.

*“2003 Resolution”* means, collectively, the District’s Resolution No. 02-11-179 adopted November 25, 2002, authorizing the execution and delivery of the Certificates and the other related documents to which the District became a party upon the execution and delivery of the Certificates, and the Corporation’s Resolution No. C-02-11-22 adopted November 25, 2002, authorizing the execution and delivery of the documents relating to the Certificates to which the Corporation became a party upon the execution and delivery of the Certificates.

“2021 Documents” means this Agreement, the Fee Letter, the Custody Agreement and the 2021 Resolution.

“2021 Resolution” means, collectively, the District’s Resolution Number [\_\_\_\_\_] adopted by the governing body of the District on [\_\_\_\_\_] , 2021, and authorizing the execution and delivery by the District of this Agreement, the Fee Letter, the Official Statement and related matters and the Corporation’s Resolution No. [\_\_\_\_\_] adopted on [\_\_\_\_\_] , 2021, authorizing the execution and delivery of the 2021 Documents to which the Corporation is a party.

“Unfunded Pension Liability” means the excess of a Pension Plan’s benefit liabilities over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan for the applicable plan year.

“United States” and “U.S.” means the United States of America.

“Verification Report” means, with respect to the deemed payment of the Certificates pursuant to Article X of the Trust Agreement, a report of an Accountant verifying that the securities and cash, if any, deposited in connection with such deemed payment satisfy the requirements of Section 10.2 of the Trust Agreement.

“Water Charges” means replenishment assessments and additional replenishment assessments, as described in the Installment Purchase Agreement.

“Weekly Rate” means the “Weekly Interest Rate” as such term is defined in the Trust Agreement.

*Section 1.02. Other Interpretive Provisions.* With reference to this Agreement and each other Related Document, unless otherwise specified herein or in such other Related Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Related Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Related Document, shall be construed to refer to such Related Document in its entirety and not to any particular provision thereof, (iv) all references in a Related Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Related Document in which such references appear, (v) any reference to any Law shall include all statutory and regulatory

provisions consolidating, amending, replacing or interpreting such Law and any reference to any Law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “*asset*” and “*property*” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “*from*” means “*from and including*,” the words “*to*” and “*until*” each mean “*to but excluding*,” and the word “*through*” means “*to and including*.”

(c) Section headings herein and in the other Related Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Related Document.

*Section 1.03. Accounting Terms.* All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, *except* as otherwise specifically prescribed herein.

*Section 1.04. Rounding.* Any financial ratios required to be maintained by the District pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

*Section 1.05. Times of Day.* Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

## ARTICLE II

### LETTER OF CREDIT

*Section 2.01. Issuance of the Letter of Credit.* Upon the terms, subject to the conditions and relying upon the representations and warranties set forth in this Agreement or incorporated herein by reference, the Bank agrees to issue the Letter of Credit (substantially in the form of Appendix I hereto). The Letter of Credit shall be in the original stated amount of \$[\_\_\_\_\_], which is the sum of (i) the principal amount of the Certificates Outstanding on the Closing Date, plus (ii) interest thereon at the Maximum Certificate Rate for a period of [ ] days.

*Section 2.02. Letter of Credit Drawings.* The Trustee is authorized to make drawings under the Letter of Credit in accordance with the terms thereof. No drawing shall be made under the Letter of Credit for the payment of principal of or interest on Ineligible Certificates. The District hereby directs the Bank to make payments under the Letter of Credit in the manner

therein provided. The District hereby irrevocably approves reductions and reinstatements of the Available Amount of the Letter of Credit as provided in the Letter of Credit.

*Section 2.03. Reimbursement of Liquidity Drawings under the Letter of Credit; Mandatory Redemption; Interest.* (a) If the conditions precedent contained in Section 4.02 hereof are satisfied at the time of payment by the Bank of any Liquidity Drawing, each Liquidity Drawing paid under the Letter of Credit shall, at the time of drawing, constitute an advance (“*Liquidity Advance*”) to the District. The District promises to pay to the Bank the portion of each Liquidity Advance representing the interest component of the purchase price of the Certificates on the date on which such Liquidity Advance is made. The District promises to pay to the Bank the portion of each Liquidity Advance representing the principal component of the purchase price of the Certificates (or a pro rata portion thereof in the event of a partial remarketing or purchase of Certificates on the date specified in (iv) below), including interest thereon, on the earlier of (i) subject to Section 2.03(b) hereof, the 90th day following the date such Liquidity Advance is made, (ii) the Conversion Date, (iii) the date on which the Certificates purchased in connection with such Liquidity Drawing are redeemed pursuant to the Trust Agreement, (iv) the date on which such Certificates, or portions thereof, are remarketed or purchased by the District or otherwise sold at the direction of the Bank, or (v) the date on which the Letter of Credit is replaced by an Alternate Credit Facility in accordance with the terms of Section 2.07 hereof. The District promises to pay to the Bank interest on the unpaid principal amount of each Liquidity Advance from the date such Liquidity Advance is made until such Liquidity Advance is paid in full as provided herein, at a rate per annum equal to the Bank Rate from time to time in effect, payable in arrears. Such interest shall be payable monthly on the first day of each calendar month (and if such day is not a Business Day on the next succeeding Business Day) and on the date on which such Liquidity Advance is payable in full as provided herein. Any Liquidity Advance not paid when due shall bear interest at the Default Rate.

(b) If on the earlier to occur of the ninetieth (90th) cumulative day that any Liquidity Advance has been outstanding hereunder and the Termination Date of the Letter of Credit (the “*Term Loan Commencement Date*”) the conditions precedent set forth in Section 4.02 hereof are satisfied, any Liquidity Advance originating or outstanding on the Term Loan Commencement Date shall immediately convert into a term loan (the “*Term Loan*”). The principal amount of each Term Loan is payable in equal quarterly installments, on each 3 month anniversary of the Term Loan Commencement Date; *provided* that the unpaid principal amount of all outstanding Term Loans shall be payable in full on the related Term Loan Maturity Date. The District promises to pay to the Bank interest on the unpaid principal amount of each Term Loan from the date such Term Loan is made until such Term Loan is paid in full as provided herein, at a rate per annum equal to the Term Loan Rate from time to time in effect, payable in arrears. Such interest shall be payable monthly on the first day of each calendar month (and if such day is not a Business Day or the next succeeding Business Day) and on the date on which such Term Loan is payable in full as provided herein. Any Term Loan not paid when due shall bear interest at the Default Rate.

(c) Any Liquidity Advance or Term Loan created pursuant to paragraph (a) or (b) above may be prepaid in whole or in part at any time without premium or penalty on any Business Day.

(d) Upon the honoring by the Bank of any Liquidity Drawing under the Letter of Credit, there shall be delivered to the Trustee pursuant to the terms of the Custody Agreement, as agent for the Bank, registered in the name of the Bank, as pledgee, in duly transferable form, all Bank Certificates purchased in connection with the related Liquidity Drawing as collateral security for the Obligations. During such time as the Certificates constitute Bank Certificates, the Bank shall have all of the rights granted to an Owner under the Trust Agreement and such additional rights as may be granted to the Bank hereunder. The obligations of the District to pay each Liquidity Advance and Term Loan may be satisfied by the payments of principal and interest on the Certificates which were delivered in respect of such Liquidity Advance, according to their terms, the terms of the Trust Agreement, and the terms hereof. To the extent the Bank (or the Custodian on behalf of the Bank) actually receives payment in respect of principal of or interest on any Certificate held by the Bank, including pursuant to subsection (e) below, the Liquidity Advance or Term Loan, as applicable, made in connection with the purchase of such Certificate shall be deemed to have been reduced *pro tanto*, with the Bank crediting any interest payment on the Certificate received by the Bank (or the Custodian on behalf of the Bank) first to the payment of interest on such Liquidity Advance or Term Loan and then to the payment of principal thereof and crediting any principal repayment received to the principal thereof.

(e) The principal amount of each Term Loan, together with all accrued and unpaid interest thereon, shall be prepaid in full by the District on the earliest of (i) the occurrence of the Termination Date of the Letter of Credit for any reason other than the occurrence of the Stated Expiration Date, (ii) the Conversion Date, (iii) the date on which such Certificates are to be redeemed pursuant to the Trust Agreement, (iv) the date on which the related Letter of Credit is replaced by a substitute letter of credit in accordance with the terms of Section 2.07 hereof or (v) the related Term Loan Maturity Date, by paying, or causing to be paid, to the Bank in immediately available funds an amount equal to the aggregate unpaid principal of and accrued interest on such Certificates.

(f) As security for the Obligations, the District hereby pledges, assigns, hypothecates, transfers and delivers to the Bank all its right, title and interest to, and hereby grants to the Bank a first lien on, and security interest in, all right, title and interest of the District in and to the following (the "*Collateral*"):

(a) all Bank Certificates which may from time to time have been purchased with proceeds of drawings under the Letter of Credit (the "*Bank Certificates*");

(b) all income, earnings, profits, interest, premium or other payments in whatever form in respect of the Bank Certificates;

(c) all proceeds (cash and non-cash) arising out of the sale, exchange, collection, enforcement or other disposition of all or any portion of the Bank Certificates;

as collateral security for the prompt and complete payment when due of all Obligations. The District covenants that the pledge, assignment and delivery of the Collateral hereunder will create a valid, perfected, first priority security interest in all right, title or interest of the District in or to such Collateral, and the proceeds thereof, subject to no prior Lien. Upon the occurrence



of any Event of Default, in addition to the rights and remedies granted to the Bank hereunder, the Bank shall have with regard to the Collateral all rights and remedies of a secured party under the applicable Uniform Commercial Code. Bank Certificates shall be released from the pledge and security interest created hereunder and the Custody Agreement upon satisfaction of the Obligations with respect to such Bank Certificates, and reinstatement of the Letter of Credit in the amount of any drawing thereunder to satisfy the Obligations.

*Section 2.04. Reimbursement of Drawings Other than Liquidity Drawings Creating Liquidity Advances under the Letter of Credit.* The District agrees to immediately reimburse (or cause to be immediately reimbursed) the Bank for the full amount of any Liquidity Drawing (but only if the conditions precedent contained in Section 4.02 hereof are not satisfied on the date of payment by the Bank of such Liquidity Drawing) and all other drawings made under the Letter of Credit on the date of payment of each such drawing. If the District does not make such reimbursement on such date, the Reimbursement Obligation of the District shall bear interest at the Default Rate, payable on demand; *provided, however*, that in no event shall the Default Rate exceed the Maximum Interest Rate.

*Section 2.05. Fees.* The District hereby agrees to perform the obligations provided for in the Fee Letter, including, without limitation, the payment of any and all fees provided for therein. The terms of the Fee Letter are incorporated by reference herein.

*Section 2.06. Method of Payment, Etc.* All payments to be made by the District under this Agreement shall be made to the Bank not later than 2:00 p.m. on the date when due and shall be made in lawful money of the United States of America and in immediately available funds, at the Payment Office of the Bank.

*Section 2.07. Termination of Letter of Credit; Substitute Letter of Credit.* Notwithstanding any provisions of this Agreement to the contrary, the District agrees not to terminate this Agreement or the Letter of Credit or permanently reduce the Available Amount, except upon (i) the payment by the District to the Bank of a Termination Fee or Reduction Fee, as applicable, if any, in the amount set forth in Section 2.5 of the Fee Letter, (ii) the payment to the Bank of all Obligations payable hereunder and (iii) the District providing the Bank with thirty (30) days prior written notice of its intent to terminate this Agreement and the Letter of Credit or permanently reduce the Available Amount; *provided* that all payments to the Bank referred to in clause (i) and (ii) above shall be made in immediately available funds; *provided further, however*, that any such termination of this Agreement or the Letter of Credit or the permanent reduction of the Available Amount shall be in compliance with the terms and conditions of the Trust Agreement and the Letter of Credit. The District agrees that any termination of the Letter of Credit as a result of the provision of any Alternate Credit Facility will require, as a condition thereto, that the District or the issuer of any Alternate Credit Facility will provide funds on the date of such termination or provision, which funds will be sufficient to pay in full at the time of termination of such Letter of Credit all Obligations due and owing to the Bank hereunder.

*Section 2.08. Computation of Fees and Interest; Default Rate.* (a) All computations of fees payable under this Agreement and the Fee Letter shall be made on the basis of a three

hundred sixty (360) day year and actual days elapsed. All computations of interest payable under the Agreement shall be computed on the basis of a year of 365 or 366 days, as applicable, and actual days elapsed. Interest and fees shall accrue during each period during which interest or fees, as applicable, is computed from and including the first day thereof to but excluding the last day thereof. Each determination by the Bank of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error. All fees payable pursuant to this Agreement and the Fee Letter shall be deemed fully earned when due and non-returnable when paid.

(b) If any amount payable by the District hereunder or under the Fee Letter is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at all times equal to the Default Rate.

*Section 2.09. Payment Due on Non-Business Day to Be Made on Next Business Day.* If any sum becomes payable pursuant to this Agreement on a day which is not a Business Day, the date for payment thereof shall be extended, without penalty, to the next succeeding Business Day, and such extended time shall be included in the computation of interest and fees.

*Section 2.10. Source of Funds.* All payments made by the Bank pursuant to the Letter of Credit shall be made from funds of the Bank and not from any other Person.

*Section 2.11. Evidence of Debt.* The Reimbursement Obligations shall be evidenced by one or more accounts or records maintained by the Bank in the ordinary course of business. The accounts or records maintained by the Bank shall be conclusive absent manifest error of the amount of the Reimbursement Obligations owing by the District and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the District hereunder to pay any amount owing with respect to the Obligations.

*Section 2.12. Recapture.* If the rate of interest payable hereunder or under the Fee Letter shall exceed the Maximum Interest Rate for any period for which interest is payable, then (i) interest at the Maximum Interest Rate shall be due and payable with respect to such interest period and (ii) interest at the rate equal to the difference between (A) the rate of interest calculated in accordance with the terms hereof and of the Fee Letter (without regard to any limitation otherwise imposed by the Maximum Interest Rate) and (B) the Maximum Interest Rate (the "Excess Interest"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof and of the Fee Letter (without regard to any limitation otherwise imposed by the Maximum Interest Rate) ceases to exceed the Maximum Interest Rate, at which time the District shall pay to the Bank, to the extent permitted by law at that time, with respect to amounts then payable to the Bank that are required to accrue interest hereunder and under the Fee Letter, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal the Maximum Interest Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder and under the Fee Letter until all deferred Excess Interest is fully paid to the Bank. Upon the termination of the Letter of Credit and this Agreement, in consideration for the limitation of the rate of interest otherwise

payable hereunder and under the Fee Letter, the District shall pay to the Bank a fee equal to the amount of all deferred Excess Interest.

*Section 2.13. Extension of Stated Expiration Date.* The Stated Expiration Date may be extended by the Bank, at its option and in its sole discretion, for an additional period acceptable to the Bank, upon the written request of the District received by the Bank no earlier than one hundred twenty (120) days and no later than ninety (90) days prior to the Stated Expiration Date then in effect. If the Bank, in its sole discretion, elects to extend the Stated Expiration Date, the Bank shall deliver to the Trustee a Notice of Extension in the form of Annex J to the Letter of Credit (herein referred to as a “*Notice of Extension*”) within thirty (30) days following the receipt of such written request designating the date to which the Stated Expiration Date is being extended. Failure to deliver a Notice of Extension by the Bank within such thirty (30) day period shall be deemed to be a decision by the Bank not to extend the Stated Expiration Date. Subject to the last sentence of this Section, such extension of the Stated Expiration Date shall be effective, immediately upon receipt of such Notice of Extension and thereafter all references in this Agreement to the Stated Expiration Date shall be deemed to be references to the date designated as such in the most recent Notice of Extension delivered to the Trustee. Any date to which the Stated Expiration Date has been extended in accordance with this Section 2.13 may be further extended in like manner.

*Section 2.14. Amendments upon Extension.* Upon any extension of the Stated Expiration Date pursuant to Section 2.13 hereof, the Bank and the District reserve the right to renegotiate any provision hereof; *provided, however*, any amendments reflecting such renegotiation shall be subject to the provisions of Section 9.01 hereof.

*Section 2.15. Special Limited Obligations.* Notwithstanding any other provision of this Agreement to the contrary, the obligations of the District to the Bank hereunder are special obligations of the District payable from and secured by a pledge of the Pledged Revenues. The obligations of the District to pay the fees, expenses and other amounts payable by the District under this Agreement, other than the reimbursement of Drawings, interest thereon, and the Bank Certificates, are secured by a pledge of Pledged Revenues and are payable as Operation and Maintenance Costs. The obligations of the District to reimburse each Drawing, to pay interest accruing thereon as provided herein, and to pay the principal of and interest with respect to Bank Certificates are secured by a pledge of and first lien on Pledged Revenues and are payable from the Net Revenues and amounts on deposit in the Revenue Fund and the Funds.

*Section 2.16. Pledge.* The District hereby irrevocably pledges, to and for the benefit of the Bank, the Pledged Revenues, to and for the payment of the obligations of the District under this Agreement including all Reimbursement Obligations, on a parity as to payment and security with all other Permitted Parity Indebtedness (the “*Pledge*”).

*Section 2.17. Installment Purchase Agreement and Trust Agreement.* The District hereby represents, warrants, covenants and agrees that, for the avoidance of doubt (i) this Agreement constitutes a “Credit Facility” as such term is defined in the Trust Agreement, (ii) this Agreement constitutes a “Contract” as such term is defined in the Installment Purchase Agreement, (iii) an Event of Default hereunder constitutes an “Event of Default” as such term is defined in the

Installment Purchase Agreement, and (iv) the references to the “Credit Facility” set forth in Section 5 and Section 35 of the Installment Purchase Agreement Amendment are also references to the “Credit Facility Agreement”.

### ARTICLE III

#### TAXES AND YIELD PROTECTION

##### *Section 3.01. Taxes.*

If any payments to the Bank under this Agreement are made from outside the United States, the District will not deduct any foreign taxes from any payments it makes to the Bank. If any such taxes are imposed on any payments made by the District (including payments under this paragraph), the District will pay the taxes and will also pay to the Bank, at the time interest is paid, any additional amount which the Bank specifies as necessary to preserve the after-tax yield the Bank would have received if such taxes had not been imposed. As soon as practicable after any payment of taxes by the District to a Governmental Authority, as provided in this Section 3.01, the District, will deliver to the Bank the original or a certificate copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return reporting such payment or other evidence of such payment reasonably satisfactory to the Bank. The District will confirm that it has paid the taxes by giving the Bank official tax receipts (or notarized copies) within thirty (30) days after the due date.

##### *Section 3.02. Increased Costs.*

(a) *Increased Costs Generally.* If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, the Bank;

(ii) subject any Recipient to any taxes on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on the Bank or the London interbank market any other condition, cost or expense affecting this Agreement, the Fee Letter or the Letter of Credit or any participation therein;

and the result of any of the foregoing shall be to increase the cost to the Bank of participating in, issuing or maintaining the Letter of Credit, or to reduce the amount of any sum received or receivable by the Bank hereunder (whether of principal, interest or any other amount) then, upon request of the Bank, the District will pay to the Bank such additional amount or amounts as will compensate the Bank for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If the Bank determines that any Change in Law affecting the Bank or the Bank's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Bank's capital or liquidity or on the capital or liquidity of the Bank's holding company, if any, as a consequence of this Agreement, the Fee Letter or the Letter of Credit issued by the Bank, to a level below that which the Bank or the Bank's holding company could have achieved but for such Change in Law (taking into consideration the Bank's policies and the policies of the Bank's holding company with respect to capital adequacy), then from time to time the District will pay to the Bank such additional amount or amounts as will compensate the Bank or the Bank's holding company for any such reduction suffered.

(c) *Certificates for Reimbursement.* A certificate of the Bank setting forth the amount or amounts necessary to compensate the Bank or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the District shall be conclusive absent manifest error. The District shall pay the Bank the amount shown as due on any such certificate within thirty (30) days after receipt thereof.

(d) *Delay in Requests.* Failure or delay on the part of the Bank to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of the Bank's right to demand such compensation; *provided* that the District shall not be required to compensate the Bank pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that the Bank, notifies the District of the Change in Law giving rise to such increased costs or reductions and of the Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

*Section 3.03. Survival.* All of the District's obligations under this Article III shall survive termination of this Agreement, the cancellation of the Letter of Credit and the repayment, satisfaction or discharge of all other Obligations.

## ARTICLE IV

### CONDITIONS PRECEDENT

*Section 4.01. Conditions Precedent to Issuance of the Letter of Credit.* As conditions precedent to the obligation of the Bank to issue the Letter of Credit:

(a) the District and the Corporation shall provide to the Bank on the Date of Issuance of the Letter of Credit (the "*Closing Date*"), in form and substance satisfactory to the Bank and its counsel:

(i) (i) the original opinions of bond counsel as to the validity and tax-exempt status of the Certificates and related matters, together with (ii) an opinion confirming no adverse effect from the acceptance of the Letter of Credit as an Alternate Credit Facility and execution and performance of the 2021

Documents on the tax-exempt status of the Certificates and (iii) an opinion dated the Date of Issuance which shall expressly include this Agreement and the delivery and acceptance of the Letter of Credit as an Alternate Credit Facility and cover such other matters as the Bank shall reasonably request, within the scope of the matters opined upon; and each of the opinions under (i), (ii) and (iii) shall be addressed to the Bank or a reliance letter shall be provided to the Bank expressly stating that the Bank is entitled to rely upon said opinion as if such opinion were addressed to the Bank;

(ii) an opinion of counsel to the District and the Corporation as updated as of the Date of Issuance addressed to and acceptable to the Bank, to the effect that (i) the Certificates are entitled to the benefits of the Trust Agreement and evidence undivided interests of the owners thereof in the Series 2003A Installment Payments and (ii) that all conditions necessary to create a valid pledge of the Pledged Revenues, subject to no prior Lien except that securing the Maintenance and Operation Costs, in favor of the Trustee with respect to the Series 2003A Installment Payments and the Bank with respect to this Agreement have been accomplished and that such pledge is on a parity with the pledge securing the other Permitted Parity Indebtedness, and (iii) covering such other matters relating to the Agreement, the Certificates or any of the other Related Documents or the proceedings of the District or the Corporation as the Bank may reasonably request, including, but not limited to, opining that the Agreement, the Fee Letter and the other Related Documents are the valid, binding and enforceable obligations of the District and the Corporation;

(iii) a certificate, signed by an Authorized District Representative, dated the Closing Date, stating that on the Closing Date:

(1) the representations and warranties of the District contained in Article V hereof are correct on and as of the Closing Date as though made on such date;

(2) no Event of Default has occurred and is continuing, or would result from the issuance of the Letter of Credit or the execution, delivery and performance of this Agreement, and no event has occurred and is continuing which would constitute an Event of Default but for the requirement that notice be given or time elapse or both;

(3) no Material Litigation has been filed since June 30, 2020;

(4) no Material Adverse Change has occurred since June 30, 2020;

(5) no “default” or “event of default” exists with respect to the Permitted Parity Indebtedness; and

(6) all conditions precedent to the issuance of the Letter of Credit set forth in this Article IV have been satisfied.

(iv) executed originals of this Agreement, the Fee Letter, the Custody Agreement and certified copies of the other Related Documents;

(v) evidence of due authorization, execution and delivery by the parties thereto of the Related Documents, which Related Documents shall be in form and substance satisfactory to the Bank and its special counsel;

(vi) a copy of the Resolutions of the board of directors of the District and the Corporation, respectively, certified as of the date of the Letter of Credit by an Authorized District Representative or an Authorized Corporation Representative, as applicable, authorizing, among other things, the execution, delivery and performance by the District and the Corporation of this Agreement and the other Related Documents or amendments thereto required to be delivered on the Closing Date and authorizing the District to obtain the issuance of the Letter of Credit;

(vii) true and correct copies of all governmental approvals necessary for the District and the Corporation to enter into this Agreement and the transactions contemplated by this Agreement;

(viii) (i) a certificate of an Authorized District Representative certifying the name, title, office and true signatures of the officers of the District authorized to sign this Agreement, and (ii) a certificate of an Authorized Corporation Representative certifying the name, title, office and true signatures of the officers of the Corporation authorized to sign this Agreement;

(ix) written evidence satisfactory to the Bank that the Bank Certificate CUSIP Number has been obtained and reserved from Standard & Poor's CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc., for Bank Certificates;

(x) the Bank shall have received satisfactory evidence that Fitch shall have assigned a rating to Bank Certificates of at least "BBB-"

(xi) the Bank shall have received satisfactory evidence that the Certificates shall have been assigned long-term (underlying) and short-term ratings of ["AAA"] and ["A-1,"] respectively, by S&P, and long-term [(joint criteria)]<sup>3</sup> and short-term ratings of ["AAA"] and ["F-1+,"] respectively, by Fitch, after giving effect to the Letter of Credit and this Agreement; and

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<sup>3</sup> Will the District actually be getting joint criteria ratings?

(xii) a copy of the District's Investment Policy;

(xiii) the Bank shall have determined (in its sole discretion) that no material adverse change in the ratings, financial condition, business, assets, liabilities or prospects of the District shall have occurred since June 30, 2020, except as disclosed in writing by the District to the Bank prior to the Closing Date or as disclosed in the offering documents or material adverse event notices, which would be reasonably likely to result in a Material Adverse Effect;

(xiv) the Bank shall have received copies of the audited financial statements for the District for the fiscal year ended June 30, 2020;

(xv) the Bank shall have received a certificate, in form and substance satisfactory to the Bank, dated and effective as of the Date of Issuance, and executed by a duly authorized officer of the Preceding Liquidity Provider, and stipulating that (A) the Preceding Liquidity Provider has been paid all amounts owing to it under the Preceding Liquidity Agreement including all fees and all principal and interest and any further amounts payable under the Trust Agreement or the Preceding Liquidity Agreement on any Bank Certificates (as defined in the Preceding Liquidity Agreement) owned by it or held for its benefit and it neither owns a legal or beneficial interest in nor has a pledge of or lien on any of the Certificates, and (B) all conditions of the Preceding Liquidity Agreement regarding substitution for the Preceding Liquidity Agreement have been satisfied and discharged and the Preceding Liquidity Agreement has been terminated effective as of the Date of Issuance;

(xvi) The Bank shall have received (i) copies of the resolution(s) of the Trustee and Tender Agent authorizing the execution, delivery and performance of the Related Documents to which they are a party and the performance of any duties of the Trustee and Tender Agent under or in connection with the other Related Documents including the Letter of Credit, this Agreement and the Trust Agreement, and (ii) a certificate of an authorized representative of the Trustee and Tender Agent (A) certifying as to the authority, incumbency and specimen signatures of the authorized representatives of the Trustee and Tender Agent authorized to sign the Related Documents to which they are a party and any other documents to be delivered by them hereunder and who will be authorized to represent the Trustee and Tender Agent in connection with this Agreement, upon which the Bank may rely until it receives a new certificate and certifying that the resolution(s) referred to under (ii) is/are presently in full force and effect and (B) covering such matters relating to the Official Statement and the other Related Documents as the Bank may reasonably request;

(xvii) such other documents, certificates and opinions as the Bank or its special counsel may reasonably request;



(b) the Bank shall have received from the District the fees payable pursuant to the Fee Letter;

(c) no law, regulation, ruling or other action of the United States, the State or the State of New York or any political subdivision or authority therein or thereof shall be in effect or shall have occurred, the effect of which would be to prevent the Bank from fulfilling their respective obligations under this Agreement; and

(d) all legal requirements provided herein incident to the execution, delivery and performance of the Related Documents, and the transactions contemplated thereby, shall be reasonably satisfactory to the Bank and its special counsel.

*Section 4.02. Conditions Precedent to Liquidity Advances and Term Loan.* Following any payment by the Bank under the Letter of Credit pursuant to a Liquidity Drawing, a Liquidity Advance and the related Term Loan shall be made available to the District *only if* on the date of payment of such Liquidity Drawing by the Bank or on the Term Loan Commencement Date, as applicable, the following statements shall be true:

(a) the representations and warranties of the District contained in Article V of this Agreement and in the other Related Documents are correct in all material respects on and as of the date of such payment as though made on and as of such date; and

(b) no event has occurred and is continuing, or would result from such payment, which constitutes a Default or Event of Default.

Unless the District shall have previously advised the Bank in writing that one or both of the above statements is no longer true, the District shall be deemed to have represented and warranted on the date of such payment that both of the above statements are true and correct.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

*Section 5.01. Representations of the District.* The District represents, warrants and covenants to and with the Bank as of the Closing Date, as of each date on which the Bank honors a Drawing under the Letter of Credit, as follows:

(a) *Due Organization; Power and Authority.* The District is a political subdivision duly created and validly existing under and by virtue of the laws of the State of California with the powers and authority, among others, set forth in the Act, including all requisite power and authority to deliver the Official Statement, to execute and deliver the 2021 Documents, and to perform its obligations under the other Related Documents to which the District is a party.

(b) *Authorization and Validity of Agreement, Related Documents and Borrowing.* The execution, delivery and performance by the District of this Agreement

and the other Related Documents to which it is a party and the delivery of the Official Statement at the direction of the District have been duly authorized by all necessary action of the governing body of the District. Each of this Agreement and the Related Documents (other than the Certificates) to which the District is a party constitutes a legal, valid and binding obligation of the District, enforceable against the District in accordance with its terms, except as such enforceability may be limited by applicable reorganization, insolvency, liquidation, readjustment of debt, moratorium or other similar laws affecting the enforcement of the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). Each Certificate (including each Bank Certificate when executed and delivered by the Trustee) has been duly executed and delivered under Applicable Law and in conformity with the Trust Agreement and the Installment Purchase Agreement has been duly executed and delivered under the Act and each of the Series 2003A Installment Payments and the Certificates constitutes the legal, valid and binding obligations of the District enforceable in accordance with their respective terms. Each Certificate is entitled to the benefits of the Trust Agreement and evidences undivided interests of the Owners thereof in the Series 2003A Installment Payments. The obligation of the District to make the Series 2003A Installment Payments under the Installment Purchase Agreement is absolute and unconditional and is an obligation imposed by law. The Letter of Credit is a Credit Facility and this Agreement is a Credit Facility Agreement, as such terms are defined in and used in the Trust Agreement and the other Related Documents.

(c) *Compliance of Agreement, Related Documents with Applicable Law, Organizational Documents, Etc.* The execution, delivery and performance of this Agreement and each of the other Related Documents in accordance with its and their respective terms, the assignment and pledge of the Pledged Revenues and the consummation of the Transactions do not and will not (i) contravene or conflict with the District's charter, by-laws or other organizational documents or with any provision of the Act, (ii) require any consent or approval of any creditor of the District, (iii) violate any Applicable Law (including, without limitation, Regulation G, T, U or X of the Board of Governors of the Federal Reserve System, or any successor regulations), (iv) conflict with, result in a breach of or constitute a default under any Bank Agreement to which the District is a party or by which any of its properties or assets may be bound or (v) result in or require the creation or imposition of any charge, pledge, security interest, encumbrance or other Lien upon or with respect to any assets now owned or hereafter acquired by the District, or any Affiliate of the District, except such Liens, if any, created under and pursuant to the Installment Purchase Agreement or the Trust Agreement. The Resolutions have each been adopted in compliance with all requirements of Applicable Law.

(d) *Governmental Approvals.* All authorizations, consents, and other Governmental Approvals necessary for the District (i) to enter into this Agreement and the other 2021 Documents and perform the transactions contemplated hereby and thereby have been obtained and remain in full force and effect and are subject to no further administrative or judicial review and (ii) to perform the transactions contemplated by the other Related Documents remain in full force and effect and are subject to no further

administrative or judicial review. No other authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by the District of this Agreement or the due execution, delivery or performance by the District of the Related Documents to which it is a party.

(e) *Compliance with Law.* (i) Other than as set forth on Exhibit C attached hereto, the District and each Affiliate of the District is in compliance with all Applicable Law, including all Governmental Approvals, except for noncompliance that, singly or in the aggregate with all other instances of noncompliance, has not had and will not have a Material Adverse Effect or an adverse effect on the District's ability to perform its obligations under this Agreement and under the other Related Documents.

(ii) Except for a violation or failure to comply that, singly or in the aggregate with all other violations or failures to comply, has not had and cannot have a Material Adverse Effect or an adverse effect on the District's ability to perform its obligations under this Agreement and under the other Related Documents, the District has not received any complaint or other notice alleging a violation of or failure to comply with, any judgment, order, writ, injunction or decree of any Governmental Authority applicable to the District or the Facilities, or any statute, law, rule or regulation applicable to the District or the Facilities. The collection of Revenues and the accounting and recordkeeping therefor are in material compliance with all Applicable Law and all applicable resolutions, ordinances and rules of the District.

(f) *Title to Properties.* The District has sole title to the Facilities and its other property. No part of the Facilities is subject to any Lien, except Permitted Liens. The District has complied with all obligations under all leases to which it is a party and under which it is in occupancy, and all such leases are in full force and effect. The District enjoys peaceful and undisturbed possession under all such leases.

(g) *Litigation.* There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, arbitrator, public board or any other Governmental Authority pending or, to the best knowledge of the General Manager after due inquiry, threatened against or affecting the District, the Corporation or the Facilities (i) wherein an unfavorable decision, ruling or finding could reasonably be expected to have a Material Adverse Effect, (ii) which seeks to restrain or enjoin any of the Transactions, or (iii) which could adversely affect (A) the status of the District as a political subdivision or the status of the Corporation as a public benefit corporation, each as created and validly existing under the laws of the State of California, (B) the exclusion of interest with respect to the Certificates from gross income for federal income tax purposes, (C) the validity, enforceability or perfection of the pledge of and lien on the Pledged Revenues or (D) the ability of the District to perform its obligations under this Agreement, the Trust Agreement or any other Related Document (any such action, suit, proceeding, inquiry or investigation being herein referred to as "*Material Litigation*").

(h) *Absence of Defaults and Events of Default.* (i) No Default or Event of Default has occurred and is continuing.

(ii) The District is not in material default under (A) any order, writ, injunction or decree of any court or governmental body, agency or other instrumentality applicable to the District or the Facilities, or (B) any law or regulation applicable to the District or the Facilities, or (C) any Bonds or Contracts, or (D) any Bank Agreement, default under which would have an adverse effect on the properties, business, condition (financial or other), results of operations or prospects of the District or the Transactions, or which would have an adverse effect on the validity or enforceability of this Agreement or any of the other Related Documents, or on the authority or ability of the District to perform its obligations under this Agreement or any of the other Related Documents to which the District is a party. The District is not in breach of any financial covenant or any other material provision of any Bank Agreement entered into in connection with any Debt.

(i) *Financial Statements.* The balance sheet of the District as of June 30, 2020 and the related statement of revenues and expenses and changes in financial position for the years then ended and the auditors' reports with respect thereto and the balance sheets of the District as of June 30, 2020 and the related statements of revenues and expenses and change in financial position for the period then ended, copies of which have heretofore been furnished to the Bank, are complete and correctly and fairly present the financial condition, changes in financial position and results of operations of the District at such dates and for such periods, and were prepared in accordance with GAAP consistently applied, except as stated in the notes thereto. Since June 30, 2020 there has been no Material Adverse Change nor any increase in the District's Debt. The District has no material contingent liabilities or other material contracts or commitments payable from the Pledged Revenues which are not reflected in such financial statements, or in the notes thereto.

(j) *Accuracy and Completeness of Information.* All information, reports and other papers and data furnished by the District to the Bank were, at the time the same were so furnished, complete and correct in all material respects, to the extent necessary to give the recipient a true and accurate knowledge of the subject matter and were provided in expectation of the Bank's reliance thereon in issuing the Letter of Credit. No fact is known to the District which has had or, so far as the District can now reasonably foresee, may in the future have a Material Adverse Effect, which has not been set forth in the financial statements referred to in Section 4.01(i) or in such other information, reports or other data disclosed in writing to the Bank prior to the Closing Date. Any financial, budget and other projections furnished to the Bank by the District or its agents were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of the conditions existing at the time of delivery of such financial, budget or other projections, and represented, and as of the date of this representation, represent the District's best estimate of its future financial performance. No document furnished nor any representation, warranty or other written statement made to the Bank in connection with the negotiation, preparation or execution of this Agreement or the 2021 Documents contains or will contain any untrue statement of a

material fact or omits or will omit (as of the date made or furnished) to state any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which they were or will be made, not misleading.

(k) *Official Statement.* Except for the Bank Disclosure and the Securities Depository Disclosure, as to which no representation is made, the Official Statement is, and any supplement or amendment thereto shall be, accurate in all material respects for the purposes for which its use is, was or shall be, authorized; and except for the Bank Disclosure and the Securities Depository Disclosure, as to which no representation is made, the Official Statement does not, and any such supplement or amendment shall not, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements made therein, in the light of the circumstances under which they are or were made, not misleading.

(l) *Sovereign Immunity.* Under the laws of the State of California, the District, the Corporation, the Facilities, and its and their revenues, assets and property are not exempt or immune from, whether on the basis of sovereign or governmental immunity or any similar legal or equitable principle, doctrine or rule of law and whether now or at any time hereafter arising, (i) jurisdiction, (ii) liability, suit or other legal or equitable remedy for the amounts due and payable under the Certificates, this Agreement or any of the other Related Documents or the performance of any of its other obligations hereunder or thereunder, and (iii) enforcement of any judgment, order or decree to which the District, the Corporation, the Facilities, or its or their revenues, assets and property may be made subject.

(m) *Incorporation of Representations and Warranties.* The District hereby makes to the Bank the same representations and warranties made by the District in each Related Document to which it is a party, which representations and warranties, together with the related definitions of terms contained therein, are incorporated herein by this reference with the same effect as if each and every such representation and warranty and definition were set forth herein in its entirety. No amendment to or waiver of such representations, warranties or definitions made pursuant to the relevant Related Document shall be effective to amend such representations and warranties and definitions as incorporated by reference herein without the prior written consent of the Bank.

(n) *Insurance.* The District currently maintains insurance of such type and in such amounts or in excess of such amounts necessary to comply with the requirements of Section 6.19.

(o) *Certificates; Bank Certificates.* Each Certificate (including all Bank Certificates) has been or will be duly and validly issued under the Trust Agreement and entitled to the benefits thereof. The Certificates purchased with amounts drawn under the Letter of Credit will constitute Bank Certificates, free and clear of any pledge, security interest, claim or other Lien of any other Person.

(p) *Pension Plans.* (i) Each Pension Plan is in compliance in all material respects with the applicable provisions of the Code and other federal or state law; (ii) there are no pending or, to the best knowledge of the Issuer, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Pension Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect; and there has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Pension Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect; and (iii) each Pension Plan is a governmental plan as defined in Section 3(32) of ERISA.

(q) *Interest.* None of the Related Documents to which the District is a party or the Certificates provide for any payments that would violate any Applicable Law regarding permissible maximum rates of interest or the calculation or collection of interest upon interest. In particular, and not in limitation of the foregoing, under the laws of the State of California, the obligation of the District under this Agreement to pay interest at the Bank Rate (i) is, under California Government Code § 5922(c), as amended, a valid, binding and enforceable contractual obligation and is not subject to any limitation, restriction or cap on the per annum rate of interest that may be charged or received by the Bank or paid by the District and (ii) constitutes an Installment Payment.

(r) *Investment Company Act.* The District is not an “investment company” or a company “controlled” by an “investment company,” as such terms are defined in the Investment Company Act of 1940 (15 U.S.C. § 80a-1 *et seq.*), as amended.

(s) *Federal Reserve Board Regulations.* The District is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock. The District will not use any part of the proceeds of the Certificates or the funds advanced hereunder and has not incurred any Debt to be reduced, retired or purchased by the District or any Affiliate out of such proceeds, for the purpose of purchasing or carrying any Margin Stock.

(t) *No Proposed Legal Changes.* There is no amendment, or to the best knowledge of the District, proposed amendment certified for placement on a statewide ballot, to the Constitution of the State or any State law or any published administrative interpretation of the Constitution of the State or any State law, or any proposition or referendum (or proposed proposition or referendum) or other ballot initiative or any legislation that has passed either house of the legislature of the State, or any published judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to affect adversely (i) the execution or delivery of, or security for, any of the Certificates, (ii) the rights or remedies of the Bank or of any Owner of the Certificates, or (iii) the existence of the District, the Corporation, the Facilities or the District’s or the Corporation’s power or ability to perform its obligations hereunder or under any of the other Related Documents including without limitation the District’s ability to repay when due its obligations under this Agreement and the Certificates.

(u) *Environmental Matters.* In the ordinary course of its business, the District conducts an ongoing review of the effect of Environmental Laws on the business, operations and properties of the District, in the course of which it identifies and evaluates associated liabilities and costs (including, without limitation, any capital or operating expenditures required for cleanup or closure of properties presently or previously owned or operated, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, and related constraints on operating activities, and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). The District, the Corporation, the Facilities, and its and their assets and property (i) has not become subject to any Environmental Liability nor does the District know of any basis for any Environmental Liability, (ii) has not received notice of any Environmental Claim or of any failure or alleged failure to comply with applicable federal, state or local health and safety statutes or regulations, except for notices of Environmental Claims or of failures or alleged failures to comply that, singly or in the aggregate, have not had and cannot have a Material Adverse Effect, and (iii) to the best knowledge of the District, is in compliance with all Environmental Laws and has obtained and maintains or complies with any permit, license or other approval required under any Environmental Law.

(v) *Sanctions Concerns and Anti-Corruption Laws.* (i) *Sanctions Concerns.* Neither the District, nor, to the knowledge of the District, any director or officer thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(ii) *Anti-Corruption Laws.* The District has conducted its business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

(w) *Valid Lien.* The District's Pledge, together with its irrevocable parity pledge of the Pledged Revenues under the Trust Agreement and the Installment Purchase Agreement to and for the payment of the Debt Service Payments for the Series 2003A Installment Payments, in each case, as authorized under and in accordance with Applicable Law: (i) is valid and binding as of the Date of Issuance and all Revenues now or hereafter received by the District are immediately subject to the lien thereof; (ii) creates for the benefit of the Bank and each of the Owners a perfected first priority lien upon and security interest in the Revenue Fund and all of the Pledged Revenues, subject to no Liens other than Permitted Liens; (iii) requires no act, instrument, approval, filing, registration, recording or publication of the Installment Purchase Agreement, the Trust Agreement, this Agreement or any other instrument nor any prior separation or physical delivery of the Pledged Revenues or notice to any Person, other than the filings

and registrations accomplished by the District as of the Closing Date, to validly establish the Pledge or the pledge provided for under the Installment Purchase Agreement and the Trust Agreement, respectively, or to create, attach, perfect, protect or maintain the lien and security interest created thereby on and in the Pledged Revenues to secure the Certificates and the Reimbursement Obligations; and (iv) does not require any act of appropriation for the application thereof to the purposes for which pledged.

(x) *The Certificates; This Agreement; Other Indebtedness.* Each Certificate (including Bank Certificates upon the execution and delivery thereof) shall have been duly executed and delivered under the Trust Agreement and shall be entitled to the benefits thereof. This Agreement constitutes a Contract and the District's obligations under this Agreement including its obligation to pay all Reimbursement Obligations are on a parity with or, in the case of obligations hereunder which qualify as Operation and Maintenance Costs, senior to the Series 2003A Installment Payments and the other Permitted Parity Indebtedness and are payable from and secured by a lien on the Pledged Revenues, which constitutes a first Lien which is subordinate to no other Lien, and, in the case of obligations hereunder which qualify as Operation and Maintenance Costs, is payable from Revenues in advance of the Permitted Parity Indebtedness. As of the Date of Issuance, (i) the District has not incurred, created or assumed any Debt payable from or secured by the Pledged Revenues which is senior in right of payment or security to the District's obligations under this Agreement or the Installment Purchase Agreement and (ii) there is no Debt payable from or secured by the Pledged Revenues or any portion thereof, whether senior, parity or subordinate, other than (A) the Series 2003A Installment Payments and the Contracts existing as of the Date of Issuance which are expressly listed in the definition of "Contracts" in the Installment Purchase Agreement, and (B) the Existing Subordinate Debt expressly listed on Schedule 4.01(x) which is payable from and secured by a pledge and lien on the Revenues and the Revenue Fund that is subordinate in all respects to the pledge of and lien thereon provided in the Installment Purchase Agreement and this Agreement. All Reimbursement Obligations constitute Credit Facility Provider Amounts as such term is defined in the Trust Agreement and the other Related Documents.

(y) *Trust Agreement; Installment Purchase Agreement.* The provisions of the Trust Agreement constitute a contract among the District, the Corporation and the Trustee, for the benefit of the Owners and for the benefit of the Bank as a Credit Facility Provider. The provisions of the Installment Purchase Agreement constitute a contract between the District and the Corporation, as assigned by the Corporation to the Trustee pursuant to the Assignment Agreement, for the benefit of the Owners and the Bank as Credit Facility Provider. Any such Owner or the Bank, as a Credit Facility Provider, subject to the provisions of the Trust Agreement, the Installment Purchase Agreement and the Certificates, may at law or in equity, by suit, action, mandamus or other proceedings, enforce and compel the performance of all duties required to be performed by the District and the Corporation under this Agreement, the Trust Agreement, the Installment Purchase Agreement and the other Related Documents.



(z) *Alternate Credit Facility.* The Letter of Credit satisfies the requirements of the Trust Agreement, including but not limited to Section 2.18 thereof, and constitutes an Alternate Credit Facility pursuant to the terms thereof.

*Section 5.02. Representations of Corporation.* The Corporation represents, warrants and covenants to and with the Bank as of the Closing Date, as of each date on which the Bank honors a Drawing under the Letter of Credit, as follows:

(a) *Organization and Authorization.* The Corporation is a nonprofit public benefit corporation duly organized and existing under the laws of the State.

(b) *Authority to Adopt or Execute Documents.* The Corporation had, as of the date of adoption thereof, full power and authority to adopt its resolution authorizing the execution and delivery of this Agreement and the other Related Documents to which it is a party and the transactions contemplated hereby and thereby, and has, or had as of the date of execution and delivery, full power and authority to execute and deliver this Agreement and the other Related Documents to which it is a party, and has full power and authority to perform its obligations under each of the foregoing.

(c) *Obligations Legal, Valid and Binding.* (i) This Agreement and the other Related Documents to which the Corporation is a party have been duly and validly authorized, executed and delivered, and constitute the legal, valid and binding obligations of the Corporation enforceable against the Corporation in accordance with their respective terms, except insofar as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights and remedies generally, and by general principles of equity.

(ii) The Corporation is not in default hereunder, or under the other Related Documents to which it is a party or under any other material mortgage, indenture, contract, agreement or undertaking to which it is a party or which purports to be binding on the Corporation or on any of its assets which default would materially adversely affect the ability of the Corporation to perform its obligations hereunder or under any of the other Related Documents to which it is a party.

(d) *Compliance of Agreement, Related Documents with Applicable Law, Organizational Documents, Etc.* The execution, delivery and performance of this Agreement and each of the other Related Documents in accordance with its and their respective terms and the consummation of the Transactions do not and will not (i) contravene or conflict with the Corporation's charter, by-laws or other organizational documents or with any provision of the Corporation Act, (ii) require any consent or approval of any creditor of the Corporation, (iii) violate any Applicable Law (including, without limitation, Regulation G, T, U or X of the Board of Governors of the Federal Reserve System, or any successor regulations), (iv) conflict with, result in a breach of or constitute a default under any contract, indenture, agreement, instrument or other undertaking to which the Corporation is a party or which purports to be binding on the Corporation or on any of its properties or assets or (v) result in or require the creation or

imposition of any charge, pledge, security interest, encumbrance or other Lien upon or with respect to any assets now owned or hereafter acquired by the Corporation, except such Liens, if any, created under and pursuant to the Installment Purchase Agreement or the Trust Agreement. The Resolutions have each been adopted in compliance with all requirements of Applicable Law.

(e) *Governmental Approvals.* All authorizations, consents, and other Governmental Approvals necessary for the Corporation (i) to enter into this Agreement and the other 2021 Documents and perform the transactions contemplated hereby and thereby have been obtained and remain in full force and effect and are subject to no further administrative or judicial review and (ii) to perform the transactions contemplated by the other Related Documents remain in full force and effect and are subject to no further administrative or judicial review. No other authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by the Corporation of this Agreement or the due execution, delivery or performance by the Corporation of the other Related Documents to which it is a party.

(f) *No Legal Bar.* (i) The Corporation is in compliance with and not in violation under any laws of the State which would adversely affect the Corporation's existence or its powers and authority referred to in Section 4.02(b).

(ii) The Corporation is not a party to, or otherwise subject to, any provision contained in any instrument evidencing Debt of the Corporation, any agreement relating thereto or to the Project or any portion thereof, or any other contract or agreement which limits the amount of, or otherwise imposes restrictions on the incurring of, obligations of the Corporation that would adversely affect the ability of the Corporation to perform its obligations hereunder or under any of the other Related Documents to which it is a party.

(g) *Litigation.* There is no action, suit, investigation or proceeding pending or, to the best of the Corporation's knowledge after due inquiry, threatened against or affecting the Corporation, in which an adverse determination could have an adverse effect on the business, operations or condition (financial or otherwise) of the Corporation or its ability to perform its obligations hereunder or under the other Related Documents to which it is a party.

(h) *Disclosure.* The representations and statements made by the Corporation herein or in any other Related Document, or made by the Corporation in any other document furnished to the Bank in connection herewith or therewith are accurate and complete as of the date of this Agreement.

(i) *No Immunity.* Under the laws of the State of California, the Corporation and its revenues, assets and property are not exempt or immune from, whether on the basis of sovereign immunity or any similar legal or equitable principle, doctrine or rule of law and whether now or at any time hereafter arising, (i) jurisdiction, (ii) liability, suit or other legal or equitable remedy for the amounts due and payable under this Agreement or

any of the other Related Documents or the performance of any of its obligations hereunder or thereunder, and (iii) enforcement of any judgment, order or decree to which the Corporation or its revenues, assets and property may be made subject. To the extent that the Corporation has or hereafter may acquire under Applicable Law any right to immunity from setoff or legal proceedings on the grounds of sovereignty, the Corporation hereby irrevocably waives, to the extent permitted by law, such rights to immunity for itself in respect of its obligations arising under or related to this Agreement or the other Related Documents to which it is a party.

(j) *No Defaults.* No Default or Event of Default has occurred and is continuing under this Agreement, and no Default or Event of Default or condition, event or act which with notice or lapse of time or both would become or constitute a Default or Event of Default under, or as such term or terms is defined in, any other Related Document or agreements related thereto, has occurred and is continuing.

(k) *Other Documents.* The representations and warranties made by the Corporation in each of the other Related Documents to which it is a party are hereby incorporated herein by this reference and are hereby reaffirmed and restated by the Corporation for the benefit of the Bank as if such representations and warranties were fully set forth herein. Except as otherwise provided herein, no amendment, modification, termination or replacement of any such representations, warranties, covenants and definitions contained in the Related Documents to which it is a party shall be effective to amend, modify, terminate or replace the representations, warranties, covenants and definitions incorporated herein by this reference, without the prior written consent of the Bank.

(l) *Margin Stock.* The Corporation is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock. The Corporation will not use any part of the proceeds of the Certificates or the funds advanced hereunder and has not incurred any Debt to be reduced, retired or purchased by the Corporation or any Affiliate out of such proceeds, for the purpose of purchasing or carrying any Margin Stock.

(m) *Environmental Matters.* The Corporation has not received notice to the effect that its operations are not in compliance with any of the requirements of any Environmental Laws or are the subject of any Environmental Claim or are subject to any Environmental Liability.

(n) *Sanctions Concerns and Anti-Corruption Laws.* (i) *Sanctions Concerns.* Neither the Corporation, nor, to the knowledge of the Corporation, any director or officer thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(ii) *Anti-Corruption Laws.* The Corporation has conducted its business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

## ARTICLE VI

### AFFIRMATIVE COVENANTS

Each of the District and the Corporation, as applicable, covenants and agrees that until the principal of and interest with respect to the Certificates and all Reimbursement Obligations have been indefeasibly paid in full and all other obligations of the District under this Agreement or with respect to any Bank Certificates have been paid and performed and the Bank shall have no further obligation or liability under or in respect of the Letter of Credit:

*Section 6.01. Compliance with Laws and Regulations.* The District and its Affiliates shall comply with all Applicable Laws, including Environmental Laws, to which it, they, the Facilities, or its or their property may be subject; *provided, however,* that the District may contest the validity or application thereof and appeal or otherwise seek relief therefrom, so long as the District and each Affiliate continues to perform all of its obligations hereunder and under the Related Documents and *provided* such acts do not affect the District's or such Affiliate's power and authority to execute this Agreement and the Related Documents to which it is a party or to perform its obligations and pay all amounts payable by it hereunder and thereunder, or otherwise result in a Default or Event of Default hereunder (including without limitation Section 8.01(k)) or under any of the other Related Documents.

*Section 6.02. Reporting Requirements.* The District shall keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to the affairs, operations, transactions and activities of the District and the Corporation in accordance with GAAP consistently applied. The District shall furnish to the Bank two copies of each of the following:

(a) *Annual Financial Statements.* (i) As soon as available, and in any event within 215 days after the close of each Fiscal Year of the District (or by such earlier time as the same is provided to the Trustee under the Installment Purchase Agreement), the complete audited financial statements of the District including the balance sheet as of the end of such Fiscal Year and the related statements of revenues, expenses and cash flows and changes in fund balance for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the preceding Fiscal Year, all in reasonable detail, and including a statement of compliance with the rate covenants contained in the Installment Purchase Agreement, all as certified to by the District's independent certified auditors as having been prepared in accordance with GAAP, consistently applied, such audit having been conducted in accordance with generally accepted auditing standards and the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States.

(ii) *Reserved.*

(b) *Certificate of Compliance.* As soon as available, and in any event within 120 days after the close of each Fiscal Year, a certificate substantially in the form attached hereto as Exhibit A signed by the Authorized District Representative: (i) certifying compliance with the financial covenants set forth in Section 6.20 as of the last day of such Fiscal Year; and (ii) certifying (A) as to the matters set forth in Section 6.19, (B) that under his/her supervision the District has made a review of its activities during the preceding Fiscal Year for the purpose of determining whether or not the District has complied with all of the terms, provisions and conditions of this Agreement and the other Related Documents, (C) that to the best of his/her knowledge the District is not in Default in the performance or observance of any of the terms, covenants, provisions or conditions of this Agreement or any of the other Related Documents, or if the District shall be in Default, such certificate shall specify each such Default, the nature and status thereof and any remedial steps taken or proposed to correct each such Default and (D) whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 5.09 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate.

(c) *Auditors.* Concurrently with any delivery of financial statements under clause (a) above, a copy of any management letter or audit report provided to the District by such auditors.

(d) *Other Reports.* Promptly upon request by the Bank, copies of any financial statement or report furnished to any other holder of any Bonds or Contracts pursuant to the terms of any Bank Agreement and not otherwise required to be furnished to the Bank pursuant to any other clause of this Section 6.02.

(e) *Budget.* As near as practicable to the beginning of each Fiscal Year, an annual budget of the District for such upcoming Fiscal Year which shall include, among other items, budgeted operating results for such Fiscal Year, including Operation and Maintenance Costs, Debt Service Payments and Revenues.

(f) *Material Event Notices.* Immediately following any dissemination, distribution or provision thereof to any Person, a copy of any Material Event Notice disseminated, distributed or provided in satisfaction of or as may be required by the provisions of Rule 15c2-12 promulgated pursuant to the Securities Exchange Act of 1934, as amended (17 C.F.R. Sec. 240.15c2-12), or any successor or similar legal requirement.

(g) *NRMSIR Filings.* Copies of all filings made by the District with any Nationally Recognized Municipal Securities Information Repository (including the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System ("*EMMA*")) promptly after such filings are made.

(h) *Certain Financial Matters.* Promptly upon request of the Bank, confirmation (by the District or by the Trustee at the written request of the District) of the amount of funds on deposit in any fund or account established under the Trust Agreement or the Installment Purchase Agreement and, promptly after the occurrence thereof, written notice of any material change in accounting policies or financial reporting practices by the District or its Affiliates.

(i) *Additional Bonds, Contracts and Subordinate Obligations.* Promptly following the date of execution and delivery of any Bond or Contract or Subordinate Obligation, written notice of the change in the aggregate principal amount of Bonds and Contracts or Subordinate Obligations outstanding, together with a copy of the final official statement or other final disclosure statement prepared with respect to such additional Bond or Contract or Subordinate Obligation and a certification that any limitations or covenants with respect to the incurrence or issuance of such Bond or Contract or Subordinate Obligation (including any debt service coverage test) have been met with respect thereto.

(j) *Legal Proceedings.* Promptly after obtaining knowledge thereof, written notice of the filing or commencement of any legal proceeding or other action by any Person involving a demand, claim or cause of action (i) arising under any Contract or Bond or (ii) which would be payable from the Net Revenues or any portion thereof.

(k) *Insurance Report.* As soon as available, a copy of any report or certificate concerning the insurance coverages for the Facilities that the District at any time may obtain from an insurance consultant as set forth in Section 6.19.

(l) *Other Information.* Such other information respecting the business, properties or the condition or operations, financial or otherwise, of the District as the Bank may from time to time reasonably request.

### *Section 6.03. Notices.*

(a) *Notice of Default.* The District shall provide to the Bank immediate notice by telephone, promptly confirmed in writing, of any Default or Event of Default or any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

(b) *Pension Plan Notices.* As soon as practicable, notice of the occurrence of (i) any “prohibited transaction” (as such term is defined in Section 503 of the Code) in connection with any Pension Plan or any trust created thereunder; (ii) the adoption of, or commencement of contributions to, any defined benefit Pension Plan by the District; or (iii) the adoption of any amendment to a Pension Plan, if such amendment results in a material increase in Unfunded Pension Liability (and in any such case, the District shall provide to the Bank telephonic notice specifying the nature thereof, and, no more than five Business Days after such telephonic notice, written notice again specifying the nature thereof and specifying what action the District or any

of its Affiliates is taking or proposes to take with respect thereto, and, when known, any action taken by the IRS or other Governmental Authority with respect thereto).

(c) *Litigation and Other Notices.* The District shall provide to the Bank in writing, promptly upon learning thereof, notice of:

(i) any Material Litigation and any other action, suit, proceeding, inquiry or investigation that is commenced or threatened (A) against the District or any Affiliate of the District and that seeks damages in excess of \$2,000,000, (B) which seeks injunctive relief, (C) which is asserted or instituted against any Pension Plan, its fiduciaries or its assets or against the District in connection with any Pension Plan, (D) which alleges criminal misconduct by the District or any Affiliate of the District or any officer, employee or agent of the District or any Affiliate of the District, or (E) which alleges the violation of any law regarding, or seeks remedies in connection with, any Environmental Liabilities that singly or in the aggregate could reasonably be expected to exceed \$2,000,000; and

(ii) (A) any criminal investigation or proceeding by a Governmental Authority involving the District, any Affiliate of the District or any officer or managerial employee of the District or any Affiliate of the District; (B) written notice of a communication from any labor union of an intent to strike the District or any of its Affiliates at a future date with such notice to include a description of the action or actions that the District or its Affiliates propose to take with respect thereto; (C) the proposal of a bill or other legislation or the filing of any initiative or referendum which challenges the validity or enforceability of any of the Related Documents or the Act, or otherwise could annul, amend, modify or replace the Act or which could lead to a material diminution or reallocation of the Revenues or any portion thereof; and (D) any material development in any legal proceeding or other action affecting the District or its Affiliates which the District has, or should have, provided notice of to the Bank pursuant to Section 5.03(b) or clause (i) of this Section 6.03(c).

(d) *Certain Notices under or in Connection with the Related Documents.* The District shall furnish to the Bank a copy of any notice, certification, demand or other writing or communication given by the Remarketing Agent, the Trustee or the Tender Agent to the District or by the District to the Remarketing Agent, the Trustee or the Tender Agent under or in connection with any of the Related Documents, in each case promptly after the receipt or giving of the same.

(e) *Amendments.* Promptly after the adoption thereof, copies of any amendments of or supplements to any of the Related Documents.

(f) *Trust Agreement Information; Identity of Owners.* Copies of all notices, certificates, opinions and other reports or documents required to be filed pursuant to the Trust Agreement. The District shall, upon request, provide or cause to be provided to the Bank the list of the name and address of the last known Owners of the Certificates.

(g) *Rating Agencies.* Promptly after any Rating Agency with which the District maintains a rating pursuant to Section 6.16 of this Agreement shall have announced a change in an Obligor Rating, written notice of such rating change.

(h) *Governmental Authority Filings.* Copies of all reports and other materials filed or delivered by the District to or with any Governmental Authority which has jurisdiction over the financial affairs of the District, which is a creditor of the District, or which issues debt on behalf of the District.

(i) *Legislation or Proposed Legislation.* Copies of (i) any amendments or modifications to the Act and (ii) any other legislation of which the District has knowledge which could reasonably be expected to adversely impact the Pledged Revenues, the District's ability to perform its obligations under the Related Documents or the pledge of the Trust Estate to payments on the Certificates and the Reimbursement Obligations.

(j) *Notices of Dispute.* The District shall promptly give written notice to the Bank of any material dispute which may exist between the District and any of the Remarketing Agent, the Trustee, or the Tender Agent or any dispute in connection with any transaction contemplated under this Agreement or any Related Document.

*Section 6.04. Further Assurances.* The District will, and will cause the Corporation to, from time to time promptly execute and deliver to the Bank (or as directed by the Bank) all further financing statements, amendments and confirmation statements and will register, record and file and re-register, re-record and re-file all such documents and instruments, at such time or times, in such manner and at such place or places, and shall take any and all other actions as may be necessary or reasonably required by the Bank to (a) perfect and protect any lien, pledge or security interest or other right or interest given, or purported to be given, to the Trustee, the Bank or any Owner under or in connection with the Trust Agreement, the Installment Purchase Agreement, this Agreement or the other Related Documents, (b) enable the Trustee and the Bank to exercise and enforce its rights under this Agreement and its rights and the rights of the Owners of the Certificates, as and in the manner provided in the Installment Purchase Agreement, the Trust Agreement and the other Related Documents and (c) further and more fully vest in the Trustee and the Bank all rights, interests, powers, benefits, privileges, and advantages conferred or intended to be conferred upon them by any of the Related Documents. Except to the extent it is exempt therefrom, the District will pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of such instruments of further assurance, and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of such instruments of further assurance.

*Section 6.05. Right of Entry; Communication with Accountant.* (a) The District shall permit the agents or representatives of the Bank during normal business hours and, at any time a Default does not exist, upon reasonable prior notice, to enter the premises of the District, or any parts thereof, to examine and copy the District's and the Corporation's financial and corporate books, records and accounts, and to discuss the affairs, finances, business and accounts of the



District and the Corporation with the District's and the Corporation's officers, employees and agents.

(b) (i) At any time that a Default exists, the District authorizes the Bank to communicate directly with its Accountant, upon reasonable prior notice, including **[Diehl, Evans & Company, LLP, Irvine, California]**<sup>4</sup>, and authorizes and shall instruct those accountants to communicate with, disclose and make available to the Bank any and all financial statements and other supporting financial documents, schedules and information relating to the District and the Corporation with respect to the business, results of operations and financial condition and other affairs of the District and the Corporation; and

(ii) At any time that no Default exists, the District shall upon receipt of written notice from the Bank, made with reasonable prior notice, instruct and authorize its Accountant, including **[Diehl, Evans & Company, LLP, Irvine, California, and Lance, Soll & Lunghard, LLP, Brea, California]**, to jointly with the District communicate with, disclose and make available to the Bank any and all financial statements and other supporting financial documents, schedules and information relating to the District and the Corporation with respect to the business, results of operations and financial condition and other affairs of the District and the Corporation.

*Section 6.06. Payment of Obligations; Removal of Liens.* The District will, and will cause each of its Affiliates to, pay (a) all Debts and obligations of the District or such Affiliate in accordance with the terms thereof, (b) all amounts payable by it hereunder and under the Related Documents in accordance with the terms hereof or thereof and (c) all assessments or other governmental charges as the same respectively become due, all taxes, assessments (general or special) and governmental charges of any kind whatsoever that may be at any time lawfully assessed or levied against or with respect to any of its or their property or any interest thereon and promptly discharge or cause to be discharged all Liens (other than Permitted Liens), fees and charges on such property; *provided* that the District or such Affiliate may withhold payment of sums described under subpart (c) where (i) the validity or amount thereof is being contested in good faith by appropriate proceedings, (ii) the District or such Affiliate has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (iii) the failure to make payment pending such contest could not result in a Material Adverse Effect.

*Section 6.07. Incorporation of Covenants.* (a) The covenants of the District set forth in the Installment Purchase Agreement, the Trust Agreement and each of the other Related Documents to which the District is a party, as well as related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety for the benefit of the Bank and shall be enforceable by the Bank against the District. All such incorporated covenants shall be in addition to the express covenants contained herein and shall not be limited by the express covenants contained herein nor shall such incorporated covenants be a limitation on the express covenants contained herein. To the extent that any such incorporated provision permits any Person to waive compliance with

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<sup>4</sup> District to confirm these accountants are still correct.

or consent to such provision or requires that a document, opinion, report or other instrument or any event or condition be acceptable or satisfactory to any Person, for purposes of this Agreement, such compliance shall be waived, or such provision shall be consented to, only if it is waived or consented to, as the case may be, by the Bank and such document, opinion, report or other instrument shall be acceptable or satisfactory to the Bank. No amendment to such covenants (or the defined terms relating thereto) made pursuant to the Related Documents shall be effective to amend such incorporated covenants without the written consent of the Bank. Notwithstanding the termination or expiration of any Related Document, the District shall, unless such Related Document has terminated or expired in accordance with its terms and has been replaced by a new Related Document, continue to observe the covenants therein contained for the benefit of the Bank until the termination of this Agreement.

(b) The District shall diligently and in good faith pursue enforcement of each of the Related Documents to which it is a party against each of the other parties thereto and shall in particular and not in limitation of the foregoing cause the Corporation, the Trustee, the Tender Agent and the Remarketing Agent at all times to comply with the terms of the Related Documents to which they are a party.

*Section 6.08. Maintenance of Governmental Approvals.* The District shall, and shall cause the Corporation to, at all times maintain in effect, renew and comply with all the terms and conditions of all consents, licenses, approvals, authorizations and other Governmental Approvals which are necessary or appropriate under Applicable Law to conduct its activities and operations as of the Closing Date or at any time thereafter and for the execution, delivery and performance of this Agreement and the Related Documents to which it is a party.

*Section 6.09. Alternate Credit Facility.* (a) The District covenants to employ its best efforts to obtain, as of the Termination Date, (i) an Alternate Credit Facility to replace the Letter of Credit or (ii) a written commitment of an underwriter to purchase the Certificates representing a Long-Term Interest Rate.

(b) The District agrees that any Alternate Credit Facility or written commitment, as the case may be, will require, as a condition to the effectiveness of the Alternate Credit Facility or written commitment, as the case may be, that the provider of the Alternate Credit Facility or underwriter will provide funds to the extent necessary, in addition to other funds available, on the date the Alternate Credit Facility or written commitment, as the case may be, becomes effective, for the purchase of all Bank Certificates at par plus accrued interest through the date purchased. On such date all Reimbursement Obligations (including all Excess Interest) owing to the Bank hereunder or under the Trust Agreement or the Certificates shall be paid in full to the Bank by the District.

(c) The District shall not permit an Alternate Credit Facility or written commitment as described in subparagraph (a) to become effective with respect to less than all of the Certificates without the prior written consent of the Bank.

*Section 6.10. Disclosure to Participants.* The District agrees to permit the Bank to disclose any information received by the Bank in connection herewith, including without

limitation the financial information described in Section 6.02, to any assignees or Participants of the Bank in this Agreement without notice to or further consent from the District.

*Section 6.11. Maintenance of Existence.* The District will preserve and maintain its existence as a political subdivision of the State of California and maintain all rights, privileges and franchises necessary and desirable in the normal conduct of its business and in the performance of its obligations under the Related Documents to which it is a party. The District will continue to conduct in the ordinary course the activities in which it is presently engaged which is that of an irrigation district of the State of California and activities ancillary thereto. The District will cause the Corporation to maintain its existence as a California nonprofit public benefit corporation and to continue to conduct in the ordinary course the activities in which it is presently engaged.

*Section 6.12. Use of Proceeds.* The District shall (a) cause the proceeds from each Drawing made pursuant to the Letter of Credit and this Agreement to be used solely for the specific purpose set forth under the Letter of Credit, the Trust Agreement and this Agreement and (b) use the proceeds of the Certificates solely for the purposes set forth in the 2003 Resolution, the Trust Agreement and the other Related Documents. The District will not use the proceeds of the Certificates or the proceeds from Drawings in a manner which violates Regulation U, as it may be amended or interpreted from time to time by the Board of Governors of the Federal Reserve System.

*Section 6.13. Notice of Conversion.* The District shall promptly furnish, or cause to be furnished, to the Bank, not later than its furnishing the same to the Remarketing Agent, a copy of any written notice furnished by the District to the Remarketing Agent pursuant to the Trust Agreement indicating a proposed conversion of the interest rate on the Certificates.

*Section 6.14. Notice of Change in Depository Banks.* The District shall provide the Bank written notice not less than thirty (30) days in advance of any change or intended change in the depository bank or banks for the Revenue Fund. The District shall not enter into any blocked account agreement or account control agreement with respect to any account or fund into which the District has deposited or invested or will deposit or invest all or any portion of the Revenues, except with or in favor of the Trustee and with the prior written consent of the Bank.

*Section 6.15. CUSIP Numbers.* The District shall at all times (a) cause Certificates which are not Bank Certificates to be assigned a CUSIP Number and (b) cause Bank Certificates to be assigned a Bank Certificate CUSIP Number.

*Section 6.16. Rating Maintenance.* The District covenants that at all times from and including the Date of Issuance until and including the Termination Date and the indefeasible payment in full of all Bank Certificates and all Reimbursement Obligations it will (a) maintain a published Obligor Rating from at least two of S&P, Moody's and Fitch, (b) cause at least two of Moody's, S&P and Fitch to assign long-term and short-term ratings to the Certificates, (c) obtain from at least one of Moody's, S&P or Fitch, which is then rating the Certificates, and maintain, a rating specifically assigned to such Bank Certificates, which rating shall be no lower than the Obligor Rating, and (d) take all actions which may be necessary or appropriate to cause the Bank

Certificate CUSIP number and the rating assigned to such Bank Certificates to be available electronically to the Bank pursuant to a third-party provider of such information.

*Section 6.17. Reserved.*

*Section 6.18. Budget.* The District covenants to prepare and adopt a budget prior to the beginning of each Fiscal Year, which budget shall provide for appropriations at levels required to make all payments of principal, interest, fees, reserves and any other expenditures required or contemplated under the Related Documents and Permitted Parity Indebtedness, including all Debt Service Payments, including with respect to the Certificates, and sufficient to pay in such Fiscal Year, to the extent the same becomes due in such Fiscal Year, all Operation and Maintenance Costs, the Reimbursement Obligations under this Agreement and all other Debt Service Payments and all other principal and interest on any other outstanding Debt of the District.

*Section 6.19. Insurance.* (a) The District shall comply with the requirements set forth in the Installment Purchase Agreement and with all requirements of Applicable Law with regard to the procurement and maintenance of insurance for the Facilities and shall in any event procure through a public agency risk pool or commercial insurers rated at least “A” by A.M. Best or S&P, and maintain at all times such insurance coverages, policy limits, and deductibles with respect to its property, employees and operations as are sufficient to cover known and usual risks and customary as compared to that maintained by similarly situated entities including public liability, third-party property damage and business interruption insurance coverages. The District shall deliver on or before the Date of Issuance and thereafter no less often than annually to the Bank and the Trustee, the certificate of an Authorized District Representative addressed to the Bank and the Trustee and certifying that such Person has reviewed the District’s insurance coverages and that such coverages comply with the requirements of the Installment Purchase Agreement and this subsection. To the extent that the District at any time retains an insurance consultant to review the District’s insurance coverages including any self-insurance program or self-insured retention under any insurance policy as permitted by the Installment Purchase Agreement, the District promptly shall provide to the Bank and the Trustee a copy of any certificate or report of such insurance consultant in the form provided to the District, which certificate or report shall confirm that any such self-insurance program and/or self-insured retention is actuarially sound and is consistent with prudent risk management policies and that the District’s insurance coverages and any such self-insurance program and/or self-insured retention fulfills each of the requirements of Applicable Law, the Installment Purchase Agreement and this Agreement.

(b) All policies of insurance required to be maintained by the District under the Installment Purchase Agreement or hereunder shall provide that the Trustee and the Bank shall be given thirty (30) days’ prior written notice of any cancellation or termination thereof or reduction of coverage provided thereby.

*Section 6.20. Rate Covenant.* (a) The District will fix, prescribe and collect Water Charges in accordance with the provisions of the Act during each Fiscal Year which will be sufficient to yield during such Fiscal Year Net Revenues equal to 125% of Debt Service

Payments for such Fiscal Year (the “*Coverage Test*”). The coverage level of Net Revenues shall be calculated following the end of the Fiscal Year and shall use the actual Net Revenues received during such Fiscal Year for such calculation.

(b) Notwithstanding the provisions of subsection (a) of this Section 6.20, if the District shall fail as of the end of any calendar quarter to demonstrate compliance with the Coverage Test, the District shall not be in default under this Section 6.20 if, as of the end of such calendar quarter, Revenues less Operation and Maintenance Costs for the twelve (12) consecutive month period ending on such calendar quarter end date (the “*Twelve Month Period*”) are equal to or in excess of 125% of Debt Service Payments for such Twelve Month Period, as certified to the Bank pursuant to Section 6.02(b).

*Section 6.21. Most Favored Nations Provisions.* In the event the District shall, directly or indirectly, be a party to or be bound by any Bank Agreement which contains a Most Favored Nations Provision, the District shall promptly provide the Bank with a copy of such Bank Agreement and such Most Favored Nations Provision (subject to the last sentence of this Section) shall automatically be deemed to be incorporated into this Agreement and the Bank shall have the benefits of such Most Favored Nations Provision as if specifically set forth herein. The District shall promptly enter into an amendment to this Agreement to include such Most Favored Nations Provision; *provided* that (a) the Bank shall have and maintain the benefit of such Most Favored Nations Provision even if the Corporation fails to provide such amendment; (b) such Most Favored Nations Provision shall only be effective so long as such other Bank Agreement is in effect or any other Bank Agreement contains a Most Favored Nations Provision; and (c) any provisions of such Most Favored Nations Provisions that are less favorable to the Bank than the provisions of this Agreement shall not be applicable to the Bank.

*Section 6.22. Paired Obligation Provider Requirements.* Notwithstanding any provision to the contrary in the Installment Purchase Agreement and provided that this Section 6.22 shall not apply to any Paired Obligations in effect as of the date of this Agreement, for all purposes of this Agreement and the Installment Purchase Agreement, the District acknowledges and agrees to the following:

(a) A Paired Obligation Provider shall initially have a long-term, unenhanced rating of A or better by S&P and/or Fitch and A2 or better by Moody’s;

(b) So long as the long-term, unenhanced rating of the Paired Obligation Provider is not reduced below A- by S&P or Fitch or A3 by Moody’s (the “*Minimum Rating Requirement*”), the interest rate of such Paired Obligation shall be deemed to be equal to the irrevocable fixed interest rate attributable thereto for purposes of the calculation of Debt Service, as set forth in the definition of Debt Service in the Installment Purchase Agreement; and

(c) At any time that a Paired Obligation Provider does not maintain the Minimum Rating Requirement, (i) the District shall provide written notice thereof to the Bank within ten (10) Business Days of its having learned of such fact and (ii) interest with respect to any Paired Obligations shall be computed for purposes of the calculation

of Debt Service, as set forth in the definition of Debt Service in the Installment Purchase Agreement without regard to payments to be received from the Paired Obligation Provider.

*Section 6.23. Certain Covenants Respecting the Corporation.*

(a) *Corporation to Maintain Its Existence.* The Corporation covenants, and the District covenants to cause the Corporation, at all times to maintain the legal existence of the Corporation as a nonprofit public benefit corporation duly organized and in good standing under the laws of the State of California, and not to consolidate with or merge into another Person or permit another Person to consolidate with or merge into the Corporation, or sell, transfer, lease, assign or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of the Corporation's assets (in each case, whether now owned or hereafter acquired), or liquidate, wind up or dissolve or suffer any liquidation or dissolution.

(b) *Limited Purpose Covenants.* Each of the District and the Corporation covenants that the Corporation shall not (i) enter into any business or activity, hold any assets, or contract for, create, incur or assume any Indebtedness or other liability, in each case other than in connection with capital improvements for the District or other public agencies as permitted by the Corporation's articles of incorporation and bylaws, (ii) issue any equity interests other than those existing on the date of this Agreement, (iii) amend, or permit or suffer the amendment of its articles of incorporation or bylaws, except with the written consent of the Bank, (iv) fail to maintain its records, books of account and bank accounts separate and apart from those of its members, partners, shareholders, principals and Affiliates, (v) enter into any contract or agreement with any member, general partner, shareholder, principal or Affiliate, except upon terms and conditions that are extrinsically fair, commercially reasonable and substantially similar to those that would be available on an arm's-length basis with unrelated third parties, (vi) fail to file its own tax return or (vii) fail to hold itself out to the public as a legal entity separate and distinct from any other Person, except as required by generally accepted accounting principles as applied to public agencies such as the District and its Affiliates, including the Corporation.

## **ARTICLE VII**

### **NEGATIVE COVENANTS AND COVENANTS ANCILLARY THERETO**

Each of the District and the Corporation, as applicable, covenants and agrees that until the principal of and interest on the Certificates and all Reimbursement Obligations have been indefeasibly paid in full and all other obligations of the District under this Agreement or with respect to any Bank Certificates have been paid and performed and the Bank shall have no further obligation or liability under or in respect of the Letter of Credit:

*Section 7.01. Amendments.* The District shall not amend, modify or supplement, nor agree to any amendment or modification of, or supplement to, any of the Related Documents or consent to, or permit or suffer to occur any action, course of dealing or omission which results in, or is equivalent to, an amendment, supplementation, termination or modification of any of the Related Documents, without the prior written consent of the Bank and any such amendment,

supplementation, termination or modification made or entered into in violation of this Section shall be deemed a nullity and of no force and effect. The District shall not take any action, nor permit the Corporation, nor cause the Tender Agent or the Trustee to take any action under any of the Related Documents, which is inconsistent with, or could reasonably be expected to impair, the District's obligations, or the rights of the Bank or the Trustee, under this Agreement or any of the other Related Documents including, without limitation, any right or remedy of the Bank upon an Event of Default, the District's obligations to make payments to the Bank under Article II of this Agreement, and the pledge of the Pledged Revenues under the Installment Purchase Agreement and the priority of the lien and security interest created thereby.

*Section 7.02. Preservation of Existence, Etc.* The District will not directly or indirectly liquidate, wind up, terminate, reorganize, dissolve, merge or consolidate with any other Person (or suffer any liquidation, winding-up, termination, reorganization or dissolution), or form or acquire any subsidiary (other than in the ordinary course of business as conducted as of the Closing Date), nor shall it sell, lease, assign, transfer or otherwise dispose of (in a single transaction or a series of transactions) all or substantially all of its property, nor will the District permit the Corporation to enter into, or to suffer to occur, any of the foregoing transactions or occurrences. The District will not sell, transfer, dispose of or abandon any material portion of the Facilities or the Project or condemn, or consent to any condemnation of, any material portion of the Facilities or the Project. The District will at all times maintain or cause to be maintained the Facilities in good repair and working order and in a safe, sound and operational condition and will pay all Operation and Maintenance Costs as they become due and payable.

*Section 7.03. Certain Information.* The District shall not include in an offering document or circular or reoffering supplement for the Certificates any information concerning the Bank that is not supplied in writing, or otherwise approved in writing, by the Bank expressly for inclusion therein.

*Section 7.04. Trustee; Tender Agent; Remarketing Agent.* The District shall not remove the Trustee, the Tender Agent or the Remarketing Agent or appoint a successor to the Trustee, the Tender Agent or the Remarketing Agent without the written consent of the Bank, not to be unreasonably withheld, and the District shall contractually require that the resignation or removal of any Trustee, Tender Agent or Remarketing Agent (including each successor thereto) shall only be effective upon the appointment of a successor acceptable to the Bank and the acceptance of such appointment by such successor. The District shall provide the Bank written notice of any change in the identity of the Trustee, Tender Agent or Remarketing Agent upon becoming aware of the same; *provided*, that the District shall, or shall cause the Remarketing Agent to provide, not less than sixty (60) days written notice prior to any resignation of the Remarketing Agent. Upon written notice from the Bank that the Trustee, the Tender Agent or the Remarketing Agent is failing to perform its respective duties in the manner contemplated by the Trust Agreement or the other Related Documents, the District shall replace or cause to be replaced the Trustee, Tender Agent or the Remarketing Agent, as the case may be, with a successor acceptable to the Bank. If the position of Trustee, Tender Agent or Remarketing Agent becomes vacant, the District shall promptly appoint a successor which is reasonably acceptable to the Bank.

*Section 7.05. Accounting Methods; Fiscal Year; Entity Classification.* The District will not adopt, permit or consent to any change in accounting practices other than as required by GAAP and will not adopt, permit or consent to any change in its Fiscal Year or take (or permit to be taken) any action that results in a change to its entity classification for U.S. federal income tax purposes.

*Section 7.06. Exempt Status.* The District shall not take any action or omit to take any action, respectively, that, if taken or omitted, respectively, could cause any revocation or adverse modification of its federal income tax-exempt status or which would cause the interest with respect to the Certificates to be included in the gross income of the Owners thereof for purposes of federal income taxation under the Code.

*Section 7.07. Optional Prepayment; Conversion; Defeasance.*

(a) *Optional Prepayment.* The District shall not permit or cause any Certificates to be optionally prepaid pursuant to Section 4.1 of the Trust Agreement unless and insofar as the District complies with each of the following requirements: (i)(A) all Bank Certificates, if any, will be prepaid at a prepayment price equal to the principal amount of such Bank Certificates plus unpaid accrued interest with respect thereto from and including the date of the related Liquidity Drawing to but excluding the date of such sale or remarketing as a part of such optional prepayment and (B) after giving effect to such prepayment, all Excess Interest owing in respect of the Liquidity Drawing pursuant to which any such Bank Certificates were purchased together with any other Reimbursement Obligations owing hereunder shall have been paid in full to the Bank, (ii) such prepayment shall be accomplished solely with Available Moneys and (iii) the amount necessary to reimburse the Bank in accordance with Section 2.01 for the Drawing under the Letter of Credit to effect the prepayment has been irrevocably deposited in the Prepayment Fund two (2) Business Days prior to the date fixed for prepayment pursuant to Section 7.2 of the Installment Purchase Agreement and Section 5.2(c) of the Trust Agreement, with such deposit to be certified by the Trustee to the Bank in writing. If, notwithstanding the foregoing clause (iii), the required amount is not deposited by such date, the District authorizes the Bank to notify the Trustee in writing on behalf of the District to rescind such optional prepayment in accordance with the terms of the Trust Agreement, unless the District has made other arrangements satisfactory to the Bank to reimburse the Bank for the Drawing under the Letter of Credit to be made with respect to the prepayment.

(b) *Conversion.* The District shall not convert nor permit the conversion under the Trust Agreement of fewer than all of the Certificates to a Non-Covered Interest Rate pursuant to Section 2.13 of the Trust Agreement, nor shall the District voluntarily convert under the Trust Agreement any Certificates to a Non-Covered Interest Rate if, after giving effect to such conversion, there would be any (i) Bank Certificates or (ii) Excess Interest owing to the Bank under this Agreement or any other amount owing in respect of any Liquidity Drawing pursuant to which Bank Certificates were purchased which shall not have been paid in full.

(c) *Defeasance.* The District will not defease, nor allow the defeasance of, the Certificates without (i) procuring a Verification Report and providing a copy thereof to the Bank



and (ii) contemporaneously paying all Reimbursement Obligations and satisfying all obligations of the District hereunder.

(d) *Prepayment Pursuant to Section 7.1 of Installment Purchase Agreement.* In the event of a prepayment pursuant to Section 7.1 of the Installment Purchase Agreement, the selection of Certificates to be prepaid shall be approved in writing by the Bank.

*Section 7.08. Pension Plans.* The District shall maintain each Pension Plan in compliance in all material respects with the applicable provisions of the Code and other federal, state or local law and shall make all required contributions to any Pension Plan. The District shall not permit, at any time, any Pension Plan to: (A) engage in any nonexempt “prohibited transaction” (as defined in Section 503 of the Code); (B) fail to comply with Applicable Laws; (C) incur any material increase in its Unfunded Pension Liability; or (D) terminate in any manner; which, in the case of any such event, has resulted, or could reasonably be expected to result, in a Material Adverse Effect.

*Section 7.09. Additional Encumbrances; Additional Debt; Subordinate Obligations.* (a) The District shall not (i) encumber, transfer, sell, lease, convey or otherwise dispose of any interest in, nor create, suffer or assume any Lien to be created on, the Pledged Revenues or any portion thereof, except as permitted under the Installment Purchase Agreement and under this Agreement or (ii) enter into any agreement or lease which impairs the operation of the Facilities or any part thereof necessary to secure adequate Revenues for the payment of the Series 2003A Installment Payments and the payment of all other Debt Service. The District shall not create, incur, assume, guarantee or permit to exist any Debt other than (i) Permitted Parity Indebtedness, (ii) Debt that is payable from and secured by a pledge and lien on Revenues or any moneys in the Revenue Fund and that satisfies the requirements of subsection (c) of this Section 7.09 (each, a “*Subordinate Obligation*”) and (iii) Debt that is incurred in the ordinary course of business and is unsecured by any Lien on the Pledged Revenues or any portion thereof. The District shall not incur any Debt payable or secured in priority to the Permitted Parity Indebtedness or otherwise preferred to the Permitted Parity Indebtedness, in any such case without the prior written consent of the Bank in its sole and absolute discretion.

(b) In addition to and without prejudice to its obligation to satisfy the requirements of the other subsections of this Section 7.09, the District will not issue or incur any additional Debt except upon compliance with each of the Debt Service coverage tests set forth in Section 5.3 of the Installment Purchase Agreement.

(c) The District shall not issue or incur or permit to exist any Subordinate Obligations unless and insofar as such Subordinate Obligation (i) is issued or incurred at a time when no Default has occurred and is continuing under this Agreement and (ii) is secured, if at all, by a pledge of and Lien on the Revenues and any money in the Revenue Fund (or any portion of the foregoing) that is junior and subordinate in right, priority, operation, effect and all other respects to any and all Permitted Parity Indebtedness and to the Pledge and the pledge set forth in Section 5.1 of the Installment Purchase Agreement and (iii) contains express provisions in the agreements or instruments creating or evidencing the Subordinate Obligation (A) stipulating that if an Event of Default under the Installment Purchase Agreement shall have occurred and be

continuing, the trustees, Owners and obligees of all Permitted Parity Indebtedness shall be entitled to receive payment of all principal and interest then owing in respect of such Permitted Parity Indebtedness according to their respective terms including, in the case of an acceleration by the Bank hereunder, all principal and interest due and owing by the District under Article III hereof, before the trustee, holder or obligee of such Subordinate Obligation is entitled to receive or collect any payment of principal or interest in respect of such Subordinate Obligation, (B) (except in the case of the Existing Subordinate Debt) precluding any such trustee, holder or obligee of any Subordinate Obligation from accelerating the Subordinate Obligation or from exercising any right or remedy with respect to the Revenues or any Funds or pursuing any cause of action or claim against the District or the Corporation relating to the Subordinate Obligation or in any way interfering with the exercise of rights and remedies by any trustee, Owner and obligee of Permitted Parity Indebtedness, unless and until such time as each trustee, Owner and obligee of Permitted Parity Indebtedness has been paid all amounts then due (whether upon maturity, by acceleration or required prepayment) under such Permitted Parity Indebtedness, (C) (except in the case of the Existing Subordinate Debt) obligating any such trustee, holder or obligee of any Subordinate Obligation to pay over to the Trustee any payments or funds received from the District after the occurrence and during the continuance of an Event of Default under the Installment Purchase Agreement and (D) (except in the case of the Existing Subordinate Debt) obligating any such trustee, holder or obligee of any Subordinate Obligation to (1) waive and relinquish any right to contest the perfection, priority, validity or enforceability of any Lien of any Permitted Parity Indebtedness, (2) neither commence against the District or the Corporation, nor solicit or join in, any Event of Bankruptcy with respect to the District or the Corporation, other than an Event of Bankruptcy commenced by the trustees, Owners and obligees of Permitted Parity Indebtedness and (3) cooperate with the trustees, Owners and obligees of Permitted Parity Indebtedness with respect to any Event of Bankruptcy commenced by such Persons.

*Section 7.10. No Sovereign Immunity; Waiver of Related Defenses.* To the fullest extent permitted by applicable law, each of the District and the Corporation hereby waives any exemption or immunity, whether on the basis of sovereign or governmental immunity or any similar legal or equitable principle, doctrine or rule of law and whether now or at any time hereafter arising, of the District and the Corporation with respect to its contractual obligations under this Agreement and the other Related Documents or with respect to any of its or their revenues, assets or property (irrespective of their use or intended use), from (a) jurisdiction, (b) liability, suit or other legal or equitable remedy for the amounts due and payable under the Certificates, this Agreement or any of the other Related Documents or the performance of any of its other obligations hereunder or thereunder, and (c) enforcement of any judgment, order or decree to which it or its revenues, assets or property may be made subject. Each of the District and the Corporation further hereby irrevocably agrees not to assert or to otherwise obtain the benefit of, in any civil action or other legal proceeding in any court of competent jurisdiction brought to enforce or collect upon the obligations of the District under this Agreement, the Certificates, the other Related Documents or in respect of the Transactions, (i) any defense to personal jurisdiction, and (ii) any defense against relief by writ of mandamus for the performance of its obligations.

*Section 7.11. Material Contracts.* (a) The District covenants to perform each of its obligations and covenants under each of the Material Contracts and to enforce the material covenants and obligations of the respective contracting party to each Material Contract and not to consent, except with the prior written consent of the Bank, to any waiver of the timely performance of any material covenant by the respective contracting party thereto.

(b) Furthermore, the District covenants not to consent to or permit the amendment, cancellation, termination, non-renewal, non-continuation or rescission of, except with the prior written consent of the Bank, any Material Contract, nor to otherwise take or fail to take any action required or permitted to be taken by it under or in connection with a Material Contract, *provided, however*, that the District shall not be in breach of this subsection (b) to the extent that, in the case of any such cancellation, termination, non-renewal, non-continuation or rescission or other action or omission, such occurrence would not and could not reasonably be expected to (x) expose the District to any materially greater risks, costs or liabilities, or (y) impair or adversely affect the ability of the District (A) to pay the Series 2003A Installment Payments and all Contracts and Bonds or (B) to comply with the rate covenants set forth in the Installment Purchase Agreement.

*Section 7.12. Incurrence of Bonds and Contracts.* The District shall not issue or enter into, as the case may be, any Bonds or Contracts (a) except in compliance with all requirements of the Installment Purchase Agreement and this Agreement and (b) during any time that a Default exists hereunder or under any Related Document.

*Section 7.13. Parity Creditors.* The District represents and warrants to, and covenants with, the Bank, as follows: with respect to each Contract and Bond now or hereafter entered into by the District and the financing documents relating to any such Contract or Bond, that (a) no such Contract or Bond shall contain a pledge of Revenues, allocation of Revenues or rights and remedies to, in favor of or for the benefit of the Corporation or any trustee, credit facility provider or other obligee thereunder (each, a "*Parity Creditor*") which provides to such Parity Creditor (i) any preference or priority with respect to the pledge of Revenues or the allocation of Revenues as compared to the pledge and allocation to, or in favor of or for the benefit of, the Trustee, as the assignee of the Corporation, and the Bank (each, a "*Series 2003A Creditor*") or (ii) any additional or materially different rights and remedies with respect to the Revenues, the District or the Corporation as compared to the rights and remedies of the Series 2003A Creditors as set forth in the Installment Purchase Agreement, the Trust Agreement and this Agreement and, in particular but not in limitation of the foregoing, in no event shall another Parity Creditor be granted, hold or exercise any right or remedy with respect to the Revenues, the District or the Corporation that is not provided to the Series 2003A Creditors under the Installment Purchase Agreement or this Agreement, (b)(i) no Parity Creditor shall have the right to exercise any right or remedy with respect to the Pledged Revenues except solely for the ratable benefit of all Parity Creditors and the Series 2003A Creditors, (ii) no Parity Creditor shall be granted any collateral or security except such collateral and security as is granted to all Parity Creditors and to the Series 2003A Creditors under the Installment Purchase Agreement and this Agreement, and all payments from, and products and proceeds of, the Pledged Revenues or other amounts recovered from or paid by the District upon or following an Event of Default shall be allocated in accordance with the order of priority set forth in Section 8.2 of the Installment Purchase

Agreement and (iii) no right or remedy granted to a Parity Creditor shall impair or limit or interfere with the exercise of any of the rights and remedies granted to the Trustee, as assignee of the Corporation, in the Installment Purchase Agreement, to the Trustee in the Trust Agreement and to the Bank in this Agreement. The District covenants to take all actions and execute all instruments that are not contrary to law and are within its power insofar as necessary to ensure the correctness and the performance of the foregoing representations, warranties and covenants.

*Section 7.14. Investment of Funds.* The District shall cause all moneys held in the Certificate Payment Fund and the Revenue Fund established under the Trust Agreement and the Installment Purchase Agreement to be invested in Permitted Investments. The District shall not after the Date of Issuance supplement or otherwise modify or amend (except by the removal of one or more investments which are Permitted Investments as of the Date of Issuance) the list of Permitted Investments without the prior written consent of the Bank in its discretion. Except as otherwise expressly provided in the Installment Purchase Agreement, investments in the Funds described in Section 5.4 of the Installment Purchase Agreement shall be valued by the Trustee as frequently as reasonably deemed necessary by the District, but not less often than annually, at the market value thereof, exclusive of accrued interest. The District covenants to restore any deficiencies in the amount on deposit in any fund or account resulting from a decline in market value no later than the succeeding annual valuation date. The District shall cause the Trustee to also value investments in any such Funds in connection with the refunding or prepayment of the Certificates as directed in a Written Request of the District (as defined in the Trust Agreement).

*Section 7.15. Hedge Agreements.* The District will not enter into any Hedge Agreement hedging or otherwise relating to the Certificates or this Agreement without the prior written consent of the Bank. The District will not, and will not permit any of its Affiliates to, enter into any Hedge Agreement, except (a) Permitted Swap Agreements entered into to hedge or mitigate risks to which the District or any Affiliate has actual exposure and (b) Permitted Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the District or any Affiliate. The District will not permit or suffer to occur the assignment, transfer or delegation, in whole or in part, of a Hedge Agreement or of any rights, duties or obligations thereunder, by a counterparty to a Permitted Swap Agreement to any assignee, transferee or delegee that does not at the time of such assignment, transfer or delegation satisfy the requirements of subpart (a) of the definition of Permitted Swap Agreement.

*Section 7.16. Transactions with Affiliates.* Neither the District nor the Corporation will sell, lease or otherwise transfer any of its respective property to, or purchase, lease or otherwise acquire any property from, or otherwise engage in any other transactions with, any of its respective Affiliates, except in the ordinary course of business at prices and on terms and conditions not less favorable to the District or the Corporation, respectively, than could be obtained on an arm's-length basis from unrelated third parties.

*Section 7.17. Investment Policy.* The District shall maintain its Investment Policy dated November 17, 2010 (the "Investment Policy"), as submitted to the Bank, in compliance with the

California Government Code Section 53600 through 53609. In the case of any amendment, the District shall provide the Bank with an updated Investment Policy.

*Section 7.18. Sanctions.* The District will not directly or indirectly, use any proceeds from the remarketing of the Certificates, or lend, contribute or otherwise make available such proceeds to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person of Sanctions.

*Section 7.19. Anti-Corruption Laws.* The District will not directly or indirectly, use any proceeds from the remarketing of the Certificates for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions.

## ARTICLE VIII

### EVENTS OF DEFAULT

*Section 8.01. Events of Default.* The occurrence of any of the following events (whatever the reason for such event and whether voluntary, involuntary, or effected by operation of Law) shall be an “*Event of Default*” hereunder, unless waived in writing by the Bank:

(a) Failure of the District to pay or cause to be paid when due any amount owed by the District hereunder or under the Fee Letter;

(b) Failure of the District to observe or perform the covenants set forth in any of Sections 6.02, 6.03, 6.06, 6.09, 6.11, 6.12, 6.13, 6.14, 6.16, 6.19, 6.20, 6.21, 6.22, 7.01, 7.02, 7.03, 7.04, 7.06, 7.07, 7.08, 7.09, 7.10, 7.11, 7.12, 7.13, 7.15, 7.16, 7.18, or 7.19;

(c) Failure of the District to observe or perform any covenant, condition or provision of this Agreement (other than as specified in (a) or (b) above) and such failure remains uncured ten (10) Business Days after written notice of such failure from the Bank to the District and the Trustee, or failure to observe or perform any covenant, condition or provision contained in any Related Document and, in the case of any covenant incorporated by reference pursuant to Section 6.07 hereof which is not a payment or financial covenant, after the expiration of any applicable grace period contained in the relevant Related Document;

(d) Any representation or warranty made or deemed made by or on behalf of the District or the Corporation in this Agreement or any other Related Document or in any amendment of, or waiver under, this Agreement or other Related Document, or in any certificate, financial statement or other document furnished by or on behalf of the District or the Corporation pursuant to or in connection with this Agreement or any of the other Related Documents shall have been inaccurate or incomplete in any material respect when made or deemed to have been made;

(e) The occurrence and continuation of a default, event of default or termination event under the Trust Agreement, the Installment Payment Agreement or the Certificates or any of the other Related Documents, irrespective of whether said default, event of default or termination event is declared, undeclared or has been waived under the terms of such respective document, or a mandatory prepayment or acceleration has occurred with respect to the Certificates or any Permitted Parity Indebtedness;

(f) Any Bond or Contract shall not be paid when and as the same shall become due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise);

(g) (i) Failure by the District or any Affiliate to make any payment (whether of principal, interest or other amount) (x) due in respect of any Debt owed to the Bank or any Affiliate of the Bank, or (y) due in respect of any other Debt having an aggregate outstanding principal amount in excess of \$1,000,000 (measured in the case of any Hedge Agreement by the District's Exposure thereunder), in any such case, as and when the same shall become due and *provided* that any applicable notice or grace period shall not apply; or (ii) the occurrence or existence of a default or event of default (other than a payment default) or other similar condition by or on the part of the District (or its Affiliate), under any Bank Agreement evidencing, issuing, securing or relating to such Debt and continuance of such default or event of default or similar condition beyond the period of grace, if any, allowed with respect thereto, which results in such Debt becoming, or being capable of becoming, due and payable prior to its scheduled maturity and regardless of whether any such right is exercised (or, with respect to any Hedge Agreement, an event which results in such Hedge Agreement being terminated early or being capable of being terminated early, other than in the case of an optional termination exercised by the District and without liability for payment by the District of any Settlement Amount);

(h) The entry or filing of one or more judgments or orders or of any similar decrees or decisions for the payment of money out of Revenues which, individually or in the aggregate, equals or exceeds \$15,000,000 (each, a "*Judgment*") shall be rendered against the District or any of its Affiliates or against any of its or their respective properties or assets and (x) such Judgment shall be undischarged, unstayed or unbonded (by property other than any of the Pledged Revenues) for a period of 30 consecutive days, or (y) any action shall be taken by a judgment creditor to attach, execute or levy upon any revenues or assets of the District or the Corporation to enforce any such Judgment;

(i) The occurrence of an Event of Insolvency with respect to the District or the Corporation;

(j) any of Fitch, Moody's and S&P shall have downgraded its long-term rating assigned to the Certificates or the Obligor Rating below "BBB+" (or its equivalent), "Baa1" (or its equivalent), or "BBB+" (or its equivalent) respectively, or suspended or withdrawn its rating of the same for credit related reasons;

(k) This Agreement, any other Related Document or any provision of this Agreement or any of the other Related Documents shall cease to be valid and binding on the District or the Corporation, or a Governmental Authority with jurisdiction to rule on the validity of this Agreement, the Trust Agreement, the Installment Purchase Agreement or any other Related Document shall so find, announce or rule, or the District or any Person on its or their behalf shall (i) contest the validity or enforceability of this Agreement or any Related Document or any provision of this Agreement or any such Related Document, (ii) deny that the District or the Corporation has any further liability under one or more provisions of this Agreement or any of the other Related Documents or (iii) seek an adjudication that (y) this Agreement or (z) a provision of this Agreement or of the Trust Agreement or the Installment Purchase Agreement or any other Related Document relating to, or the absence or invalidity of which could adversely affect, the security for the Series 2003A Installment Payments, the Certificates, the Bank Certificates or the Permitted Parity Indebtedness or the District's ability to pay the Series 2003A Installment Payments, the Certificates, the Bank Certificates or the Permitted Parity Indebtedness or perform its obligations under this Agreement or any of the other Related Documents or the rights and remedies of the Bank, is not valid and binding on the District or the Corporation;

(l) Any Revenues or other funds or investments on deposit in, or otherwise to the credit of, any of the Revenue Fund or any of the other Funds or accounts established under the Trust Agreement or any of the other Related Documents shall become subject to any writ, judgment, warrant or attachment, execution or similar process;

(m) A Determination of Taxability shall occur;

(n) (i) Any Lien created by the Installment Purchase Agreement, the Trust Agreement or this Agreement in favor of the Trustee, any Owner or the Bank, at any time and for any reason (except as expressly permitted to be released by the terms of such governing document) shall not constitute a valid and perfected Lien or shall fail to have the priority required by the Installment Purchase Agreement, the Trust Agreement or this Agreement or, except as permitted under the Installment Purchase Agreement, the Trust Agreement or this Agreement, the District shall so assert in writing, (ii) any legislation is enacted, repealed, reenacted, amended or otherwise modified, and such repeal, enactment, reenactment, amendment or modification, in the opinion of the Bank, has a Material Adverse Effect on the validity, enforceability or priority of the Lien on the Pledged Revenues in favor of the Trustee, any Owner or the Bank or (iii) any rescission of or amendment to or any other action under or in connection with any legislation, law or regulation relating to the Pledged Revenues which would (A) materially reduce the amount of the Pledged Revenues or the allocation of the Pledged Revenues to the payment of the Series 2003A Installment Payments, the Certificates, the Bank Certificates or the Permitted Parity Indebtedness or (B) impair or adversely affect (x) the rights of the District to any or all of the Pledged Revenues or (y) the rights or security of the Trustee, for the benefit of the Owners, under the Installment Purchase Agreement or the Trust Agreement;

(o) Reserved;

(p) Any event (other than the exercise of an optional tender right by the holder thereof or of a right of optional prepayment by the District, in each case in the absence of a default or event of default) occurs or condition exists that results in any Permitted Parity Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the Trustee or any Owner or holder, or any trustee or agent on its or their behalf, to exercise any right to accelerate any Permitted Parity Indebtedness or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; or

(q) A repudiation by the District of the payment when due of the principal of or interest on any Permitted Parity Indebtedness or any other Debt of the District payable from the Revenues.

*Section 8.02. Rights and Remedies* . Upon the occurrence and during the continuance of any Event of Default hereunder, the Bank, shall, with written notice thereof to the Trustee, exercise any one or more of the following rights and remedies, in addition to any other remedies herein or by law provided:

(a) (i) notify the Trustee and the District in writing that an Event of Default has occurred and is continuing,

(ii) (A) notify the Trustee in writing that an Event of Default has occurred and is continuing and that the Letter of Credit shall terminate and (B) in such notice further direct the Trustee to (1) cause a mandatory tender of the Certificates and draw upon the Letter of Credit in accordance with its terms and purchase all Eligible Certificates for the account of the Bank, whereupon such Certificates shall be Bank Certificates, and may (in the same or a separate notice) direct the Trustee to declare the principal of all Series 2003A Installment Payments, and the Certificates, and the accrued interest with respect thereto, to be due and payable immediately upon the completion of such purchase or (2) declare the principal of all Series 2003A Installment Payments, the Certificates and the Reimbursement Obligations, and the accrued interest with respect thereto, to be immediately due and payable,

(iii) at any time subsequent to any notice under subpart (ii) and if the Bank has not already directed such action, the Bank may give written notice to the Trustee directing the Trustee to declare the principal of all Series 2003A Installment Payments, the Certificates and the Reimbursement Obligations, and the accrued interest with respect thereto, to be immediately due and payable,

(iv) by notice to the District, declare the entire unpaid principal and interest amount of any advances outstanding as a result of any Liquidity Drawing (including any Liquidity Drawing following such notice to the Trustee) together with accrued interest thereon, and all other amounts owing under this Agreement, to be, whereupon the same shall become, immediately due and payable without presentment, demand, protest or



other notice of any kind, all of which are hereby waived by the District; *provided* that in the case of any of the Events of Default specified in Section 8.01(i), 8.01(p) or 8.01(q) above, without any notice to the District or any other Person or any other act by the Bank, the principal amount of any advances outstanding as a result of any Drawing (including any Drawing thereafter occurring), together with accrued interest with respect thereto, and all other Reimbursement Obligations owing to the Bank, shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the District,

(v) (A) cure any default, event of default or event of nonperformance under this Agreement or under any of the Related Documents (in which event the District shall reimburse the Bank therefor), (B) exercise its banker's lien, or right of setoff, (C) proceed to protect its right by suit in equity, action at law or other appropriate proceedings, whether for specific performance of any covenant or agreement of the District herein contained or in the exercise of any power or remedy granted to the Bank under any of the Related Documents, (D) exercise any right it or the Trustee may have under the Trust Agreement as an Owner or Credit Facility Provider or otherwise, either singly or together with such other number of Owners as shall constitute the percentage required under the Trust Agreement to take any such action, including without limitation any right it or the Trustee may have as an Owner or Credit Facility Provider or otherwise to direct the acceleration of the Series 2003A Installment Payments or the Certificates, to direct or cause the Trustee to foreclose, marshal, dispose of or otherwise realize on the Revenue Fund and all of the Pledged Revenues of the District pursuant to and in compliance with the Related Documents or to otherwise direct or control the enforcement of remedies and proceedings taken under the Related Documents, and foreclose, marshal, dispose of and otherwise realize on any other collateral of the District pledged hereunder or under the Related Documents, on such terms and in such manner as the Bank may determine, or (E) exercise any other rights or remedies available under any Related Document, any other agreement or at law or in equity, and

(vi) following receipt by the Trustee of a notice from the Bank pursuant to subpart (ii)(B) or (iii) of this Section 8.02(a) and to the extent it has not already done so, the Trustee shall promptly draw under the Letter of Credit in accordance with its terms and to the extent permitted by the Letter of Credit, to purchase the Eligible Certificates for the account of the Bank, whereupon such Certificates shall be Bank Certificates, or to pay principal of, and interest with respect to, the Eligible Certificates, as directed by the Bank under the Letter of Credit. The Letter of Credit shall terminate upon the earlier of (x) seven (7) days following the notice given by the Bank to the Trustee pursuant to subpart (ii)(B) or (iii) of this Section 8.02(a) and (y) distribution of the proceeds of such drawing to the Trustee. Upon receipt by the Trustee of a notice from the Bank pursuant to subpart (ii)(B) or (iii) of this Section 8.02(a) directing the acceleration of all Series 2003A Installment Payments, the Trustee shall promptly declare the entire principal amount of the unpaid Series 2003A Installment Payments, and the Certificates, and the interest accrued with respect thereto, immediately due and payable pursuant to the Installment Purchase Agreement and the Trust Agreement and shall apply such Series 2003A Installment Payments and all payments from, and products and proceeds of,

the Pledged Revenues and other amounts recovered from or paid by the District upon or following an Event of Default as provided in the Trust Agreement and the Installment Purchase Agreement.

(b) If the Event of Default is the failure by the District to reimburse the Bank on a timely basis for an Interest Drawing, as provided in the Letter of Credit the Bank may deliver to the Trustee written notice that the Letter of Credit will not be reinstated. The rights and remedies of the Bank specified herein are for the sole and exclusive benefit, use and protection of the Bank, and the Bank is entitled, but shall have no duty or obligation to the District, the Trustee, the Owners or any other Person, (i) to exercise or to refrain from exercising any right or remedy reserved to the Bank hereunder, or (ii) to cause the Trustee or any other Person to exercise or to refrain from exercising any right or remedy available to it under any of the Related Documents.

(c) From and after the occurrence of an Event of Default, all amounts owing to the Bank hereunder shall bear interest at the Default Rate.

*Section 8.03. No Waiver; Remedies.* No failure on the part of the Bank to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any right under this Agreement preclude any other further exercise of such right or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law or equity.

## ARTICLE IX

### MISCELLANEOUS

*Section 9.01. Amendments, Etc..* No amendment or waiver of any provision of this Agreement or any other Related Document, and no consent to any departure by the District or the Corporation therefrom, shall be effective unless in writing signed by the Bank, the Corporation and the District, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

*Section 9.02. Notices; Effectiveness; Electronic Communications.*

(a) *Notices Generally.* Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax transmission or e-mail transmission as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, to the address, fax number, e-mail address or telephone number specified for the District or the Bank on Schedule 9.02 hereof. Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax transmission shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business

Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (c).

(b) *Electronic Communications.* Notices and other communications to the Bank hereunder may be delivered or furnished by electronic communication (including e-mail, FPML messaging and Internet or intranet websites) pursuant to procedures approved by the Bank. The Bank or the District, in its discretion, agrees to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it provided that the approval of such procedures may be limited to particular notices or communications.

(c) Unless the Bank otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices and other communications posted to an Internet or intranet website shall be deemed received by the intended recipient upon the sender's receipt of an acknowledgement by the intended recipient (such as by the "return receipt requested" function, as available, return email address or other written acknowledgement) indicating that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(d) *Change of Address, Etc.* Each of the District and the Bank may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

(e) *Reliance by Bank.* The Bank shall be entitled to rely and act upon any notices (including, without limitation, telephonic or electronic notices) purportedly given by or on behalf of the District even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The District shall indemnify the Bank and the Related Parties from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the District. All telephonic notices to and other telephonic communications with the Bank may be recorded by the Bank, and each of the parties hereto hereby consents to such recording.

*Section 9.03. No Waiver; Cumulative Remedies.* No failure by the Bank to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Related Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Related Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and

provided under each other Related Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

*Section 9.04. Expenses; Indemnity.* (a) The District shall pay (i) all reasonable out-of-pocket expenses incurred by the Bank and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Bank), in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Related Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Bank in connection with the issuance, amendment, renewal or extension of its Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Bank (including the fees, charges and disbursements of any counsel for the Bank), and shall pay all fees and time charges for attorneys who may be employees of the Bank, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Related Documents, including its rights under this Section, or (B) in connection with the Liquidity Advances or Term Loans made or the Letter of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Liquidity Advances or Term Loans or the Letter of Credit.

(b) *Indemnification by the District.* The District shall indemnify the Bank and each Related Party of the Bank (each such Person being called an “*Indemnitee*”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all reasonable fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the District) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Related Document, the Official Statement or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or the administration of this Agreement and the other Related Documents (including in respect of any matters addressed in Section 3.01), (ii) any Liquidity Advance, Term Loan or the Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Bank to honor a demand for payment under its Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the District, and regardless of whether any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(c) *Waiver of Consequential Damages, Etc.* To the fullest extent permitted by applicable Law, the District shall not assert, and hereby waives, and acknowledges that no other

Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Related Document, the Official Statement or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Liquidity Advance, Term Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Related Documents, the Official Statement or the transactions contemplated hereby or thereby.

(d) *No Liability of the Bank.* The District agrees that the Bank shall have no liability or responsibility for the acts or omissions of the Trustee or the Remarketing Agent in respect of the use of this Agreement or any Drawings funded by the Bank under the Letter of Credit. The Bank shall have no responsibility for, nor incur any liability in respect of, any act, or any failure to act, by the Trustee or the Remarketing Agent which results in the failure of the Trustee to effect a Drawing to or to comply with the applicable provisions of the Trust Agreement or any other Related Document. Neither the Bank nor any of its officers or directors shall be liable or responsible for: (a) the use which may be made of the Letter of Credit or for any acts or omissions of the Trustee, any agent of the Trustee and any transferee beneficiary in connection therewith; (b) the validity or genuineness of documents, or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respects invalid, fraudulent or forged; (c) payment by the Bank against presentation of documents which do not comply with the terms of the Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under the Letter of Credit; except only that the District shall have a claim against the Bank and the Bank shall be liable to the District to the extent of any direct, as distinguished from consequential or punitive (the right to receive consequential or punitive damages being hereby waived), damages suffered by the District when the District proves such were caused by the Bank's gross negligence or willful failure to make payment under the Letter of Credit in accordance with its terms as determined by a court of competent jurisdiction in a final, non-appealable judgment thereof. In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary. The Bank is hereby expressly authorized and directed to honor any demand for payment which is made under the Letter of Credit without regard to, and without any duty on its part to inquire into the existence of, any disputes or controversies between or among the District, the Trustee, any transferee beneficiary of the Letter of Credit or any other Person or the respective rights, duties or liabilities of any of them, or whether any facts or occurrences represented in any of the documents presented under the Letter of Credit are true and correct.

(e) *Payments.* All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(f) *Survival.* The agreements in this Section and the indemnity provisions of Section 9.02(e) shall survive the termination of this Agreement, the cancellation of the Letter of Credit and the repayment, satisfaction or discharge of all the other Obligations.

*Section 9.05. Obligations Absolute.* The payment obligations of the District under this Agreement shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including, without limitation, the following circumstances:

(i) any lack of validity or enforceability of the Letter of Credit or any of the other Related Documents;

(ii) any amendment or waiver of or any consent to departure from all or any of the Related Documents (unless consented to in writing by the Bank);

(iii) the existence of any claim, set-off, defense (other than the defense of payment) or other right which the District may have at any time against the Trustee or any other beneficiary, or any transferee, of the Letter of Credit (or any persons or entities for whom the Trustee, any such beneficiary or any such transferee may be acting), the Bank, or any other person or entity, whether in connection with this Agreement, the transactions contemplated herein or in the Related Documents, or any unrelated transaction;

(iv) any statement or any other document presented under the Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or

(v) payment by the Bank under the Letter of Credit against presentation of a draft or certificate which does not comply with the terms of the Letter of Credit.

*Section 9.06. Payments Set Aside.* To the extent that any payment by or on behalf of the District is made to the Bank, or the Bank exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Bank in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

*Section 9.07. Successors and Assigns.*

(a) *Successors and Assigns Generally.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the District may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Bank. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the

parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of the Bank) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) *Participations.* The Bank may at any time, without the consent of, or notice to, the District, sell participations to any Person (other than a natural person or the District or any of the District's Affiliates) (each, a "*Participant*") in all or a portion of the Bank's rights and/or obligations under this Agreement; *provided* that (i) the Bank's obligations under this Agreement shall remain unchanged, (ii) the Bank shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the District shall continue to deal solely and directly with the Bank in connection with the Bank's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which the Bank sells such a participation shall provide that the Bank shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that the Bank will not, without the consent of the Participant, agree to any amendment, waiver or other modification that affects such Participant. The District agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.02 and 9.04 to the same extent as if it were the Bank hereunder.

(c) *Limitations upon Participant Rights.* A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.02 than the Bank would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the District's prior written consent.

(d) *Certain Pledges.* In addition to the rights of the Bank set forth above, the Bank may at any time pledge or grant a security interest in all or any portion of its rights or interest under this Agreement and the Related Documents to secure obligations of the Bank or an Affiliate of the Bank, including any pledge or assignment to secure obligations to a Federal Reserve Bank or to any state or local governmental entity or with respect to public deposits; *provided* that no such pledge or assignment shall release the Bank from any of its obligations hereunder or substitute any such pledgee or assignee for the Bank as a party hereto.

*Section 9.08. Treatment of Certain Information; Confidentiality* (a) Each of the District and the Bank agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates, its auditors and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Related Document or any action or proceeding relating to this Agreement or any other Related Document or the

enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or participant in, or any prospective assignee of or participant in, any of its rights and obligations under this Agreement or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the District and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating the District or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the District or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Bank or any of its Affiliates on a nonconfidential basis from a source other than the District. For purposes of this Section, “*Information*” means all information received from the District relating to the District or any of their respective businesses, other than any such information that is available to the Bank or the Trustee on a nonconfidential basis prior to disclosure by the District, *provided* that, in the case of information received from the District after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Bank may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers the Bank in connection with the administration of this Agreement, the other Related Documents and the Letter of Credit.

(b) Except as otherwise provided below in this paragraph, the District agrees that it will not issue any press release or similar public disclosure using the name of the Bank or its Affiliates nor will the District make any public disclosure of this Agreement or any part hereof or any statement or description of the content of this Agreement or any part hereof, without the prior written consent of the Bank. The District may, after consultation with the Bank, file (or cause to be filed) with the Municipal Securities Rulemaking Board under its Electronic Municipal Market Access (EMMA) system or otherwise a copy of this Agreement and agreements between the Bank and the District related to this Agreement, in each case redacted in a manner satisfactory to the Bank to prevent disclosure of any signatures, account information, information regarding pricing, or other proprietary or other confidential information regarding the transactions contemplated hereby, or a summary of this Agreement and such related agreements (in each case as so redacted). The District shall be permitted to include in such redacted copies of this Agreement (or summaries thereof) such information as shall be necessary to comply with requirements of applicable law (including federal or state securities laws and the regulations promulgated thereunder) and the requirements of its continuing disclosure agreements to the extent that such disclosure is required to cause the underwriting, issuance, sale or remarketing of bonds or other obligations issued by the District to be in compliance with applicable law. The District may include any such redacted copies of this Agreement and related agreements (or summaries thereof) in any official statement, offering circular or other disclosure document prepared in connection with any issuance of Debt by the District.



*Section 9.09. Right of Setoff.* If an Event of Default shall have occurred and be continuing, the Bank and its Affiliates are hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by the Bank or any such Affiliate to or for the credit or the account of the District against any and all of the obligations of the District now or hereafter existing under this Agreement or any other Related Document to the Bank or its Affiliates, irrespective of whether or not the Bank or its Affiliates shall have made any demand under this Agreement or any other Related Document and although such obligations of the District may be contingent or unmatured, secured or unsecured, or are owed to a branch, office or Affiliate of the Bank different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness. The rights of the Bank and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that the Bank or its Affiliates may have. The Bank agrees to notify the District promptly after any such setoff and application, *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

*Section 9.10. Counterparts; Integration; Effectiveness.* This Agreement and each of the other Related Documents may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Related Documents, and any separate letter agreements with respect to fees payable to the Bank, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Bank and when the Bank shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement or any other Related Document, or any certificate delivered thereunder, by fax transmission or e-mail transmission (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement or such other Related Document or certificate. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Related Document, upon the request of any party, such fax transmission or e-mail transmission shall be promptly followed by such manually executed counterpart.

*Section 9.11. Survival of Representations and Warranties.* All representations and warranties made hereunder and in any other Related Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Bank, regardless of any investigation made by the Bank or on its behalf and notwithstanding that the Bank may have had notice or knowledge of any Default at the time of any issuance of the Letter of Credit, or the making of any Liquidity Advance or Term Loan hereunder, and shall continue in full force and effect as long as any Liquidity Advance or Term Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or the Letter of Credit shall remain outstanding.

*Section 9.12. Severability.* If any provision of this Agreement or the other Related Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Related Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

*Section 9.13. Governing Law; Jurisdiction; Etc..*

(a) *GOVERNING LAW.* THIS AGREEMENT AND THE OTHER RELATED DOCUMENTS (EXCEPT, AS TO ANY OTHER RELATED DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT (EXCEPT, AS TO ANY OTHER RELATED DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK; *PROVIDED* THAT THE POWER AND AUTHORITY OF THE DISTRICT TO EXECUTE, DELIVER AND PERFORM ITS OBLIGATIONS HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE.

(b) *SUBMISSION TO JURISDICTION.* THE DISTRICT AND THE CORPORATION IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE BANK OR ANY RELATED PARTY OF THE BANK IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER RELATED DOCUMENT SHALL AFFECT ANY RIGHT THAT THE BANK MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT AGAINST THE DISTRICT OR ITS PROPERTIES OR THE CORPORATION OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) *WAIVER OF VENUE.* THE DISTRICT AND THE CORPORATION IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER RELATED

DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) *Service of Process.* EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

*Section 9.14. Waiver of Jury Trial.* (a) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER RELATED DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) If any action or proceeding is filed in a court of the State of California by or against any party hereto in connection with any of the transactions contemplated by this Agreement or any other Related Document, (a) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, *provided* that at the option of any party to such proceeding, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (b) without limiting the generality of Section 9.04, the District shall be solely responsible to pay all fees and expenses of any referee appointed in such action or proceeding.

*Section 9.15. No Advisory or Fiduciary Relationship.* In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Related Document), each of the District and the Corporation acknowledges and agrees, and acknowledges its Affiliates’ understanding, that: (a) (i) the services regarding this Agreement provided by the Bank and any Affiliate thereof are arm’s-length commercial transactions between the District and the Corporation, on the one hand, and the Bank and its Affiliates, on the other hand, (ii) each of the District and the Corporation has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) each of the District and the Corporation is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Related Documents; (b) (i) the Bank and its Affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary

pursuant to Section 15B of the Securities Exchange Act of 1934, for the District or the Corporation, or any other Person and (ii) neither the Bank nor any of its Affiliates has any obligation to the District or the Corporation with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Related Documents; and (c) the Bank and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the District and the Corporation, and neither the Bank nor any of its Affiliates has any obligation to disclose any of such interests to the District or the Corporation. To the fullest extent permitted by law, each of the District and the Corporation, hereby waives and releases any claims that it may have against the Bank or any of its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

*Section 9.16. Electronic Execution of Certain Documents.* This Agreement and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a “*Communication*”), including Communications required to be in writing, may, if agreed by the Bank, be in the form of an Electronic Record and may be executed using Electronic Signatures, including, without limitation, facsimile and/or .pdf. The District and the Corporation each agrees that any Electronic Signature (including, without limitation, facsimile or .pdf) on or associated with any Communication shall be valid and binding on the District and the Corporation to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of the District and the Corporation enforceable against the District and the Corporation in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered to the Bank. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Bank of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Bank may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“*Electronic Copy*”), which shall be deemed created in the ordinary course of the Bank’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Bank is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Bank pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Bank has agreed to accept such Electronic Signature, the Bank shall be entitled to rely on any such Electronic Signature without further verification and (b) upon the request of the Bank any Electronic Signature shall be promptly followed by a manually executed, original counterpart. For purposes hereof, “*Electronic Record*” and “*Electronic Signature*” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

*Section 9.17. USA Patriot Act.* The Bank hereby notifies the District and the Corporation that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “*Patriot Act*”), it is required to obtain, verify and record information that identifies the District and the Corporation, which information includes the name and address of the District and the Corporation and other information that will allow the Bank to identify the District and the Corporation in accordance with the Patriot Act. The District and the Corporation each agrees to, promptly following a request by the Bank, provide all such other documentation and information reasonably requested by Bank for purposes of compliance with applicable “know your customer” and anti-money laundering rules and regulations, including, without limitation, the Patriot Act.

*Section 9.18. Time of the Essence.* Time is of the essence of the Related Documents.

*Section 9.19. Entire Agreement.* THIS AGREEMENT AND THE OTHER RELATED DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

*Section 9.20. Further Assurances.* From time to time upon the request of either party hereto, the other shall promptly and duly execute, acknowledge and deliver any and all such further instruments and documents as the requesting party may in its reasonable discretion deem necessary or desirable to confirm this Agreement, and the other Related Documents, to carry out the purpose and intent hereof and thereof or to enable the requesting party to enforce any of its rights hereunder or thereunder. At any time, and from time to time, upon request by the Bank, the District and the Corporation will, at the District’s (or the Corporation’s if applicable) expense, (a) correct any defect, error or omission which may be discovered in the form or content of any of the Related Documents, and (b) make, execute, deliver and record, or cause to be made, executed, delivered and recorded, any and all further instruments, certificates, and other documents as may, in the opinion of the Bank, be necessary or desirable in order to complete, perfect or continue and preserve the Lien of the Trust Agreement. Upon any failure by the District or the Corporation to do so, the Bank or the Trustee may make, execute and record any and all such instruments, certificates and other documents for and in the name of the District or the Corporation, all at the sole expense of the District (or the Corporation, if applicable), and the District and the Corporation each hereby appoints the Bank and the Trustee the agent and attorney-in-fact of the District and the Corporation to do so, this appointment being coupled with an interest and being irrevocable. In addition, at any time, and from time to time, upon request by the Bank or the Trustee, the District and the Corporation will, at the District’s (or the Corporation’s if applicable) expense, provide any and all further instruments, certificates and other documents as may, in the opinion of the Bank or the Trustee, be necessary or desirable in order to verify the District’s or the Corporation’s identity and background in a manner satisfactory to the Bank or the Trustee, as the case may be.

*Section 9.21. No Third-Party Rights.* Nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the parties hereto any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the parties hereto.

*Section 9.22. US QFC Stay Rules .*

(a) *Recognition of U.S. Resolution Regimes.* In the event that any party that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of this Agreement (and any interest and obligation in or under this Agreement and any property securing this Agreement) from such Covered Entity will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement (and any such interest, obligation and property) were governed by the laws of the United States or a state of the United States. In the event that any party that is a Covered Entity or a BHC Act Affiliate of such party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights against such party with respect to this Agreement are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States. The requirements of this paragraph (a) apply notwithstanding the provisions of paragraph (b).

(b) *Limitation on the Exercise of Certain Rights Related to Affiliate Insolvency Proceedings.* Notwithstanding anything to the contrary in this Agreement or any related agreement, but subject to the requirements of paragraph (a), no party to this Agreement shall be permitted to exercise any Default Right against a party that is a Covered Entity with respect to this Agreement that is related, directly or indirectly, to a BHC Act Affiliate of such Covered Entity becoming subject to Insolvency Proceedings, except to the extent the exercise of such Default Right would be permitted under 12 C.F.R. § 252.84, 12 C.F.R. § 47.5, or 12 C.F.R. § 382.4, as applicable. After a BHC Act Affiliate of a party that is a Covered Entity has become subject to Insolvency Proceedings, any party that seeks to exercise a Default Right against such Covered Entity with respect to this Agreement shall have the burden of proof, by clear and convincing evidence, that the exercise of such Default Right is permitted hereunder.

“*BHC Act Affiliate*” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“*Covered Entity*” means any of the following:

(a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“*Default Right*” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

*“Insolvency Proceeding”* means a receivership, insolvency, liquidation, resolution, or similar proceeding.

*“U.S. Special Resolution Regime”* means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

*Section 9.23. Concerning the Trustee* . U.S. Bank National Association, in acting under this Agreement, is acting solely in its capacity as Trustee under the Trust Agreement, and in acting hereunder, shall be entitled to all of the rights, privileges, protections, indemnities and immunities accorded to the Trustee under the Trust Agreement, as if fully set forth herein.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the Closing Date.

ORANGE COUNTY WATER DISTRICT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

OCWD PUBLIC FACILITIES CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BANK OF AMERICA, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT A**

**FORM OF COMPLIANCE CERTIFICATE**

To: Bank of America, N.A. (the “*Bank*”)

This Compliance Certificate is furnished pursuant to that certain Reimbursement Agreement dated as of May 1, 2021 (as amended, modified, renewed or extended from time to time, the “*Agreement*”) among Orange County Water District (the “*District*”), OCWD Public Facilities Corporation and the Bank. Unless otherwise defined herein, capitalized terms used in this Compliance Certificate have the meanings ascribed thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am the \_\_\_\_\_ of the District.
2. This Compliance Certificate is provided with respect to the Fiscal Year ending on [\_\_\_\_\_] (the “*Relevant Period*”).
3. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the District during the Relevant Period.
4. The examinations described in paragraph 3 did not disclose, and I have no knowledge of, the existence of any condition or event which constitutes a Default during or at the end of the Relevant Period or as of the date of this Compliance Certificate, except as set forth below.

Described below are the exceptions, if any, to paragraph 4 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which the District has taken, is taking, or proposes to take with respect to each such condition or event:

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5. In accordance with Section 6.02 of the Agreement, I certify on behalf of the District the following as of \_\_\_\_\_, 20\_\_ for the Relevant Period:

- (a) Net Revenues are equal to [\_\_\_]% of Debt Service Payments.

Annex \_\_ attached hereto sets forth financial data and computations evidencing the District's compliance with the above covenants of the Agreement, all of which data and computations are true, complete and correct.

6. I have reviewed the District's insurance coverages and certify that the District is in compliance with the insurance coverage requirements of the Installment Purchase Agreement and this Agreement.

7. **[OTHER REPORTING ITEMS, INCLUDING 6.02(C)(IV), AS APPLICABLE].**

The foregoing certifications, together with any financial data and computations provided herewith, are made and delivered this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

ORANGE COUNTY WATER DISTRICT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE 5.01(x)**

**EXISTING SUBORDINATE DEBT**

[To be added]

## SCHEDULE 9.02

### NOTICES

Bank:

Bank of America, N.A.  
555 California Street, Suite 1160  
Mailcode CA5-705-11-00  
San Francisco, California 94104  
Telephone: (415) 913-2325  
Facsimile: (213) 984-4051  
Attention: Grace L. Barvin  
Email: grace.barvin@bofa.com

with copy to:

Bank of America, N.A.  
800 5th Avenue, 35th Floor  
Mailcode WA1-501-35-11  
Seattle, WA 98104  
Attention: Satinder Parwana  
Telephone: (206) 358-6055  
Email: satinder.parwana@baml.com

and, with respect to the Letter of Credit:

Bank of America, N.A.  
1 Fleet Way, PA6-580-02-30  
Scranton, PA 18507  
Attention: Standby Letter of Credit Department  
Telephone: (800) 370-7519 OPT 1  
Facsimile: (800) 755-8743

if to the District, addressed to the District at:

Orange County Water District  
18700 Ward Street  
Fountain Valley, CA 92708  
Attention: General Manager  
Telephone: (714) 378-3305  
Facsimile: (714) 378-3373  
E-Mail: mmarkus@ocwd.com

if to the Corporation, addressed to the Corporation at:

Orange County Water District  
18700 Ward Street  
Fountain Valley, CA 92708  
Attention: Chief Financial Officer  
Telephone: (714) 378-3271  
Facsimile: (714) 378-3373  
E-Mail: rfick@ocwd.com

or if to the Trustee or Tender Agent, addressed to it at:

U.S. Bank National Association  
633 West Fifth Street, 24<sup>th</sup> Floor  
Los Angeles, CA 90071  
Attention: Global Corporate Trust

or if to the Remarketing Agent, addressed to it at:

Morgan Stanley & Co. LLC  
1999 Avenue of the Stars, Suite 2400  
Los Angeles, CA 90067  
Attention: Dan Kurz  
Telephone: (310) 788-2171  
Facsimile: [\_\_\_\_\_] ]  
E-Mail: Daniel.Kurz@morganstanley.com

**APPENDIX I**

**FORM OF  
IRREVOCABLE TRANSFERABLE LETTER OF CREDIT**

**IRREVOCABLE TRANSFERABLE LETTER OF CREDIT**

**BANK OF AMERICA, N.A.  
1 FLEET WAY  
PA6-580-02-30  
SCRANTON, PENNSYLVANIA 18507**

May 17, 2021

\*\*U.S. \$[\_\_\_\_\_]

No. <<LC Number>>

U.S. Bank National Association  
as Trustee (the "*Trustee*")  
633 West Fifth Street, 24<sup>th</sup> Floor  
Los Angeles, CA 90071  
Attention: Global Corporate Trust

Ladies and Gentlemen:

1. We hereby establish in your favor as trustee and tender agent (the "*Trustee*") under that certain Amended and Restated Trust Agreement dated as of May 1, 2011 (as amended, supplemented, restated or otherwise modified from time to time, the "*Trust Agreement*"), by and among the Orange County Water District (the "*District*"), the OCWD Public Facilities Corporation (the "*Corporation*") and the Trustee for the benefit of the holder of the Certificates (as hereinafter defined) our Irrevocable Transferable Letter of Credit No. <<LC Number>> (as amended, supplemented, restated or otherwise modified from time to time, this "*Letter of Credit*") for the account of the District, whereby we hereby irrevocably authorize you to draw on us from time to time, from and after the date hereof to and including the earliest to occur of our close of business on: (i) May 16, 2024, (as extended from time to time, the "*Stated Expiration Date*"), (ii) the earlier of (A) the date which is five (5) days following the date on which all of the Certificates bear interest at a rate other than the Weekly Interest Rate, as such date is specified in a certificate in the form of Annex A hereto (the "*Conversion Date*") hereto and (B) the date on which the Bank honors a drawing under the Letter of Credit on or after the Conversion Date, (iii) the date of receipt from you of a certificate in the form set forth as Annex B hereto, (iv) the date on which an Acceleration Drawing or a Stated Maturity Drawing is honored by us and (v) the date which is seven (7) days (or if such day is not a Business Day, on the next succeeding Business Day) following receipt by you of a written notice from us in the form of Annex L hereto, specifying the occurrence of an Event of Default under the Reimbursement Agreement dated as of May 1, 2021 (as amended, supplemented, restated or otherwise modified from time to time, the "*Reimbursement Agreement*"), by and among the District, the Corporation and Bank of America, N.A. (the "*Bank*"), directing you to cause a mandatory tender of the Certificates (the earliest of the foregoing dates herein referred to as the "*Termination Date*"), a maximum aggregate amount not exceeding \$[\_\_\_\_\_] (the "*Original Stated Amount*") to pay the unpaid principal amount of, or a portion of the purchase

price corresponding to the principal of, and accrued interest on, the District's Adjustable Rate Revenue Certificates of Participation Series 2003A (the "*Certificates*"), in accordance with the terms hereof (said \$[ ] having been calculated to be equal to (A) \$129,815,000, the original aggregate principal amount of the Certificates, plus (B) \$[ ] which is [ ] days' accrued interest on said principal amount of the Certificates at the rate of 12% per annum (the "*Cap Interest Rate*") and assuming a year of 365 days. This credit is available to you against presentation of the following documents (the "*Payment Documents*") presented to the Bank:

A certificate (with all blanks appropriately completed) (i) in the form attached as Annex C hereto to pay accrued interest on the Certificates (an "*Interest Drawing*"), (ii) in the form attached as Annex D hereto to pay the principal amount of and accrued interest on the Certificates in respect of any redemption of the Certificates (a "*Redemption Drawing*"), (iii) in the form attached as Annex E hereto to pay the purchase price and accrued interest of Certificates tendered for purchase that have not been successfully remarketed or for which the purchase price has not been received by the Trustee (a "*Liquidity Drawing*"); (iv) in the form attached as Annex F hereto to pay the principal of and interest on the Certificates the payment of which has been accelerated pursuant to the terms of the Trust Agreement (an "*Acceleration Drawing*"); or (v) in the form attached as Annex G hereto to pay the principal of and interest on the Certificates maturing on August 1, 2042 (a "*Stated Maturity Drawing*"), each certificate to state therein that it is given by your duly authorized officer and dated the date such certificate is presented hereunder. No Drawings shall be made under this Letter of Credit for (i) Certificates bearing interest at a rate other than the Weekly Interest Rate ("*Converted Certificates*"), (ii) Certificates purchased with the proceeds of a Liquidity Drawing and registered in the name of the Bank or its nominee (the "*Purchased Certificates*") or (iii) Certificates owned by or on behalf of the District ("*District Certificates*" and, together with the Converted Certificates and the Purchased Certificates, collectively referred to herein as the "*Ineligible Certificates*"). "*Weekly Interest Rate*" has the meaning set forth in the Trust Agreement.

2. All drawings shall be made by presentation of each Payment Document at Bank of America, N.A., Scranton, at telecopier number (800) 755-8743, Attention: Standby Letter of Credit Department, without further need of documentation, including the original of this Letter of Credit, it being understood that each Payment Document so submitted is to be the sole operative instrument of drawing. You shall use your best efforts to give telephonic notice of a drawing to the Bank at (800) 370-7519 OPT 1 on the Business Day preceding the day of such drawing (but such notice shall not be a condition to drawing hereunder and you shall have no liability for not doing so).



3. The Available Amount (as hereinafter defined) of this Letter of Credit will be reduced automatically by the amount of any drawing hereunder; *provided, however*, that the amount of any Interest Drawing hereunder, shall be automatically reinstated effective at 11:00 A.M., New York time, five (5) Business Days from the date such drawing is honored by us unless you receive notice from us in the form of Annex L hereto on the fourth (4th) Business Day after the date we honor such drawing; *provided* that in no event shall such reinstated amount exceed the amount equal to the outstanding principal amount of Certificates at such time plus 49 days' accrued interest on such principal amount of Certificates at the Cap Interest Rate and assuming a year of 365 days. After payment by the Bank of a Liquidity Drawing, the obligation of the Bank to honor drawings under this Letter of Credit will be automatically reduced by an amount equal to the amount set forth in the certificate in the form of Annex E relating to such Liquidity Drawing. In addition, in the event of the remarketing of the Certificates (or portions thereof) previously purchased with the proceeds of a Liquidity Drawing, the Bank's obligation to honor drawings hereunder will be automatically reinstated in the amount indicated in a certificate in the form of Annex K attached hereto concurrently upon receipt by the Bank of such certificate and our receipt of funds. The Available Amount under this Letter of Credit will be reduced automatically upon our receipt of Annex H to the amount stated in paragraph 2 therein.

4. The "*Available Amount*" shall mean the Original Stated Amount (i) less the amount of all prior reductions pursuant to Interest Drawings, Redemption Drawings or Liquidity Drawings, (ii) less the amount of any reduction thereof pursuant to a reduction certificate in the form of Annex H hereto, (iii) plus the amount of all reinstatements as above provided.

5. Prior to the Termination Date, we may extend the Stated Expiration Date from time to time at the request of the District by delivering to you an amendment to this Letter of Credit in the form of Annex J hereto designating the date to which the Stated Expiration Date is being extended, and thereafter all references in this Letter of Credit to the Stated Expiration Date shall be deemed to be references to the date designated as such in such notice. Any date to which the Stated Expiration Date has been extended as herein provided may be extended in a like manner.

6. Upon the Termination Date this Letter of Credit shall automatically terminate.

7. We agree to honor and pay the amount of any Interest, Redemption, Liquidity Acceleration or Stated Maturity Drawing if presented in compliance with all of the terms of this Letter of Credit. If any such drawing, other than a Liquidity Drawing, is presented prior to 3:00 P.M., New York time, on a Business Day, payment shall be made, in immediately available funds, by 1:00 P.M., New York time, on the following Business Day. If any such Drawing, other than a Liquidity Drawing, is presented at or after 3:00 P.M., New York time, on a Business Day, payment shall be made, in immediately available funds, by 1:00 P.M., New York time, on the second following Business Day. If a Liquidity Drawing is presented prior to 11:30 A.M., New York time, on a Business Day, payment shall be made, in immediately available funds, by 2:30 P.M., New York time, on the same Business Day. If a Liquidity Drawing is presented at or after 11:30 A.M., New York time, on any Business Day, payment shall be made, in immediately available funds, by 2:30 P.M., New York time, on the following Business Day. Payments made hereunder shall be made by wire transfer of immediately available funds to U.S. Bank National

Association [ABA Number \_\_\_\_\_, Account Number \_\_\_\_\_, Attention: \_\_\_\_\_, re: \_\_\_\_\_], or such other wire transfer instructions as the Trustee shall provide to Bank of America, N.A. in writing. “*Business Day*” means any day other than a Saturday, Sunday or a day on which banks located in: (a) the State of California or the State of New York; (b) the city or cities in which the Principal Corporate Trust Office (as defined in the Trust Agreement) of the Trustee and the Tender Agent is located; (c) the city or cities in which the principal office of the Bank is located; and (d) the city in which the principal office of the Remarketing Agent is located, are required or authorized by law to close or a day on which the New York Stock Exchange is closed. For purposes of this definition, the Bank’s principal office shall be that office of the Bank at which Drawings are to be presented hereunder.

8. This Letter of Credit is transferable to any transferee whom has succeeded you as Trustee under the Trust Agreement, and may be successively transferred in its entirety. Transfer of the available balance under this Letter of Credit to such transferee shall be effected by the presentation to us of a Transfer Request in the form of Annex I attached hereto signed by the transferor and acknowledged by the transferee (each a “*Transfer*”) together with the original Letter of Credit.

9. Other than the provisions for communication by facsimile copy, communications with respect to this Letter of Credit shall be addressed to us at Bank of America, N.A., 1 Fleet Way, PA6-580-02-30, Scranton, Pennsylvania 18507, Attention: Standby Letter of Credit Department, specifically referring to the number of this Letter of Credit.

10. To the extent not inconsistent with the express terms hereof, this Letter of Credit shall be governed by, and construed in accordance with, the terms of the International Standby Practices 1998, International Chamber of Commerce-Publication No. 590 (“*ISP98*”). As to matters not governed by the ISP98, this Letter of Credit shall be governed by and construed in accordance with Article 5 of the Uniform Commercial Code of the State of New York, without regard to conflict of laws.

11. All payments made by us hereunder shall be made from our funds and not with the funds of any other person.

12. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified or amended by reference to any other document whatsoever.

BANK OF AMERICA, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ANNEX A  
TO  
BANK OF AMERICA, N.A.  
LETTER OF CREDIT**

**No. <<LC Number>>**

**NOTICE OF CONVERSION DATE**

[Date]

Bank of America, N.A.  
1 Fleet Way  
PA6-580-02-30  
Scranton, Pennsylvania 18507

Attention: Standby Letter of Credit Department

Ladies and Gentlemen:

Reference is hereby made to that certain Irrevocable Transferable Letter of Credit No. <<LC Number>> dated May 17, 2021 (as amended, the "*Letter of Credit*"), which has been established by you for the account of the Orange County Water District, in favor of the Trustee.

The undersigned hereby certifies and confirms that on [insert date] (the "*Conversion Date*") the interest mode on all the Certificates has been converted to bear interest at a rate other than the Weekly Interest Rate, and, accordingly, said Letter of Credit shall terminate on \_\_\_\_\_, 20\_\_, which is 5 days after such Conversion Date in accordance with its terms.

All defined terms used herein which are not otherwise defined herein shall have the same meaning as in the Letter of Credit.

\_\_\_\_\_  
As Trustee

By \_\_\_\_\_  
[Title of Authorized Officer]

**ANNEX B  
TO  
BANK OF AMERICA, N.A.  
LETTER OF CREDIT**

**No. <<LC Number>>**

**NOTICE OF TERMINATION**

[Date]

Bank of America, N.A.  
1 Fleet Way  
PA6-580-02-30  
Scranton, Pennsylvania 18507

Attention: Standby Letter of Credit Department

Ladies and Gentlemen:

Reference is hereby made to that certain Irrevocable Transferable Letter of Credit No. <<LC Number>> dated May 17, 2021 (as amended, the "*Letter of Credit*"), which has been established by you for the account of the Orange County Water District, in favor of the Trustee.

The undersigned hereby certifies and confirms that **[(i) no Certificates (as defined in the Letter of Credit) remain Outstanding within the meaning of the Trust Agreement, (ii) all Drawings required to be made under the Trust Agreement and available under the Letter of Credit have been made and honored or (iii) an Alternate Credit Facility (as defined in the Trust Agreement) has been issued to replace the Letter of Credit pursuant to the Trust Agreement]** and, accordingly, the Letter of Credit shall be terminated in accordance with its terms.

All defined terms used herein which are not otherwise defined shall have the same meaning as in the Letter of Credit.

\_\_\_\_\_  
as Trustee

By \_\_\_\_\_  
[Title of Authorized Officer]

**ANNEX C  
TO  
BANK OF AMERICA, N.A.  
LETTER OF CREDIT**

**No. <<LC Number>>**

**INTEREST DRAWING CERTIFICATE**

Bank of America, N.A.  
1 Fleet Way  
PA6-580-02-30  
Scranton, Pennsylvania 18507

Attention: Standby Letter of Credit Department

Ladies and Gentlemen:

The undersigned individual, a duly authorized officer of U.S. Bank National Association (the “*Beneficiary*”), hereby certifies on behalf of the Beneficiary as follows with respect to (i) that certain Irrevocable Transferable Letter of Credit No. <<LC Number>>\_ dated May 17, 2021 (as amended, the “*Letter of Credit*”), issued by Bank of America, N.A. (the “*Bank*”) in favor of the Beneficiary; (ii) those certain Certificates (as defined in the Letter of Credit); and (iii) that certain Trust Agreement (as defined in the Letter of Credit):

1. The Beneficiary is the Trustee (as defined in the Letter of Credit) under the Trust Agreement.

2. The Beneficiary is entitled to make this Drawing in the amount of \$ \_\_\_\_\_ under the Letter of Credit pursuant to the Trust Agreement with respect to the payment of interest due on all Certificates Outstanding on the Interest Payment Date (as defined in the Trust Agreement) occurring on [insert applicable date], other than Ineligible Certificates (as defined in the Letter of Credit).

3. The amount of the drawing is equal to the amount required to be drawn by the Trustee pursuant to Section 2.17(a)(i) of the Trust Agreement.

4. The amount of the drawing made by this Certificate was computed in compliance with the terms of the Trust Agreement and, when added to the amount of any other drawing under the Letter of Credit made simultaneously herewith, does not exceed the Available Amount (as defined in the Letter of Credit).

5. Payment by the Bank pursuant to this drawing shall be made to the Trustee in accordance with the instructions set forth in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
as Trustee

By \_\_\_\_\_  
[Title of Authorized Officer]

**ANNEX D**  
**TO**  
**BANK OF AMERICA, N.A.**  
**LETTER OF CREDIT**

No. <<LC Number>>

**REDEMPTION DRAWING**

Bank of America, N.A.  
1 Fleet Way  
PA6-580-02-30  
Scranton, Pennsylvania 18507

Attention: Standby Letter of Credit Department

Ladies and Gentlemen:

The undersigned individual, a duly authorized officer of U.S. Bank National Association (the “*Beneficiary*”), hereby certifies on behalf of the Beneficiary as follows with respect to (i) that certain Irrevocable Transferable Letter of Credit No. <<LC Number>> dated May 17, 2021 (as amended, the “*Letter of Credit*”), issued by Bank of America, N.A. (the “*Bank*”) in favor of the Beneficiary; (ii) those certain Certificates (as defined in the Letter of Credit); and (iii) that certain Trust Agreement (as defined in the Letter of Credit):

1. The Beneficiary is the Trustee (as defined in the Letter of Credit) under the Trust Agreement.

2. The Beneficiary is entitled to make this drawing in the amount of \$ \_\_\_\_\_ under the Letter of Credit pursuant to Section 2.17(a)(ii) of the Trust Agreement.

3. (a) The amount of this drawing is equal to (i) the principal amount of Certificates to be redeemed by the District (as defined in the Letter of Credit) pursuant to Section 2.17(a)(ii) of the Trust Agreement on [insert applicable date] (the “*Redemption Date*”) other than Ineligible Certificates (as defined in the Letter of Credit), *plus* (ii) interest on such Certificates accrued from the immediately preceding Interest Payment Date (as defined in the Trust Agreement) to the Redemption Date, provided that in the event the Redemption Date coincides with an Interest Payment Date this drawing does not include any accrued interest on such Certificates.

(b) Of the amount stated in paragraph 2 above:

(i) \$ \_\_\_\_\_ is demanded in respect of the principal amount of the Certificates referred to in subparagraph (a) above; and

(ii) **[\$0.00 is demanded in respect of accrued interest on such date (the Redemption Date coincides with an Interest Payment Date)]** [\$ \_\_\_\_\_ is



**demanded in respect of accrued interest on such Certificates (the Redemption Date is not an Interest Payment Date)]<sup>1</sup>.**

4. Payment by the Bank pursuant to this drawing shall be made to the Trustee in accordance with the instructions set forth in the Letter of Credit.

5. The amount of the drawing made by this Certificate was computed in compliance with the terms and conditions of the Trust Agreement and, when added to the amount of any other drawing under the Letter of Credit made simultaneously herewith, does not exceed the Available Amount (as defined in the Letter of Credit).

6. Upon payment of the amount drawn hereunder, the Bank is hereby directed to permanently reduce the Available Amount by \$(insert amount of reduction) and the Available Amount shall thereupon equal \$(insert new Available Amount). The Available Amount has been reduced by an amount equal to the principal of Certificates paid with this drawing and an amount equal to \_\_\_ days' interest thereon at the Cap Interest Rate (as defined in the Letter of Credit).

7. Of the amount of the reduction stated in paragraph 6 above:

(i) \$\_\_\_\_\_ is attributable to the principal amount of Certificates redeemed; and

(ii) \$\_\_\_\_\_ is attributable to interest on such Certificates (*i.e.*, \_\_\_ days' interest thereon at the Cap Interest Rate).

8. The amount of the reduction in the Available Amount has been computed in accordance with the provisions of the Letter of Credit.

9. Following the reduction, the Available Amount shall be at least equal to the aggregate principal amount of the Certificates Outstanding (to the extent such Certificates are not Ineligible Certificates (as defined in the Letter of Credit)), plus 49 days' interest thereon at the Cap Interest Rate.

10. In the case of a redemption pursuant to Section 4.1(a) of the Trust Agreement, the Trustee, prior to giving notice of redemption to the owners of the Certificates, received written evidence from the Bank that the Bank has consented to such redemption.

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<sup>1</sup> Delete as appropriate.

IN WITNESS WHEREOF, this Certificate has been executed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
as Trustee

By \_\_\_\_\_  
[Title of Authorized Officer]

**ANNEX E**  
**TO**  
**BANK OF AMERICA, N.A.**  
**LETTER OF CREDIT**

**No. <<LC Number>>**

**LIQUIDITY DRAWING CERTIFICATE**

Bank of America, N.A.  
1 Fleet Way  
PA6-580-02-30  
Scranton, Pennsylvania 18507

Attention: Standby Letter of Credit Department

Ladies and Gentlemen:

The undersigned individual, a duly authorized officer of U.S. Bank National Association (the "*Beneficiary*") hereby certifies as follows with respect to (i) that certain Irrevocable Transferable Letter of Credit No. <<LC Number>> dated May 17, 2021 (as amended, the "*Letter of Credit*"), issued by Bank of America, N.A. (the "*Bank*") in favor of the Beneficiary; (ii) those certain Certificates (as defined in the Letter of Credit); and (iii) that certain Trust Agreement (as defined in the Letter of Credit):

1. The Beneficiary is the Trustee under the Trust Agreement.

2. The Beneficiary is entitled to make this drawing under the Letter of Credit in the amount of \$ \_\_\_\_\_ with respect to the payment of the purchase price of Certificates tendered for purchase in accordance with Section 2.17(a)(iii) of the Trust Agreement and to be purchased on [insert applicable date] (the "*Purchase Date*") which Certificates have not been successfully remarketed as provided in the Trust Agreement or the purchase price of which has not been received by the Trustee by 11:00 A.M., New York time, on said Purchase Date.

3. (a) The amount of the drawing is equal to (i) the principal amount of Certificates to be purchased pursuant to the Trust Agreement on the Purchase Date other than Ineligible Certificates (as defined in the Letter of Credit), *plus* (ii) interest on such Certificates accrued from the immediately preceding Interest Payment Date (as defined in the Trust Agreement) (or if none, the date of issuance of the Certificates) to the Purchase Date, provided that in the event the Purchase Date coincides with an Interest Payment Date this drawing does not include any accrued interest on such Certificates.

(b) Of the amount stated in paragraph 2 above:

(i) \$ \_\_\_\_\_ is demanded in respect of the principal portion of the purchase price of the Certificates referred to in paragraph 2 above; and

(ii) **[\$0.00 is demanded in respect of accrued interest on such date (the Purchase Date coincides with an Interest Payment Date)]** **[\$\_\_\_\_\_ is demanded in respect of payment of the interest portion of the purchase price of such Certificates (the Purchase Date is not an Interest Payment Date)]<sup>2</sup>.**

4. The amount of the drawing made by this Certificate was computed in compliance with the terms and conditions of the Trust Agreement and, when added to the amount of any other drawing under the Letter of Credit made simultaneously herewith, does not exceed the Available Amount (as defined in the Letter of Credit).

5. Upon payment of the amount drawn hereunder, the Bank is hereby directed to reduce the Available Amount of the Letter of Credit by **[\$insert amount of reduction]** and the Available Amount shall, after giving effect to such reduction, equal **[\$insert new Available Amount]**.

6. Of the amount of such reduction stated in paragraph 5 above:

(i) \$\_\_\_\_\_ is attributable to the principal amount of Certificates tendered; and

(ii) \$\_\_\_\_\_ is attributable to interest on such Certificates (*i.e.*, \_\_\_ days' interest at the Cap Interest Rate (as defined in the Letter of Credit)).

7. The Beneficiary will register or cause to be registered in the name of the Bank (or its nominee at the written direction of the Bank), upon payment of the amount drawn hereunder, Certificates in the principal amount of the Certificates being purchased with the amounts drawn hereunder and will deliver such Certificates in accordance with the Trust Agreement.

8. Payment by the Bank pursuant to this drawing shall be made to the Trustee in accordance with the instructions set forth in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
as Trustee

By \_\_\_\_\_  
[Title of Authorized Officer]

<sup>2</sup> Delete as appropriate.

**ANNEX F**  
**TO**  
**BANK OF AMERICA, N.A.**  
**LETTER OF CREDIT**

**No. <<LC Number>>**

**ACCELERATION DRAWING CERTIFICATE**

Bank of America, N.A.  
1 Fleet Way  
PA6-580-02-30  
Scranton, Pennsylvania 18507

Attention: Standby Letter of Credit Department

Ladies and Gentlemen:

The undersigned individual, a duly authorized officer of U.S. Bank National Association (the “*Beneficiary*”), hereby certifies on behalf of the Beneficiary as follows with respect to (i) that certain Irrevocable Transferable Letter of Credit No. <<LC Number>> dated May 17, 2021 (as amended, the “*Letter of Credit*”), issued by Bank of America, N.A. (the “*Bank*”) in favor of the Beneficiary; (ii) those certain Certificates (as defined in the Letter of Credit); and (iii) that certain Trust Agreement (as defined in the Letter of Credit):

1. The Beneficiary is the Trustee under the Trust Agreement.

2. An Event of Default has occurred under the Trust Agreement and the Trustee has declared the principal of and accrued interest on all Certificates then outstanding immediately due and payable. The Beneficiary is entitled to make this drawing in the amount of \$\_\_\_\_\_ under the Letter of Credit pursuant to Section 2.17(a)(ii) of the Trust Agreement in order to pay the principal of and interest accrued on the Certificates due to an acceleration thereof in accordance with Section 2.17(a)(ii) of the Trust Agreement.

3. (a) The amount of this drawing is equal to (i) the principal amount of Certificates outstanding on [insert date of acceleration] (the “*Acceleration Date*”) other than Ineligible Certificates (as defined in the Letter of Credit), plus (ii) interest on such Certificates accrued from the immediately preceding Interest Payment Date (as defined in the Trust Agreement) to the Acceleration Date.

(b) Of the amount stated in paragraph 2 above:

(i) \$\_\_\_\_\_ is demanded in respect of the principal portion of the Certificates referred to in subparagraph (a) above; and

(ii) **[\$0.00 is demanded in respect of accrued interest on such date (the Acceleration Date coincides with an Interest Payment Date)]**  
**[\$\_\_\_\_\_ is demanded in respect of accrued interest on such Certificates (the Acceleration Date is not an Interest Payment Date)]<sup>3</sup>.**

4. The amount of this drawing made by this Certificate was computed in compliance with the terms and conditions of the Trust Agreement and, when added to the amount of any drawing under the Letter of Credit made simultaneously herewith, does not exceed the Available Amount (as defined in the Letter of Credit).

5. Payment by the Bank pursuant to this drawing shall be made to the Trustee in accordance with the instructions set forth in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, as Trustee

By \_\_\_\_\_ [Title of Authoriz

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<sup>3</sup> Delete as appropriate.

**ANNEX G  
TO  
BANK OF AMERICA, N.A.  
LETTER OF CREDIT**

**No. <<LC Number>>**

**STATED MATURITY DRAWING CERTIFICATE**

Bank of America, N.A.  
1 Fleet Way  
PA6-580-02-30  
Scranton, Pennsylvania 18507

Attention: Standby Letter of Credit Department

Ladies and Gentlemen:

The undersigned individual, a duly authorized officer of U.S. Bank National Association (the "*Beneficiary*"), hereby certifies on behalf of the Beneficiary as follows with respect to (i) that certain Irrevocable Transferable Letter of Credit No. <<LC Number>> dated May 17, 2021 (as amended, the "*Letter of Credit*"), issued by Bank of America, N.A. (the "*Bank*") in favor of the Beneficiary; (ii) those certain Certificates (as defined in the Letter of Credit); and (iii) that certain Trust Agreement (as defined in the Letter of Credit):

1. The Beneficiary is the Trustee under the Trust Agreement.
2. The Beneficiary is entitled to make this drawing in the amount of \$\_\_\_\_\_ under the Letter of Credit pursuant to Section 2.17(a)(ii) of the Trust Agreement.
3. (a) The amount of this drawing is equal to the principal of and interest on the Certificates Outstanding on August 1, 2042, the maturity date thereof as specified in the definition of Maturity Date as set forth in the Trust Agreement, other than Ineligible Certificates (as defined in the Letter of Credit).

(b) Of the amount stated in paragraph (2) above:

(i) \$\_\_\_\_\_ is demanded in respect of the principal portion of the Certificates referred to in subparagraph (2) above; and

(ii) **[\$0.00 is demanded in respect of accrued interest on such date (the maturity date coincides with an Interest Payment Date)]** [\$\_\_\_\_\_ is demanded in respect of payment of the interest portion of such Certificates (the maturity date is not an Interest Payment Date)]<sup>4</sup>.

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<sup>4</sup> Delete as appropriate.

4. The amount of this Drawing made by this Certificate was computed in compliance with the terms and conditions of the Trust Agreement and, when added to the amount of any other drawing under the Letter of Credit made simultaneously herewith, does not exceed the Available Amount (as defined in the Letter of Credit).

5. Payment by the Bank pursuant to this drawing shall be made to the Trustee in accordance with the instructions set forth in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
as Trustee

By \_\_\_\_\_  
[Title of Authorized Officer]



**ANNEX H  
TO  
BANK OF AMERICA, N.A.  
LETTER OF CREDIT**

**No. <<LC Number>>**

**REDUCTION CERTIFICATE**

Bank of America, N.A.  
1 Fleet Way  
PA6-580-02-30  
Scranton, Pennsylvania 18507

Attention: Standby Letter of Credit Department

Ladies and Gentlemen:

The undersigned hereby certifies with respect to (i) that certain Irrevocable Transferable Letter of Credit No. <<LC Number>> dated May 2, 2021 (as amended, the "*Letter of Credit*"), issued by Bank of America, N.A. (the "*Bank*") in favor of the Beneficiary; (ii) those certain Certificates (as defined in the Letter of Credit); and (iii) that certain Trust Agreement (as defined in the Letter of Credit):

1. The Beneficiary is the Trustee under the Trust Agreement.
2. Upon receipt by the Bank of this Certificate, the Available Amount (as defined in the Letter of Credit) shall be reduced by \$ \_\_\_\_\_ and the Available Amount shall thereupon equal \$ \_\_\_\_\_. \$ \_\_\_\_\_ of the new Available Amount is attributable to interest and \$ \_\_\_\_\_ of the new Available Amount is attributable to principal.
3. The amount of the reduction in the Available Amount has been computed in accordance with the provisions of the Letter of Credit.
4. Following the reduction, the Available Amount shall be at least equal to the aggregate principal amount of the Certificates Outstanding (other than Ineligible Certificates (as defined in the Letter of Credit)) plus \$ \_\_\_\_\_ which is at least 49 days' accrued interest on said principal amount of the Certificates at the Cap Interest Rate (as defined in the Letter of Credit) and assuming a year of 365 days.

IN WITNESS WHEREOF, this Certificate has been executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
as Trustee

By \_\_\_\_\_  
[Title of Authorized Officer]

**ANNEX I  
TO  
BANK OF AMERICA, N.A.  
LETTER OF CREDIT**

**No. <<LC Number>>**

**TRANSFER CERTIFICATE**

[Date]

Bank of America, N.A.  
1 Fleet Way  
PA6-580-02-30  
Scranton, Pennsylvania 18507

Attention: Standby Letter of Credit Department

Re: Irrevocable Transferable Letter of Credit No. <<LC  
Number>> dated May 17, 2021

We, the undersigned "Transferor", hereby irrevocably transfer all of our rights to draw under the above referenced Letter of Credit (as amended, the "*Letter of Credit*") in its entirety to:

NAME OF TRANSFEREE

\_\_\_\_\_  
(Print Name and complete address of the Transferee)

"Transferee"

ADDRESS OF TRANSFEREE

\_\_\_\_\_  
CITY/STATE/COUNTRY ZIP  
\_\_\_\_\_

(the "*Transferee*") all rights of the Transferor with respect to the above-referenced Letter of Credit, including the right to draw under said Letter of Credit in the amount of the full unutilized balance thereof. Said Transferee has succeeded the Transferor as Trustee under that certain Amended and Restated Trust Agreement dated as of May 1, 2011 (as amended, supplemented, restated or otherwise modified from time to time, the "*Trust Agreement*"), by and among the Orange County Water District (the "*District*"), the OCWD Public Facilities Corporation (the "*Corporation*") and the Transferor with respect to the District's Adjustable Rate Revenue Certificates of Participation Series 2003A issued by the District.

By virtue of this transfer, the Transferee shall have the sole rights as beneficiary of said Letter of Credit, including sole rights relating to any past or future amendments thereof, whether increases or extensions or otherwise. All amendments are to be advised directly to the Transferee without necessity of any consent of or notice to the Transferor.

By its signature below, the Transferee acknowledges that it has duly succeeded the Transferor as Trustee under the Trust Agreement, and agrees to be bound by the terms of the Trust Agreement as if it were the original Trustee thereunder.

The Letter of Credit is returned herewith, and we ask you to endorse the transfer on the reverse thereof and to forward it directly to the Transferee with your customary notice of transfer.

Very truly yours,

[Insert Name of Trustee],  
as Trustee

By: \_\_\_\_\_  
[Insert name and title of authorized officer]

SIGNATURE OF THE ABOVE OFFICER,  
DULY AUTHORIZED TO ACT ON  
BEHALF OF [insert name of  
Trustee], AUTHENTICATED BY:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Acknowledged by  
[insert name of Transferee]  
as Transferee and successor Trustee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SIGNATURE OF THE ABOVE OFFICER  
DULY AUTHORIZED TO ACT ON BEHALF  
OF [insert name of Transferee], AUTHENTICATED BY:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ANNEX J  
TO  
BANK OF AMERICA, N.A.  
LETTER OF CREDIT**

**No. <<LC Number>>**

**NOTICE OF EXTENSION**

\_\_\_\_\_

U.S. Bank National Association  
633 West Fifth Street, 24<sup>th</sup> Floor  
Los Angeles, CA 90071  
Attention: Global Corporate Trust

Ladies and Gentlemen:

Reference is hereby made to that certain Irrevocable Transferable Letter of Credit No. <<LC Number>> dated May 17, 2021 (as amended, the "*Letter of Credit*"), established by us in your favor as Beneficiary. We hereby notify you that, in accordance with the terms of the Letter of Credit, the Stated Expiration Date (as defined in the Letter of Credit) has been extended to \_\_\_\_\_.

This letter shall be attached to the Letter of Credit and made a part thereof.

BANK OF AMERICA, N.A.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ANNEX K**  
**TO**  
**BANK OF AMERICA, N.A.**  
**LETTER OF CREDIT**

**No. <<LC Number>>**

**NOTICE OF REMARKETING**

Bank of America, N.A.  
1 Fleet Way  
PA6-580-02-30  
Scranton, Pennsylvania 18507

Attention: Standby Letter of Credit Department

Ladies and Gentlemen:

The undersigned, a duly authorized officer of U.S. Bank National Association [insert name of Trustee] (the “Trustee”), hereby notifies Bank of America, N.A. (the “Bank”), with reference to that certain Irrevocable Transferable Letter of Credit No. <<LC Number>> dated May 17, 2021 (as amended, the “Letter of Credit”; terms defined therein and not otherwise defined herein shall have the meanings set forth in the Letter of Credit) issued by the Bank in favor of the Trustee as follows:

1. \_\_\_\_\_ is the Remarketing Agent under the Trust Agreement for the holders of the Certificates.

2. The Trustee has paid the amount of \$\_\_\_\_\_ to the Bank today on behalf of the District, which is a payment made to reimburse the Bank, pursuant to the Reimbursement Agreement, for amounts (or portions thereof) drawn under the Letter of Credit pursuant to a Liquidity Drawing.

3. Of the amount referred to in paragraph 2, \$\_\_\_\_\_ represents the aggregate principal amount of Purchased Certificates resold or to be resold on behalf of the District.

4. Of the amount referred to in paragraph 2, \$\_\_\_\_\_ represents accrued and unpaid interest on such Purchased Certificates.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate as of this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

[INSERT NAME OF TRUSTEE],  
as Trustee

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ANNEX L  
TO  
BANK OF AMERICA, N.A.  
LETTER OF CREDIT  
No. <<LC Number>>

NOTICE OF MANDATORY TENDER

[DATE]

U.S. Bank National Association  
633 West Fifth Street, 24<sup>th</sup> Floor  
Los Angeles, CA 90071  
Attention: Global Corporate Trust

Ladies and Gentlemen:

The undersigned, a duly authorized officer of Bank of America, N.A. (the “*Bank*”), hereby advises you, with reference to Irrevocable Transferable Letter of Credit No. <<LC Number>>, dated May 17, 2021 (as amended, the “*Letter of Credit*”; any capitalized term used herein and not defined shall have its respective meaning as set forth in the Letter of Credit) issued by the Bank in your favor, that:

**[Insert one of the following paragraphs as appropriate]**

**[An “*Event of Default*” has occurred under the Reimbursement Agreement and the Bank has elected to direct the Trustee to cause a mandatory tender of the Certificates pursuant to the Trust Agreement, whereby the Letter of Credit will terminate [seven (7)] days following the receipt by the Trustee of this Notice of \_\_\_\_\_ [insert date that is 5 days from beneficiary’s receipt of this notice or, if such day is not a Business Day, the next succeeding Business Day].]**

**[An “*Event of Default*” has occurred under the Reimbursement Agreement and, as a result thereof, the amount of the Interest Drawing will not be reinstated and the Bank has elected to direct the Trustee to cause a mandatory tender of the Certificates pursuant to the Trust Agreement, whereby the Letter of Credit will terminate [seven (7)] days following the receipt by the Trustee of this Notice of [\_\_\_\_\_ [insert date that is 5 days from beneficiary’s receipt of this notice or, if such day is not a Business Day, the next succeeding Business Day].]**



BANK OF AMERICA, N.A.

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPENDIX II**

**FORM OF  
CUSTODY AGREEMENT**

[To come]