



**SPECIAL MEETING OF THE BOARD OF DIRECTORS AGENDA  
TRABUCO CANYON WATER DISTRICT  
32003 DOVE CANYON DRIVE, TRABUCO CANYON, CALIFORNIA  
ADMINISTRATIVE FACILITY, CONFERENCE ROOM  
TUESDAY, FEBRUARY 8, 2022 AT 4:00 PM**

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**NOTICE OF SPECIAL BOARD MEETING**

*NOTICE IS HEREBY GIVEN PURSUANT TO GOVERNMENT CODE SECTION 54956 THAT A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE TRABUCO CANYON WATER DISTRICT WILL BE HELD ON TUESDAY, FEBRUARY 8, 2022, AT 4:00 P.M. AND WILL BE CONDUCTED IN PERSON BUT WILL BE AVAILABLE FOR PARTICIPATION BY THE PUBLIC BY TELEPHONE AUDIO AS DESCRIBED BELOW.*

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**BOARD OF DIRECTORS**

Don Chadd, President  
Stephen Dopudja, Vice President  
Glenn Acosta, Director  
Edward Mandich, Director  
Michael Safranski, Director

**DISTRICT STAFF**

Fernando Paludi, General Manager  
Michael Perea, District Secretary  
Cindy Byerrum, District Treasurer  
Hanson Bridgett, LLP, General Counsel

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**AGENDA NOTE:**

*Trabuco Canyon Water District (District) will be conducted in person but will be available by telephone audio as follows:*

**Telephone Audio:** 1 (669) 900-6833 (Toll Free)      **Access Code:** 913-8681-1652

*Persons desiring to monitor the Board meeting agenda items may download the Board meeting agenda and documents on the internet at [www.tcwd.ca.gov](http://www.tcwd.ca.gov). You may submit public comments by email to the Board at [mperea@tcwd.ca.gov](mailto:mperea@tcwd.ca.gov). In order to be part of the record, emailed comments on meeting agenda items must be received by the District, at the referenced e-mail address, not later than 3:00 p.m. (PDT) on the day of the meeting.*

**CALL MEETING TO ORDER**

**PLEDGE OF ALLEGIANCE**

**VISITOR PARTICIPATION**

*Members of the public wishing to address the Board regarding a particular item on the agenda are requested to submit public comments by email to the Board at [mperea@tcwd.ca.gov](mailto:mperea@tcwd.ca.gov). The Board President will call on the visitor following the Board's discussion about the matter. Members of the public will be given the opportunity to speak prior to the Board taking action on that item. For persons desiring to make verbal comments and utilizing a translator to present their comments into English reasonable time accommodations, consistent with State law, shall be provided. Please limit comments to three minutes.*

**ORAL COMMUNICATION**

*Members of the public who wish to make comment on matters not appearing on the agenda are requested to submit oral communication by email to the Board at [mperea@tcwd.ca.gov](mailto:mperea@tcwd.ca.gov). Under the requirements of State Law, Directors cannot take action on items not identified on the agenda and will not make decisions on such matters. The Board President may direct District Staff to follow up on issues as may be deemed appropriate. For persons desiring to make verbal comments and utilizing a translator to present their comments into English reasonable time accommodations, consistent with State law, shall be provided. Please limit comments to three minutes.*

**DIRECTORS' COMMENTS AND MEETING REPORTS**

**REPORT FROM THE GENERAL MANAGER**

## **ACTION CALENDAR**

*All matters under the Action Calendar have been reviewed by the General Manager and Staff prior to the Board's consideration.*

### **ADMINISTRATIVE MATTERS**

#### **ITEM 1: CONSIDERATION AND POSSIBLE ACTION(S) REGARDING ADOPTING A DEBT MANAGEMENT POLICY FOR THE TRABUCO CANYON WATER DISTRICT**

##### **RECOMMENDED ACTION(S):**

*Approve and Adopt the Debt Management Policy for the Trabuco Canyon Water District.*

### **FINANCIAL MATTERS**

#### **ITEM 2: CONSIDERATION AND POSSIBLE ACTION(S) REGARDING A RESOLUTION APPROVING THE ISSUANCE OF A NEGOTIABLE PROMISSORY NOTE FOR THE PURPOSE OF FINANCING CAPITAL PROJECTS & AUTHORIZING THE EXECUTION & DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH & CERTAIN OTHER MATTERS**

##### **RECOMMENDED ACTION(S):**

*Adopt Resolution No. 2022-1303 – Resolution of the Board of Directors of the Trabuco Canyon Water District Approving the Issuance of a Negotiable Promissory Note for the Purpose of Financing Capital Projects and Authorizing the Execution and Delivery of Certain Documents in Connection Therewith and Certain Other Matters*

## **END ACTION CALENDAR & ADJOURNMENT**

### **AVAILABILITY OF AGENDA MATERIALS**

*Agenda exhibits and other writings that are disclosable public records distributed to all or a majority of the members of the Trabuco Canyon Water District Board of Directors in connection with a matter subject to discussion or consideration at an open meeting of the Board of Directors are available for public inspection at the Trabuco Canyon Water District Administrative Facility, 32003 Dove Canyon Drive, Trabuco Canyon, California (District Administrative Facility) or will be posted online on the District's website located at [www.tcwd.ca.gov](http://www.tcwd.ca.gov). If such writings are distributed to members of the Board less than 72 hours prior to the meeting, they will be available online at [www.tcwd.ca.gov](http://www.tcwd.ca.gov) at the same time as they are distributed to the Board Members, except that, if such writings are distributed immediately prior to or during the meeting, they will be posted online on the District's website located at [www.tcwd.ca.gov](http://www.tcwd.ca.gov).*

### **COMPLIANCE WITH THE REQUIREMENTS OF CALIFORNIA GOVERNMENT CODE SECTION 54954.2**

*In compliance with California law and the Americans with Disabilities Act, if you need special disability-related modifications or accommodations, including auxiliary aids or services in order to participate in the meeting, or if you need the agenda provided in an alternative format, please contact the District Secretary at (949) 858-0277, at least 48 hours in advance of the scheduled Board meeting. Notification at least 48 hours prior to the meeting will assist the District in making reasonable arrangements to accommodate your request. The Board Meeting Room is wheelchair accessible. The District may conduct future meetings electronically (via teleconferencing) during the current ongoing emergency situation.*



**TRABUCO CANYON WATER DISTRICT  
SPECIAL BOARD MEETING | FEBRUARY 8, 2022**

**ACTION CALENDAR**

**ITEM 1: CONSIDERATION AND POSSIBLE ACTION(S) REGARDING ADOPTING A DEBT MANAGEMENT POLICY FOR THE TRABUCO CANYON WATER DISTRICT**

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Trabuco Canyon Water District does not currently have a policy that establishes parameters for issuing and managing debt. Given that the Board of Directors is approving the issuance of short-term debt for capital program funding in February 2022, District staff recommends the Board’s consideration and approval of a Debt Management Policy (Policy).

The goals of the Policy are not only ensure that the District properly manages cost of borrowing and risk through preserving and enhancing credit quality but also to comply with applicable laws and reporting requirements. As stated in the Policy, the policy objectives relative to debt and financial-related activities are to:

- a. Maintain cost-effective access to the capital markets through prudent fiscal management policies and practices;
- b. Minimize debt service commitments through effective planning and cash management;
- c. Protect the District’s creditworthiness and achieve the highest practical credit rating;
- d. Spread cost over the useful life of an asset;
- e. Smooth out annual cash flow by using debt financing to spread the cost of a project over a period of years;
- f. Optimize overall financial resources;
- g. Refinance outstanding obligations when appropriate to achieve debt service savings or for programmatic reasons; and
- h. Fully and timely repay all debt.

**FUNDING SOURCE:**

Not applicable.

**FISCAL IMPACT**

Adherence to this proposed Debt Management Policy will help ensure the District achieves the most advantageous cost of borrowing.

**ENVIRONMENTAL COMPLIANCE:**

Not applicable.

**COMMITTEE STATUS:**

This matter was not reviewed at the Committee level.

**RECOMMENDED ACTION**

*Approve and Adopt the Debt Management Policy for the Trabuco Canyon Water District.*

**EXHIBIT(S):**

1. DRAFT Debt Management Policy for Trabuco Canyon Water District

**CONTACTS (staff responsible): PALUDI/BYERRUM/COLLINS**

## **TRABUCO CANYON WATER DISTRICT DEBT MANAGEMENT POLICY**

The Debt Management Policy (“Debt Policy”) of the Trabuco Canyon Water District (“District”) was approved by the Board of Directors of the District (“Board”) on \_\_\_\_\_, 2022. The Debt Policy may be amended by the Board as it deems appropriate from time to time in the prudent financial management of the District.

Debt, properly issued and managed, is a valuable funding resource for the District. It assists in the District’s efforts to allocate limited resources, to provide the highest quality of service to the public, and when used appropriately and prudently, can minimize the District’s utility rates and charges over time.

### **1. PURPOSE**

- 1.1 The purpose of this Debt Management Policy (“Debt Policy”) is to establish and maintain parameters for issuing and managing debt, provide guidance as to types and amounts of permissible debt and methods of sale to be used, articulate policy goals, demonstrate a commitment to long-term capital and financial planning, and promote objectivity in the District’s decision-making process.
- 1.2 The goals of the Debt Policy are to ensure that the District maintains a sound debt position that achieves the most advantageous cost of borrowing commensurate with prudent levels of risk, preserve and enhance credit quality and ratings assigned to its debt, and is intended to comply with law, including California Government Code Section 8855 and the California Debt and Investment Advisory Commission (“CDIAC”) guidance, to ensure all debt issuances are consistent and all required reports are submitted to CDIAC on time.

### **2. POLICY OBJECTIVES**

- 2.1 The primary objectives of the District’s debt and financial-related activities are to:
  - a. Maintain cost-effective access to the capital markets through prudent fiscal management policies and practices;
  - b. Minimize debt service commitments through effective planning and cash management;
  - c. Protect the District’s creditworthiness and achieve the highest practical credit rating;
  - d. Spread cost over the useful life of an asset;
  - e. Smooth out annual cash flow by using debt financing to spread the cost of a project over a period of years;
  - f. Optimize overall financial resources;

- g. Refinance outstanding obligations when appropriate to achieve debt service savings or for programmatic reasons; and
- h. Fully and timely repay all debt.

2.2 The Debt Policy is an integral component of the District's overall financial practices and capital-intensive expenditure plan. The issuance of debt must be generally consistent with the District's planning goals, capital improvement programs, and budget. The issuance of debt must be designed to assure sufficient resources to fund all of the District's operating and capital requirements in all foreseeable circumstances.

### 3. SCOPE AND DELEGATION OF AUTHORITY

3.1 Overall policy direction of this Debt Policy is provided by the District's Board. The General Manager or designee implements the Debt Policy and has day-to-day responsibility for structuring, implementing, and managing the District's debt and finance program. The General Manager or designee will use these guidelines to review and report to the Board any long-term debt implications, including cost of borrowing, historical interest rate trends, credit enhancement capacity, opportunities to refund existing debt obligations, and other financial considerations. This Debt Policy requires that the Board specifically authorize each debt financing.

3.2 While adherence to this Debt Policy is required in certain circumstances, the Board recognizes that changes in the capital markets, District programs, and other unforeseen circumstances may from time to time produce situations that are not covered by the Debt Policy and will require modifications or exceptions to achieve policy goals. In these cases, management flexibility is appropriate, upon obtaining specific authorization from the Board.

4. **STANDARDS FOR USE OF DEBT FINANCING.** In financial planning, the District will evaluate the use of various alternatives including current year funding of capital projects through rates, various forms of debt financing, use of reserves, and inter-fund borrowing if available and appropriate. The District will utilize the most advantageous financing alternative, balancing the goals of long-term cost minimization, risk exposure, and compliance with generally accepted ratemaking principles. The District's debt management program will consider debt issuance where public policy, equity, general ratemaking principles, economic efficiency, and compliance with long-term financial planning parameters favor financing over cash funding.

#### 4.1 Use and Timing of Debt

- a. The District will utilize debt financing as an appropriate approach to fund long-term capital improvements and ensure that existing and future users pay their fair share of infrastructure costs. Long-term improvements include the acquisition and/or construction of land, facilities, infrastructure, and enhancements or expansions to existing facilities. Debt may be issued to fund the planning, pre-design, design, land and/or easement acquisition, construction and related fixtures, equipment and other costs

as permitted by law. The District will not issue debt to fund operating needs.

- b. The General Manager or designee will periodically evaluate the District's existing debt and execute re-financings or prepayment (refunding) when economically beneficial. A refinancing may include the issuance of bonds or other obligations to refund existing bonds or other obligations. Debt may only be issued upon Board authorization and when the District has pledged appropriated sufficient funds to pay the obligation of principal and interest.

#### 4.2 Credit Rating and Quality

- a. The District will seek to maintain the highest possible credit ratings that can be achieved for debt instruments without compromising rate payer affordability. To enhance creditworthiness, the District is committed to prudent financial management, systematic capital planning, and long-term financial planning.
- b. All District debt management activities for new debt issuances will be conducted in a manner conducive to receiving the highest credit ratings possible consistent with the District's debt management objectives.

4.3 Rebate Policy. The District will develop a system of reporting interest earnings and rebates that complies with the Internal Revenue Code requirements relating to rebate, yield limits, and arbitrage. The District will accurately account for all interest earnings in debt-related funds to ensure that the District is compliant with all debt covenants and with State and Federal laws. The District will invest funds in accordance with the investment parameters set forth in each respective bond indenture, and as permitted by the District's Investment Policy.

4.4 Joint Powers Authorities & Conduit Financing. For the purpose of debt financing, the District may participate in a joint powers authority with one or more other eligible entities pursuant to Section 6500 of the California Government Code if deemed advantageous and appropriate and approved by the Board.

### 5. DEBT MANAGEMENT

5.1 There are no specific provisions within the California Government Code that limit the amount of debt that can be issued by the District. The District will provide periodic reviews of its financial performance and evaluate its performance relative to the financial policies outlined in this Debt Policy. Necessary appropriations for annual debt service requirements will be routinely included in the District's budget.

5.2 The District will issue debt only in the case where there is an identified source of repayment. Debt will be issued to the extent that (1) projected revenues are sufficient to pay for the proposed debt service together with existing debt service covered by such existing revenues, or (2) additional revenues or savings have been identified as a source of repayment in an amount sufficient to pay for the proposed debt. The proceeds of any debt obligation shall be expended only for

the purpose for which it was authorized. Debt will be structured for the shortest period possible, consistent with a fair allocation of costs to current and future users. Borrowings by the District will be of a duration that does not exceed the projected useful life of the improvement that it finances and where feasible, should be shorter than the projected economic life.

- 5.3 The District may issue debt on a fixed or variable interest rate basis. Fixed rate securities enhance budget predictability through the life of the securities and can be advantageous in a low interest rate environment. When appropriate, the District may choose to issue securities that pay a rate of interest that varies according to a predetermined formula or results from a periodic remarketing of the securities. It may be appropriate to issue short-term or long-term variable rate debt to diversify the District's debt portfolio, reduce interest costs or provide interim funding for capital projects.
- 5.4 The proceeds of bond sales will be invested until used for the intended project(s) in order to maximize utilization of the public funds. The investments will be made to obtain the highest level of safety of principal. The District's Debt Policy, Investment Policy, and the specific bond indentures govern objectives and criteria for investment of bond proceeds.
- 5.5 The General Manager or designee will monitor dedicated debt reserve fund balances, if any, and periodically review and recommend on the advisability of prepayment or refunding of related debt with the Board. A potential refunding will be assessed in combination with any new capital projects requiring financing, and the benefits of the refunding will be evaluated in relation to its costs and risks.

## 6. TYPES OF DEBT

- 6.1 The following types of debt are allowable under this Debt Policy, subject to applicable law including Government Code Section 8855(i)(1)(B), and the District's statutory authority to issue debt:
  - a. General obligation bonds
  - b. Commercial paper
  - c. Bond or grant anticipation notes
  - d. Lease revenue bonds, certificates of participation, and lease-purchase transactions
  - e. Other revenue bonds, including private placement obligations
  - f. Tax and revenue anticipation notes
  - g. Land-secured financings
  - h. Refunding obligations

- i. State revolving fund loans
- j. Lines of credit
- k. Letters of credit

6.2 The Board may from time to time find that other forms of debt would be beneficial to further its public purposes and may approve such debt without an amendment to this Debt Policy.

7. **METHOD OF SALE/ISSUANCE.** The District will select the method of sale that best fits the type of bonds being sold, market conditions, and the desire to structure bond maturities to enhance the overall performance of the entire debt portfolio. Three general methods exist for the sale of municipal bonds, each requiring Board approval. A recommendation regarding the proposed method of sale shall be prepared by the General Manager or designee and provided to the Board prior to the proposed issuance.

7.1 **Competitive Sale.**

Bonds will be marketed to a number of prequalified underwriting firms. The underwriter is selected based on the best bid for the District's securities, i.e., highest price/lowest yield. The District will award the sale of the competitively sold bonds on a true interest cost basis. The District's General Manager or designee or Board President are hereby authorized to sign the bid form on behalf of the District fixing the interest rates on bonds sold on a competitive basis.

7.2 **Negotiated Sale**

The Board approves selection of the underwriter, or team of underwriters, of its securities in advance of the bond sale. The General Manager or designee works with the underwriter to bring the issue to market and negotiates all rates and terms of the sale. In advance of the debt issuance, the Board will determine compensation for and liability of each underwriter employed and the designation rules and priority of orders under which the sale will be conducted. The District's General Manager or designee or the Board President are hereby authorized to sign the bond purchase agreement on behalf of the District.

7.3 **Direct Purchase/Private Placement**

The District may elect to issue debt through a direct purchase with a bank counterparty or on a private placement basis. Such methods of sale shall be considered if it is demonstrated to result in cost savings or provide other advantages relative to other methods of debt issuance. Private placement financing shall also be considered if it is determined that access to the public market is limited and timing considerations require that a financing be completed.

8. **CRITERIA FOR ISSUING DEBT**

8.1 The General Manager or designee will evaluate the need for issuing debt, taking into consideration the anticipated capital program and long-term rate projections. The purpose and policy objectives of this Debt Policy will be factored into the

decision-making process. Projects will only be financed if the District has the ability to repay the debt and fund appropriate operations and maintenance costs for the asset. The repayment period for any debt must not exceed the anticipated useful life of assets and improvements funded by the debt.

- 8.2 If incurring debt is the best option for funding a particular project, the following criteria will be used to determine the optimum debt structure:
- a. The term, repayment structure, and interest rate mode must ensure other financial objectives are met.
  - b. The type of debt instrument will generally, but not necessarily, be optimized to achieve the lowest net present value cost. The District reserves the right to utilize a structuring that does not necessarily result in the lowest net present value cost, provided it aligns with other strategic objectives.
  - c. Any conditions for the debt must not place undue burdens or obligations on the District.
- 8.3 If the General Manager or designee determines the use of debt is appropriate, then a report will be provided to the Board that: (1) describes the intended use of the financial proceeds; (2) recommends a specific type of debt, including duration, type, interest rate characteristics, call features, credit enhancement, or financial derivatives to be used in the transaction; and (3) presents the impact of the bonds on the District's forecasted rates based on the anticipated maturity schedule.

## 9. REFINANCING/REFUNDING EXISTING DEBT

The District will periodically evaluate any outstanding bond issues for refunding opportunities and will bring it to the attention of the Board those opportunities that are in the District's interest. A debt refinancing or refunding will be deemed to be in the District's interest if the net present value savings as a percentage of the refunded par amount is at least 3% for any current refunding transaction and 5% for any advance refunding transaction. Reports to the Board shall describe anticipated savings and the structure of refunding and refunded debt, and any refunded transaction executed will be followed with a report on actual savings.

## 10. RELATIONSHIP OF DEBT TO CAPITAL IMPROVEMENT PROGRAM

The District shall integrate its debt issuances with the goals of its Capital Improvement Program by timing the issuance of debt to ensure that projects are available when needed in furtherance of the District's public purposes and are consistent with the rate and financial planning parameters specified in the District's long-term financial plans.

## 11. CREDIT ENHANCEMENTS

Credit enhancement may be used to improve or establish a credit rating on a District debt obligation. Types of credit enhancements include letters of credit, bond insurance, or surety policies. The District may consider the use of credit enhancement on a case-by-case basis, evaluating the economic benefit versus the cost for each case. Only when a clearly

demonstrable saving or other measurable advantage can be shown will enhancement be considered and authorized.

## 12. PROFESSIONAL SERVICES

12.1 Selection of Finance Team Members. The General Manager or designee will make recommendations for all financing team members, with the Board providing the final approval. Financing team members may include a financial advisor, bond counsel, disclosure counsel, and underwriter. Selection of those financing team members shall be in accordance with District policies.

### 12.2 Financial Advisor

The District may utilize a financial advisor to assist in its debt issuance and debt administration process as is deemed prudent and necessary by the General Manager and in compliance with Municipal Securities Rulemaking Board regulations. This assistance includes advising on the best type of debt instrument to use, the merits of the various methods of sale, and assessing whether refunding opportunities exist. The financial advisor will assist staff in selecting the rest of the finance team members, developing and coordinating the overall financial schedule, structuring the financing, and assisting with the review of the District's legal and disclosure documents.

### 12.3 Bond Counsel

The District will retain bond counsel for all debt issues. The General Manager or designee with input from General Counsel shall make a recommendation to the Board for approval of bond counsel for each issuance.

Bond counsel will prepare the necessary authorizing resolutions, agreements, and other documents necessary to execute the financing. The District's debt issuances will include a written opinion by bond counsel affirming that the District is authorized to issue the proposed debt and that the District has met all constitutional and statutory requirements necessary for issuance and a determination of the proposed debt's federal income tax status. The approving opinion and other documents relating to the issuance of debt will be prepared by bond counsel with extensive experience in public finance and tax issues.

### 12.4 Disclosure Counsel

For transactions that are publicly sold, the District will retain disclosure counsel to assist with preparing the required disclosure documents, including the Official Statement. The District may utilize a separate firm as disclosure counsel as it deems necessary. If cost effective and in the best interest of the District, bond counsel may also serve as disclosure counsel.

### 12.5 Underwriter

For negotiated sales, the District will generally select or pre-qualify underwriters through a competitive process. This process may include a request for proposal or qualifications to all firms considered appropriate for the underwriting of a particular issue or type of bond. The General Manager or designee will recommend the appropriate method to evaluate the underwriter submittals and then select or qualify firms on that basis. Final

underwriters will require Board approval. The District will have the right to select a senior manager for a proposed negotiated sale, as well as co-managers and selling group members, as appropriate.

#### 12.6 Conflict of Interest Disclosure by Finance Team Members

All finance team members will be required to provide full and complete disclosure, relative to agreements with other financing team members and outside parties. The extent of the disclosure may vary depending on the nature of the transaction. However, generally, no agreements will be permitted which could compromise the firm's ability to provide independent advice that is solely in the District's best interest to the extent the firm's role involves a duty to do so, or which could reasonably be perceived as a conflict of interest.

### 13. INTERNAL CONTROL PROCEDURES

Pursuant to Government Code 8855(i)(1)(E), the District will maintain all debt-related records according to the District's Document Retention Policy. The District will maintain internal controls to ensure compliance with the Debt Policy, all debt covenants and any applicable Federal and State law, including but not limited to the following: initial bond disclosure, continuing disclosure, tax- exemption, post-issuance compliance, investment of bond proceeds, and annual reporting to CDIAC.

### 14. INITIAL AND CONTINUING DISCLOSURE COMPLIANCE

The District will submit a Report of Proposed Debt Issuance to CDIAC that also certifies it has adopted a debt policy concerning the use of debt and that the proposed debt issuance is consistent with those policies no later than 30 days prior to the sale of any debt issue, in accordance with Government Code Section 8855(i). Not later than 21 days after the sale of the debt, the District will submit a Report of Final Sale to CDIAC with a copy of the final Official Statement or other required documents, in accordance with Government Code Section 8855(j). For any issue that has submitted a Report of Final Sale, the District will also submit an annual report covering its fiscal year no later than seven (7) months after the end of the reporting period, containing the information set forth in Government Code Section 8855(k). The District may engage a third-party consultant to ensure compliance with this ongoing reporting requirement.

The District will meet secondary disclosure requirements and remain in compliance with SEC Rule 15c2-12 addressing continuing disclosure obligations. The General Manager or designee shall be responsible for providing ongoing disclosure information to the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system, the central depository designated by the SEC for ongoing disclosures by municipal issuers. The District will annually provide required financial information and operating data no later than the required due date, following the end of the District's fiscal year, and will provide timely notice of certain enumerated events with respect to the bonds, if material, as defined in the District's bond covenants. The District may engage a third-party consultant to ensure compliance with this ongoing reporting requirement.

15. DEBT MANAGEMENT POLICY REVIEW AND ADOPTION

The General Manager or designee shall have the authority to make non-substantive updates to this Policy as needed. Any updates regarding changes to law or SEC rules will be presented for approval and adoption by the Board. The Board may waive aspects of this policy in connection with individual financings if the Board determines such waiver to be in the best interest of the District.

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**TRABUCO CANYON WATER DISTRICT  
SPECIAL BOARD MEETING | FEBRUARY 8, 2022**

**ACTION CALENDAR**

**ITEM 2: CONSIDERATION AND POSSIBLE ACTION(S) REGARDING A RESOLUTION APPROVING THE ISSUANCE OF A NEGOTIABLE PROMISSORY NOTE FOR THE PURPOSE OF FINANCING CAPITAL PROJECTS & AUTHORIZING THE EXECUTION & DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH & CERTAIN OTHER MATTERS**

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The need for debt financing Trabuco Canyon Water District’s capital projects was identified and approved as part of the District’s current rate study and rate adjustments for the five calendar years beginning with 2021. The use of debt financing has been recommended as a prudent financial tool to support reserves and minimize variability in rate adjustments to fund the District’s annual capital program.

District staff has been working with the financial team of Eide Bailly (District Treasurer), Fieldman Rolapp as Municipal Financial Advisor, Stradling Yocca as Bond Counsel, and Hilltop Securities as Placement Agent to solicit proposals from private lenders for short-term financing (approximately 23 months). This short-term borrowing is predicated on the assumption that the District will conduct a new rate study to support debt service associated with future long-term debt financing to repay the subject short-term loan and fund capital spending beginning in FYE 2024 onwards. It is anticipated that District staff will start the new rate study process in Spring 2022.

At its January 12, 2022 regular meeting, the Finance & Audit Committee reviewed lender proposals short-listed by the financial team and approved negotiations with the recommended lender, Bank of the West.

At the time of the Special Board Meeting, the District’s financial team will present the specific terms for the short-term loan negotiated with Bank of the West. Approval of Resolution No. 2022-1303 will include approval of the credit agreement between the District and Bank of the West.

**FUNDING SOURCE:**

Not applicable.

**FISCAL IMPACT**

Approval of the Promissory Note will provide the District with up to \$10 million in short-term financing for funding District capital improvement projects through FYE 2024.

**ENVIRONMENTAL COMPLIANCE:**

Not applicable.

**COMMITTEE STATUS:**

This matter was previously discussed at the January 12, 2021 Finance & Audit Committee.

**RECOMMENDED ACTION**

*Adopt Resolution No. 2022-1303 – Resolution of the Board of Directors of the Trabuco Canyon Water District Approving the Issuance of a Negotiable Promissory Note for the Purpose of Financing Capital Projects and Authorizing the Execution and Delivery of Certain Documents in Connection Therewith and Certain Other Matters.*

**EXHIBIT(S):**

1. DRAFT Resolution No. 2022-1303
2. Credit Agreement between Trabuco Canyon Water District and Bank of the West

**CONTACTS (staff responsible): PALUDI/BYERRUM/COLLINS**

**RESOLUTION NO. 2022-1303**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
TRABUCO CANYON WATER DISTRICT  
APPROVING THE ISSUANCE OF A NEGOTIABLE  
PROMISSORY NOTE FOR THE PURPOSE OF  
FINANCING CAPITAL PROJECTS AND AUTHORIZING  
THE EXECUTION AND DELIVERY OF CERTAIN  
DOCUMENTS IN CONNECTION THEREWITH AND  
CERTAIN OTHER MATTERS**

The Trabuco Canyon Water District (the "District") is a county water district that is duly organized and existing under and pursuant to Division 12 of the California Water Code (Section 30000 *et seq.*) (the "Act").

The District desires to finance the costs of acquiring, constructing and installing certain public facilities and improvements related to its water system (collectively, the "Project").

The District has received proposals from a number of banks with respect to the financing of the Project, and has evaluated such proposals together with its municipal advisor.

The District has determined that it is in the best interest of the District to issue a promissory note having a maximum maturity not in excess of five years and in an amount less than 1% of the assessed valuation of property in the District from time to time under the authority provided by Water Code § 31304 (the "Note"), to enter into a related Credit Agreement (the "Credit Agreement"), by and between the District and Bank of the West (the "Bank"), and to approve certain other documents, to provide for the financing of the Project.

The Note will be payable from all available District funds, including net revenues of the District's water system, wastewater system and reclaimed water system as described in Section 3, to the extent set forth in the Note and the Credit Agreement.

The Credit Agreement is in the best interest of the District and the health, safety and welfare of its residents, is of benefit to the District and complies with all requirements of the Act and California law related thereto, including with respect to the principal amount, term and interest rate thereof.

**THEREFORE, THE BOARD OF DIRECTORS OF THE TRABUCO CANYON WATER DISTRICT HEREBY RESOLVES, DETERMINES AND ORDERS AS FOLLOWS:**

**Section 1:** The foregoing recitals are true and correct.

**Section 2:** The form of the Note, which is attached as Exhibit A to the Credit Agreement, to be issued from time to time, to be dated the date of issuance, execution and delivery thereof, payable to the order of the Bank, is hereby approved and ordered. The President of the Board, the Secretary, the General Manager (including for this purpose any duly designated Interim General Manager or acting General Manager) and the Assistant General Manager (collectively, the “Authorized Officers”) are authorized and directed for and on behalf of the District to execute and deliver such Note, in substantially the form presented at this meeting, with only such revisions thereto as may be required or approved by the District’s General Counsel or Stradling Yocca Carlson & Rauth, as Bond Counsel (“Bond Counsel”), which will be conclusively evidenced by the execution and delivery of such Note; provided that: (i) the Note shall mature on or before June 30, 2024; (ii) the total principal amount of the Note and any other promissory notes issued by the District pursuant to Water Code § 31304 outstanding at any one time shall not exceed the lesser of \$10,000,000 or 1% of the total assessed valuation of the taxable property in the District; and (iii) the interest rate on the Note shall not exceed 1.45% (except in an event of default or taxability, each as set forth in the Credit Agreement), and which in no event shall exceed the maximum interest rate payable by law.

**Section 3:** The Note constitutes a general obligation of the District payable from all legally available District funds. The District also hereby pledges water system, wastewater system and reclaimed water system revenues, including Water Reliability and Emergency Storage Meter Charge revenues (as such term is used in the Funding Agreement (Construction Loan Agreement No. SRF09CX102), dated September 28, 2009 (as amended by the Amendment dated October 27, 2010, the “SRF Loan”), by and between the District and the State of California Department of Public Health) remaining after payment of the SRF Loan, to secure the payment of the principal of and interest on the Note, on a subordinate basis to the pledge of Water Reliability and Emergency Storage Meter Charge revenues under the SRF Loan, all in accordance with the Credit Agreement.

**Section 4:** The Note shall be subject to call and redemption prior to maturity as set forth therein.

**Section 5:** The Credit Agreement is hereby approved substantially in the form on file with the Secretary of the Board. The Authorized Officers are hereby authorized and directed to execute and deliver such Credit Agreement with such changes, insertions and omissions as may be recommended by General Counsel or Bond Counsel and approved by the officer executing the same, said execution being conclusive evidence of such approval.

**Section 6:** The proceeds of the Note shall be applied to finance the Project.

**Section 7:** The Authorized Officers or any other proper officer of the District, acting singly, be and each of them hereby is authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated

by the Note, the Credit Agreement and this resolution. In the event that the President of the Board is unavailable to sign any of the agreements that are described herein, any other member of the Board may sign such agreement. Without limiting the foregoing, the Authorized Officers may apply available funds under the Credit Agreement as in such officer's judgment are reasonably necessary or appropriate to provide funds to pay on a timely basis costs related to the Project.

**Section 8:** The good faith estimates of costs related to the Note which are required by Section 5852.1 of the California Government Code are disclosed in Exhibit A hereto and are available to the public at the meeting at which this resolution is approved.

**Section 9:** This resolution shall take effect immediately.

**ADOPTED, SIGNED AND APPROVED** February 8, 2022:

\_\_\_\_\_  
President/Vice President

APPROVED AS TO FORM:

\_\_\_\_\_  
Claire Collins, General Counsel



## EXHIBIT A

### GOOD FAITH ESTIMATES

The good faith estimates set forth herein are provided with respect to the Note in accordance with California Government Code Section 5852.1. Such good faith estimates have been provided to the District by Fieldman, Rolapp & Associates (the District's "**Municipal Advisor**").

*Principal Amount.* The Municipal Advisor has informed the District that, based on the District's financing plan and current market conditions, its good faith estimate of the principal amount of the Note to be sold is **\$10,000,000** (the "**Estimated Principal Amount**").

*True Interest Cost of the Note.* The Municipal Advisor has informed the District that, assuming that the Estimated Principal Amount of the Note is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the true interest cost of the Note, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the Note, is **1.45%**.

*Finance Charge of the Note.* The Municipal Advisor has informed the District that, assuming that the Estimated Principal Amount of the Note is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the finance charge for the Note, which means the sum of all fees and charges paid to third parties (or costs associated with the Note), is **\$87,000**.

*Amount of Proceeds to be Received.* The Municipal Advisor has informed the District that, assuming that the Estimated Principal Amount of the Note is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the amount of proceeds expected to be received by the District for sale of the Note, less the finance charge of the Note, as estimated above, and any reserves or capitalized interest paid or funded with proceeds of the Note, is **\$9,913,000**.

*Total Payment Amount.* The Municipal Advisor has informed the District that, assuming that the Estimated Principal Amount of the Note is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the total payment amount, which means the sum total of all payments the District will make to pay debt service on the Note, plus the finance charge for the Note, as described above, not paid with the proceeds of the Note, calculated to the final maturity of the Note, is **\$10,344,778**.

The foregoing estimates constitute good faith estimates only. The actual principal amount of the Note issued and sold, the true interest cost thereof, the finance charges thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to: (a) the actual date of the sale of the Note being different than the date assumed for purposes of such estimates; (b) the actual principal amount of Note sold being different from the

Estimated Principal Amount; (c) the actual amortization of the Note being different than the amortization assumed for purposes of such estimates; (d) the actual market interest rates at the time of sale of the Note being different than those estimated for purposes of such estimates; (e) other market conditions; or (f) alterations in the District's financing plan, delays in the financing, additional legal work or a combination of such factors and additional finance charges, if any, attributable thereto. The actual date of sale of the Note and the actual principal amount of Note sold will be determined by the District based on the timing of the need for proceeds of the Note and other factors.

DRAFT

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**CREDIT AGREEMENT**

**Between**

**TRABUCO CANYON WATER DISTRICT**

**And**

**BANK OF THE WEST**

**Dated February 15, 2022**

**TRABUCO CANYON WATER DISTRICT  
PROMISSORY NOTE**

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## CREDIT AGREEMENT

This CREDIT AGREEMENT (as amended and supplemented after the date hereof, this “**Agreement**”) is entered into on February 15, 2022, by and between TRABUCO CANYON WATER DISTRICT, a county water district organized and existing pursuant to the California Water Code (the “**District**”), and BANK OF THE WEST (the “**Bank**”).

### RECITALS

A. The District is a county water district that is duly organized and validly existing under the laws of the State of California and authorized to transact business and exercise powers under and pursuant to the provisions of the County Water District Law (Division 12 of the Water Code of the State of California) (the “**Water Code**”).

B. Pursuant to Section 31304 of the Water Code, the District may issue a negotiable promissory Note (the “**Note**”) payable at a future time or times in order to obtain funds or property for any lawful purpose of the District.

C. The Board of Directors of the District (the “**Board**”) has found and determined that it is necessary to issue Note in order to provide interim funding of the anticipated costs in connection with capital improvement projects of the Enterprises (as such term is defined herein), including but not limited to refurbishment and replacement of pipelines, pump stations, reservoirs, and treatment facilities for water, sanitary sewer, and recycled water systems.

D. The District wishes to authorize the issuance of the Note in an aggregate principal amount of \$[10,000,000].

E. All acts and proceedings required by law necessary to make the Note, when executed by the District and duly issued, the valid, binding and legal special obligations of the District, and to constitute this Agreement a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the adoption and the execution, issuance and delivery of the Note have been in all respects duly authorized.

## ARTICLE I

### DEFINITIONS; EQUAL SECURITY

SECTION 1.01 Definitions. Unless the context otherwise requires, the terms defined in this Section 1.01 shall for all purposes hereof and of any amendment hereof or supplement hereto and of the Note and of any certificate, opinion, request or other document mentioned herein or therein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein:

“Applicable Law” 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.

“Authorized Denominations” means denominations of two hundred fifty thousand dollars (\$250,000) or any integral multiple of five thousand dollars (\$5,000) in excess thereof.

“Authorized Officer” means the President or Vice President of the Board or the Manager or Assistant General of the District, or their designated representatives, or such other representatives of the District designated by resolution of the District.

“Bank” means Bank of the West, as original purchaser of the Note, and its successors and assigns.

“Base Rate” means a fluctuating rate per annum equal to the higher of (i) the Prime Rate and (ii) the Federal Funds Rate plus 0.5% per annum, calculated on the basis of a 360-day year and actual days elapsed.

“Board” means the Board of Directors of the District.

“Bond Counsel” means Stradling Yocca Carlson & Rauth, a Professional Corporation, or another firm of nationally recognized attorneys experienced in the issuance of obligations the interest on which is excludable from gross income under Section 103 of the Code.

“Business Day” means any day other than a Saturday, Sunday or legal holiday or a day on which banks are authorized to be closed for business in California.

“Certificate of the District” means an instrument in writing signed by an Authorized Officer of the District.

“Closing Date” means February 15, 2022.

“Code” means the Internal Revenue Code of 1986, as amended.

“Contracts” means all contracts of the District that are hereafter authorized and executed by the District, the payments under which are payable from Net Revenues on a parity with the Note and which are secured by a pledge and lien on Revenues.

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

(i) the interest accruing during such period on all outstanding Parity Obligations, assuming that all outstanding serial Parity Obligations are retired as scheduled and that all outstanding term Parity Obligations are redeemed or paid from sinking fund payments as scheduled (except to the extent that such interest is capitalized or is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 23 Stat. 115 (2009), enacted February 17, 2009)), or any future similar program);

(ii) those portions of the principal amount of all outstanding serial Parity Obligations maturing in such period, but excluding Excluded Principal;

(iii) those portions of the principal amount of all outstanding term Parity Obligations required to be prepaid or paid in such period, but excluding Excluded Principal; and

(iv) those portions of the Contracts that are required to be paid during such period, (except to the extent that the interest that is evidenced and represented thereby is capitalized or is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code (Section 1531 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 23 Stat. 115 (2009), enacted February 17, 2009)), or any future similar program), but excluding Excluded Principal;

but less the earnings to be derived from the investment of moneys on deposit in debt service reserve funds established for Parity Obligations or Contracts, if any;

provided that, as to any such Parity Obligations or Contracts bearing or comprising interest at other than a fixed rate, the rate of interest used to calculate Debt Service shall, for all purposes, be assumed to be a fixed rate equal to the higher of: (1) the then current variable interest rate borne by such Parity Obligations or Contract plus [1]%; and (2) the highest variable rate borne over the preceding twenty-four (24) months by outstanding variable rate debt issued or executed by the District or, if no such variable rate debt is at the time outstanding, by variable rate debt of which the interest rate is computed by reference to an index that is comparable to that to be utilized in determining the interest rate for the debt then proposed to be issued;

provided further that if any series or issue of such Parity Obligations or Contracts have twenty-five percent (25%) or more of the aggregate principal amount of such series or issue due in any one year (and such principal is not Excluded Principal), Debt Service shall be determined for the period of determination as if the principal of and interest on such series or issue of such Parity Obligations or Contracts were being paid from the date of incurrence thereof in substantially equal annual amounts over a period of thirty-five (35) years from the date of calculation; and

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

provided further that if the Parity Obligations or Contracts constitute paired obligations such as Swap Contracts, the interest rate on such Parity Obligations or Contracts shall be the resulting linked rate or the effective fixed interest rate to be paid by the District with respect to such paired obligations; and

provided further that the amount on deposit in a debt service reserve fund on any date of calculation of Debt Service shall be deducted from the amount of principal due at the final maturity of the Parity Obligations and Contracts for which such debt service reserve fund was established and, to the extent that the amount in such debt service reserve fund is in excess of such amount of principal, such excess shall be applied to the full amount of principal due, in each preceding year, in descending order, until such amount is exhausted.

“Default Rate” means a fluctuating rate per annum equal to the Base Rate plus three percent (3.0%); provided that at no time shall the Default Rate exceed 12% per annum. The Default Rate shall be calculated on the basis of a 365/366-day year and actual days elapsed.

“Defeasance Obligations” means those obligations described in clause (A) of the definition of “Permitted Investments.”

“Delivery Costs” means all items of expense directly or indirectly payable by or reimbursable to the District relating to the issuance of the Note, including but not limited to filing costs, settlement costs, printing costs, reproduction and binding costs, initial fees and charges of the Bank’s counsel, Nixon Peabody LLP (such Bank’s counsel fees in an amount of \$25,000), financing discounts, legal fees and charges, financial and other professional consultant fees, fees for execution, transportation and safekeeping of the Note, fees of the California Debt Advisory and Investment Commission and charges and fees in connection with the foregoing.

“Determination of Taxability” means and shall be deemed to have occurred on the first to occur of the following:

(1) the date on which the District files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have in fact occurred;

(2) the date on which the Bank has received written notification from the District, supported by a written opinion of Bond Counsel to the effect that an Event of Taxability has occurred;

(3) the date on which the District shall be advised in writing by the Commissioner or any district director of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar function from time to time) that, based upon filings of the District (or a statutory notice of deficiency, or a document of substantially similar import), or upon any review or audit of the District, or upon any other ground whatsoever, an Event of Taxability shall have occurred; or

(4) on the date when the District shall receive notice from the Bank that the Internal Revenue Service (or any other Governmental Authority exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of the Bank due to the occurrence of an Event of Taxability;

provided, however, that: (i) no Determination of Taxability shall occur under clauses (3) or (4) above unless the District has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; and (ii) upon demand from the Bank, the District shall promptly reimburse the Bank or any such other Owner for any payments, including any taxes, interest, penalties or other charges the Bank or Owner shall be obligated to make as a result of the Determination of Taxability.

“District” means Trabuco Canyon Water District, a county water district.

“Enterprises” means, collectively, the Water Fund, the Wastewater Fund, and the Reclaimed Water Fund.

“Enterprise Systems” means, collectively, the Water System, the Wastewater System, and the Reclaimed Water System.

“Environmental Laws” means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, or rules, and all judgments, orders, decrees, permits, concessions, grants, franchises, licenses, permits, agreements or governmental restrictions relating to air, water or land pollution, wetlands, or the protection of the environment or the release of any materials into the environment, including air, water or land and those related to Hazardous Materials, air emissions and discharges to waste or public systems.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the District directly or indirectly resulting from or based upon: (1) violation of any Environmental Law; (2) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials; (3) exposure to any Hazardous Materials; (4) the release or threatened release of any Hazardous Materials into the environment; or (5) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Event of Default” means an event of default described in Section 6.01.

“Event of Taxability” means: (1) a change in Applicable Law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the District, or the failure to take any action by the District, or the making by the District of any misrepresentation herein or in any certificate required to be given in connection with this Agreement) which has the effect of causing interest paid or payable on the Note to become includable, in whole or in part, in the gross income of the Bank or any other Owner thereof for federal income tax purposes; or (2) the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service or the Department of the Treasury, which decree, judgment or action shall be final under applicable procedural law, in either case, which has the effect of causing interest paid or payable on the Note to become includable, in whole or in part, in the gross income of the Bank or any other Owner for federal income tax purposes.

“Excluded Principal” means each payment of principal of any Parity Obligation or Contract for which there is on file with the Bank: (1) a certificate of an Independent Financial Consultant to the effect that such Parity Obligation or Contract is commercial paper or otherwise of a revolving or short-term nature and has a maturity of less than 42 months; and (2) a certificate of an authorized representative of the District to the effect that the District intends to pay such principal from the proceeds of Parity Obligations or Contracts or other bonds, notes or other obligations of the District. No such determination shall affect the security for such Parity Obligations or Contracts or the obligation of the District to pay such Parity Obligations or Contracts from Net Revenues.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average (rounded upwards, if necessary to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Bank from three Federal funds brokers of recognized standing selected by it.

“Fiscal Year” means the period from July 1 of each year through June 30 of the following year, or any other twelve-month period that is selected and designated as the official Fiscal Year of the District.

“Generally Accepted Accounting Principles” means the uniform accounting and reporting procedures prescribed by the California State Controller or its successor for municipal corporations in the State of California, or failing the prescription of such procedures means generally accepted accounting principles as presented and recommended by the American Institute of Certified Public Accountants or its successor, or by the National Council on Governmental Accounting or its successor, or by any other generally accepted authority on such principles.

“Governmental Authority” means the government of the United States or any state or political subdivision thereof or any other nation or political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other person with authority to bind a party at law.

“Hazardous Materials” means: (1) any petroleum or petroleum products, flammable substance, explosives, radioactive materials, hazardous waste or contaminants, toxic wastes, substances or contaminants, or any other wastes, contaminants, or pollutants; (2) asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers, or other equipment that contains dielectric fluid containing levels of polychlorinated biphenyls or radon gas; (3) any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants” or “pollutants,” or words of similar import, under any applicable Environmental Law; (4) any other chemical, material or substance, exposure to which is prohibited, limited, or regulated by any governmental authority; and (5) any other chemical, material or substance which may or could pose a hazard to the environment.

“Independent Certified Public Accountant” means any firm of certified public accountants that is appointed by the District, and each of whom is independent pursuant to the Statement on Auditing Standards No. 1 of the American Institute of Certified Public Accountants.

“Independent Financial Consultant” means a financial consultant or firm of such consultants that is appointed by the District, and who, or each of whom: (1) is in fact independent and not under domination of the District; (2) does not have any substantial interest, direct or

indirect, with the District; and (3) is not connected with the District as an officer or employee of the District, but who may be regularly retained to make reports to the District.

“Interest Payment Date” means July 1, 2022 and each January 1 and July 1 thereafter through and including the Maturity Date. Moneys due hereunder on any Interest Payment Date which is not a Business Day shall be paid on the immediately following Business Day, without the accrual of additional interest thereon.

“Investment Agreement” means any investment agreement (including guaranteed investment contracts, forward delivery agreements, repurchase agreements or similar obligations) with, or guaranteed by, an entity the long-term unsecured obligations or the claims paying ability of which are rated “A” or better by a nationally recognized rating agency (without regard to gradations or modifiers within such category) at the time of initial investment.

“Manager” means the General Manager of the District, or any other person that is designated by the General Manager to act on behalf of the General Manager.

“Margin Stock” has the meaning ascribed to such term in Regulation U and/or Regulation X promulgated by the Federal Reserve Board, as now and hereafter from time to time in effect.

“Maturity Date” means July 1, 2024, or such later date as agreed to by the District and the Bank pursuant to an amendment hereto.

“Net Proceeds” means, when used with respect to any casualty insurance or condemnation award, the proceeds from such insurance or condemnation award remaining after payment of all expenses (including attorneys’ fees) incurred in the collection of such proceeds.

“Net Revenues” means, for any Fiscal Year or other period, the Revenues for such Fiscal Year or other period less the Operation and Maintenance Costs for such Fiscal Year or other period.

“Note Register” means the register of the names of each Owner of the Note, which shall be kept for that purpose by the District.

“Note” means the Trabuco Canyon Water District Promissory Note authorized hereby in a principal amount of \$[10,000,000] issued by the District under and pursuant to Article II of this Agreement.

“Operation and Maintenance Costs” means costs spent or incurred for maintenance and operation of the Enterprise Systems calculated in accordance with Generally Accepted Accounting Principles, including (among other things) the reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Enterprise Systems in good repair and working order, and including administrative costs of the District that are charged directly or apportioned to the Enterprise Systems, including but not limited to salaries and wages of employees, payments to the Public Employees Retirement System, overhead, insurance, taxes (if any), fees of auditors, accountants, attorneys, consultants or engineers and insurance premiums, and including all other reasonable and necessary costs of the District or charges (other than Debt Service) required to be paid by it to comply with the terms of any Contract or of any resolution or indenture authorizing the issuance of any Parity Obligations or of such Parity Obligations, but

excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature.

“Outstanding” when used as of any particular time with reference to the Note, means (subject to the provisions of Section 7.02) the Note except: (1) the Note canceled by the District; (2) the Note paid or deemed to have been paid within the meaning of Article VIII; and (3) the Note in lieu of or in substitution for which replacement Note shall have been executed and delivered hereunder.

“Owner” or “Note Owner” means the registered owner of any Outstanding Note.

“Parity Obligations” means the Note and all other revenue bonds or notes of the District that are authorized, executed, issued and delivered by the District, the payments of which are payable, in whole or part, from Net Revenues on a parity with the Note and which are secured, in whole or part, by a pledge of and lien on Revenues.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107-56 (signed into law October 26, 2001), as amended.

“Permitted Investments” means any of the following which at the time of investment are legal investments under the laws of the State for the moneys proposed to be invested therein:

(A) for all purposes, including: (i) as defeasance investments in refunding escrow accounts; and (ii) for the purpose of investing (and receiving premium credit for) accrued and capitalized interest: (1) cash; or (2) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America; and

(B) for all purposes other than: (i) defeasance investments in refunding escrow accounts; and (ii) investing (and receiving credit for) accrued and capitalized interest: (1) obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America, including the Export-Import Bank; Farmers Home Administration; General Services Administration; U.S. Maritime Administration; Small Business Administration; Government National Mortgage Association (GNMA); U.S. Department of Housing & Urban Development (PHAs); and Federal Housing Administration; (2) bonds, notes or other evidences of indebtedness rated “AAA” and “Aaa” by the applicable Rating Agency issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years; (3) U.S. dollar denominated deposit accounts, certificates of deposit, federal funds and banker’s acceptances with domestic commercial banks, which may include the Bank and its affiliates, which have a rating on their short term certificates of deposit on the date of purchase of “A-1” or “A-1+” by S&P (ratings on holding companies are not considered as the rating of the bank); (4) commercial paper which is rated at the time of purchase in the single highest classification, “A-1+” by S&P and which matures not more than 270 days after the date of purchase; (5) investments in a money market mutual fund rated “AAAm” or “AAAm-G” or better by S&P, excluding funds which have a floating net asset value; (6) pre-refunded municipal obligations defined as follows: any bonds or other obligations of any state of

the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice and which are rated, based on the escrow, in the highest rating category of S&P, or any successor thereto; (7) any Investment Agreement; (8) the Local Agency Investment Fund of the State; (9) shares in a State common law trust established pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State of California which invests exclusively in investments permitted by Section 53601 of Title 5, Division 2, Chapter 4 of the Government Code of the State of California, as it may be amended, i.e. "CAMP;" and (10) any other investment permitted by law.

"Prime Rate" means an index for a variable interest rate which is quoted, published or announced by the Bank as its prime rate and as to which loans may be made by the Bank at, above or below such rate.

"Reclaimed Water Service" means the water service that is made available or provided by the Reclaimed Water System.

"Reclaimed Water Fund" means the fund pursuant to which revenues generated by the Reclaimed Water System are deposited.

"Reclaimed Water System" means the whole and each and every part of recycled and reclaimed water system of the District, including the portion thereof existing on the date hereof, and including all additions, betterments, extensions and improvements to such recycled and reclaimed water system or any part thereof hereafter acquired or constructed.

"Record Date" means the fifteenth day of the calendar month prior to an Interest Payment Date.

"Redemption Account" means the account of that name established by the District pursuant to Section 4.02 hereof

"Redemption Notice" has the meaning assigned to such term in Section 4.02.

"Related Documents" means this Agreement, the Note, the Tax Certificate, the Resolution and any other documents executed in connection herewith.

"Resolution" means Resolution No. [\_\_\_\_\_] of the District, adopted on February [\_\_\_], 2022.

"Revenue Fund" means the account by that name established pursuant to Section 3.01 hereto together with other accounts that may be created in the future and designated by action of the Board of Directors of the District.

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

(1) all income, rents, rates, fees, charges, business interruption insurance proceeds or other moneys derived by the District from the furnishing of potable water service, recycled and reclaimed water service, wastewater collection and treatment, provision of other services, facilities, and commodities sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the Enterprise Systems; plus

(2) the facility capacity charges or similar charges related to the Enterprise Systems; plus

(3) for any Fiscal Year, the amount of 1% ad valorem property taxes allocated by the Board to the Enterprise Systems, if and to the extent received by the District; plus

(4) the earnings on and income derived from the investment of the amounts described in clauses (1), (2) and (3) hereof;

but excluding in all cases customer deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the District, and excluding from the Water Fund the Water Reliability and Emergency Storage Meter Charge revenue, but only to the extent such revenue is first paid towards the State of California Department of Public Health pursuant to Article B-3 of the SDWSRF Loan Agreement.

“S&P” means S&P Global Ratings, a Standard & Poor’s Financial Services LLC business, or any successor thereto.

“SDWSRF Loan Agreement” means the Funding Agreement (Construction Loan Agreement No. SRF09CX102 dated September 28, 2009) between the State of California Department of Public Health and the District, as amended and supplemented.

“Swap Contract” means: (1) any and all rate swap transactions, basis swaps, total return swaps, credit derivative transactions, forward rate transactions, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, cap transactions, floor transactions, collar transactions, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement; and (2) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Tax Certificate” means the Tax Certificate dated the Closing Date, concerning certain matters pertaining to the use and investment of proceeds of the Note, executed by the District, including any and all exhibits attached thereto.

“Taxable Date” means the date on which interest on the Note is first includable in gross income of the Bank or any Owner thereof as a result of an Event of Taxability, as such a date is established pursuant to a Determination of Taxability.

“Taxable Rate” means [\_\_\_\_\_] % per annum.

“Wastewater Fund” means the fund pursuant to which revenues generated by the Wastewater System are deposited.

“Wastewater Service” means the wastewater treatment service that is made available or provided by the Wastewater System.

“Wastewater System” means the whole and each and every part of the wastewater collection and treatment system of the District, including the portion thereof existing on the date hereof, and including all additions, betterments, extensions and improvements to such wastewater collection and treatment system or any part thereof hereafter acquired or constructed.

“Water Fund” means the fund pursuant to which revenues generated by the Water System are deposited.

“Water Service” means the potable water service that is made available or provided by the Water System.

“Water System” means the whole and each and every part of the potable water system of the District, including the portion thereof existing on the date hereof, and including all additions, betterments, extensions and improvements to such potable water system or any part thereof hereafter acquired or constructed.

“Water Code” means Division 12 of the Water Code of the State of California.

SECTION 1.02 Equal Security. In consideration of the acceptance of the Note by the Owners, this Agreement shall be deemed to be and shall constitute a contract by and among the District and the Owners to secure the full and final payment of the interest and principal and redemption premiums, if any, to be made by the District on the Note, subject to the agreements, conditions, covenants and terms contained herein; and all agreements, conditions, covenants and terms contained herein required to be observed or performed by or on behalf of the District shall be for the equal and proportionate benefit, protection and security of all Owners without distinction, preference or priority as to benefit, protection or security of this Note over any other Note by reason of the number or date thereof or the time of execution or delivery thereof or otherwise for any cause whatsoever, except as expressly provided herein or therein.

## ARTICLE II

### TERMS AND CONDITIONS OF THE NOTE

SECTION 2.01 Preparation of the Note. Solely for the purpose of providing funding for capital improvement projects of the Enterprises (as such term is defined herein), including but not limited to refurbishment and replacement of pipelines, pump stations, reservoirs, and treatment facilities for water, sanitary sewer, and recycled water systems, the District hereby determines to and shall borrow an aggregate principal amount of \$[10,000,000] by the issuance of a short-term promissory note under Section 31304 of the Water Code. The Note is designated “Trabuco Canyon Water District Promissory Note.” The Bank agrees to purchase the Note in immediately

available funds. The Note shall mature on the Maturity Date and shall bear interest as set forth in Section 2.03.

SECTION 2.02        Denominations, Medium, Method and Place of Payment and Dating of the Note. The Note shall be issued in the form of a single fully registered Note in the amount of [\$10,000,000]. The interest and principal on the Note shall be payable by check in lawful money of the United States of America. Interest on the Note shall be payable on the Interest Payment Dates by check mailed via first class mail on the Interest Payment Date by the District to the respective Owners thereof as of the Record Date at their addresses as they appear in the books required to be kept by the District pursuant to the provisions of Section 2.07 hereof, or: (i) upon the written request from any Owner of the Note aggregating at least \$1,000,000 in principal amount, received on or prior to the fifteenth day of the month preceding an applicable Interest Payment Date; or (ii) while the Bank is the sole Owner of the Note, by wire in Federal Reserve funds to the following account within the United States on the applicable Interest Payment Date, or to such other account as the Bank shall direct the District:

ABA: [\_\_\_\_\_]
Bank of the West
[180 Montgomery Street]
[San Francisco, California 94104]
Loan Services Wire Account Number: [\_\_\_\_\_]
[Trabuco Canyon Water District]
Loan Reference Number: [\_\_\_\_\_]

The principal of the Note shall be payable on the Maturity Date, or on any date prior thereto, upon surrender thereof to the District. The Bank is hereby authorized to note the date, principal amount and interest rate applicable to the Note and any payments made thereon on the Bank's books and records (either manually or by electronic entry), which notations shall be conclusive evidence of the accuracy of the information noted.

The Note shall be dated and shall bear interest from the Closing Date.

SECTION 2.03        Interest on the Note.

(a) Rate of Interest. Interest shall accrue on the unpaid balance of the Outstanding principal amount of the Note at the rate of 1.45% (computed on a 30/360 day basis), except as set forth in clauses (c) and (d).

(b) Payment of Interest. Interest accrued on the Note shall be payable on each Interest Payment Date.

(c) Event of Taxability. On and after the Taxable Date, the Outstanding principal amount of the Note shall bear interest at the Taxable Rate.

(d) Default Interest. From and after the Maturity Date of the Note, or upon the occurrence and during the continuance of an Event of Default, the outstanding principal balance of the Note shall bear interest until paid in full at the Default Rate (computed on the basis of a 360-day year, actual days elapsed).

SECTION 2.04        Form of Note. The Note and the assignment to appear thereon shall be in substantially the form set forth in Exhibit A hereto with appropriate or necessary insertions, omissions and variations as permitted or required hereby. The Note may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the District, shall be without coupons and may contain such reference to any of the provisions hereof as may be appropriate.

SECTION 2.05        Execution of the Note. The Note shall be executed by the manual signature of the President, Vice President or Manager of the District, and shall be attested to by the manual signature of the Secretary or Assistant Secretary of the District.

SECTION 2.06        Transfer and Exchange of the Note.

(a)        Each Note shall be transferable only upon the Note Register by the Owner thereof in person or by his attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the District duly executed by the Owner or his duly authorized attorney. Upon the transfer of any such Note, the District shall provide in the name of the transferee a new Note or Notes of the same aggregate principal amount, interest rate and maturity as the surrendered Note (unless there has occurred a partial redemption of such Note pursuant to Section 4.01, in which case the principal amount of the new Note shall be equal to the unredeemed principal amount of the Note submitted for transfer).

(b)        The District shall deem and treat the person in whose name any Outstanding Note shall be registered upon the Note Register as the absolute owner of such Note, whether such Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Note and for all other purposes, and all such payments so made to any such Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid, and the District shall not be affected by any notice to the contrary.

In all cases in which the privilege of exchanging or transferring the Note is exercised, the District shall execute and deliver the Note in accordance with the provisions of this Article. The Note surrendered in any such exchanges or transfers shall forthwith be canceled by the District. For every such exchange or transfer of the Note, whether temporary or definitive, the District may make a charge sufficient to reimburse it for any tax, fee or other governmental charge, other than one imposed by the District, required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. Notwithstanding any other provision hereof, the cost of preparing each new Note and any other expenses of the District incurred in connection therewith (except any applicable tax, fee or other governmental charge other than one imposed by the District) shall be paid by the District. The District shall not be obliged to effect any exchange or transfer of any Note during the period after the mailing of notice calling such Note or a portion thereof for redemption, nor during the five (5) days preceding the giving of such notice of redemption.

(c)        The following provisions shall apply to all sales and transfers of the Note after the initial sale and delivery of the Note:

(i) The Note, in the form attached hereto as Exhibit A, shall be a physical certificated instrument, and shall not be held in a book-entry only system.

(ii) The Note shall only be sold and transferred in Authorized Denominations: (A) to Accredited Investors (as such term is defined in Section 2(a)(15) of the Securities Act of 1933, as amended); or (B) to Qualified Institutional Buyers (as such term is defined in Rule 144A promulgated under the Securities Act of 1933, as amended). Each transferee of the Note shall certify as to the matters set forth in this Section 2.06(c)(ii) and in Section 2.11 at the time of transfer of the Note.

(iii) The Bank shall not sell or transfer the Note, or any participation therein, without complying with all applicable securities laws.

(iv) No transfer or sale shall be made that would cause there to be more than two (2) Registered Owners of the Note or the creation of any interest in the Note in an aggregate principal amount of less than \$250,000. In the event that an Owner is proposing to transfer its Note which would cause the total number of Registered Owners to exceed two (2), then the District shall so notify the Owner and shall not be obligated to make such proposed transfers.

SECTION 2.07 Note Registration Books. The District shall keep or cause to be kept a Note Register; and, upon presentation for such purpose, the District shall, under such reasonable regulations consistent herewith as it may prescribe, register or transfer or cause to be registered or transferred, on the Note Register, the Note as herein before provided.

SECTION 2.08 Note Mutilated, Destroyed, Lost or Stolen. If any Note shall become mutilated, the District, at the expense of the Owner of said Note, shall execute and deliver a new Note of like tenor in exchange and substitution for the Note so mutilated, but only upon surrender to the District of the Note so mutilated. Every mutilated Note so surrendered to the District shall be canceled by it and destroyed. If any Note shall be lost, destroyed or stolen, evidence of such loss, destruction or theft shall be submitted to the District, and, if such evidence is satisfactory to the District and if an indemnity satisfactory to the District shall be given, the District, at the expense of the Owner, shall execute and deliver a new Note of like tenor and numbered as the District shall determine in lieu of and in substitution for the Note so lost, destroyed or stolen. The District may require payment of a reasonable fee for each new Note delivered under this Section and of the reasonable expenses which may be incurred by the District in carrying out the duties under this Section. Any Note issued under the provisions of this Section in lieu of any Note alleged to be lost, destroyed or stolen shall be equally and proportionately entitled to the benefits hereof with the Note secured by this Agreement. The District shall not be required to treat both the original Note and any replacement Note as being Outstanding for the purpose of determining the principal amount of the Note which may be issued under this Agreement or for the purpose of determining any percentage of the Note Outstanding under this Agreement, but both the original and replacement Note shall be treated as one and the same. Notwithstanding any other provision of this Section, in lieu of delivering a new Note for a Note which has been mutilated, lost, destroyed or stolen and which has matured, the District may make payment of such Note upon receipt of indemnification satisfactory to the District.

SECTION 2.09 Evidence of Signatures of Note Owners and Ownership of the Note. Any request, direction, consent, revocation of consent, or other instrument in writing required or permitted by this Agreement to be signed or executed by Note Owner may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such Note Owners in person or by their attorneys or agents appointed by an instrument in writing for that purpose. Proof of the execution of any such instrument, or of any instrument appointing any such attorney or agent, and of the holding and ownership of the Note shall be sufficient for any purpose hereof (except as otherwise herein provided), if made in the Form of the Assignment attached to the Note in Exhibit A.

Nothing contained in this Article shall be construed as limiting the District to such proof, it being intended that the District may accept any other evidence of the matters herein stated which to the District may seem sufficient. Any request or consent of the Owner of any Note shall bind every future Owner of the same Note in respect of anything done or suffered to be done by the District in pursuance of such request or consent.

SECTION 2.10 Additional Obligations. No provision herein shall be construed to prevent the District from incurring other obligations, in such principal amount as shall be determined by the District, subject to Section 5.17 hereof.

SECTION 2.11 Transfer of Ownership. The Bank hereby represents, and any transferee shall be required to represent, that such purchaser is acquiring the Note for its own account for the purpose of lending or investment and not with a view to the distribution thereof and that such purchaser has no present intention of selling, negotiating, or otherwise disposing of the Note; provided, however, that the Bank may transfer the Note to affiliates of the Bank or to banks, insurance companies or other financial institutions or their affiliates, including participation arrangements with such entities, so long as the provisions of Section 2.06(c) are met.

SECTION 2.12 Reimbursement of Costs and Expenses. The District agrees to pay on demand by Bank all costs, expenses and fees incurred or assessed by the Bank in connection with the preparation, execution and delivery of this Agreement, the Note and any other documents which may be delivered in connection with this Agreement and the Note including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Bank (to include outside counsel fees in the amount of \$25,000 and all allocated costs of the Bank's in-house counsel), any waiver or amendment or the giving of any consent under, this Agreement or the Note and such instruments, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Bank (to include outside counsel fees and all allocated costs of the Bank's in-house counsel) with respect thereto and with respect to advising the Bank as to its rights and responsibilities under this Agreement, all reasonable costs and expenses, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Bank (to include outside counsel fees and all allocated costs of the Bank's in-house counsel), if any, in connection with the enforcement of the Note and such other documents which may be delivered in connection with this Agreement.

SECTION 2.13 Restrictions on the Note. The Note shall not be: (a) assigned a rating by any credit rating agency; (b) registered with The Depository Trust Company or any other

securities depository; (c) offered pursuant to any type of offering document or official statement; or (d) assigned a CUSIP number by S&P's CUSIP Service.

### **ARTICLE III PROCEEDS OF THE NOTE; PLEDGE OF REVENUES**

SECTION 3.01        Delivery of the Note; Payment of Debt Service. Upon the terms and conditions set forth herein, subject to fulfillment of each of the conditions precedent set forth in Section 3.03 hereof, and upon the basis of the representations set forth herein, the Bank hereby agrees to provide funds to the District in an aggregate principal amount of \$\_\_\_\_\_.

The obligation of the District to pay the principal of and interest on the Note is absolute and unconditional, and until such time as the Note shall have been paid in full (or provision for the payment thereof shall have been made pursuant to Article VIII), the District will not discontinue or suspend any payment under the Note which is required to be made by it under this Section when due, whether or not the Enterprise Systems or any part thereof are operating or operable or their use is suspended, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

In order to provide for the timely payment of the Note, the District hereby pledges Revenues of the District on a parity with the pledge and lien securing the Parity Obligations and Contracts issued or incurred in accordance with Section 5.17 hereof, if any. Payment of the Note shall be made solely from Net Revenues as follows:

The Revenues, other amounts that are on deposit in the Revenue Fund and any other amounts (including proceeds of the Note) which are held in any fund or account that is established pursuant to this Agreement are irrevocably pledged to the payment of the Note. Except for the payment of Operation and Maintenance Costs, the Revenues shall not be used for any other purpose while any of the Note remain unpaid; provided that out of the Revenues there may be apportioned such sums for such purposes as are expressly permitted herein. This pledge shall constitute a first lien on Revenues, the Revenue Fund and the other funds and accounts that are created hereunder for the payment of the Note and all other Contracts and Parity Obligations in accordance with the terms hereof.

In order to carry out and effectuate the pledge and lien contained herein, the District agrees and covenants that all Revenues shall be received by the District in trust hereunder and shall be deposited when and as received in a special fund designated as the "Revenue Fund," which fund is hereby created and which fund the District agrees and covenants to maintain and to hold separate and apart from other funds. Moneys in the Revenue Fund shall be used and applied by the District as provided in this Agreement.

The District shall, from the moneys in the Revenue Fund, pay all Operation and Maintenance Costs (including amounts which are reasonably required to be set aside in contingency reserves for Operation and Maintenance Costs, the payment of which is not then immediately required) as they become due and payable. All remaining moneys in the Revenue

Fund shall be set aside by the District at the following times in the following respective special funds in the following order of priority, and all moneys in each of such funds shall be held in trust and shall be applied, used and withdrawn only for the purposes hereinafter authorized in this section:

(a) Note. The District shall (i) on or before each Interest Payment Date, transfer to the Owner of the Note an amount that is equal to the interest payable and coming due on such Note; and (ii) on or before July 1, 2024, transfer to the Owners an amount that is equal to the principal payable and coming due on such Note. The District shall also, from the moneys in the Revenue Fund, transfer to the applicable trustee for deposit in the applicable payment fund, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, any other Debt Service in accordance with the provisions of the Contract, Parity Obligation, resolution or indenture relating thereto, if any.

(b) Surplus. Moneys on deposit in the Revenue Fund which are not necessary to make any of the payments which are required above may be expended by the District at any time for any purpose permitted by law.

SECTION 3.02 Deposit of Proceeds of the Note and Other Amounts. The purchase price of the Note shall be delivered to the District on the Closing Date pursuant to instructions provided by and executed by the District thereto.

SECTION 3.03 Closing Conditions. The obligation of the Bank to execute this Agreement is subject to the satisfaction, or waiver, of the following conditions on or before the Closing Date, each to the satisfaction of the Bank in its sole discretion and, as to any agreement, document or instrument specified below, each in form and substance satisfactory to the Bank:

(a) This Agreement executed by the District.

(b) The Note executed by the District.

(c) The Tax Certificate executed by the District.

(d) Evidence of any and all insurance policies required by this Agreement or by other Related Documents, and evidence that Bank has been added as an “additional insured” to such policies with respect to liability coverage.

(e) A certificate or certificates, signed by an authorized representative of the District, certifying (i) the resolution of the District authorizing the execution, delivery and performance of each Loan Document to which it is a party, (ii) that no Event of Default under this Agreement has occurred and is continuing, (iii) the representations and warranties set forth in this Agreement are true and correct as of the Closing Date, (iv) the name and true signature of the incumbent officer of the District authorized to sign the Related Documents to which it is a party under the Agreement.

(f) Written opinions of the District’s bond counsel and general counsel, addressed to the Bank and otherwise in form and substance satisfactory to the Bank.

(g) There shall not have occurred a material adverse change in the facts and information regarding the District as represented by such entities to date.

(h) No action, suit, investigation or proceeding is pending or, to the knowledge of the District, threatened in any court or before any arbitrator or Governmental Authority that seeks to prevent, enjoin or delay the issuance of the Note.

(i) Such other documents or items as required by Bank in its reasonable discretion.

SECTION 3.04 Investment of Funds. Upon receipt of the consent of the Owners of a majority of the Note Outstanding, the District is allowed to transfer any of the funds held by it pursuant to this Agreement into a separate fund or funds for investment purposes only; provided, however, that all funds or accounts held by the District hereunder shall constitute collateral for the Note.

#### **ARTICLE IV REDEMPTION OF THE NOTE**

SECTION 4.01 Terms of Redemption.

(a) The District may or shall, as the case may be, prepay from Net Proceeds as provided herein the Note in whole, or in part, on any date in the order of payment date as directed by the District, at a redemption price equal to the sum of the principal amount to be redeemed plus accrued interest thereon to the date of redemption, without premium.

(b) The District may redeem the Note as a whole, or in part, on any date in the order of payment date as directed by the District, at a redemption price equal to the principal amount of the Note to be redeemed, together with accrued interest thereon to the date of redemption, without premium.

(c) Notwithstanding any such redemption, the District shall not be relieved of its obligations hereunder, including its obligations under Article III, until the Note has been fully paid (or provision for payment thereof shall have been provided to the written satisfaction of the Owner).

SECTION 4.02 Redemption Account; Notice of Redemption. On the optional redemption date selected by the District, moneys to accomplish any such optional redemption shall be deposited in the Redemption Account to be established and held by the District. All money in the Redemption Account shall be used and withdrawn solely for the purpose of paying the interest on, premium, if any, and principal of the Note to be optionally redeemed on their respective redemption dates.

When redemption is authorized or required pursuant to this Article, the District shall give notice (the "Redemption Notice") of the redemption of the Note. Such Redemption Notice shall be given at least fifteen (15) days prior to the redemption date or such lesser period agreed to by the Owners in their sole discretion. Such Redemption Notice shall specify: (a) the Note or designated portions thereof (in the case of redemption of the Note in part but not in whole) which

are to be redeemed; (b) the date of redemption; (c) the place or places where the redemption will be made, including the name and address of any paying agent; (d) the redemption price; and (e) in the case of any Note to be redeemed in part only, the amount of such Note to be redeemed. Such Redemption Notice shall further state that on the specified date there shall become due and payable upon each Note or portion thereof being redeemed the redemption price, together with interest accrued to the redemption date, and that from and after such date interest with respect thereto shall cease to accrue and be payable.

Neither failure to receive any Redemption Notice nor any defect in such Redemption Notice so given shall affect the sufficiency of the proceedings for the redemption of the Note.

SECTION 4.03 Effect of Redemption. Notice having been given as aforesaid, the portion of the Note to be redeemed shall become due and payable on said redemption date, and, upon presentation and surrender thereof at the office or offices specified in said notice, said Note shall be paid at the unpaid principal amount and premium, if any, with respect thereto, plus any unpaid and accrued interest to said redemption date.

On said redemption date, interest with respect to the portion of the Note to be redeemed shall cease to accrue and become payable. If moneys sufficient for the redemption of the Note to be redeemed, together with interest to said redemption date, shall not be so available on said redemption date, interest with respect to such portion of the Note shall continue to be payable until paid at the same rates as they would have been payable had they not been called for redemption.

## **ARTICLE V REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE DISTRICT**

SECTION 5.01 Punctual Payment. The District covenants that it will duly and punctually pay or cause to be paid the principal of and interest on every Note issued hereunder, on the date, at the place and in the manner provided in this Agreement. The District further covenants that all legally available Enterprise System charges, tolls and assessments shall be duly and punctually collected and deposited into the District's accounts.

SECTION 5.02 Compliance with Agreement. The District will not suffer or permit any default by it to occur under the Note or hereunder, but will faithfully comply with, keep, observe and perform all of the agreements, conditions, covenants and terms thereof and hereof required to be complied with, kept, observed and performed by it. The District shall not amend, modify or supplement in any manner whatsoever the Resolution without the prior written consent of the Bank, nor shall it amend, modify or supplement any provision of the Resolution or any other Related Document, in a manner which would have an adverse effect upon the District's ability to perform its obligations under this Agreement or to repay indebtedness that is secured by the Revenues or which adversely affects the security for the Note or the District's ability to repay when due its obligations or the rights, interests, security or remedies of the Bank under this Agreement, the Resolution or the other Related Documents.

SECTION 5.03 Observance of Laws and Regulations. The District will faithfully comply with, keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States of America or

of the State of California, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of each and every franchise, right or privilege now owned or hereafter acquired by it, including their right to exist and carry on their respective businesses, to the end that such franchises, rights and privileges shall be maintained and preserved and shall not become abandoned, forfeited or in any manner impaired.

SECTION 5.04        Prosecution and Defense of Suits. The District will promptly, upon request of any Owner, take such action from time to time as may be necessary or proper to remedy or cure any cloud upon or defect in the title to the Enterprise Systems or any part thereof, whether now existing or hereafter developing, will prosecute all actions, suits or other proceedings as may be appropriate for such purpose and will indemnify and save every Owner harmless from all cost, damage, expense or loss, including attorneys' fees, which they or any of them may incur by reason of any such cloud, defect, action, suit or other proceeding. Additionally, the District will promptly, upon request of any Owner, take such action from time to time as may be necessary or proper to enforce the District's rights and remedies under any contract related to the Enterprise Systems. Except as required by Applicable Law, the District agrees not to assert the defense of any future right of sovereign immunity in any legal proceeding to enforce or collect upon the obligations of the District under this Agreement or any other Related Document or the transactions contemplated hereby or thereby.

SECTION 5.05        Accounting Records and Statements. The District will keep proper accounting records, and such accounting records shall be available for inspection by any Owner of not less than ten percent (10%) of the Outstanding Note or such Owner's agent duly authorized in writing on any Business Day, upon reasonable notice at reasonable hours and under reasonable conditions prescribed by the District.

In addition, the District shall provide to the Owner all of the following:

(a)        Within 270 calendar days after the end of each Fiscal Year, the District will provide to the Owners: (i) its audited financial statements for the prior Fiscal Year; (ii) a calculation of Debt Service coverage on all Contracts and Parity Obligations outstanding during the prior Fiscal Year; and (iii) a compliance certificate which shall be substantially similar to the form set forth in Exhibit B hereto.

(b)        Within 60 calendar days after the adoption thereof, the District will provide to the Owners a copy of its annual budget.

(c)        Any other financial or operating information that may be reasonably requested by the Owners.

SECTION 5.06        Further Assurances. Whenever and so often as requested to do so by any Owner, the District will promptly execute and deliver or cause to be executed and delivered all such other and further assurances, documents or instruments and promptly do or cause to be done all such other and further things as may be necessary or reasonably required in order to further and more fully vest in the Owners all advantages, benefits, interests, powers, privileges and rights conferred or intended to be conferred upon them by this Agreement.

SECTION 5.07 Tax Covenants. Notwithstanding any other provision of this Agreement, absent an opinion of Bond Counsel that the exclusion from gross income of the interest on the Note will not be adversely affected for federal income tax purposes, the District covenants to comply with all applicable requirements of the Code which are necessary to preserve the exclusion from gross income of the interest on the Note and specifically covenants, without limiting the generality of the foregoing, as follows:

(a) Private Activity. The District will take no action or refrain from taking any action, and the District will make no use of the proceeds of the Note or of any other moneys or property, which would cause the Note to be “private activity bonds” within the meaning of Section 141 of the Code;

(b) Arbitrage. The District will make no use of the proceeds of the Note or of any other amounts or property, regardless of the source, and the District will not take any action or refrain from taking any action, which will cause the Note to be “arbitrage bonds” within the meaning of Section 148 of the Code;

(c) Federal Guarantee. The District will make no use of the proceeds of the Note, and the District will not take or omit to take any action, that would cause the Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code;

(d) Information Reporting. The District will take or cause to be taken all necessary action to comply with the informational reporting requirement of Section 149(e) of the Code which is necessary to preserve the exclusion of the interest on the Note pursuant to Section 103(a) of the Code;

(e) Hedge Bonds. The District will make no use of the proceeds of the Note or any other amounts or property, regardless of the source, and the District will not take any action or refrain from taking any action, that would cause the Note to be considered “hedge bonds” within the meaning of Section 149(g) of the Code unless the District takes all necessary action to assure compliance with the requirements of Section 149(g) of the Code to maintain the exclusion from gross income of the interest on the Note for federal income tax purposes; and

(f) Miscellaneous. The District will not take any action or refrain from taking any action which is inconsistent with its expectations stated in the Tax Certificate executed by the District in connection with the execution and delivery of the Note and will comply with the covenants and requirements that are stated therein and incorporated by reference herein.

This Section and the covenants that are set forth herein shall not be applicable to, and nothing that is contained herein shall be deemed to prevent the District from issuing Parity Obligations or executing and delivering Contracts, the interest with respect to which has been determined to be subject to federal income taxation.

SECTION 5.08 Maintenance and Operation of the Enterprise Systems. The District will maintain and preserve the Enterprise Systems in good repair and working order at all times and will operate the Enterprise Systems in an efficient and economical manner and will pay all Operation and Maintenance Costs of the Enterprise Systems as they become due and payable.

SECTION 5.09            Payment of Claims. The District will pay and discharge any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien on the Enterprise Systems or any part thereof; provided the District shall not be obligated to make such payment so long as the District contests such payment in good faith.

SECTION 5.10            Compliance with Contracts. The District will comply with, keep, observe and perform all agreements, conditions, covenants and terms, express or implied, required to be performed by it contained in all contracts for the use of the Enterprise Systems, and all other contracts affecting or involving the Enterprise Systems to the extent that the District is a party thereto.

SECTION 5.11            Insurance.

(a) The District will procure and maintain or cause to be procured and maintained insurance on each of the Enterprise Systems with responsible insurers in such amounts and against such risks (including damage to or destruction of the Enterprise Systems) as are usually covered in connection with utility systems similar to the Enterprise Systems, as applicable, so long as such insurance is available from reputable insurance companies; provided that, commencing with the Closing Date, the District agrees and covenants to maintain the following insurance coverages: (i) hazard insurance with a deductible that shall not exceed \$500,000; and (ii) general liability insurance in the amount of at least \$1,000,000 per occurrence and \$2,000,000 aggregate.

In the event of any damage to or destruction of the Enterprise Systems caused by the perils covered by such insurance, the Net Proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the Enterprise Systems, respectively. The District shall begin such reconstruction, repair or replacement promptly after such damage or destruction shall occur, and shall continue and properly complete such reconstruction, repair or replacement as expeditiously as possible, and shall pay out of such Net Proceeds all costs and expenses in connection with such reconstruction, repair or replacement so that the same shall be completed and the Enterprise Systems shall be free and clear of all claims and liens.

If such Net Proceeds exceed the costs of such reconstruction, repair or replacement portion of the Enterprise Systems, and/or the cost of the construction of additions, betterments, extensions or improvements to the Enterprise Systems, respectively, then the excess Net Proceeds shall be applied in part to the redemption of the Note as provided in Article IV and in part to such other fund or account as may be appropriate and used for the retirement of Parity Obligations and Contracts in the same proportion which the aggregate unpaid principal balance of the Note then bears to the aggregate unpaid principal amount of such Parity Obligations and Contracts. If such Net Proceeds are sufficient to enable the District to retire the entire obligation evidenced by the Note prior to the Maturity Date as well as the entire obligations evidenced by Parity Obligations and Contracts then remaining unpaid prior to their final respective due dates, the District may elect not to reconstruct, repair or replace the damaged or destroyed portion of the Enterprise Systems, and/or not to construct other additions, betterments, extensions or improvements to the Enterprise Systems; and thereupon such Net Proceeds shall be applied to the redemption of the Note as provided in Article IV and to the retirement of such Parity Obligations and Contracts.

(b) The District will procure and maintain such other insurance as it shall deem advisable or necessary to protect its interests and the interests of the Owners, which insurance shall afford protection in such amounts and against such risks as are usually covered in connection with utility systems similar to the Enterprise Systems.

(c) Any insurance that is required to be maintained by paragraph (a) above and, if the District determines to procure and maintain insurance pursuant to paragraph (b) above, such insurance, may be maintained under a self-insurance program so long as such self-insurance is maintained in the amounts and manner usually maintained in connection with utility systems similar to the Enterprise Systems and is, in the opinion of an accredited actuary, actuarially sound.

All policies of insurance which are required to be maintained herein shall provide that the Owners shall be given thirty (30) days written notice of any intended cancellation thereof or reduction of coverage provided thereby.

**SECTION 5.12**        Payment of Taxes and Compliance with Governmental Regulations.  
The District will pay and discharge all taxes, assessments and other governmental charges, if any, which may hereafter be lawfully imposed upon the District, the Enterprise Systems or any part thereof or upon the revenues of the District when the same shall become due. The District will duly observe and conform with all valid regulations and requirements of any governmental authority relative to the operation of the District and the Enterprise Systems or any part thereof, but the District shall not be required to comply with any regulations or requirements so long as the validity or application thereof shall be contested in good faith.

**SECTION 5.13**        Collection of Rates and Charges. The District shall have in effect at all times by-laws, rules and regulations requiring each customer to pay the rates and charges applicable to the Recycled Water Service, the Wastewater Service and the Water Service and providing for the billing thereof and for a due date and a delinquency date for each bill, if applicable.

**SECTION 5.14**        Eminent Domain Proceeds. If all or any part of the Enterprise Systems shall be taken by eminent domain proceedings, the Net Proceeds thereof shall be applied as follows:

(a) If: (1) the District files with the Owners a certificate showing: (i) the estimated loss of annual Net Revenues, if any, suffered or to be suffered by the District by reason of such eminent domain proceedings; (ii) a general description of the additions, betterments, extensions or improvements to the Enterprise Systems that are proposed to be acquired and constructed by the District from such Net Proceeds; and (iii) an estimate of the additional annual Net Revenues to be derived from such additions, betterments, extensions or improvements; and (2) the District, on the basis of such certificate filed with the Owners, determines that the estimated additional annual Net Revenues will sufficiently offset the estimated loss of annual Net Revenues resulting from such eminent domain proceedings so that the ability of the District to meet its obligations hereunder will not be substantially impaired (which determination shall be final and conclusive), then the District shall promptly proceed with the acquisition and construction of such additions, betterments, extensions or improvements substantially in accordance with such certificate and such Net Proceeds shall be applied for the payment of the costs of such acquisition and construction,

and any balance of such Net Proceeds not required by the District for such purpose shall be deposited in the Revenue Fund.

(b) If the foregoing conditions are not met, then such Net Proceeds shall be applied by the District in part to the redemption of the Note and in part to such other fund or account as may be appropriate and used for the retirement of Parity Obligations and Contracts in the same proportion which the aggregate unpaid principal balance of the Note then bears to the aggregate unpaid principal amount of such Parity Obligations and Contracts.

SECTION 5.15 Maintenance of Existence. The District shall preserve and maintain all licenses, permits, governmental approvals, rights, privileges and franchises necessary to conduct its business. The District will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another public agency or permit one or more public agencies to consolidate with or merge into it; provided, however, that the District may dissolve, consolidate or merge, sell or otherwise transfer to another entity all or substantially all of its assets, provided that the surviving, resulting or transferee entity, as the case may be: (i) is a public agency of the State of California or a subdivision thereof; (ii) assumes in writing all of the obligations of the District under this Agreement; and (iii) provides an opinion of nationally recognized bond counsel to the effect that such dissolution, consolidation, merger, sale or transfer will not adversely affect the exclusion of interest on the Note from gross income for federal income tax purposes.

SECTION 5.16 Amount of Rates and Charges.

(a) To the fullest extent permitted by law, the District shall fix and prescribe, at the commencement of each Fiscal Year, rates and charges for the Reclaimed Water System that are reasonably expected, at the commencement of such Fiscal Year, to be at least sufficient to yield during each Fiscal Year Net Revenues equal to one hundred ten percent (110%) of the Debt Service that is allocated to the Reclaimed Water System for such Fiscal Year.

(b) To the fullest extent permitted by law, the District shall fix and prescribe, at the commencement of each Fiscal Year, rates and charges for the Wastewater System that are reasonably expected, at the commencement of such Fiscal Year, to be at least sufficient to yield during each Fiscal Year Net Revenues equal to one hundred one hundred ten percent (110%) of the Debt Service that is allocated to the Wastewater System for such Fiscal Year.

(c) To the fullest extent permitted by law, the District shall fix and prescribe, at the commencement of each Fiscal Year, rates and charges for the Water System that are reasonably expected, at the commencement of such Fiscal Year, to be at least sufficient to yield during each Fiscal Year Net Revenues equal to one hundred one hundred ten percent (110%) of the Debt Service that is allocated to the Water System for such Fiscal Year.

(d) The District may make adjustments from time to time in such rates and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates and charges then in effect unless the Net Revenues from such reduced rates and charges will at all times be sufficient to meet the requirements of this section.

SECTION 5.17        Additional Debt. The District may at any time execute any Contract or issue any Parity Obligations, as the case may be, in accordance herewith; provided that:

(a)        The Net Revenues for the most recent audited Fiscal Year preceding the date of adoption by the Board of the resolution authorizing the issuance of such Parity Obligations or the date of the execution of such Contract, as the case may be, as evidenced by both a calculation prepared by the District and a special report prepared by an Independent Certified Public Accountant or an Independent Financial Consultant on such calculation on file with the District, shall have produced a sum equal to at least one hundred ten percent (110%) of the Debt Service for such Fiscal Year; and

(b)        The Net Revenues for the most recent audited Fiscal Year preceding the date of adoption by the Board of the resolution authorizing the issuance of such Parity Obligations date of the execution of such Contract, as the case may be, including adjustments to give effect as of the first day of such Fiscal Year to increases or decreases in rates and charges for the Reclaimed Water Service, Wastewater Service and Water Service approved and in effect as of the date of calculation, as evidenced by a calculation prepared by the District, shall have produced a sum equal to at least one hundred ten percent (110%) of the Debt Service for such Fiscal Year plus the Debt Service which would have accrued on any Contracts executed or Parity Obligations issued since the end of such Fiscal Year assuming that such Contracts had been executed or Parity Obligations had been issued at the beginning of such Fiscal Year, plus the Debt Service which would have accrued had such proposed additional Contract been executed or Parity Obligations been issued at the beginning of such Fiscal Year.

Notwithstanding the foregoing, Parity Obligations or Contracts may be issued or incurred to refund outstanding Parity Obligations or Contracts if, after giving effect to the application of the proceeds thereof, total Debt Service will not be increased in any Fiscal Year in which Parity Obligations or Contracts (outstanding on the date of issuance or incurrence of such refunding Parity Obligations or Contracts, but excluding such refunding Parity Obligations or Contracts) not being refunded are outstanding.

SECTION 5.18        Reserved.

SECTION 5.19        Reserved.

SECTION 5.20        Swap Contract. Unless otherwise consented to in writing by the Bank, the District shall not enter into any Swap Contract relating to debt secured by Revenues.

SECTION 5.21        Organization; Powers. As of the Closing Date: (a) the District is a county water district that is duly organized and existing under and pursuant to the Water Code; and (b) the District: (i) has full power and authority to carry on its business as now conducted; (ii) has (or, if already executed or adopted, had at the time of execution or adoption) full power and authority to execute (or adopt, if applicable), deliver and perform its obligations under this Agreement and the other Related Documents, to borrow hereunder and to execute, deliver and perform its obligations hereunder and under the Note and the other Related Documents; and (iii) may only contest the validity or enforceability of any provision of, or deny that the District has

any liability or obligation under this Agreement, Applicable Law, the Note or any other Related Document by an act of its governing body.

SECTION 5.22 Authorization; Absence of Conflicts. The execution (or adoption, if applicable), delivery and performance of this Agreement, the Note and the other Related Documents: (a) have been duly authorized, executed and delivered or, if applicable, adopted by the District; (b) do not and will not, to any material extent, conflict with, or result in violation of, any Applicable Law, including the Water Code, or any order, rule or regulation of any court or other Government Authority; and (c) do not and will not, to any material extent, conflict with, result in a violation of or constitute a default under, the Resolution or any other resolution, agreement or instrument to which the District is a party or by which the District or any of its property is bound.

SECTION 5.23 Governmental Consent or Approval. The execution (or adoption, if applicable), delivery and performance of this Agreement, the Note and the other Related Documents do not and will not require registration with, or the consent or approval of, or any other action by, any federal, state or other Governmental Authority or regulatory body other than those which have been made or given and are in full force and effect; provided that no representation is made as to any blue sky or securities law of any jurisdiction.

SECTION 5.24 Litigation. There is no action or investigation pending or, to the knowledge of the District, threatened, against the District before any court or other Governmental Authority which questions the validity of any act or the validity of any proceeding taken by the District in connection with the execution and delivery of this Agreement, the Note or the other Related Documents, or wherein an unfavorable decision, ruling or finding would in any way adversely affect: (a) the validity or enforceability of this Agreement, the Note or the other Related Documents; (b) the validity, enforceability or the pledge of and lien on the Revenues or on the amounts held in funds, accounts and subaccounts under this Agreement; (c) the status of the District as a county water district organized pursuant to and existing under the Constitution and other Applicable Laws of the State of California; or (d) the exemption of interest on the Note from the gross income of the recipients thereof for federal income tax purposes. To the knowledge of the District, there is no action pending or threatened, which questions the validity of the Water Code nor is there any pending initiative or referendum qualified for the ballot which would seek to amend, annul, modify or replace the Applicable Law or the Resolution.

SECTION 5.25 Financial Condition. All of the District's financial statements that have been furnished to the Bank have been prepared in conformity with Generally Accepted Accounting Principles (except as noted therein) and are comprised of a balance sheet and a statement of revenues and expenditures and changes in fund balances. All of such financial statements accurately present, in all material respects, the financial condition of the District, including the Revenues as of the dates thereof, and there have been no changes in the business, operations or condition (financial or otherwise) of the District, since the dates of said financial statements that could reasonably be expected to result in a material adverse effect on the ability of the District to receive Revenues or its ability to perform its obligations hereunder or under the Note and under the other Related Documents.

SECTION 5.26 Tax-Exempt Status. The District has not taken any action and knows of no action that any other person has taken which would cause interest on the Note to be included in the gross income of the recipients thereof for federal income tax purposes.

SECTION 5.27 Related Documents. Each of the Related Documents is in full force and effect. Except as previously disclosed in writing to the Bank prior to the Closing Date, no event of default and no event which, with the giving of notice, the passage of time or both, would constitute an event of default, presently exists under any of the Related Documents. Except as previously disclosed in writing to the Bank prior to the Closing Date, neither the District nor any other party thereto has waived or deferred performance of any material obligation under any Related Document.

SECTION 5.28 Incorporation of Representations and Warranties. In addition to the representations and warranties that are set forth herein, the District hereby makes to the Bank the same representations and warranties as are set forth by the District in each of the other Related Documents, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated by reference for the benefit of the Bank with the same effect as if each and every such representation and warranty and defined term were set forth herein in its entirety. The representations and warranties made by the District herein and therein are true and correct as of the date of this Agreement. No amendment to such representations and warranties or definitions which could reasonably be expected to have a material adverse effect with respect to the ability of the District to meet its obligations hereunder or under the other Related Documents or the rights or security of the Bank hereunder or under the other Related Documents shall be effective to amend such representations and warranties and definitions as incorporated by reference herein without the prior written consent of the Bank.

SECTION 5.29 Margin Regulations. The District is not engaged in the business of extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds of the Note or any amounts furnished by the Bank will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock.

SECTION 5.30 No Event of Default. No Event of Default or default hereunder has occurred and is continuing.

SECTION 5.31 Security; Pledge of Revenues Securing Obligations. All of the Revenues and all amounts held in the funds and accounts created hereunder have been pledged to secure the payment of principal and interest of the Note as described in Section 3.01. The pledge of the Revenues securing the payment of principal of and interest on the Note is a valid and binding obligation of the District, on a pari passu basis with the Contracts and Parity Obligations, subject to any applicable bankruptcy, insolvency, debt adjustment, moratorium, reorganization or other similar laws, judicial decisions and principles of equity relating to or affecting creditors' rights or contractual obligations generally or limitations of remedies against public entities in California. No filing, registration, recording or publication of the Resolution or any other instrument nor any prior separation or physical delivery of the Revenues is required to establish the pledge provided for hereunder or to protect or maintain the lien created thereby on the Revenues and amounts held under this Agreement in funds, accounts or subaccounts to secure the Note. As of the Closing

Date, there is no debt of the District which is payable from or secured by the Revenues or amounts held in funds, accounts or subaccounts under this Agreement or any portion thereof on a basis that is on a parity with the Note.

SECTION 5.32 Sovereign Immunity. The District is subject to claims and to suit for damages in connection with its obligations under this Agreement and the other Related Documents pursuant to and in accordance with the laws of the State applicable to public entities such as the District; provided, however, that a claimant shall be required to comply with the provisions of the Government Claims Act set forth in California Government Code Section 810 et seq. in tort or contract suits, actions or proceedings brought against the District.

SECTION 5.33 Accurate Information. All information, reports and other papers and data with respect to the District furnished to the Bank, at the time the same were so furnished, were accurate in all material respects. Any financial, budget and other projections furnished to the Bank were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of conditions existing at the time of delivery of such financial, budget or other projections.

SECTION 5.34 Maximum Rate. The terms of the Related Documents (including the Note) regarding the calculation of interest and fees do not violate any Applicable Laws.

SECTION 5.35 No Proposed Legal Changes. There is no amendment or, to the knowledge of the District, no proposed amendment certified for placement on a statewide or local ballot, to the California Constitution or any published administrative interpretation of the California Constitution or any Applicable Laws, or any legislation that has passed either house of the California legislature, or any published judicial decision interpreting any of the foregoing, which could reasonably be expected to have a material adverse effect on the ability of the District to receive Revenues or its ability to perform its obligations hereunder or under the Note and the other Related Documents.

SECTION 5.36 Valid Lien. No further acts, instruments, approvals or consents are necessary for the creation, validity or perfection of the District's irrevocable pledge of the Revenues and amounts hereunder to and for the payment of the Note.

SECTION 5.37 ERISA. The District is not subject to the Employee Retirement Income Security Act of 1974. The District has no funding deficiency with respect to any employee benefit plan which could reasonably be expected to materially and adversely affect the ability of the District to perform its obligations hereunder or under any other Related Documents to which it is a party, and the District is otherwise in compliance with terms of any such plan in which the District or any of its employees participate to the extent any such failure to comply could reasonably be expected to materially and adversely affect the ability of the District to perform its obligations hereunder or under any other Related Documents to which it is a party.

SECTION 5.38 Solvency. After giving effect to the issuance of the Note and the other obligations contemplated by this Agreement, the District is solvent, having assets of a fair value which exceed the amount required to pay its debts (including contingent, subordinated, unmatured and unliquidated liabilities) as they become absolute and matured, and the District is

able to and anticipates that it will be able to meet its debts as they mature and has adequate capital to conduct its business in which it is engaged.

SECTION 5.39 Environmental Laws. The District and its properties: (a) have not become subject to any Environmental Liability caused by the District, nor does the District know of any basis for any Environmental Liability against the District; (b) have not received notice to the effect that any of the District's operations are not in compliance with any of the requirements of any Environmental Laws or any applicable federal, state or local health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any Hazardous Materials into the environment; and (c) to the best of the knowledge of the District, are in compliance with all Environmental Laws and the District has obtained and maintains or complies with any permit, license or other approval required under any Environmental Law, in each of clauses (a), (b) and (c) above, except with respect to any matters that, individually or in the aggregate, could not reasonably be expected to result in a material adverse effect on the ability of the District to receive Revenues or its ability to perform its obligations hereunder or under the Note and under the other Related Documents.

SECTION 5.40 Binding Effect. This Agreement and the other Related Documents constitute legal, valid and binding obligations of the District, enforceable against the District in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally, by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law and by limitations on legal remedies against public agencies in the State. The Note will be duly issued, executed and delivered in conformity with the Water Code and the Resolution, and constitute legal, valid and binding special, limited obligations of the District, enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally, by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law and by limitations on legal remedies against public agencies in California, and entitled to the benefit and security of the Resolution.

SECTION 5.41 No Senior Obligations. The District covenants not to enter into any obligations which are secured by a pledge of Revenues or payable from Net Revenues on a senior basis to the Note; provided, however, and for the avoidance of doubt, this excludes the Water Reliability and Emergency Storage Meter Charge revenue, but only to the extent such revenue is first paid towards the State of California Department of Public Health pursuant to Article B-3 of the SDWSRF Loan Agreement.

## **ARTICLE VI DEFAULT**

SECTION 6.01 Events of Default and Events of Mandatory Acceleration; Acceleration of Maturities. If one or more of the following Events of Default shall happen:

(a) Default shall be made in the due and punctual payment by the District of any Debt Service payment or fees required to be paid hereunder when and as the same shall become due and payable;

(b) Default shall be made by the District in the performance of any of the agreements or covenants contained herein required to be performed by it, including but not limited to the District's covenant to provide the financial information referenced in Section 5.05, and such default shall have continued for a period of sixty (60) days after the District shall have been given notice in writing of such default by the Owners; provided, however, that if in the reasonable opinion of the District such default can be corrected, but not within such sixty (60) day period, and corrective action is instituted by the District within such sixty (60) day period and diligently pursued in good faith until the default is corrected, such default shall not be an Event of Default hereunder; provided, further, however, that such corrective action shall be completed no later than ninety (90) days after the District shall have been given notice in writing of such default by the Owners;

(c) Any financial statement or certificate furnished to the Bank in connection with the purchase of the Note, or any representation or warranty made by the District shall prove to be incorrect, false or misleading in any material respect when furnished or made;

(d) The District shall file a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction shall approve a petition filed with or without the consent of the District seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of the District or of the whole or any substantial part of its property;

(e) Payment of the principal of the SDWSRF Loan Agreement or any Contract or Parity Obligation is accelerated in accordance with its terms; or

(f) Any material provision of this Agreement or any other Related Document is declared to be null and void by a final non-appealable judgment of court of competent jurisdiction or the District, pursuant to official action on the part of its Board, shall deny that it has any or further liability or obligation under this Agreement or any other Related Document;

then and in each and every such case during the continuance of such Event of Default, the Owners of not less than a majority in aggregate principal amount represented by the Note at the time Outstanding, upon notice given in writing to the District, may exercise the remedies provided herein.

Upon the occurrence of an Event of Default hereunder, the Owners of not less than a majority in aggregate principal amount represented by the Note at the time Outstanding may declare the principal and interest with respect to such Note immediately due and payable and such principal and interest shall thereupon be due and payable immediately.

This provision, however, is subject to the condition that, if at any time after such Outstanding principal amount of the Note and the accrued interest thereon shall have been so declared due and payable and before the acceleration date or the date of any judgment or decree for the payment of the money due shall have been obtained or entered, the District shall pay such

amount due prior to such date and the accrued interest thereon, with interest on such overdue payments at the Default Rate, and any and all other defaults known to the District (other than in the payment of such principal amount of the Note and the accrued interest thereon due and payable solely by reason of such declaration) shall have been made good or cured or provision shall have been made therefor, then and in every such case the Owners, by written notice to the District, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon.

No remedy provided for herein shall be exercised in a manner which materially adversely impacts the ability of the District to repay other Contracts and Parity Obligations, if any.

SECTION 6.02 Other Remedies. The Owners of not less than a majority in aggregate principal amount represented by the Note at the time Outstanding may:

(a) by mandamus or other action or proceeding or suit at law or in equity enforce its rights against the District, or any Board member, officer or employee thereof, and compel the District or any such Board member, officer or employee to perform and carry out his or her duties under applicable law and the agreements and covenants contained herein required to be performed by it or him, including compelling the District, to the extent permitted by the Water Code and the California Constitution: to (i) increase or impose additional rates, fees, tolls or charges to raise the revenue necessary to pay Debt Service; or (ii) to submit the levy of an assessment to pay Debt Service to the voters in the District;

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

(c) intervene in judicial proceedings that affect the Note or the security therefor or hereunder; or

(d) by suit in equity upon the happening of an Event of Default require the District and its board members, officers and employees to account as the trustee of an express trust.

SECTION 6.03 Non-Waiver. A waiver of any default or breach of duty or contract by the Owners shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Owners to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Owners by law or by this Article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Owners of not less than a majority in aggregate principal amount represented by the Note at the time Outstanding.

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

SECTION 6.04 Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Owners is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by any other law.

SECTION 6.05 Application of Funds Upon Default. All moneys received by any receiver pursuant to any right given or action taken under the provisions of this Article VI shall, after payment of the reasonable fees, expenses, liabilities and advances incurred or made by the Owners (including fees and expenses of attorneys and advisors), be applied as follows:

(a) Unless the principal of the Note shall have become or shall have been declared due and payable, all such moneys shall be applied:

First: To the payment to the persons entitled thereto, on a pari passu basis, of: (i) all installments of interest then due on the Note, with interest on overdue installments, if lawful, payable at the Default Rate, in the order of the maturity of the installments of such interest; and (ii) all installments of interest then due on Parity Obligations and Contracts, with interest on the overdue installments at the rate or rates of interest applicable to such Parity Obligations and Contracts; provided that if the amount available shall not be sufficient to pay in full any particular installment of interest, then to the payment ratably according to the amounts due on such installment, to the persons entitled thereto without any discrimination or privilege; and

Second: To the payment to the persons entitled thereto, on a pari passu basis, of: (i) the unpaid principal of any of the Note which shall have become due (other than the Note called for redemption for the payment of which moneys are held pursuant to the provisions of this Agreement), with interest on such Note payable at the Default Rate from the respective dates upon which they became due, in the order of their due dates; and (ii) the unpaid principal of any Parity Obligations and Contracts which shall have become due, with interest on such Parity Obligations and Contracts at the rate or rates of interest applicable to such Parity Obligations and Contracts; provided that if the amount available shall not be sufficient to pay in full the Note, Parity Obligations and Contracts due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal and interest due on such date, to the persons entitled thereto without any discrimination or privilege.

(b) If the principal of the Note shall have become due or shall have been declared due and payable, all such moneys shall be applied, on a pari passu basis: (i) to the payment of the principal and interest then due and unpaid upon the Note, with interest payable at the Default Rate on overdue principal, as aforesaid; and (ii) to the payment of principal and interest then due and unpaid upon Parity Obligations and Contracts, with interest payable at the rate or rates of interest applicable to such Parity Obligations and Contracts, without preference or priority over interest or of interest over principal or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege.

## **ARTICLE VII**

### **AMENDMENT OF OR SUPPLEMENT TO AGREEMENT**

#### **SECTION 7.01**      Amendment or Supplement by Consent of Owners.

(a) The provisions of this Agreement may be amended or supplemented in writing by the District and the Owners of 100% of in aggregate principal amount of the Note then Outstanding.

(b) Any amendment of this Agreement to extend the Maturity Date shall be subject to credit approval of the Bank. Any such amendment shall include an amendment to Section 2.03 in order to reflect market interest rates at the time of execution of the amendment.

**SECTION 7.02**      Disqualified Note. The Note owned or held by or for the account of the District shall not be deemed Outstanding for the purpose of any consent or other action or any calculation of Outstanding Note provided in this Article VII, and shall not be entitled to consent to or take any other action provided in this Article VII.

## **ARTICLE VIII**

### **DEFEASANCE**

**SECTION 8.01**      Defeasance. Any Outstanding Note shall be paid and discharged in any one or more of the following ways:

(a) by paying or causing to be paid the principal of and interest on such Note Outstanding, as and when the same become due and payable;

(b) by depositing in trust, before maturity, money which is fully sufficient to pay such Note, including all principal and interest; or

(c) by depositing under an escrow deposit and trust agreement, cash or non-callable Defeasance Obligations in such amount as Independent Certified Public Accountant or Independent Financial Consultant shall determine will, together with the interest to accrue thereon, be fully sufficient to pay and discharge such Note (including all principal and interest) at or before its Maturity Date. Notwithstanding the fact that the Note may not have been surrendered for payment, all obligations of the District under this Agreement with respect to such defeased Note shall cease and terminate, except only the obligation of the District to pay or cause to be paid to the Owners of such Note all sums due thereon.

Any funds held by the District, at the time of one of the events described above in subsections (a), (b) or (c), which are not required for the payment to be made to Owners, shall be released from the lien of this Agreement.

**ARTICLE IX  
MISCELLANEOUS**

SECTION 9.01        Benefits Limited. Nothing contained herein, expressed or implied, is intended to give to any person other than the District and the Owners any claim, remedy or right under or pursuant hereto, and any agreement, condition, covenant or term contained herein required to be observed or performed by or on behalf of the District shall be for the sole and exclusive benefit of the Owners.

SECTION 9.02        Successor Deemed Included in all References to Predecessor. Whenever either the District or any officer thereof is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the District or such officer, and all agreements, conditions, covenants and terms required hereby to be observed or performed by or on behalf of the District or any officer thereof shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

SECTION 9.03        Execution of Documents by Owners. Any declaration, request or other instrument which is permitted or required herein to be executed by Owners may be in one or more instruments of similar tenor and may be executed by Owners in person or by their attorneys appointed in writing. The fact and date of the execution by any Owner or his or her attorney of any declaration, request or other instrument or of any writing appointing such attorney may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state or territory in which he purports to act, that the person signing such declaration, request or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer, or by such other proof as the District may accept which it may deem sufficient.

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

SECTION 9.04        Waiver of Personal Liability. No Board member, officer or employee of the District shall be individually or personally liable for the payment of the interest or principal the Note, but nothing contained herein shall relieve any Board member, officer or employee of the District from the performance of any official duty provided by any applicable provisions of law or hereby.

SECTION 9.05        Acquisition of the Note by District or the District. The Note acquired by the District, whether by purchase or gift or otherwise, shall be canceled by the District.

SECTION 9.06        Content of Certificates. Every Certificate of the District with respect to compliance with any agreement, condition, covenant or term contained herein shall include: (a) a statement that the person or persons making or giving such certificate have read such agreement, condition, covenant or term and the definitions herein relating thereto; (b) a statement that, in the opinion of the signers they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such agreement, condition, covenant or term has been complied with; and (c) a statement as to

whether, in the opinion of the signers, such agreement, condition, covenant or term has been complied with. Any Certificate of the District may be based, insofar as it relates to legal matters, upon an opinion of counsel unless the person making or giving such certificate knows that the opinion of counsel with respect to the matters upon which such certificate may be based, as aforesaid, is erroneous, or in the exercise of reasonable care should have known that the same was erroneous. Any opinion of counsel may be based, insofar as it relates to factual matters or information with respect to which is in the possession of the District, upon a representation by an officer or officers of the District unless the counsel executing such opinion of counsel knows that the representation with respect to the matters or upon which his opinion may be based, as aforesaid, is erroneous, or in the exercise of reasonable care should have known that the same was erroneous.

**SECTION 9.07**      Notice by Mail. Any notice required to be given hereunder by mail to any Owners shall be given by mailing a copy of such notice, first class postage redeemed, to the Owners at their addresses appearing in the books required to be kept by the District not less than thirty (30) days nor more than sixty (60) days following the action or prior to the event concerning which notice thereof is required to be given unless this Agreement expressly provides a different provision, and except during the period when Bank is the sole Owner of the Note, in which case, notice shall be given not less than five (5) days following such action or event; provided, that receipt of any such notice shall not be a condition precedent to the effect of such notice and failure to receive any such notice shall not affect the validity of the proceedings taken in connection with the action or the event concerning which such notice was given. All notices, requests and demands which the District or the Bank is required to give to the other party under any provision of this Agreement must be in writing delivered to the following address:

If to the District:            Trabuco Canyon Water District  
32003 Dove Canyon Drive  
Trabuco Canyon, California 92679  
Attention: General Manager  
Telephone: 949-709-5721  
Email: fpaludi@tcwd.ca.gov

If to the Bank:                Bank of the West  
[180 Montgomery Street]  
[San Francisco, California 94104]  
Attention:  
Telephone:  
Facsimile:  
Email:  
Loan Number:

or to such other address as the District or the Bank may designate by written notice to the other party. Each such notice, request and demand shall be deemed given or made as follows: (a) if sent by hand delivery, upon delivery; (b) if sent by mail, upon the earlier of the date of receipt or three (3) days after deposit in the U.S. mail, first class and postage prepaid; and (c) if sent by electronic mail, upon confirmed receipt.

SECTION 9.08 Funds. Any fund or account required to be established and maintained herein by the District may be established and maintained in the accounting records of the District either as an account or a fund, and may, for the purposes of such accounting records, any audits thereof and any reports or statements with respect thereto, be treated either as an account or a fund; but all such records with respect to all such funds shall at all times be maintained in accordance with industry practice and with due regard for the protection of the security of the Note and the rights of the Owners.

SECTION 9.09 Investments. Amounts on deposit in any fund or account created pursuant to this Agreement shall be invested in Permitted Investments which will, as nearly as practicable, mature on or before the dates when such money is anticipated to be needed for disbursement hereunder. The District shall not be liable or responsible for any loss suffered in connection with any such investment made by it under the terms of and in accordance with this Section. The District may sell or present for redemption any obligations so purchased whenever it shall be necessary in order to provide moneys to meet any payment of the funds so invested, and the District shall not be liable or responsible for any losses resulting from any such investment sold or presented for redemption.

SECTION 9.10 Article and Section Headings, Gender and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to “Articles,” “Sections” and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words “hereby,” “herein,” “hereof,” “hereto,” “herewith,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

SECTION 9.11 Partial Invalidity. If any one or more of the agreements, conditions, covenants or terms contained herein required to be observed or performed by or on the part of the District shall be contrary to law, then such agreement or agreements, such condition or conditions such covenant or covenants or such term or terms shall be null and void and shall be deemed separable from the remaining agreements, conditions, covenants and terms hereof and shall in no way affect the validity hereof or of the Note, and the Owners shall retain all the benefit, protection and security afforded to them under any applicable provisions of law.

SECTION 9.12 Governing Law; Waiver of Jury Trial; Waiver of Special Damages; Sovereign Immunity.

(a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE; PROVIDED THAT THE DUTIES AND OBLIGATIONS OF THE DISTRICT UNDER THIS AGREEMENT AND THE NOTE SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT GIVING EFFECT TO CONFLICT OF LAW PRINCIPLES.

(b) THE DISTRICT AND THE BANK (BY THEIR ACCEPTANCE HEREOF) HEREBY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) BETWEEN THE DISTRICT AND THE BANK ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE NOTE AND THE OTHER RELATED DOCUMENTS. THIS PROVISION IS A MATERIAL INDUCEMENT TO THE BANK TO PROVIDE THE FINANCING EVIDENCED BY THIS AGREEMENT. IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, THE DISTRICT AND THE BANK HEREBY CONSENT TO THE ADJUDICATION OF ANY AND ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE, WHO SHALL BE A BENCH OFFICER OR RETIRED BENCH OFFICER, SHALL BE EMPOWERED TO HEAR AND DETERMINE ANY AND ALL ISSUES IN SUCH REFERENCE WHETHER FACT OR LAW. THE DISTRICT AND THE BANK REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND CONSENT AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS AND CONSENTS TO JUDICIAL REFERENCE FOLLOWING THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL OF ITS CHOICE ON SUCH MATTERS. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT OR TO JUDICIAL REFERENCE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 AS PROVIDED HEREIN.

(c) THE DISTRICT WAIVES, TO THE EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THE UNDERSIGNED MAY HAVE TO CLAIM OR RECOVER FROM THE BANK IN ANY LEGAL ACTION OR PROCEEDING ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

(d) THE BANK HEREBY RECOGNIZES THAT THE PROCEDURAL REQUIREMENTS AND REMEDIES APPLICABLE TO COMMENCING AN ACTION AGAINST THE DISTRICT DIFFER FROM REQUIREMENTS APPLICABLE TO NONGOVERNMENTAL ENTITIES.

SECTION 9.13 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

SECTION 9.14 Payments Due on Days that are not Business Days. In any case where the date fixed for payment of principal or interest on the Note or the date fixed for redemption of the Note shall not be a Business Day, then payment of such principal or interest or redemption price shall be made on the next succeeding Business Day, with the same force and effect as if made on such non-Business Day and no interest shall accrue on such amounts from and after such non-Business Day.

SECTION 9.15 Indemnification. The District shall, to the extent then permitted by law, indemnify, protect, hold harmless, save and keep harmless the Bank and its directors, officers

and employees from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of the purchase of the Note, the operation and use of the Enterprise Systems and each portion thereof or any accident in connection with the operation, use, condition or possession of the Enterprise Systems or any portion thereof resulting in damage to property or injury to or death to any person including, without limitation, any claim alleging latent and other defects, whether or not discoverable by the District or the Bank; any claim arising out of any Environmental Law or regulation; any claim for patent, trademark or copyright infringement; and any claim arising out of strict liability in tort. The indemnification arising under this Section shall continue in full force and effect notwithstanding the full payment of the Note.

SECTION 9.16      OFAC; Patriot Act.

(a)      The Bank hereby notifies the District that, pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the District, which information includes the name and address of the District and other information that will allow the Bank to identify the District in accordance with the Patriot Act. The District hereby agrees that it shall promptly provide such information upon request by the Bank.

(b)      The District shall: (i) ensure that it is not and shall not be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control (“OFAC”), the U.S. Department of the Treasury or included in any Executive Orders, that prohibits or limits the Bank from making any advance or extension of credit to the District or from otherwise conducting business with the District; and (ii) to ensure that the proceeds of the Note shall not be used to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto.

SECTION 9.17      No Advisory or Fiduciary Relationship. In connection with all aspects of the transaction contemplated hereby, the District acknowledges and agrees that:

(a)      (i) the services regarding this Agreement provided by the Bank are arm’s-length commercial transactions between the District, on the one hand, and the Bank and its affiliates, on the other hand; (ii) the District has consulted its own legal, accounting, regulatory and tax advisors to the extent that it has deemed appropriate; and (iii) the District 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, for the District or any other person; and (ii) neither the Bank nor any of its affiliates has any obligation to the District 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 neither the Bank nor any of its affiliates

has any obligation to disclose any of such interests to the District. To the fullest extent permitted by law, the District 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.

[Remainder of page intentionally left blank; signatures follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

TRABUCO CANYON WATER DISTRICT

By: \_\_\_\_\_  
Name:  
Title: [General Manager]

[ATTEST:

By: \_\_\_\_\_  
Name:  
Title: Secretary of the Board]

BANK OF THE WEST

By: \_\_\_\_\_  
Name:  
Title: Authorized Officer

**EXHIBIT A**

**FORM OF NOTE**

**THIS PROMISSORY NOTE MAY NOT BE TRANSFERRED  
EXCEPT AS PROVIDED HEREIN**

**UNITED STATES OF AMERICA  
STATE OF CALIFORNIA**

**[\$10,000,000]  
TRABUCO CANYON WATER DISTRICT  
PROMISSORY NOTE**

**Rate of Interest**

1.45%

**Maturity Date**

July 1, 2024

**Dated Date**

February 15, 2022

**REGISTERED OWNER:** BANK OF THE WEST (and its successors and assigns)

**PRINCIPAL AMOUNT:** [TEN MILLION] DOLLARS AND 00/100

Trabuco Canyon Water District (the “District”), a county water district duly created, established and authorized to transact business and exercise powers under and pursuant to the provisions of the County Water District Law (Division 12 of the Water Code of the State of California) (the “Water Code”), for value received, hereby promises to pay from any legally available funds to the Registered Owner specified above (the “Owner”) or registered assigns on the Maturity Date specified above (subject to any right of prior redemption provided for) the outstanding portion of the Principal Amount specified above.

The Principal Amount of this Note shall be payable in lawful money of the United States of America and, upon the Maturity Date hereof, upon presentation and surrender of this Note to the District; provided that, so long as the Owner is the sole owner of this Note, the Principal Amount of this Note shall be paid to the Owner by wire transfer to the following account, or to such other account as the Owner shall direct the District:

ABA: [\_\_\_\_\_]
Bank of the West
[140 Montgomery Street]
[San Francisco, California 94104]
Loan Services Wire Account Number: [\_\_\_\_\_]
[Trabuco Canyon Water District]
Loan Reference Number: [\_\_\_\_\_]

Interest on the outstanding Principal Amount of this Note shall accrue from the Closing Date (as such term is defined in the herein-defined Credit Agreement) at the Rate of Interest per annum set forth above (computed on the basis of a 360-day year, actual days elapsed); provided that, notwithstanding the foregoing: (i) interest shall be at the Default Rate in the event that the District is in default in under the Credit Agreement; and (ii) from and after the Taxable Date (as such term is defined in the Credit Agreement), the outstanding principal amount of the Note shall bear interest at the Taxable Rate (as such term is defined in the Credit Agreement). Interest shall be payable on July 1, 2022 and each January 1 and July 1 thereafter through and including the Maturity Date (each, an “Interest Payment Date”).

Payment of interest on this Note due on or before the maturity or prior redemption thereof shall be made to the person in whose name such Note is registered, as of the fifteenth day preceding the applicable Interest Payment Date, on the registration books kept by the District, such interest to be paid by check mailed by first class mail on such Interest Payment Dates to the registered owner at its address as it appears on such books, or while the Owner is the sole owner of this Note, by wire transfer to the account specified above. Interest on this Note shall be payable in lawful money of the United States of America.

This Note is subject to redemption prior to maturity on any date at a redemption price equal to the then-outstanding principal amount hereof, plus interest accrued to the date of redemption, without premium, upon fifteen days’ written notice to the Owner hereof or such lesser period agreed to by the Owner in its sole discretion.

The District may or shall, as the case may be, also prepay from Net Proceeds as provided in the below-defined Credit Agreement the Note in whole, or in part, on any date in the order of payment date as directed by the District, at a redemption price equal to the sum of the principal amount to be redeemed plus accrued interest thereon to the date of redemption, without premium, upon five days’ written notice to the Owner hereof, or such lesser period agreed to by the Owner in its sole discretion.

This Note is the promissory note of the District designated as its “Trabuco Canyon Water District Promissory Note,” in the amount of \$[10,000,000], and is issued under and pursuant to the provisions of the Resolution of the District dated February 8, 2022 by authority of Section 31304 of the Water Code and the Credit Agreement, dated February 15, 2022 (the “Credit Agreement”), by and between the District and the Owner.

This Note has been issued to provide funding for capital improvement projects of the Enterprises (as such term is defined in the Credit Agreement), including but not limited to refurbishment and replacement of pipelines, pump stations, reservoirs, and treatment facilities for water, sanitary sewer, and recycled water systems. This Note is a general obligation of the District and is payable from all moneys of the District which are legally available therefor, and is additionally secured by a pledge of and lien on Revenues and payable from Net Revenues (as such terms are defined in the Credit Agreement), on a parity with other Parity Obligations and Contracts (as such terms are defined in the Credit Agreement), all in accordance with the Credit Agreement.

This Note is transferable or exchangeable by the Owner hereof in person or by the Owner’s attorney duly authorized in writing, solely to an Accredited Investor (as such term is defined in

Section 2(a)(15) of the Securities Act of 1933, as amended) or a Qualified Institutional Buyer (as such term is defined in Rule 144A promulgated under the Securities Act of 1933, as amended), and upon surrender of this Note for cancellation accompanied by delivery of a duly executed written instrument of transfer or exchange in a form approved by the District. Upon such transfer or exchange, a new Note or Note of authorized denominations of the same Maturity Date and Rate of Interest and in the same aggregate Principal Amount hereof will be executed and delivered by the District to the Owner thereof in exchange therefor.

The District shall not be obligated to make any such registration of transfer or exchange of this Note during the five-day period prior to any redemption with respect to any portion of this Note which has been selected for redemption

Upon all partial redemptions (whether optional, mandatory or otherwise) the Owner shall make the appropriate notation itself on the table below. The Owner's records relating to the outstanding principal amount of the Note shall in all cases prevail:

<u>Date</u>	<u>Amount Redeemed</u>	<u>Remaining Unpaid Principal Amount</u>	<u>Signature of Owner</u>
	\$	\$	

It is hereby certified that all acts and proceedings which are required by law and necessary to make this Note, when executed by the District and duly issued, the valid, binding and legal obligation of the District have been done and taken, and have been in all respects duly authorized.

**The issuance of this Note is exempt from Rule 15c2-12 of the Securities Exchange Commission, as amended.**

IN WITNESS WHEREOF, Trabuco Canyon Water District has caused this Note to be executed in its name and on its behalf by the manual signature of its President and attested to by the manual or facsimile signature of its Secretary, and has caused this Note to be dated as of the dated date set forth above.

TRABUCO CANYON WATER DISTRICT

By: \_\_\_\_\_  
[President]

ATTEST:

By: \_\_\_\_\_  
Secretary

**FORM OF ASSIGNMENT**

For value received, the undersigned does hereby sell, assign and transfer unto \_\_\_\_\_ the within Note and does) hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer such Note on the register of the District, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Signature Guaranteed by: \_\_\_\_\_

Above signature(s) must be guaranteed by an eligible guaranty institution.

**EXHIBIT B**  
**FORM OF COMPLIANCE CERTIFICATE**  
**[\$10,000,000]**  
**TRABUCO CANYON WATER DISTRICT**  
**PROMISSORY NOTE**

CERTIFICATE OF COMPLIANCE

IT IS HEREBY CERTIFIED by the undersigned, the General Manager of Trabuco Canyon Water District (the “District”) on \_\_\_\_\_, 202\_\_ that:

1. To the best of my knowledge, the District is not in default under any documents related to the above-referenced note (the “Note”) issued pursuant to the Credit Agreement, dated February 15, 2022 (the “Credit Agreement”), by and between the District and Bank of the West.
2. As required by Section 5.05(a) of the Credit Agreement, the following is a calculation of Debt Service coverage on all Contracts and Parity Obligations outstanding during the prior Fiscal Year:

[TOTAL NET  
REVENUES]/TOTAL DEBT SERVICE = \_\_\_\_\_coverage]

3. The District confirms that it during the prior Fiscal Year that it has fixed and prescribed rates and charges for the Reclaimed Water System, the Wastewater System and the Water System in compliance with Section 5.16 of the Credit Agreement.

TRABUCO CANYON WATER DISTRICT

By:

Name:

Title: