

**ACTION MINUTES OF  
BOARD OF PUBLIC UTILITIES COMMISSIONERS  
CITY OF TULARE**

**September 19, 2019**

**A regular meeting of the Board of Public Utilities of the City of Tulare was held on Thursday, September 19, 2019 at 4:00 p.m. in the Tulare Public Library & Council Chamber, 491 North "M" Street.**

**BPU PRESENT:** Chris Harrell, Howard Stroman, Thomas Griesbach, Ray Fonseca, Rene Soto

**STAFF PRESENT:** Rob Hunt, Megan Dodd, Michael Miller, Darlene Thompson, Trisha Whitfield, Nick Bartsch, Jim Funk, Andrew Bettencourt, Melissa Hermann

**I. CALL TO ORDER**

President Harrell called the regular meeting to order at 4:00 p.m.

**II. PLEDGE OF ALLEGIANCE AND INVOCATION**

President Harrell led the Pledge of Allegiance and an invocation was given by Vice President Stroman.

**III. CITIZEN COMMENTS**

President Harrell requested those who wish to speak on matters not on the agenda within the jurisdiction of the Board, or to address or request a matter be pulled from the Consent Calendar to do so at this time. He further stated comments related to General Business matters would be heard at the time that matter is addressed on the agenda.

There were no citizen comments.

**IV. COMMUNICATIONS**

There were no communications.

**V. CONSENT CALENDAR**

**It was moved by Board Member Fonseca, seconded by Vice President Stroman, and unanimously carried that the items on the Consent Calendar be approved as presented.**

- (1) Approve minutes of September 5, 2019 regular meeting.**
- (2) Accept the Financial Status Report.**

- (3) Receive the Public Works performance reports for August 2019.
- (4) Receive the Water System Development Program update.

**VI. GENERAL BUSINESS**

- (1) **Approve and authorize the City Manager to execute the third amendment to the Digester Gas Purchase Agreement (DGPA) between the City and Fuel Cell Energy (FCE), execute the Assumption of New Business Contract with SoCalGas (SCG), execute the Request for Non-Core Service, execute the Non-Core Service Agreement and execute the Master Services Agreement subject to minor conforming changes by the City Attorney's Office.** Public Works Director Trisha Whitfield provided a report for the Board's review and consideration. Questions posed by the Board were responded to by Ms. Whitfield. Following discussion, it was moved by Board Member Soto, seconded by Board Member Fonseca, and unanimously carried to approve the item as presented.

**VII. ITEMS OF INTEREST**

Items of interest were discussed amongst the Board and staff.

**VIII. ADJOURNMENT**

President Harrell adjourned the regular meeting at 4:21 p.m.

\_\_\_\_\_  
President of the Board of Public Utilities  
Commissioners of the City of Tulare

**ATTEST:**

\_\_\_\_\_  
Secretary of the Board of  
Public Utilities Commissioners

**CITY OF TULARE  
SUMMARY TREASURER'S REPORT  
SUMMARY OF ALL INVESTMENTS  
AUGUST 31, 2019**

**AGENDA ITEM: Consent 2**

<u>TYPE OF INVESTMENT</u>	<u>BOOK VALUE</u>	<u>MARKET VALUE</u>	<u>CURRENT YIELD</u>	<u>BOOK VALUE % OF TOTAL</u>
UNRESTRICTED INVESTMENTS - SEE PAGE 2	126,660,644	126,720,815	2.256%	63.57%
RESTRICTED INVESTMENTS - SEE PAGE 4	<u>72,596,956</u>	<u>72,482,195</u>	N/A	<u>36.43%</u>
<b>TOTAL INVESTMENTS</b>	<u><u>199,257,600</u></u>	<u><u>199,203,010</u></u>	N/A	<u><u>100.00%</u></u>

Note: The City's financial statements will report market values, not book values, at June 30 each year.

I certify that this report reflects all City investments and complies with the investment policy of the City of Tulare as approved by City Council. Furthermore, I certify that sufficient investment liquidity and anticipated revenues are available to meet the City's budgeted expenditures for the next six months.

Presented to the City Council on September 24, 2019.

Presented to the Board of Public Utility Commissioners on September 24, 2019.

Respectfully submitted, Darlene J. Thompson, CPA, Finance Director/Treasurer



9-24-19  
Date

**CITY OF TULARE  
SUMMARY TREASURER'S REPORT, CONTINUED  
SUMMARY OF UNRESTRICTED INVESTMENTS  
AUGUST 31, 2019**

TYPE OF INVESTMENT	ISSUER OF INVESTMENT	DATES:		INTEREST RATES:		BOOK VALUE MARKET VALUE	UNREALIZED	ESTIMATED	BOOK
		ACQUISITION	MATURITY	STATED	CURRENT YIELD		GAIN/(LOSS):	EARNINGS:	VALUE
							THIS MONTH	ANNUAL	% OF
							LAST MONTH	THIS MONTH	U/I~
Petty Cash	N/A	N/A	N/A	N/A	6,825	N/A	N/A	N/A	0.01%
		N/A	None		6,825	N/A	N/A		
Checking Account - City	Wells Fargo Bank	N/A	N/A	N/A	809,719	N/A	N/A	N/A	0.64%
		On Demand	None		809,719	N/A	N/A		
					Balance per bank is \$2,035,406				
Local Agency Investment Fund (LAIF)	State of California	Various	N/A	N/A	33,000,000	56,489	772,530	26.05%	
		On Demand	2.341%		* 33,056,489	47,074	64,378		
<b>Sub-Total</b>			N/A	N/A	33,816,544	56,489	772,530	26.70%	
			2.281%		33,873,033	47,074	64,378		
Fixed Income Investments	Various (See page 5-9)		N/A	N/A	Per BNY WTC 86,294,100	3,682	1,692,889	68.13%	
Investments in Safekeeping With BNY Western Trust Company			1.960%		86,297,782	(394,585)	141,074		
Commerical Paper			6.000%	N/A	6,550,000	0	393,000	5.17%	
Investments in Safekeeping With City Clerk			6.000%		6,550,000	0	33,378		
<b>TOTAL UNRESTRICTED INVESTMENTS</b>			N/A	N/A	126,660,644	60,171	2,858,419	100.00%	
			2.256%		126,720,815	(347,511)	238,830		

\* LAIF market values are based on the most currently available amortized cost information - June, 2019;

1.001711790

~ U/I = Unrestricted Investments

**CITY OF TULARE**  
**SUMMARY TREASURER'S REPORT, CONTINUED**  
**SUMMARY OF RESTRICTED INVESTMENTS**  
**AUGUST 31, 2019**

TYPE OF INVESTMENT	ISSUER OF INVESTMENT	ACQUISITION DATE	MATURITY DATE	STATED INTEREST RATE	PAR VALUE	BOOK VALUE	MARKET VALUE	BALANCES AS-OF DATE
<b>Bond Funds (All are Managed by U.S. Bank Trust Except LAIF):</b>								
2018 Lease Revenue and Refunding Bonds (Account No. 244938000)								
U S Bk Mmkt	U.S. Bank Trust	Various	On Demand	Various	N/A	4,077,798	4,077,798	08-31-19
				Reserve Fund		<u>4,077,798</u>	<u>4,077,798</u>	
2009 Sewer Revenue Bonds (Account No. 133007000)								
U S Bk Mmkt	U.S. Bank Trust	Various	On Demand	Various	N/A	6,334,261	6,334,261	08-31-19
				Reserve Fund		<u>6,334,261</u>	<u>6,334,261</u>	
2012 Sewer Revenue Refunding Bonds (Account No. 162033000)								
U S Bk Mmkt	U.S. Bank Trust	Various	On Demand	Various	N/A	312,836	312,836	08-31-19
U S Bk Mmkt	U.S. Bank Trust	Various	On Demand	Various	N/A	926,901	926,901	08-31-19
				Reserve Fund		<u>1,239,737</u>	<u>1,239,737</u>	
2013 Sewer Revenue Refunding Bonds (Account No. 203701000)								
U S Bk Mmkt	U.S. Bank Trust	Various	On Demand	Various	N/A	397	397	08-31-19
Guarantee Invest. Cont.	Bayerische Landesbank	08-01-13	11-15-22	2.310%	N/A	2,745,126	2,745,126	08-31-19
						<u>2,745,523</u>	<u>2,745,523</u>	
2015 Sewer Revenue Refunding Bonds (Account No. 2615940000)								
U S Bk Mmkt	U.S. Bank Trust	Various	On Demand	Various	N/A	851	851	08-31-19
Investment Repurchase GIC	Bayerische Landesbank	11-15-15	11-15-25	1.960%	N/A	6,765,635	6,765,635	07-31-19
				Reserve Fund		<u>6,766,486</u>	<u>6,766,486</u>	
2016 Sewer Revenue Refunding Bonds (Account No. 260)								
U S Bk Mmkt	U.S. Bank Trust	Various	On Demand	Various	N/A	1,285,569	1,285,569	08-31-19
Cash				Reserve Fund - 2009 Sewer Bonds		13,531	13,531	08-31-19
U S Treasuries	U S Treasuries	Various	42,689	1.030%	N/A	50,125,526	50,010,765	08-31-19
				Reserve Fund - 2009 Sewer Bonds		<u>51,424,626</u>	<u>51,309,865</u>	
2017 Water Revenue Bonds (Account No. 219189000)								
U S Bk Mmkt	U.S. Bank Trust	Various	On Demand	Various	N/A	8,384	8,384	08-31-19
						<u>8,384</u>	<u>8,384</u>	

- CONTINUED ON PAGE 4 -

**CITY OF TULARE  
SUMMARY TREASURER'S REPORT, CONTINUED  
SUMMARY OF RESTRICTED INVESTMENTS  
AUGUST 31, 2019**

<u>TYPE OF INVESTMENT</u>	<u>ISSUER OF INVESTMENT</u>	<u>ACQUISITION DATE</u>	<u>MATURITY DATE</u>	<u>STATED INTEREST RATE</u>	<u>PAR VALUE</u>	<u>BOOK VALUE</u>	<u>MARKET VALUE</u>	<u>BALANCES AS-OF DATE</u>
<b>Bond Funds (All are Managed by U.S. Bank Trust Except LAIF):</b>								
2017 Successor Agency Tax Allocation Bonds - Series A & B (Account No. 24534600)								
U S Bk Mmkt	U.S. Bank Trust	Various	On Demand	Various	N/A	70	70	08-31-19
						<u>70</u>	<u>70</u>	
<b>TOTAL BOND FUNDS</b>						<u>72,596,885</u>	<u>72,482,124</u>	
<b>Restricted Insurance Deposits Managed by Fiscal Agents:</b>								
Employee Welfare Fund	(60) Various	N/A	N/A	Various	N/A	71	71	08-31-19
Workers' Comp. Fund	(61) Various	N/A	N/A	Various	N/A	0	0 *	06-30-18
General Insurance Fund	(62) Various	N/A	N/A	Various	N/A	0	0 *	06-30-18
						<u>71</u>	<u>71</u>	
						* NOTE: Reported as information is made available.		
						* Adjusted annually.		
<b>TOTAL RESTRICTED INVESTMENTS</b>						<u>72,596,956</u>	<u>72,482,195</u>	
						<i>Book Value % of Total Investments =</i>		
						<b>36.43%</b>		

**CITY OF TULARE  
SUMMARY TREASURER'S REPORT, CONTINUED  
FIXED INCOME INVESTMENTS  
AUGUST 31, 2019**

TYPE OF FIXED INCOME INVESTMENT	CUSIP NUMBER	DATES:		INTEREST RATES:		PAR VALUE	BOOK VALUE MARKET VALUE	UNREALIZED	ESTIMATED
		ACQUISITION	MATURITY	STATED	CURRENT YIELD			GAIN/(LOSS): THIS MONTH	EARNINGS: ANNUAL THIS MONTH
<b><u>U.S. GOVERNMENT AGENCY OBLIGATIONS</u></b>									
				**			Per BNY WTC		
Federal Home Loan Mtg Corp		07-22-19			2.150%	1,500,000	1,500,000	390	32,250
	3134GTZP1	10-08-20	C		2.150%		1,500,390	(2,055)	2,688
Federal Home Ln Bks		07-13-16			1.375%	1,500,000	1,500,000	(8,040)	20,625
	3130A8MP5	10-13-20	C		1.380%		1,491,960	(15,405)	1,719
Federal Home Ln Bks		10-28-15			1.720%	2,000,000	2,000,000	(3,320)	34,400
	3130A6MH7	10-28-20	C		1.720%		1,996,680	(13,480)	2,867
Federal Nat'l Mortgage Assoc		09-30-16			1.500%	1,500,000	1,500,000	(1,665)	22,500
	3136G4AB9	12-30-20	C		1.500%		1,498,335	(9,870)	1,875
Federal Farm Credit Banks		07-19-16			1.440%	1,000,000	999,250	(4,400)	14,400
	3133EGMP7	01-19-21	C		1.450%		994,850	(8,250)	1,200
Federal Farm Credit Banks		01-29-18			2.250%	1,500,000	1,497,825	15,480	33,750
	3133EJAW9	01-29-21	C		2.230%		1,513,305	7,650	2,813
Federal Farm Credit Banks		07-06-16			1.500%	2,500,000	2,500,000	(8,800)	37,500
	3133EGKA2	07-06-21	C		1.510%		2,491,200	(26,400)	3,125
Federal Nat'l Mortgage Assoc		07-27-16			1.500%	1,000,000	998,750	(5,190)	15,000
	3136G3A70	07-27-21	C		1.510%		993,560	(12,830)	1,250
Federal Nat'l Mortgage Assoc		07-27-16			1.550%	1,000,000	999,500	520	15,500
	3136G3G90	07-27-21	C		1.550%		1,000,020	(6,820)	1,292
Federal Nat'l Mortgage Assoc		07-28-16			1.550%	1,000,000	999,250	740	15,500
	3136G3C78	07-28-21	C		1.550%		999,990	(6,740)	1,292
Federal Nat'l Mortgage Assoc		07-28-16			1.600%	2,000,000	2,000,000	160	32,000
	3136G3J30	07-28-21	C		1.600%		2,000,160	(12,780)	2,667
Federal Nat'l Mortgage Assoc		07-28-16			1.650%	2,000,000	2,000,000	340	33,000
	3136G3R72	07-28-21	C		1.650%		2,000,340	(10,760)	2,750

- CONTINUED ON PAGE 6 -

**CITY OF TULARE  
SUMMARY TREASURER'S REPORT, CONTINUED  
FIXED INCOME INVESTMENTS, CONTINUED  
AUGUST 31, 2019**

TYPE OF FIXED INCOME INVESTMENT	CUSIP NUMBER	DATES:		INTEREST RATES:		PAR VALUE	BOOK VALUE MARKET VALUE	UNREALIZED	ESTIMATED
		ACQUISITION	MATURITY	STATED	CURRENT YIELD			GAIN/(LOSS): THIS MONTH	EARNINGS: ANNUAL THIS MONTH
<b><u>U.S. GOVERNMENT AGENCY OBLIGATIONS, CONTINUED</u></b>									
				**			Per BNY WTC		
Federal Nat'l Mortgage Assoc		10-28-16			1.500%	1,500,000	1,500,000	(1,005)	22,500
	3136G4EF6	07-28-21	C		1.500%		1,498,995	(12,405)	1,875
Federal Home Loan Mtg Corp		08-24-16			1.550%	2,000,000	2,000,000	(6,800)	31,000
	3134G94T1	08-24-21	C		1.560%		1,993,200	(22,640)	2,583
Federal Nat'l Mortgage Assoc		08-24-16			1.500%	1,500,000	1,500,000	(1,275)	22,500
	3136G3X26	08-24-21	C		1.500%		1,498,725	(13,095)	1,875
Federal Home Loan Mtg Corp		08-25-16			1.625%	3,000,000	3,000,000	(1,500)	48,750
	3134G9X44	08-25-21	C		1.630%		2,998,500	(24,840)	4,063
Federal Nat'l Mortgage Assoc		08-25-16			1.500%	1,500,000	1,500,000	(6,420)	22,500
	3136G3Y25	08-25-21	C		1.510%		1,493,580	(13,365)	1,875
Federal Home Loan Mtg Corp		09-29-16			1.650%	2,000,000	2,000,000	(300)	33,000
	3134GAEF7	09-29-21	C		1.650%		1,999,700	(16,300)	2,750
Federal Home Ln Bks		09-30-16			1.625%	2,000,000	1,999,200	620	32,500
	3130A9F89	09-30-21	C		1.630%		1,999,820	(15,540)	2,708
Federal Nat'l Mortgage Assoc		09-30-16			1.625%	2,000,000	2,000,000	60	32,500
	3136G4AH6	09-30-21	C		1.620%		2,000,060	(14,340)	2,708
Federal Nat'l Mortgage Assoc		09-30-16			1.500%	1,500,000	1,499,775	(5,130)	22,500
	3136G4CY7	09-30-21	C		1.510%		1,494,645	(12,960)	1,875
Federal Home Ln Banks		10-12-16			1.700%	1,500,000	1,500,000	90	25,500
	3130A9GS4	10-12-21	C		1.700%		1,500,090	(10,110)	2,125
Federal Home Ln Banks		10-12-16			1.580%	1,500,000	1,500,000	(1,365)	23,700
	3130A9KH3	10-12-21	C		1.580%		1,498,635	(13,725)	1,975
Federal Nat'l Mortgage Assoc		10-13-16			1.650%	2,255,000	2,255,000	203	37,208
	3136G4AS2	10-13-21	C		1.650%		2,255,203	(14,522)	3,101

- CONTINUED ON PAGE 7 -



**CITY OF TULARE  
SUMMARY TREASURER'S REPORT, CONTINUED  
FIXED INCOME INVESTMENTS, CONTINUED  
AUGUST 31, 2019**

TYPE OF FIXED INCOME INVESTMENT	CUSIP NUMBER	DATES:		INTEREST RATES:		PAR VALUE	BOOK VALUE	UNREALIZED	ESTIMATED
		ACQUISITION	MATURITY	STATED	CURRENT YIELD		MARKET VALUE	GAIN/(LOSS):	EARNINGS:
								THIS MONTH	ANNUAL
								LAST MONTH	THIS MONTH
<b><u>U.S. GOVERNMENT AGENCY OBLIGATIONS, CONTINUED</u></b>									
				**			Per BNY WTC		
Federal Nat'l Mortgage Assoc		10-25-16			1.550%	1,500,000	1,500,000	(2,175)	23,250
	3136G4ED1	10-25-21	C		1.550%		1,497,825	(14,625)	1,938
Federal Home Ln Mtg Corp		11-10-16			1.700%	2,500,000	2,500,000	275	42,500
	3134GATC8	11-10-21	C		1.700%		2,500,275	(17,750)	3,542
Federal Home Ln Mtg Corp		11-22-16			1.650%	2,000,000	2,000,000	60	33,000
	3134GAUB8	11-22-21	C		1.650%		2,000,060	(16,520)	2,750
Federal Nat'l Mtg Corp		11-23-16			1.600%	2,000,000	2,000,000	100	32,000
	3136G4GM9	11-23-21	C		1.600%		2,000,100	(16,200)	2,667
Federal Home Ln Mtg Corp		10-02-17			2.000%	2,000,000	1,998,500	1,620	40,000
	3134GBK68	12-29-21	C		2.000%		2,000,120	(11,020)	3,333
Federal Home Ln Mtg Corp		12-30-16			2.000%	2,000,000	2,000,000	520	40,000
	3134GAYV0	12-30-21	C		2.000%		2,000,520	(2,280)	3,333
Federal Farm Credit Bks		09-14-17			1.950%	1,500,000	1,500,000	15	29,250
	3133EHYQ0	03-14-22	C		1.950%		1,500,015	0	2,438
Federal Home Ln Mtg Corp		07-27-17			2.250%	1,500,000	1,500,000	1,050	33,750
	3134GBXU1	07-27-22	C		2.250%		1,501,050	210	2,813
Federal Nat'l Mtg Assoc.		08-23-17			2.000%	1,500,000	1,498,500	2,385	30,000
	3136G4NQ2	08-23-22	C		2.000%		1,500,885	(5,160)	2,500
Federal Home Ln Banks		08-24-17			2.150%	1,500,000	1,500,000	1,815	32,250
	3130AC2L7	08-24-22	C		2.150%		1,501,815	90	2,688
Federal Farm Credit Bks		09-12-17			2.000%	1,500,000	1,500,000	15	30,000
	3133EHXZ1	09-12-22	C		2.000%		1,500,015	15	2,500
Federal Home Ln Mtg Corp		09-29-17			2.150%	1,500,000	1,499,250	1,080	32,250
	3134GBM74	09-29-22	C		2.150%		1,500,330	(4,305)	2,688

- CONTINUED ON PAGE 8 -

**CITY OF TULARE**  
**SUMMARY TREASURER'S REPORT, CONTINUED**  
**FIXED INCOME INVESTMENTS, CONTINUED**  
**AUGUST 31, 2019**

TYPE OF FIXED INCOME INVESTMENT	CUSIP NUMBER	DATES:		INTEREST RATES:		PAR VALUE	BOOK VALUE MARKET VALUE	UNREALIZED	ESTIMATED
		ACQUISITION	MATURITY	STATED	CURRENT YIELD			GAIN/(LOSS):	EARNINGS:
								THIS MONTH	ANNUAL
							LAST MONTH	THIS MONTH	
<b><u>U.S. GOVERNMENT AGENCY OBLIGATIONS, CONTINUED</u></b>									
				**			Per BNY WTC		
Federal Farm Credit Bks		10-17-17			2.280%	1,500,000	1,500,000	15	34,200
	3133EHF73	10-17-22	C		2.280%		1,500,015	(8,715)	2,850
Federal Home Ln Banks		10-26-17			2.250%	2,000,000	2,000,000	1,400	45,000
	3130ACJU9	10-26-22	C		2.250%		2,001,400	320	3,750
Federal Nat'l Mtg Corp		10-27-17			2.250%	1,500,000	1,500,000	1,410	33,750
	3136G4PV9	10-27-22	C		2.250%		1,501,410	675	2,813
Federal Farm Credit Bks		05-31-17			2.220%	2,000,000	1,999,700	320	44,400
	3133EHKT9	11-25-22	C		2.220%		2,000,020	(5,360)	3,700
Federal Home Loan Mtg Corp		12-29-17			2.400%	2,000,000	2,000,000	860	48,000
	3134GB4U3	12-29-22	C		2.400%		2,000,860	580	4,000
Federal Home Mtg Corp		09-27-18			3.250%	1,500,000	1,500,000	1,005	48,750
	3134GSXW0	09-27-23	C		3.250%		1,501,005	2,505	4,063
Federal Home Mtg Corp		10-04-18			3.300%	1,050,000	1,049,213	1,963	34,650
	3134G4TP8	09-27-23	C		3.300%		1,051,176	2,646	2,888
Federal Farm Credit Bks		10-04-18			3.340%	1,000,000	1,000,000	1,430	33,400
	3133EJE39	10-04-23	C		3.340%		1,001,430	2,120	2,783
Federal Home Loan Bks		05-08-19			2.750%	2,000,000	2,000,000	2,940	55,000
	3130AGDE2	05-08-24	C		2.750%		2,002,940	1,900	4,583
Federal Home Loan Bks		05-08-19			2.720%	1,500,000	1,500,000	2,220	40,800
	3130SGE35	05-08-24	C		2.720%		1,502,220	1,455	3,400
Federal Home Loan Mtg Corp		05-22-19			2.800%	2,000,000	2,000,000	3,680	56,000
	3134GTMP5	05-22-24	C		2.790%		2,003,680	2,340	4,667
Federal Home Loan Mtg Corp		06-11-19			2.520%	1,500,000	1,500,000	6,255	37,800
	3134GTRM7	06-11-24	C		2.510%		1,506,255	1,185	3,150

- CONTINUED ON PAGE 9 -

**CITY OF TULARE  
SUMMARY TREASURER'S REPORT, CONTINUED  
FIXED INCOME INVESTMENTS, CONTINUED  
AUGUST 31, 2019**

TYPE OF FIXED INCOME INVESTMENT	CUSIP NUMBER	DATES:		INTEREST RATES:		PAR VALUE	BOOK VALUE		UNREALIZED GAIN/(LOSS):		ESTIMATED EARNINGS:	
		ACQUISITION	MATURITY	STATED	CURRENT YIELD		MARKET VALUE	THIS MONTH	LAST MONTH	ANNUAL	THIS MONTH	
<b><u>U.S. GOVERNMENT AGENCY OBLIGATIONS, CONTINUED</u></b>												
				**				Per BNY WTC				
Federal Home Loan Mtg Corp		06-17-19			2.500%	1,500,000	1,500,000		1,755		37,500	
	3134GTUB7	06-17-24	C		2.500%		1,501,755		(2,625)		3,125	
Federal Home Loan Mtg Corp		06-27-19			2.625%	1,500,000	1,500,000		285		39,375	
	3134GTUH4	06-27-24	C		2.620%		1,500,285		(10,965)		3,281	
Federal Home Loan Bks	3130AGQE8	07-22-19			2.270%	2,000,000	2,000,000		8,000		45,400	
		07-22-24	C		2.260%		2,008,000		(540)		3,783	
Government National Mortgage Association II Pool		01-24-94			8.500%	N/A	387		(9)		31	
	36202AHH3	09-20-22			8.160%		378		(9)		3	
<b>TOTAL FIXED INCOME INVESTMENTS</b>					N/A	N/A	86,294,100		3,682		1,692,889	
All are in safekeeping with BNY Western Trust Company					1.960%		86,297,782		(394,585)		141,074	

~ U/I = Unrestricted Investments

**CITY OF TULARE**  
**SUMMARY TREASURER'S REPORT, CONTINUED**  
**COMMERICAL PAPER**  
**AUGUST 31, 2019**

<u>INSTITUTION</u>	<u>CUSIP NUMBER</u>	<u>INTEREST RATES:</u>		<u>DATES:</u>		<u>UNREALIZED GAIN/(LOSS)</u>		<u>ESTIMATED EARNING:</u>	
		<u>STATED</u>	<u>CURRENT YIELD</u>	<u>ACQUISITION</u>	<u>INVESTED</u>	<u>THIS MONTH</u>	<u>LAST MONTH</u>	<u>ANNUAL</u>	
Tulare Local Healthcare District		6.000%		02/19/2019		6,550,000		0	393,000
		6.000%		02/19/2024		6,550,000		0	33,378
<b>TOTAL COMMERICAL PAPER</b>		6.000%				<u>6,550,000</u>		<u>0</u>	<u>393,000</u>

Safekeeping with City Clerk's Office

**CITY OF TULARE  
TREASURER'S EXECUTIVE SUMMARY  
AUGUST 31, 2019**

CHANGES IN BALANCES AND YIELDS: CATEGORY	BOOK VALUE MARKET VALUE DIFFERENCE			AVERAGE STATED YIELD		
	AUGUST	JULY	CHANGE	AUGUST	JULY	CHANGE
Total Investments	199,257,600 <u>199,203,010</u> (54,590)	203,446,076 <u>202,864,953</u> (581,123)	(4,188,476) <u>(3,661,943)</u> 526,533	N/A	N/A	N/A
Unrestricted Investments	126,660,644 <u>126,720,815</u> 60,171	129,776,082 <u>129,419,971</u> (356,111)	(3,115,438) <u>(2,699,156)</u> 416,282	2.256%	2.281%	-0.025%
Restricted Investments	72,596,956 <u>72,482,195</u> (114,761)	73,669,994 <u>73,444,982</u> (225,012)	(1,073,038) <u>(962,787)</u> 110,251	N/A	N/A	N/A
Local Agency Investment Fund (LAIF)	33,000,000 <u>33,056,489</u> 56,489	27,500,000 <u>27,547,074</u> 47,074	5,500,000 <u>5,509,415</u> 9,415	2.341%	2.379%	-0.038%
Fixed Income Investments (Total)	86,294,100 <u>86,297,782</u> 3,682	95,794,112 <u>95,390,927</u> (403,185)	(9,500,012) <u>(9,093,145)</u> 406,867	1.960%	2.030%	-0.070%
Commerical Paper	6,550,000 <u>6,550,000</u> 0	5,800,000 <u>5,800,000</u> 0	750,000 <u>750,000</u> 0	6.000%	6.000%	0.000%

**TRANSACTIONS (BOOK VALUE): \***

CATEGORY	PURCHASES	SALES / CALLS
<u>Certificates of Deposit</u>		<u>Commercial Paper</u>
	0	0
<u>Fixed Income Investments</u>		<u>Fixed Income Investments</u>
		Government National Mortgage Assn. Pool 12
		Federal Home Loan Mtg Corp, 2.350% 2,000,000
		Federal Home Loan Mtg Corp, 2.40% 2,000,000
		Federal Home Loan Mtg Corp, 2.75% 2,000,000
		Federal Home Loan Banks, 3.20% 2,000,000
		Federal Home Loan Mtg Corp, 2.90% 1,500,000
	0	9,500,012

\*

Net LAIF transactions are represented by the change in book value balance shown above. Changes in Restricted Investments are not shown.

**CITY OF TULARE**  
**INVESTMENTS BALANCE AND YIELD HISTORY FOR EIGHT MONTHS**  
**AUGUST 31, 2019**

<b>BALANCES:</b>	<b>BOOK VALUE</b>							
	<b>MARKET VALUE</b>							
<b>CATEGORY</b>	<b>DIFFERENCE</b>							
	<b>JULY</b>	<b>JUNE</b>	<b>MAY</b>	<b>APRIL</b>	<b>MARCH</b>	<b>FEBRUARY</b>	<b>JANUARY</b>	<b>DECEMBER</b>
	<b>2019</b>	<b>2019</b>	<b>2019</b>	<b>2019</b>	<b>2019</b>	<b>2019</b>	<b>2019</b>	<b>2018</b>
Total Investments	203,446,076 <u>202,864,953</u> (581,123)	204,630,982 <u>204,220,075</u> (410,907)	205,759,445 <u>205,077,706</u> (681,739)	212,297,188 <u>210,942,702</u> (1,354,486)	206,046,160 <u>204,633,028</u> (1,413,132)	209,714,111 <u>207,477,204</u> (2,236,907)	206,896,976 <u>204,650,777</u> (2,246,199)	206,176,823 <u>203,683,101</u> (2,493,722)
Unrestricted Investments	129,776,082 <u>129,419,971</u> (356,111)	132,423,622 <u>132,237,727</u> (185,895)	130,835,925 <u>130,467,398</u> (368,527)	135,620,674 <u>134,649,059</u> (971,615)	127,817,057 <u>126,841,420</u> (975,637)	127,957,486 <u>126,307,866</u> (1,649,620)	124,826,967 <u>123,277,502</u> (1,549,465)	124,640,151 <u>122,893,246</u> (1,746,905)
Restricted Investments	73,669,994 <u>73,444,982</u> (225,012)	72,207,360 <u>71,982,348</u> (225,012)	74,923,520 <u>74,610,308</u> (313,212)	76,676,514 <u>76,293,643</u> (382,871)	78,229,103 <u>77,791,608</u> (437,495)	81,756,625 <u>81,169,338</u> (587,287)	82,070,009 <u>81,423,275</u> (646,734)	81,536,672 <u>80,789,855</u> (746,817)
Local Agency Investment Fund (LAIF)	27,500,000 <u>27,547,074</u> 47,074	33,500,000 <u>33,504,923</u> 4,923	35,500,000 <u>35,505,217</u> 5,217	39,500,000 <u>39,505,805</u> 5,805	33,000,000 <u>33,004,849</u> 4,849	28,000,000 <u>27,973,432</u> (26,568)	28,000,000 <u>27,973,432</u> (26,568)	29,000,000 <u>28,937,140</u> (62,860)
Fixed Income Investments (Total)	95,794,112 <u>95,390,927</u> (403,185)	92,294,124 <u>92,103,306</u> (190,818)	89,293,610 <u>88,919,866</u> (373,744)	84,293,623 <u>83,316,203</u> (977,420)	86,293,635 <u>85,313,149</u> (980,486)	90,793,646 <u>89,170,594</u> (1,623,052)	94,792,658 <u>93,219,761</u> (1,572,897)	94,792,669 <u>93,108,624</u> (1,684,045)
Commerical Paper	5,800,000 <u>5,800,000</u> 0	5,800,000 <u>5,800,000</u> 0	5,800,000 <u>5,800,000</u> 0	6,450,000 <u>6,450,000</u> 0	6,000,000 <u>6,000,000</u> 0	4,861,885 <u>4,861,885</u> 0		

**AVERAGE STATED YIELDS:**

Unrestricted Investments	2.281%	2.308%	2.312%	2.238%	2.235%	2.151%	2.161%	2.137%
Restricted Investments	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Local Agency Investment Fund (LAIF)	0.024%	2.480%	2.449%	2.445%	2.392%	2.355%	2.291%	2.208%
Fixed Income Investments (Total)	2.030%	2.030%	2.020%	1.990%	2.090%	2.140%	2.140%	2.160%
Commerical Paper	6.000%	6.000%	6.000%	6.000%	6.000%	6.000%		

**CITY OF TULARE, CALIFORNIA  
BOARD OF PUBLIC UTILITIES COMMISSIONERS  
AGENDA ITEM TRANSMITTAL SHEET**

**Submitting Department:** City Manager's Office

**For Board Meeting of:** October 3, 2019

**Documents Attached:**  Ordinance  Resolution  Other  None

---

**AGENDA ITEM:**

Approve the cancelation of the October 17, 2019 regular meeting.

**IS PUBLIC HEARING REQUIRED:**  Yes  No

**BACKGROUND/EXPLANATION:**

The Board of Public Utilities regular meetings are held on the first and third Thursdays of each month. Periodically, due to lack of business or schedule conflicts, there is a need to cancel regular meetings. In the third week of October this year, the League of California Cities is holding their Annual Conference and Expo. Representatives from the City of Tulare will be attending including the City Manager. Additionally, the Public Works Director has a conflict in her schedule on October 17 and will be unable to be present at the Board of Public Utilities meeting.

In review of the October 17<sup>th</sup> meeting tracking calendar, there appears to be no pressing items that need to go before the Board. With the absence of the City Manager and Public Works Director, staff recommends the cancelation of the October 17, 2019 regular meeting.

**STAFF RECOMMENDATION:**

Approve the cancelation of the October 17, 2019 regular meeting.

**CITY ATTORNEY REVIEW/COMMENTS:**  Yes  N/A

**IS ADDITIONAL (NON-BUDGETED) FUNDING REQUIRED:**  Yes  No  N/A

**FUNDING SOURCE/ACCOUNT NUMBER:**

**Submitted by:** Rob A. Hunt

**Title:** City Manager

**Date:** September 20, 2019

**City Manager Approval:**           RH

**CITY OF TULARE, CALIFORNIA  
BOARD OF PUBLIC UTILITIES COMMISSIONERS  
AGENDA ITEM TRANSMITTAL SHEET**

**Submitting Department:** Finance

**For Board Meeting of:** October 3, 2019

**Documents Attached:**     Ordinance         Resolution         Other         None

---

**AGENDA ITEM:**

Adopt Resolution 19-09 to authorize issuance of the City of Tulare Water Revenue Bonds, Series 2019 in an amount not to exceed \$20 million to fund water system capital improvements and potentially refinance an outstanding equipment lease for savings.

**IS PUBLIC HEARING REQUIRED:**     Yes     No

**BACKGROUND/EXPLANATION:**

The City is proposing to issue water revenue bonds to help fund capital improvements to the City's water system. Proceeds from the proposed water revenue bonds will be used to finance capital improvements to restore water system capacity, replace and improve infrastructure, operate in compliance with the City's volume and pressure standards, and meet current water demands. Planned improvements include the construction of new water wells, improvements to water storage tanks, repair and replacement of five miles of aging water pipelines per year, funding for groundwater sustainability improvements mandated by State law, and other infrastructure improvements.

The City anticipates funding its water system capital needs with a combination of debt and pay-as-you-go financing. In 2016, the City completed a water rate study that recommended the issuance of bonds in 2017 and 2019 to help fund the City's water system capital needs. The City subsequently adopted a 5-year schedule of water rates adequate to fund debt repayment on the proposed water revenue bonds. No additional rate increases are needed at this time.

In 2017, the City issued its first series of water revenue bonds to fund \$20 million of capital improvements. The proposed 2019 water revenue bonds will enable the City to continue addressing its water system capital improvement needs. The City anticipates the 2019 water revenue bonds would be issued with a 30-year repayment term. No additional future bond issues are anticipated at this time.

In addition, the City is currently evaluating the potential to refinance the City's 2006 lease agreement for savings. The lease agreement was used to fund a range of projects with over 80% of the proceeds used to fund new water meters. The lease currently has roughly \$3.0 million of outstanding principal coming due within the next 3 years and has an annual interest rate of 4.49%. Current interest rates are significantly lower. If the refunding generates savings, the City anticipates including the water enterprise's share of the refinancing as a



component of the 2019 water revenue bonds. The repayment term for this component of the bonds would coincide with the repayment term of the outstanding lease payments.

If authorized, the City would move forward with issuance of Water Revenue Bonds, Series 2019. The Resolution approves a City Council Ordinance that authorizes the issuance of water revenue bonds subject to certain parameters and approves of the form of a Bond Indenture. The Resolution also authorizes the BPU to take action as needed in order for the City to comply with the proposed Ordinance and Indenture.

**STAFF RECOMMENDATION:**

**CITY ATTORNEY REVIEW/COMMENTS:** Yes N/A

Reviewed by Bond Counsel

**IS ADDITIONAL (NON-BUDGETED) FUNDING REQUIRED:** Yes No N/A

**FUNDING SOURCE/ACCOUNT NUMBER:**

Submitted by: Darlene Thompson

Title: Finance Director

Date: September 24, 2019

City Manager Approval:           RH

## RESOLUTION 19-09

### A RESOLUTION OF THE BOARD OF PUBLIC UTILITIES COMMISSIONERS OF THE CITY OF TULARE APPROVING THE ADOPTION OF AN ORDINANCE BY THE COUNCIL OF THE CITY OF TULARE AND THE ISSUANCE OF WATER REVENUE BONDS

**WHEREAS**, the City of Tulare desires to issue one or more series of Water Revenue Bonds (the "Bonds"), to finance and refinance certain capital improvements (the "Project") to its municipal water system (the "System") (including but not limited to refinancing the 2006 Lease, as defined below); and

**WHEREAS**, the City has previously entered into a lease purchase agreement, by and between the City of Tulare and CitiMortgage, Inc., as assigned to CitiCapital Municipal Finance, for certain equipment (the "2006 Lease") in the aggregate principal amount of \$9,823,414;

**WHEREAS**, the Council of the City of Tulare, on October 22, 2019, or such other date as the city may select, has for consideration an Ordinance, providing for the issuance of not to exceed \$20,000,000 principal amount of City of Tulare Water Revenue Bonds (the "Ordinance"); and

**WHEREAS**, the Board has carefully considered said Ordinance and each and every provision thereof; and

**WHEREAS**, the City Council of the City of Tulare is expected to adopt an ordinance and a resolution providing for the issuance of not to exceed \$20,000,000 aggregate principal amount of one or more series of Bonds pursuant to an Indenture (the "Indenture"), the proceeds of which will be used to finance and refinance the Project (including but not limited to refinancing the 2006 Lease); and

**WHEREAS**, pursuant to Section 5852.1 of the Government Code of the State of California, the City has received certain representations and good faith estimates from the Municipal Advisor and the City has disclosed such good faith estimates as set forth on Exhibit A attached hereto; and

**WHEREAS**, this Board of Public Utilities Commissioners of the City of Tulare (the "Board") desires to approve the Ordinance and issuance of the Bonds by the City of Tulare; and

#### **NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC UTILITIES COMMISSIONERS OF THE CITY OF TULARE AS FOLLOWS:**

Section 1. Approval of Ordinance. The Ordinance and each and every provision thereof, is hereby approved by the Board, and the Board hereby consents to and concurs in the adoption of said Ordinance, and consents to the issuance of one or more series of Bonds and the use of a portion of the proceeds thereof to finance or refinance

the Project. The Board acknowledges that the Bonds may be sold by the City in a public or private sale.

Section 2. Actions by Board. Whenever in said Ordinance or the Indentures, any act is required by any applicable law to be done or performed by the Board, then in each and every such case the Board hereby agrees that it will do or perform such act, and the Board hereby covenants, represents and agrees, for the direct benefit of the owners of all of the revenue bonds authorized to be issued under said Ordinance and Indenture that it will take any and all action required by it to be taken in order for the City of Tulare to comply with said Ordinance and Indenture and each and every provision thereof.

**PASSED AND ADOPTED this 3<sup>rd</sup> day of October, 2019.**

---

President of the Board of Public Utilities  
Commissioners

**ORDINANCE NO. 19-\_\_**  
**AN ORDINANCE OF THE COUNCIL OF THE CITY OF**  
**TULARE PROVIDING FOR THE ISSUANCE OF NOT TO**  
**EXCEED \$20,000,000 PRINCIPAL AMOUNT OF CITY OF**  
**TULARE WATER REVENUE BONDS AND APPROVING A**  
**BOND INDENTURE**

WHEREAS, the City of Tulare (the “City”) now owns and operates a municipal water system (the “System”);

WHEREAS, the City proposes to issue not to exceed \$20,000,000 aggregate principal amount of “City of Tulare Water Revenue Bonds, Series 2019”, in one or more series (collectively, the “Bonds”) to finance and refinance certain capital improvements to its municipal water system (the “System”) (including but not limited to refinancing the 2006 Lease, as defined below);

WHEREAS, the City has previously entered into a lease purchase agreement, by and between the City and CitiMortgage, Inc., as assigned to CitiCapital Municipal Finance, for certain equipment (the “2006 Lease”) in the aggregate principal amount of \$9,823,414;

WHEREAS, the Bonds shall be issued under the provisions of the Charter of the City and the City of Tulare Revenue Bond Law, enacted by Ordinance No. 1030, adopted by the Council of the City of Tulare (the “Council”) on February 1, 1972, as amended (collectively, the “Law”);

WHEREAS, the Council has reviewed all proceedings heretofore taken relative to the authorization of the Bonds and has found, as a result of such review, and hereby finds and determines, that all conditions, things and acts required by law to exist, happen or be performed precedent to and in the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Council is now authorized, pursuant to each and every requirement of law, to issue the Bonds in the manner and form provided in this Ordinance; and

WHEREAS, pursuant to Section 5852.1 of the Government Code of the State of California, the City has received certain representations and good faith estimates from the Municipal Advisor and the City has disclosed such good faith estimates as set forth on Exhibit A attached hereto;

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TULARE:**

Section 1. Amount, Issuance, Purpose and Nature of Bonds. Under and pursuant to the Law and this Ordinance, Revenue Bonds of the City of Tulare shall be issued for the purposes stated herein. Said Bonds shall be and are special obligations of the City of Tulare and shall be and are secured by a pledge of and lien upon, and shall be and are a charge upon, and shall be and are payable as to the principal thereof and interest thereon and any premiums upon the redemption of any thereof, solely from the System Net Revenues (as defined under the Bond Indenture described below), such System Net Revenues being pledged, charged and assigned for the security of the Bonds. The Bonds are not to be secured by the taxing power of the City.

The Bond proceeds shall be used by the City for the purpose of financing and refinancing the acquisition and construction of improvements to the System.

The principal amount of the Bonds issued under this Ordinance shall not exceed \$20,000,000, the interest rate on the Bonds shall not exceed 5%, the term of the Bonds shall not exceed thirty (30) years and the Bonds shall be designated "City of Tulare, Water Revenue Bonds, Series 2019."

The President of the Council and Ex-Officio Mayor of the City of Tulare and the Finance Director of the City are hereby authorized and directed to execute the Bonds (either manually or by facsimile), in substantially the form as attached to the Indenture, and the City Clerk and Clerk of the Council and/or the Chief Deputy City Clerk and Clerk of the Council are hereby authorized and directed to countersign and attach the seal of the City (either manually or by facsimile) to such Bonds.

Section 2. Approval of Bond Indenture. The security for and the terms and conditions of the Bonds will be provided for under an Indenture to be entered into by the City and a trustee bank named therein, as Trustee (the "Bond Indenture"). The Bond Indenture is hereby approved, in substantially the form as presented to the Council and on file with the City Clerk and Clerk of the Council. The President of the Council and Ex-Officio Mayor of the City and/or City Manager and/or Finance Director/Treasurer of the City are hereby authorized and directed to execute each Bond Indenture and the City Clerk and Clerk of the Council and/or the Chief Deputy City Clerk and Clerk of the Council is hereby authorized and directed to attest and attach the seal of the City to each Bond Indenture, such Bond Indentures to be in substantially the form presented to this meeting and on file with the City Clerk and Clerk of the Council, together with such changes therein or additions thereto as may be deemed advisable to such officers, upon the advice of Hawkins Delafield & Wood LLP, Bond Counsel, such execution to be conclusive evidence of the approval of such Bond Indenture.

Section 3. Effective Date of Ordinance; Publication. This Ordinance is subject to the approval of the Board of Public Utilities Commissioners of the City. This Ordinance shall take effect thirty (30) days after its final passage. The City Clerk is hereby authorized and directed to publish this Ordinance by one insertion in a newspaper of general circulation in the City of Tulare, with the "Ayes" and "Noes", within ten (10) days of its passage to print.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
President of the Council and Ex-Officio  
Mayor of the City of Tulare

ATTEST:

\_\_\_\_\_  
City Clerk and Clerk of the  
Council of the City of Tulare

**EXHIBIT A**

**CITY OF TULARE WATER REVENUE BONDS, SERIES 2019**

**GOOD FAITH ESTIMATES**

Pursuant to Section 5852.1 of the Government Code of the State of California, the following information was obtained from Bartle Wells Associates, as the municipal advisor of the bonds defined above (the “Bonds”), for consideration prior to the authorization in the foregoing Ordinance of the proposed Bonds:

1. *True Interest Cost of the Bonds.* Assuming an aggregate principal amount of the Bonds in the amount of \$17,500,000 is sold to effectuate the financing with annual debt service savings and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the true interest cost of the Bonds, 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 Bonds, is 3.3%.

2. *Finance Charge of the Bonds.* Assuming such a principal amount of the proposed Bonds is sold and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the Finance Charge of the Bonds, which means the sum of all fees and charges paid to third parties (or costs associated with the issuance of the Bonds), is \$300,000.

3. *Amount of Proceeds to be received.* Assuming such aggregate principal amount of the proposed Bonds required to effectuate the financing is sold and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the amount of proceeds expected to be received by the City for sale of the Bonds less the Finance Charge of the Bonds described in 2 above and any reserves or capitalized interest paid or funded with proceeds of the Bonds, is \$17,000,000.

4. *Total Payment Amount.* Assuming such aggregate principal amount of the proposed Bonds are sold and based on market interest rates prevailing at the time of preparation of this information, a good faith estimate of the total payment amount, which means the sum total of all payments the issuer will make to pay debt service on the Bonds plus the Finance Charge of the Bonds described in paragraph 2 above not paid with the proceeds of the Bonds, calculated to the final maturity of the Bonds, is \$26,350,000.

Attention is directed to the fact that the foregoing information constitutes good faith estimates only. The actual interest cost, finance charges, amount of proceeds and total payment amount may vary from the estimates above due to variations from these estimates in the timing of Bond sales, the amount of Bonds sold, the amortization of the Bonds sold and market interest rates at the time of each sale. The date or dates of sale and the amount of Bonds sold will be determined by the City based on need for funds and other factors. The actual interest rates at which the Bonds will be sold will depend on the bond market at the time of sale. The actual amortization of the Bonds will also depend, in part, on market interest rates at the time of each sale. Market interest rates are affected by economic and other factors beyond the City’s control.

---

---

**INDENTURE**

by and between

**CITY OF TULARE**

and

**U.S. BANK NATIONAL ASSOCIATION**

as Trustee

Dated as of \_\_\_\_\_ 1, 2019

Relating to the

**CITY OF TULARE  
WATER REVENUE BONDS, SERIES 2019**

---

---

**TABLE OF CONTENTS**

Page

**ARTICLE I**

**DEFINITIONS; EQUAL SECURITY**

Section 1.1. Definitions .....  
Section 1.2. Equal Security.....

**ARTICLE II**

**THE BONDS**

Section 2.1. Authorization and Terms of Bonds .....  
Section 2.2. Form of Bonds .....  
Section 2.3. Application of Proceeds of Sale of Bonds; .....  
Section 2.4. Redemption of Bonds .....  
Section 2.5. Execution of Bonds .....  
Section 2.6. Transfer and Registration of Bonds.....  
Section 2.7. Exchange of Bonds.....  
Section 2.8. Bond Registration Books.....  
Section 2.9. Mutilated, Destroyed, Stolen or Lost Bonds.....  
Section 2.10. Temporary Bonds .....  
Section 2.11. Validity of Bonds.....  
Section 2.12. Book-Entry System for Bonds.....

**ARTICLE III**

**SECURITY; CREATION OF FUNDS**

Section 3.1. Pledge and Allocation of System Revenues .....  
Section 3.2. Debt Service Fund.....  
Section 3.3. Establishment and Maintenance of Funds for Use of Money in the Debt  
Service Fund  
Section 3.4. Project Fund .....  
Section 3.5. Costs of Issuance Fund .....  
Section 3.6. Reserve Fund .....  
Section 3.7. Additional Parity Obligations .....  
Section 3.8. Rate Stabilization Fund.....

**ARTICLE IV**

**COVENANTS OF THE CITY**

Section 4.1. Punctual Payment .....  
Section 4.2. Tax Covenants and Matters .....



Section 4.3.	Rebate Fund.....
Section 4.4.	Against Encumbrances.....
Section 4.5.	Against Sale or Other Disposition of the System.....
Section 4.6.	Maintenance and Operation of System.....
Section 4.7.	Insurance .....
Section 4.8.	Amounts of Rates, Fees and Charges .....
Section 4.9.	Enforcement of and Performance Under Contracts.....
Section 4.10.	Collection of Charges, Fees and Rates .....
Section 4.11.	No Free Service.....
Section 4.12.	Payment of Claims .....
Section 4.13.	Books of Record and Accounts; Financial Statements.....
Section 4.14.	Payment of Taxes and Other Charges and Compliance with Governmental Regulations
Section 4.15.	Continuing Disclosure.....
Section 4.16.	Further Assurances.....

ARTICLE V

THE TRUSTEE

Section 5.1.	The Trustee.....
Section 5.2.	Liability of Trustee.....
Section 5.3.	Notice to Trustee.....

ARTICLE VI

AMENDMENT OF THE INDENTURE

Section 6.1.	Procedure for Amendment of the Indenture .....
Section 6.2.	Disqualified Bonds.....
Section 6.3.	Endorsement or Replacement of Bonds After Amendment.....
Section 6.4.	Amendment by Mutual Consent.....
Section 6.5.	Opinion of Counsel .....

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES OF OWNERS

Section 7.1.	Events of Default and Acceleration of Maturities.....
Section 7.2.	Application of Funds Upon Acceleration .....
Section 7.3.	Other Remedies of Owners.....
Section 7.4.	Non-Waiver .....
Section 7.5.	Actions by Trustee as Attorney-in-Fact.....
Section 7.6.	Remedies Not Exclusive.....

ARTICLE VIII

DEFEASANCE

Section 8.1. Discharge of Bonds .....  
Section 8.2. Unclaimed Money .....

ARTICLE IX

MISCELLANEOUS

Section 9.1. Liability of City Limited to System Revenues and Other Funds .....  
Section 9.2. Benefits of Indenture Limited to Certain Parties .....  
Section 9.3. Successor Is Deemed Included in All References to Predecessor .....  
Section 9.4. Execution of Documents by Owners.....  
Section 9.5. Waiver of Personal Liability .....  
Section 9.6. Acquisition of Bonds by City.....  
Section 9.7. Content of Certificates and Reports .....  
Section 9.8. Investment of Money in Funds and Accounts.....  
Section 9.9. Accounts and Funds.....  
Section 9.10. Article and Section Headings, Gender and References .....  
Section 9.11. Partial Invalidity.....  
Section 9.12. Execution in Several Counterparts .....  
Section 9.13. Business Days .....  
Section 9.14. Governing Law .....  
Section 9.15. Notices .....  
Section 9.16. Provisions Relating to Bond Insurer .....  
EXHIBIT A – FORM OF BONDS ..... A-1  
EXHIBIT B – FORM OF COSTS OF ISSUANCE FUND REQUISITION.....B-1

## **INDENTURE**

This INDENTURE dated as of \_\_\_\_\_ 1, 2019 (the “Indenture”), by and between the CITY OF TULARE, a charter city, duly organized and existing under and by virtue of the laws of the State of California (the “City”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association duly organized and existing under and by virtue of the laws of the United States of America, as Trustee (the “Trustee”);

### **WITNESSETH:**

WHEREAS, the City is authorized under the Law (as defined herein) to issue bonds (the “Bonds”) to finance or refinance capital improvements to its water enterprise system (the “System”) (including but not limited to refinancing the 2006 Lease, as defined below);

WHEREAS, the City has previously entered into a lease purchase agreement, by and between the City and CitiMortgage, Inc., as assigned to CitiCapital Municipal Finance, for certain equipment (the “2006 Lease”) in the aggregate principal amount of \$9,823,414, of which \$ \_\_\_\_\_ remains outstanding;

WHEREAS, the City has determined that it is in the best interests of the City and its water customers and is necessary and proper for City purposes that the City issue the Bonds to finance and refinance certain improvements to the System, and in the manner described in this Indenture;

WHEREAS, pursuant to Section 5451 of the California Government Code, the pledge by the City herein of System Net Revenues (as defined herein) to the payment of the Bonds shall be valid and binding in accordance to the terms hereof without the need for any physical delivery, recordation, filing, or further act; and

WHEREAS, the City has determined that all things necessary to cause the Bonds, when duly executed by the City and authenticated and delivered by the Trustee as provided herein, to be legal and valid special obligations of the City enforceable in accordance with their terms and to constitute the Indenture a valid agreement for the purposes and uses herein set forth in accordance with its terms, have been done and taken, and the execution and delivery hereof and the execution, authentication and delivery of the Bonds, subject to the terms hereof, have in all respects been duly authorized;

NOW THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the interest on and principal of and redemption premiums, if any, on all Bonds at any time issued and delivered hereunder according to their tenor, and to secure the observance and performance of all the agreements, conditions, covenants and terms therein and herein set forth, and to declare the conditions and terms upon and subject to which the Bonds are to be issued, and in consideration of the premises and of the mutual agreements and covenants herein contained and of the purchase and acceptance of the Bonds by the respective registered owners thereof from time to time, and for other valuable considerations, the receipt whereof is hereby acknowledged, the City does hereby agree and covenant with the Trustee, for the benefit of the respective registered owners from time to time of the Bonds, as follows:

## ARTICLE I

### DEFINITIONS; EQUAL SECURITY

Section 1.1. Definitions. Unless the context otherwise requires, the terms defined in this Section shall for all purposes hereof and of the Bonds and of any certificate, opinion, report, request or other document herein or therein mentioned have the meanings herein specified, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein:

#### 2006 Lease

“2006 Lease” means the lease purchase agreement entered into on September 27, 2006, by and between the City and CitiMortgage, Inc., as assigned to CitiCapital Municipal Finance, in the aggregate principal amount of \$9,824,414, for the purposes of attaining certain equipment for the City.

#### Annual Debt Service

“Annual Debt Service” means, for any Fiscal Year, the sum of (1) the interest accruing on all Parity Obligations during such Fiscal Year, assuming that all Parity Obligations is retired as scheduled, plus (2) the principal amount (including principal due as sinking fund payments) of all Parity Obligations due in such Fiscal Year, provided, that the following adjustments shall be made to the foregoing amounts in the calculation of Annual Debt Service:

A. with respect to any such Parity Obligations bearing or comprising interest at other than a fixed interest rate, the rate of interest used to calculate Annual Debt Service shall be (i) with respect to such Parity Obligations then outstanding, one hundred ten per cent (110%) of the daily average interest rate on such Parity Obligations during the twelve (12) calendar months next preceding the date of such calculation (or if Parity Obligations has been outstanding for less than twelve (12) calendar months, such outstanding period) or (ii) with respect to such Parity Obligations then proposed to be issued the current SIFMA index for floating tax-exempt debt;

B. with respect to any such Parity Obligations having twenty-five per cent (25%) or more of the aggregate principal amount thereof due in any one Fiscal Year (“bullet maturities”), Annual Debt Service shall be calculated for the Fiscal Year of determination as if the principal of such bullet maturity were being paid in substantially equal annual amounts over a period of twenty-five (25) years from the date of such bullet maturity;

C. with respect to any such Parity Obligations or portions thereof bearing no interest but which are sold at a discount and which discount accretes with respect to such Parity Obligations or portions thereof, such accreted discount shall be treated as due when scheduled to be paid;

D. Annual Debt Service shall not include interest on Parity Obligations which is to be paid from amounts constituting capitalized interest; and

E. with respect to an interest rate swap agreement relating to Parity Obligations, a reasonable estimate or forecast shall be made by the City of amounts that will be due under such instrument in combination with such Parity Obligations, and for this purpose if the City pays a fixed rate in exchange for a variable rate then such fixed rate may be assumed as the City's rate and if the City pays a variable rate in exchange for a fixed rate then the variable rate shall be determined in accordance with the procedure set forth in subparagraph (A) of this definition.

Authorized Investments

“Authorized Investments” means any of the following obligations which at the time of investment are legal investments of funds of the City under the laws of the State of California for the money proposed to be invested herein:

- (1) (a) Direct obligations (other than an obligation subject to variation in principal repayment) of the United States of America (“United States Treasury Obligations”), (b) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America, (c) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by any agency or instrumentality of the United States of America when such obligations are backed by the full faith and credit of the United States of America, or (d) evidences of ownership of proportionate interests in future interest and principal payments on obligations described above held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying government obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated. These include, but are not necessarily limited to:

- U.S. Treasury obligations  
All direct or fully guaranteed obligations

- Farmers Home Administration  
Certificates of beneficial ownership

- General Services Administration  
Participation certificates

- U.S. Maritime Administration  
Guaranteed participation certificates  
Guaranteed pool certificates

- Government National Mortgage Association (GNMA)  
GNMA-guaranteed mortgage-backed securities  
GNMA-guaranteed participation certificates

- U.S. Department of Housing & Urban Development  
Local authority bonds

Washington Metropolitan Area Transit Authority  
Guaranteed transit bonds

- (2) Federal Housing Administration debentures.
  - (3) The listed obligations of government-sponsored agencies which are not backed by the full faith and credit of the United States of America:
    - Federal Home Loan Mortgage Corporation (FHLMC)  
Participation certificates (excluding stripped mortgage securities which are purchased at prices exceeding their principal amounts)
- Senior debt obligations
- Farm Credit Banks (formerly: Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives)  
Consolidated system wide bonds and notes
  - Federal Home Loan Banks (FHL Banks)  
Consolidated debt obligations
  - Federal National Mortgage Association (FNMA)  
Senior debt obligations  
Mortgage-backed securities (excluding stripped mortgage securities which are purchased at prices exceeding their principal amounts)
  - Student Loan Marketing Association (SLMA)  
Senior debt obligations (excluding securities that do not have a fixed par value and/or the terms of which do not promise a fixed dollar amount at maturity or call date)
  - Financing Corporation (FICO)  
Debt obligations
  - Resolution Funding Corporation (REFCORP)  
Debt obligations
- (4) Unsecured certificates of deposit, deposit accounts, time deposits, and bankers' acceptances (having maturities of not more than 30 days) of any bank the short-term obligations of which are rated "A-1" or better by S&P.
  - (5) Deposits the aggregate amount of which are fully insured by the Federal Deposit Insurance Corporation (FDIC), in banks which have capital and surplus of at least \$5 million.
  - (6) Commercial paper (having original maturities of not more than 270 days) rated "A-1" or its equivalent by S&P, Moody's or Fitch.

- (7) Money market funds rated “AAm” or “AAm-G” by Standard & Poor’s, or better, including funds which the Trustee or an affiliate manages, sponsors and advises.
- (8) Repurchase agreements with (1) any domestic bank, or domestic branch of a foreign bank, the long term debt of which is rated at least “A” by S&P, Moody’s or Fitch; or (2) any broker-dealer with “retail customers” or a related affiliate thereof which broker-dealer has, or the parent company (which guarantees the provider) of which has, long-term debt rated at least “A” by the S&P, Moody’s or Fitch, which broker-dealer falls under the jurisdiction of the Securities Investors Protection Corporation; or (3) any other entity rated “A” or better by S&P, Moody’s or Fitch.
- (9) State Obligations, which means:
  - (i) Direct general obligations of any state of the United States or any subdivision or agency thereof to which is pledged the full faith and credit of a state the unsecured general obligation debt of which is rated “A” or its equivalent by S&P, Moody’s or Fitch, or better, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured general obligation debt is so rated.
  - (ii) Direct, general short-term obligations of any state agency or subdivision described in (a) above and rated at least “A-1” or its equivalent by S&P, Moody’s or Fitch.
  - (iii) Special Revenue Bonds (as defined in the United States Bankruptcy Code) of any state, state agency or subdivision described in (i) above and rated at least “AA” or its equivalent by S&P, Moody’s or Fitch.
- (10) Investment agreements with a domestic or foreign bank or corporation (other than a life or property casualty insurance company) the long-term debt of which, or, in the case of a guaranteed corporation the long-term debt, or, in the case of a monoline financial guaranty insurance company, claims paying ability, of the guarantor is rated at least “AA” or its equivalent by S&P, Moody’s or Fitch, or investment agreements fully secured by Federal Securities.
- (11) Pre-funded municipal obligations rated “AAA” or its equivalent by S&P, Moody’s or Fitch.
- (12) Local California agency investment pools, so long as such pool is rated in one of the two highest rating categories by S&P, Moody’s or Fitch.
- (13) The Local Agency Investment Fund administered by the State of California.
- [(14) Any investment approved by the Bond Insurer.]

[Bond Insurer

“Bond Insurer” shall mean \_\_\_\_\_, or any successor thereto.]

[Bond Insurance Policy

“Bond Insurance Policy” means the bond insurance policy insuring the Bonds issued by the Bond Insurer.]

Bonds

“Bonds” means the City of Tulare Water Revenue Bonds Series 2019 authorized, executed and delivered hereunder.

Book-Entry Bonds

“Book-Entry Bonds” means Bonds registered in the name of the Nominee of a Depository as the Owner thereof pursuant to the terms and provisions of Section 2.12 hereof.

Business Day

“Business Day” means any day other than a Saturday, a Sunday or a day on which banks located in the city where the Corporate Trust Office is located, are required or authorized to remain closed.

Certificate of the City

“Certificate of the City” means an instrument in writing signed by the Mayor, the Vice Mayor, the City Manager, Finance Director, or any other officer of the City duly authorized by the City for that purpose, such authorization to be evidenced by a certificate verifying the specimen signatures of such officers.

City

“City” shall mean the City of Tulare, California.

Code

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations of the United States Department of the Treasury issued thereunder, and in this regard reference to any particular section of the Code shall include reference to all successors to such section of the Code.

Continuing Disclosure Certificate

“Continuing Disclosure Certificate” means that certain Continuing Disclosure Certificate executed by the City with respect to the Bonds.

Corporate Trust Office

“Corporate Trust Office” means a corporate trust office of the Trustee, located at Los Angeles, California, provided that for purposes of transfer, exchange, surrender, redemption and payment of Bonds such term shall mean the corporate trust office of the Trustee located in St.



Paul, Minnesota, or such other address as may be specified by the Trustee in a written notice to the City.

### Costs of Issuance

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the City and related to the authorization, execution, sale and delivery of the Bonds, including but not limited to advertising and printing costs, costs of preparation and reproduction of documents, filing and recording fees, travel expenses and costs relating to rating agency meetings and other meetings concerning the Bonds, initial fees and charges of any Trustee, legal fees and charges, fees and disbursements of consultants, lawyers and other professionals, financial advisor fees and expenses, rating agency fees, fees and charges for preparation, execution, transportation and safekeeping of Bonds, and any other cost, charge or fee in connection with the delivery of the Bonds.

### Costs of Issuance Fund

“Costs of Issuance Fund” means the Fund established pursuant to Section 3.4 hereof.

### Debt Service Fund

“Debt Service Fund” means the fund by that name, established pursuant to Section 3.2 hereof that is held by the Trustee.

### Depository

“Depository” means the securities depository acting as Depository for the Bonds pursuant to Section 2.12 hereof.

### DTC

“DTC” means The Depository Trust Company, New York, New York, and its successors or assigns.

### DTC Participants

“DTC Participants” means those broker-dealers, banks and other financial institutions from time to time for which the Depository holds Book-Entry Bonds as a securities depository.

### Event of Default

“Event of Default” means any event described as such in Section 7.1 hereof.

### Federal Securities

“Federal Securities” means the Authorized Investments described in paragraph 1(a) of such definition.

### Fitch

“Fitch” means Fitch Ratings, Inc, and its successors or assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a municipal securities rating agency, then the term “Fitch” shall be deemed to refer to any other nationally recognized municipal securities rating agency selected by the City.

### Generally Accepted Accounting Principles

“Generally Accepted Accounting Principles” means the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor.

### Indenture

“Indenture” means this Indenture and any Supplemental Indentures.

### Independent Certified Public Accountant

“Independent Certified Public Accountant” means any certified public accountant or firm of such accountants duly licensed and entitled to practice and practicing as such under the laws of the State of California, appointed and paid by the City, and who, or each of whom:

- (1) is in fact independent and not under the domination of the City;
- (2) does not have any substantial interest, direct or indirect, with the City; and
- (3) is not connected with the City as a director, officer or employee of the City, but who may be regularly retained to make annual or other audits of the books of or reports to the City.

### Information Services

“Information Services” means the Electronic Municipal Market Access (“EMMA”) system maintained by the Municipal Securities Rulemaking Board, or such other generally accepted service available to the City for the purpose of providing information with respect to called bonds and recognized or acceptable in accordance with current guidelines of the Securities and Exchange Commission.

### Interest Fund

“Interest Fund” means the fund by that name established pursuant to Section 3.3 hereof that is held by the Trustee.

### Interest Payment Date

“Interest Payment Date” means any June 1 or December 1, commencing June 1, 2020.

## Law

“Law” means (1) the Freeholder’s Charter of the City and the City of Tulare Revenue Bond Law, enacted by Ordinance No. 1030, adopted by the Council of the City on February 1, 1972, as amended and/or (2) Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 (commencing with Section 53570) of the California Government Code (commonly referred to as the Refunding Bond Law).

## Letter of Representations

“Letter of Representations” means a letter of the City and the Trustee delivered to and accepted by the Depository at or prior to the issuance of any Book-Entry Bonds setting forth the basis on which the Depository serves as depository for such Book-Entry Bonds, as originally executed or as it may be supplemented or revised or replaced by a letter to a substitute depository.

## Maximum Annual Debt Service

“Maximum Annual Debt Service” means, as of any date of calculation, the largest Annual Debt Service during the period from the date of such calculation through the final maturity date of all Parity Obligations.

## Moody’s

“Moody’s” means Moody’s Investors Service, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the services of a municipal securities rating agency, then the term “Moody’s” shall be deemed to refer to any other nationally recognized municipal securities rating agency selected by the City.

## Nominee

“Nominee” means the nominee of the Depository, which may be the Depository, as determined from time to time pursuant to Section 2.12 hereof.

## Operation and Maintenance Costs

“Operation and Maintenance Costs” means the reasonable and necessary costs paid or incurred by the City for maintaining and operating the System, determined in accordance with Generally Accepted Accounting Principles, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, and including all administrative costs of the City that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums (including payments required to be paid into any self-insurance funds), and including all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms hereof or of any Supplemental Indenture or of any resolution authorizing the execution of any Parity Obligations, such as compensation, reimbursement and indemnification of the Trustee and fees and expenses of Independent Certified Public Accountants; but excluding in all cases (i) payment of Parity Obligations and

Subordinate Obligations, (ii) costs of capital additions, replacements, betterments, extensions or improvements which under Generally Accepted Accounting Principles are chargeable to a capital account, and (iii) depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles.

### Outstanding

“Outstanding,” when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 6.2 hereof) all Bonds issued and delivered hereunder except:

- (1) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation;
- (2) Bonds paid or deemed to have been paid within the meaning of Section 8.1 hereof; and
- (3) Bonds in lieu of or in substitution for which other Bonds shall have been executed, issued and delivered by the City pursuant hereto.

### Owner

“Owner” means the registered owner of any Outstanding Bond as per the registration books required to be maintained pursuant to Section 2.8 hereof.

### Parity Obligations

“Parity Obligations” means (1) the Bonds and (2) all obligations of the City, the payments under which are secured by a pledge of the System Net Revenues on a parity with payments of principal of and interest on the Bonds as provided herein.

### Principal Fund

“Principal Fund” means the fund by that name, established pursuant to Section 3.3 hereof that is held by the Trustee.

### Principal Payment Date

“Principal Payment Date” means any December 1 on which the principal of the Bonds is scheduled to be paid.

### Rate Stabilization Fund

“Rate Stabilization Fund” means the fund by that name established pursuant to Section 3.6 hereof.

### Rating Agency or Agencies

“Rating Agency” or “Rating Agencies” means as applicable Fitch, Moody’s and/or S&P to the extent one or more of such rating agencies is then rating the Bonds (or if no such rating agency is then rating the Bonds, then one of such rating agencies selected by the City).

### Rebate Fund

“Rebate Fund” means the fund by that name, established pursuant to the Code and Section 4.3 hereof that is held by the Trustee.

### Record Date

“Record Date” means the close of business on the fifteenth (15th) day of the month preceding any Interest Payment Date, whether or not such day is a Business Day.

### Reserve Fund

“Reserve Fund” means the fund by that name established pursuant to Section 3.6 hereof that is held by the Trustee.

### Reserve Fund Requirement

“Reserve Fund Requirement” shall mean the aggregate amount, as calculated from time to time with respect to the Bonds, equal to the least of (i) maximum annual debt service on the Bonds (based on a year ending June 30), (ii) 125% of average annual debt service on the Bonds (based on a year ending June 30) or (iii) 10% of the original principal amount of the Bonds or, if more than a de minimis of original issue discount or premium on such Series of Bonds under the Code, 10% of the issue price of the Bonds.

### [Reserve Fund Surety Policy or Reserve Policy

“Reserve Fund Surety Policy” or “Reserve Policy” means the Reserve Fund Surety Policy issued by the Bond Insurer in the amount of \$\_\_\_\_\_ and deposited in the Reserve Fund.]

### Securities Depositories

“Securities Depositories” means The Depository Trust Company, and in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses or such other securities depositories as the City designates in written notice filed with the Trustee.

### S&P

“S&P” means S&P Global Ratings, and its successors or assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a municipal securities rating agency, then the term “S&P” shall be deemed to refer to any other nationally recognized municipal securities rating agency selected by the City.

### Supplemental Indenture

“Supplemental Indenture” means any indenture then in full force and effect which has been entered into by the City and the Trustee, amendatory of or supplemental hereto; but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

### System

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

### System Net Revenues

“System Net Revenues” means for any period, System Revenues less Operation and Maintenance Costs for such period; provided that certain adjustments in the amount of System Net Revenue deemed collected during a Fiscal Year may be made in connection with amounts deposited in the Rate Stabilization Fund as provided in Section 3.6 herein.

### System Revenue Fund

“System Revenue Fund” means the fund by that name created pursuant to Section 3.1 hereof.

### System Revenues

“System Revenues” means all gross income and revenue received or receivable by the City from the ownership or operation of the System, determined in accordance with Generally Accepted Accounting Principles, including all fees, rates, charges (including connection fees) and all amounts paid under any contracts received by or owed to the City in connection with the operation of the System and all proceeds of insurance relating to the System and all other income and revenue howsoever derived by the City from the ownership or operation of the System or arising from the System.

### Tax Certificate

“Tax Certificate” means the certificate, executed by the City and dated the date of the original issuance and delivery of the Bonds, with respect to the requirements of certain provisions of the Code, as such certificate may from time to time be modified or supplemented in accordance with the terms thereof.

### Trustee

“Trustee” means U.S. Bank National Association, a national banking association, duly organized and existing under the laws of the United States of America, appointed by the City and acting as an independent trustee with the duties and powers herein provided, and its successors or

assigns, or any other corporation or association which may at any time be substituted in its place as provided in Section 5.1 hereof.

Written Request of the City

“Written Request of the City” means an instrument in writing signed by the Mayor, Vice-Mayor, City Manager or their designee, or by any other officer of the City duly authorized by the City for that purpose, such authorization to be evidenced at the request of the Trustee by a certificate verifying the specimen signatures of such officers.

Section 1.2. Equal Security. In consideration of the acceptance of the Bonds by the Owners thereof, the Indenture shall be deemed to be and shall constitute a contract between the City and the Trustee for the benefit of the owners from time to time of all the Bonds issued hereunder and then Outstanding to secure the full and final payment of the interest on and principal of and redemption premiums, if any, on all Bonds authorized, executed, issued and delivered hereunder, 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 on behalf of the City shall be for the equal and proportionate benefit, security and protection of all Owners of the Bonds from time to time without preference, priority or distinction as to security or otherwise of any Bonds over any other Bonds.

**ARTICLE II**

**THE BONDS**

Section 2.1. Authorization and Terms of Bonds. The Bonds in a principal amount of \$\_\_\_\_\_ are hereby authorized to be issued by the City subject to finance and refinance the acquisition and construction of public capital improvements to the System of the City. The Bonds shall be designated the “City of Tulare Water Revenue Bonds Series 2019.”

The Bonds shall be dated as of their date of delivery, shall bear interest (computed on the basis of a 360-day year consisting of twelve 30-day months) at the rates per annum (payable semiannually on June and December 1 in each year, commencing on [June 1, 2020]) and shall mature and become payable on December 1 in each of the years in the principal amounts set forth in the following schedule:

<u>Maturity (December 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
	\$	%

The Bonds shall be issued as fully registered bonds in denominations of five thousand dollars (\$5,000) or any integral multiple of five thousand dollars (\$5,000) (not exceeding the principal amount of Bonds maturing at any one time). The Bonds shall be numbered sequentially. Each Bond shall bear interest from the Interest Payment Date next preceding the date of registration thereof, unless such date of registration is during the period from and including the Record Date next preceding an Interest Payment Date to and including such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or unless such date of registration is on or before the Record Date next preceding the first Interest Payment Date, in which event it shall bear interest from its date of delivery; *provided*, that if at the time of registration of any Bond interest is then in default on the Outstanding Bonds, such Bond shall bear interest from the Interest Payment Date to which interest previously has been paid or made available for payment on the Outstanding Bonds. Payment of interest on the Bonds due on or before the maturity or prior redemption of the Bonds shall be made to the person whose name appears in the registration books maintained under Section 2.8 hereof as the Owner thereof as of the close of business on the Record Date next preceding each Interest Payment Date, such interest to be paid by check mailed by first class mail, postage prepaid, on each Interest Payment Date to such Owner at his address as it appears in the registration books maintained under such Section 2.8 hereof, or, upon written request received prior to the Record Date next preceding an Interest Payment Date of an Owner of at least one million dollars (\$1,000,000) in aggregate principal amount of Bonds, by wire transfer in immediately available funds to an account within the continental United States of America designated by such Owner.



The principal of and redemption premiums, if any, on the Bonds shall be payable upon the surrender thereof at maturity or the prior redemption thereof at the Corporate Trust Office of the Trustee. The interest on and principal of and redemption premiums, if any, on the Bonds shall be paid in lawful money of the United States of America.

Section 2.2. Form of Bonds. The Bonds, the authentication and registration endorsement and the assignment to appear thereon shall be substantially in the forms attached hereto as Exhibit A, which is incorporated herein and made a part hereof, with necessary or appropriate variations, omissions and insertions as permitted or required hereby.

Section 2.3. Application of Proceeds of Sale of Bonds. Upon receipt of payment for the Bonds (which amount shall be equal to \$\_\_\_\_\_, representing the par amount of the Bonds, plus net original issue premium of \$\_\_\_\_\_, and less an underwriting discount of \$\_\_\_\_\_, and less \$\_\_\_\_\_ for the bond insurance and reserve surety premiums paid by the Underwriter to the Bond Insurer on behalf of the City), the Trustee shall set aside and deposit such proceeds, together with any other amounts received from the City, in the manner described below and as set forth in further detail in a Written Request of the City.

- (i) The Trustee shall transfer to the Project Fund an amount equal to \$\_\_\_\_\_.
- (ii) The Trustee shall deposit in the Costs of Issuance Fund an amount equal to \$\_\_\_\_\_.
- (iii) The Trustee shall wire \$\_\_\_\_\_ as directed by the City to retire the 2006 Lease on the retire date of \_\_\_\_\_.
- (iv) The Trustee shall deposit in the Reserve Fund the Reserve Fund Surety Policy in the stated amount of \$\_\_\_\_\_, an amount equal to the Reserve Fund Requirement.

The Trustee may establish a temporary fund or account to facilitate such transfer and deposit.

Section 2.4. Redemption of Bonds.

(a) Optional Redemption. The Bonds maturing by their terms on or after December 1, 20\_\_\_, are subject to optional redemption by the City on any date on or after December 1, 20\_\_\_ to their respective stated maturity dates, as a whole or in part in such principal amounts and from such maturity dates as selected by the City, from funds derived by the City from any lawful source and deposited with the Trustee on or before the date of redemption, upon mailed notice as provided in Section 2.4(b) hereof, at a redemption price equal to the principal amount of the Bonds or the portions thereof called for redemption, together with interest accrued thereon to the date fixed for redemption, without premium.

(b) Mandatory Sinking Fund Redemption. The Bonds maturing on December 1, 20\_\_\_ are also subject to redemption prior to their stated maturities, in part, from mandatory sinking account payments, on each December 1 specified below, at a redemption

price equal to the principal plus accrued interest thereon to the date fixed for redemption, without premium.

Bonds Maturing December 1, 20\_\_

<u>Year</u> <u>(December 1)</u>	<u>Principal</u> <u>Amount</u>
------------------------------------	-----------------------------------

†

† Final Maturity.

The Bonds maturing on December 1, 20\_\_ are also subject to redemption prior to their stated maturities, in part, from mandatory sinking account payments, on each December 1 specified below, at a redemption price equal to the principal plus accrued interest thereon to the date fixed for redemption, without premium.

Bonds Maturing December 1, 20\_\_

<u>Year</u> <u>(December 1)</u>	<u>Principal</u> <u>Amount</u>
------------------------------------	-----------------------------------

†

† Final Maturity.

The Bonds maturing on December 1, 20\_\_ are also subject to redemption prior to their stated maturities, in part, from mandatory sinking account payments, on each December 1 specified below, at a redemption price equal to the principal plus accrued interest thereon to the date fixed for redemption, without premium.

Bonds Maturing December 1, 20\_\_

<u>Year</u> <u>(December 1)</u>	<u>Principal</u> <u>Amount</u>
------------------------------------	-----------------------------------

†

---

† Final Maturity.

(c) Terms of Redemption. Whenever less than all the Outstanding Bonds maturing on any one date are called for redemption at any one time, the Trustee shall select the Bonds to be redeemed (from the Outstanding Bonds maturing on such date not previously selected for redemption) by lot in any manner which the Trustee deems fair. The City shall deposit with the Trustee money sufficient to redeem any Outstanding Bonds on or before the redemption date of the Bonds to be redeemed. If the Bonds to be optionally redeemed are also subject to mandatory redemption, the Trustee will designate the mandatory sinking fund payment or payments (or portions thereof) against which the principal amount of the Bonds optionally redeemed will be credited.

Except for the redemption of Bonds at maturity, the City shall, at least thirty (30) days prior to the redemption date, notify the Trustee of the redemption date and the principal amount of Bonds to be redeemed. Notice of redemption of any Bonds or any portions thereof shall be mailed by first class mail, postage prepaid, by the Trustee not less than thirty (30) nor more than sixty (60) days prior to the redemption date of such Bonds (i) to the respective Owners of the Bonds designated for redemption at their addresses appearing on the bond registration books kept by the Trustee, (ii) to the Information Services and (iii) to the Securities Depositories. Each notice of redemption shall state the date of such notice, the Bonds to be redeemed, the date of issue of such Bonds, the redemption date, the redemption price, whether funds are then on deposit sufficient to pay the redemption price, the place of redemption (including the name and appropriate address), the CUSIP number (if any) of the maturity or maturities, and, if less than all Bonds of any such maturity are to be redeemed, the distinctive numbers of the Bonds of such maturity to be redeemed and, in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each such notice shall also state that on such redemption date there will become due and payable on each of such Bonds the redemption price thereof or of the specified portion of the principal amount thereof in the case of a Bond to be redeemed in part only, together with interest accrued thereon to the redemption date, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered at the Corporate Trust Office of the Trustee specified in the redemption notice as the place of redemption; *provided*, that failure by the Trustee to give notice pursuant to this Section 2.4 to any one or more of the Information Services or Securities Depositories, or the insufficiency of any such notice or the failure of any Owner to receive any redemption notice mailed to such Owner or any immaterial defect in the notice so mailed shall not affect the sufficiency of the proceedings for the redemption of any Bonds. Each notice relating to a redemption pursuant to this paragraph may be conditional, and shall further state that such redemption may be rescinded by the City on or prior to the date set for redemption.

The City shall have the right to provide conditional notice of redemption and to rescind any redemption pursuant to Section 2.4(a) by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default hereunder. The Trustee shall mail notice of rescission of redemption as soon as practicable in the same manner notice of redemption was originally provided.

Upon surrender of any Bond redeemed in part only, the City shall execute and the Trustee shall (upon receipt of a Written Request of the City) authenticate and deliver to the Owner thereof, at the expense of the City, a new Bond or Bonds of authorized denominations equal in aggregate principal amount to the unredeemed portion of the Bond surrendered and of the same maturity.

From and after the date fixed for redemption of any Bonds or any portions thereof, if notice of such redemption shall have been duly given and funds available for the payment of such redemption price of the Bonds or such portions thereof so called for redemption shall have been duly provided, no additional interest shall accrue on such Bonds or such portions thereof from and after the redemption date specified in such notice.

All Bonds redeemed or purchased pursuant to the provisions of this Section 2.4 shall be destroyed by the Trustee in accordance with its retention policy then in effect and the Trustee shall deliver a certificate of destruction to the City.

Section 2.5. Execution of Bonds. The President of the Board of the City is hereby authorized and directed to execute each of the Bonds on behalf of the City and the Secretary of the City is hereby authorized and directed to attest each of the Bonds on behalf of the City. Any of such signatures may be by manual subscription or by printed, lithographed or facsimile reproduction. In case any officer whose signature appears on the Bonds shall cease to be such officer before the delivery of the Bonds to the purchaser thereof, such signature shall nevertheless be valid and sufficient for all purposes the same as though he had remained in office until the delivery of such Bonds.

Only such of the Bonds as shall bear thereon a certificate of authentication, manually executed and dated by the Trustee, shall be entitled to any benefits hereunder or shall be valid or obligatory for any purpose, and such certificate of the Trustee shall be conclusive evidence that the Bonds so registered have been duly issued and delivered hereunder and are entitled to the benefits hereof.

Section 2.6. Transfer and Registration of Bonds. Any Bond may, in accordance with its terms, be transferred upon the books required to be kept pursuant to the provisions of Section 2.8 hereof by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation at the Corporate Trust Office of the Trustee accompanied by delivery of a duly executed written instrument of transfer in a form as provided by Supplemental Indenture.

Whenever any Bond or Bonds shall be surrendered for transfer, the City shall execute and the Trustee shall (upon receipt of a Written Request of the City) authenticate and deliver a new Bond or Bonds for a like aggregate principal amount and maturity date. The Trustee shall require the payment by the Owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer. The cost of any services rendered or expenses incurred by the Trustee in connection with any transfer shall be paid by the City.

The Trustee shall not be required to register the transfer of (i) any Bond during the fifteen (15) day period preceding any date established by the Trustee for selection of Bonds for

redemption, (ii) any Bonds which have been selected for redemption (except for any unredeemed portion of any of such Bonds) or (iii) any Bonds during the period from any Record Date to any Interest Payment Date.

Section 2.7. Exchange of Bonds. The Bonds may be exchanged at the Corporate Trust Office of the Trustee for a like aggregate principal amount of Bonds of the same maturity of other authorized denominations. The Trustee shall require the payment by the Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange. The cost of any services rendered or expenses incurred by the Trustee in connection with any exchange shall be paid by the City. No such exchange shall be required to be made (i) during the fifteen (15) days preceding any date established by the Trustee for selection of Bonds for redemption, (ii) of any Bonds which have been selected for redemption (except for any unredeemed portion of any of such Bonds) or (iii) any Bonds during the period from any Record Date to any Interest Payment Date.

Section 2.8. Bond Registration Books. The Trustee will keep, in accordance with its general practices and procedures in effect from time to time, at its Corporate Trust Office, sufficient books for the registration, transfer and exchange of the Bonds, which shall be open to inspection by the City during regular business hours upon reasonable prior written notice; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register, transfer or exchange the Bonds on such books as hereinbefore provided.

The ownership of the Bonds and the amount, maturity, number and date of holding the same shall be proved by the registration books maintained under this Section.

Section 2.9. Mutilated, Destroyed, Stolen or Lost Bonds. In case any Bond shall become mutilated, or shall be believed by the City to have been destroyed, stolen or lost, upon proof of ownership satisfactory to the Trustee, and upon the surrender of such mutilated Bond at the Corporate Trust Office of the Trustee, or upon the receipt of evidence satisfactory to the Trustee of such destruction, theft or loss, and upon receipt also of security or indemnity satisfactory to the City and the Trustee, and upon payment of a sum sufficient to cover any tax or governmental charge and all fees and expenses incurred by the City and the Trustee in the premises, the City shall execute and the Trustee shall (upon receipt of a Written Request of the City) authenticate and deliver at the Corporate Trust Office, a new Bond or Bonds of the same maturity date and of the same aggregate principal amount of authorized denominations, of like tenor and date, with such notations as the City shall determine, in exchange and substitution for and upon cancellation of the mutilated Bond, or in lieu of and in substitution for the Bond so destroyed, stolen or lost.

If any such destroyed, stolen or lost Bond shall have matured or shall have been called for redemption, payment of the amount due thereon may be made by the Trustee upon receipt by the Trustee and the City of like proof, security or indemnity and payment of any taxes, fees and expenses.

Any such replacement Bonds issued pursuant to this Section shall be entitled to equal and proportionate benefits with all other Bonds issued hereunder, and the City and the Trustee shall not be required to treat both the original Bond and any replacement Bond as being Outstanding

for the purpose of determining the principal amount of Bonds which may be issued hereunder or for the purpose of determining any percentage of Bonds Outstanding hereunder, but both the original and replacement Bond shall be treated as one and the same.

Section 2.10. Temporary Bonds. Until definitive Bonds shall be prepared, the City may cause to be executed and delivered in lieu of such definitive Bonds, and subject to the same provisions, limitations and conditions as are applicable in the case of definitive Bonds, except that they may be in any denominations authorized by the City, one or more temporary typed, printed, lithographed or engraved Bonds in fully registered form, as may be authorized by the City, substantially of the same tenor and, until exchanged for definitive Bonds, entitled and subject to the same benefits and provisions hereof as definitive Bonds. If the City issues temporary Bonds, it will execute and furnish definitive Bonds without unnecessary delay and thereupon the temporary Bonds may be surrendered to the Trustee at the Corporate Trust Office, without expense to the Owner in exchange for such definitive Bonds. The costs of printing any definitive Bonds and any services rendered by the Trustee in connection with the authentication and delivery thereof shall be paid by the City. All temporary Bonds so surrendered shall be cancelled by the Trustee and shall not be reissued.

Section 2.11. Validity of Bonds. The validity of the authorization and issuance of the Bonds shall not be affected in any way by any proceedings taken by the City for the financing or refinancing of the acquisition and construction of any additions, betterments, extensions or improvements to the facilities of the City, or by any contracts made by the City in connection therewith, and shall not be dependent upon the completion of the financing or refinancing of the acquisition and construction of any additions, betterments, extensions or improvements to the facilities of the City or upon the performance by any person of his obligation with respect to the acquisition and construction of any additions, betterments, extensions or improvements to the facilities of the City, and the recitals contained in the Bonds that the same are issued pursuant to the Law or other applicable laws and pursuant hereto shall be conclusive evidence of their validity and of the regularity of their issuance.

Section 2.12. Book-Entry System for Bonds. The Bonds shall be initially issued as Book-Entry Bonds, and each maturity of the Bonds shall be in the form of a separate single fully registered Bond (which may be typewritten), and upon initial issuance, the ownership of each such Bond shall be registered in the registration books maintained under Section 2.8 hereof in the name of the Nominee, as nominee of the Depository.

With respect to Book-Entry Bonds, the City and the Trustee shall have no responsibility or obligation to any DTC Participant or to any person on behalf of which such a DTC Participant holds an interest in such Book-Entry Bonds. Without limiting the immediately preceding sentence, the City and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any DTC Participant with respect to the owners of beneficial interests in Book-Entry Bonds, (ii) the delivery to any DTC Participant or any other person, other than an Owner as shown in the registration books maintained under Section 2.8 hereof, of any notice with respect to Book-Entry Bonds, including any notice of redemption, (iii) the selection by the Depository and its DTC Participants of the beneficial interests in Book-Entry Bonds to be redeemed in the event the City redeems any Book-Entry Bonds in part or (iv) the payment of any DTC Participant or any other person, other than an

owner as shown in the registration books maintained under Section 2.8 hereof, of any amount with respect to the interest on or principal of or redemption premiums, if any, on Book-Entry Bonds. The City and the Trustee may treat and consider the person in whose name each Book-Entry Bond is registered in the registration books maintained under Section 2.8 hereof as the absolute Owner of such Book-Entry Bond for the purpose of payment of the interest on and the principal of and the redemption premium, if any, with respect to such Book-Entry Bond, for the purpose of giving notices of redemption and other matters with respect to such Book-Entry Bond, for the purpose of registering transfers with respect to such Book-Entry Bond and for all other purposes whatsoever. The Trustee shall pay the interest on and the principal of and the redemption premiums, if any, on the Book-Entry Bonds only to or upon the order of the respective Owners, as shown in the registration books maintained under Section 2.8 hereof, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of the interest on and the principal of and the redemption premiums, if any, on the Book-Entry Bonds to the extent of the sum or sums so paid. No person other than an Owner, as shown in the registration books maintained under Section 2.8 hereof, shall receive a Bond evidencing the obligation of the City to make payments of the interest on and principal of and redemption premium, if any, on any Book-Entry Bond pursuant hereto. Upon delivery by the Depository to the Owner, the Trustee and the City of written notice to the effect that the Depository has determined to substitute a new nominee in place of the Nominee, and subject to the provisions herein with respect to record dates, the term Nominee herein shall refer to such new nominee of the Depository.

In order to qualify the Book-Entry Bonds for the Depository's book-entry system, the City and the Trustee (upon receipt of a Written Request of the City) shall execute and deliver to the Depository a Letter of Representations with respect to such Bonds; *provided*, that the execution and delivery of a Letter of Representations shall not in any way impose upon the City or the Trustee any obligation whatsoever with respect to persons having beneficial interests in such Book-Entry Bonds other than the Owners, as shown in the registration books maintained under Section 2.8 hereof. In addition to the execution and delivery of a Letter of Representations, the City and the Trustee (upon receipt of a Written Request of the City) shall take such other actions, not inconsistent herewith, as are reasonably necessary to qualify Book-Entry Bonds for the Depository's book-entry program.

In the event (i) the Depository determines not to continue to act as securities depository for any Book-Entry Bonds or (ii) the Depository shall no longer so act and gives written notice to the Trustee of such determination, then the City will discontinue the book-entry system for such Bonds with the Depository. If the City determines to replace the Depository with another qualified securities depository, the City shall prepare or direct the preparation of a new single, separate, fully registered Bond for each of the maturities of such Book-Entry Bonds, registered in the name of such successor or substitute qualified securities depository or its nominee; provided, that if the City fails to identify another qualified securities depository to replace the Depository, then the Bonds shall no longer be restricted to being registered in the registration books maintained under Section 2.8 hereof in the name of the Nominee, but shall be registered in whatever name or names Owners transferring or exchanging such Bonds shall designate, in accordance with provisions of Sections 2.6 and 2.7 hereof.

Notwithstanding any other provision hereof to the contrary, so long as any Book-Entry Bond is registered in the name of the Nominee, all payments with respect to the interest on and the principal of and the redemption premium, if any, on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the Letter of Representations or as otherwise instructed in writing by the Depository.

### **ARTICLE III**

#### **SECURITY; CREATION OF FUNDS**

Section 3.1. Pledge and Allocation of System Revenues. All System Net Revenues and all amounts on deposit in the System Revenue Fund and in the funds or accounts so specified and provided for herein (except the Rebate Fund) are hereby irrevocably pledged by the City to the punctual payment of the interest on, principal of and redemption premiums, if any, on the Bonds, and the System Net Revenues and such other money shall not be used for any other purpose while any of the Bonds remain Outstanding; subject to the provisions hereof permitting the application thereof for the purposes and on the conditions and terms set forth herein. This pledge, together with the pledge created by all other Parity Obligations, shall constitute a first and exclusive lien on the System Revenues and, subject to application of amounts on deposit therein as permitted herein, the System Revenue Fund and other funds and accounts created hereunder for the payment of the Bonds and all other Parity Obligations in accordance with the terms hereof.

In order to carry out and effectuate the pledge and lien contained in this Section 3.1, the City agrees and covenants that all System Revenues shall be received by the City in trust hereunder and shall be deposited when and as received in a special fund designated as the "System Revenue Fund," which fund is hereby established and which fund the City agrees and covenants to maintain and to hold separate and apart from other funds so long as any Bonds remain Outstanding. To the extent the City has an existing fund or funds which satisfies the foregoing requirements, then such fund or funds shall be deemed to be the "System Revenue Fund" and the City shall not be required to create a new fund. The City may maintain separate accounts within the System Revenue Fund.

The City shall, from the moneys in the System Revenue Fund, pay all Operation and Maintenance Costs (including amounts reasonably required to be set aside in contingency reserves for Operation and Maintenance Costs, the payment of which is not then immediately required) as such Operation and Maintenance Costs become due and payable. Thereafter, all remaining moneys in the System Revenue Fund shall be set aside by the City at the following times for the transfer to the Trustee in the following order of priority; and all such moneys shall be held in trust and shall be applied, used and withdrawn only for the purposes set forth in this Section.

- (1) Interest and Principal Payments. Not later than one (1) Business Day prior to the next succeeding Interest Payment Date or Principal Payment Date the City shall, from the moneys in the System Revenue Fund, transfer to the Trustee the interest, principal, and redemption premium, if any, due and payable on the next succeeding Interest Payment Date or Principal Payment Date, provided that such



amount due and payable will take into account amounts already on deposit in the Debt Service Fund (defined below). The City shall also, from the moneys in the System Revenue Fund, transfer to the applicable trustee for deposit in the respective payment fund, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, any other Parity Obligation in accordance with the provisions of any Parity Obligation.

- (2) Surplus. Moneys on deposit in the System Revenue Fund not necessary to make any of the payments required above, may be expended by the City at any time for any purpose permitted by law, including but not limited to payments with respect to Subordinate Obligations and deposits to the Rate Stabilization Fund.

Section 3.2. Debt Service Fund. There is hereby established a special fund to be known as the “Series 2019 City of Tulare Debt Service Fund,” which fund shall be held by the Trustee. Beginning on the date the Bonds become Outstanding and continuing until no Bonds are Outstanding, the Trustee shall deposit all interest payments, principal payments, and redemption premium payments, if any, received from the City pursuant to Section 3.1, as and when received by it in the Debt Service Fund and the City agrees and covenants that all funds deposited by it in the Debt Service Fund will be accounted for through and held in trust in the Debt Service Fund, and the Trustee shall have no beneficial right or interest in such funds, except only as provided herein, and all such funds shall be disbursed, allocated and applied solely to the uses and purposes herein set forth, and shall be accounted for separately and apart from all other money, funds, accounts or other resources of the Trustee.

Section 3.3. Establishment and Maintenance of Funds for Use of Money in the Debt Service Fund. Amounts in the Debt Service Fund shall be transferred by the Trustee for deposit in the following respective funds (each of which is hereby created and each of which the Trustee hereby covenants and agrees to cause to be maintained) at the following times and in the following order of priority:

- (1) Interest Fund; and
- (2) Principal Fund.

All funds in the Debt Service Fund shall be applied, used and withdrawn only for the purposes hereinafter authorized in this Section.

(a) Interest Fund. The Trustee shall transfer from the Debt Service Fund and deposit in the Interest Fund for receipt before June 1 and December 1 of each year, beginning on [June 1, 2020], an amount of money from the Debt Service Fund which is equal to the aggregate amount of the interest becoming due and payable on all Outstanding Bonds on such Interest Payment Date. No deposit need be made into the Interest Fund if the amount contained therein is at least equal to the amount of the interest becoming due and payable on all Outstanding Bonds on such Interest Payment Date. All money in the Interest Fund shall be used and withdrawn by the Trustee solely for the purpose of paying the interest on the Outstanding Bonds (including accrued interest on any Bonds (or portions thereof) purchased or redeemed prior to maturity);

provided that any earnings on deposit in the Interest Fund after payment of interest on Bonds on an Interest Payment Date shall be transferred to the Debt Service Fund.

(b) Principal Fund. The Trustee shall deposit in the Principal Fund before December 1 of each year, an amount of money from the Debt Service Fund which, together with any money contained in the Principal Fund, is equal to the aggregate amount of the principal becoming due and payable on all Outstanding Bonds on such Principal Payment Date. No deposit need be made into the Principal Fund if the amount contained therein is at least equal to the aggregate amount of the principal of all Outstanding Bonds on such Principal Payment Date. All money in the Principal Fund shall be used and withdrawn by the Trustee solely for the purpose of paying the principal of the Outstanding Bonds as they shall become due and payable; provided that any earnings on deposit in the Principal Fund after payment of principal of the Bonds on a Principal Payment Date shall be transferred to the Debt Service Fund.

Section 3.4. Project Fund. There shall be established by the Trustee the Project Fund. The moneys in the Project Fund, including earnings on the investment thereof, shall be used in the manner provided by law for the purpose of paying the costs of the acquisition, construction, improvement and financing of the System, including engineering, inspection, legal fees, rate studies and all other costs incidental to or connected with such acquisition, construction, improvement and financing, and reimbursement to the City for all moneys advanced by the City for the acquisition, construction, improvement and financing of said System. The City shall requisition moneys from the Project Fund by delivering a written request of the City to the Trustee setting forth the amount to be paid, the purpose for which such amount is to be paid and that such payment is a proper charge against the Project Fund. Any balance remaining in the Project Fund after the date of completion of said acquisition, construction, improvement and financing of said System, as certified in a Certificate of the City furnished to the Trustee, shall be transferred by the Trustee as directed by the City in writing, after consultation with Bond Counsel. When all moneys have been expended in the Project Fund, such fund shall be closed by the Trustee.

Section 3.5. Costs of Issuance Fund. There shall be established a fund with the Trustee to be known as the “Series 2019 City of Tulare Costs of Issuance Fund,” which shall be referred to herein as the “Costs of Issuance Fund.” On March 1, 2020 all amounts on deposit in the Costs of Issuance Fund shall be transferred to the City and the Costs of Issuance Fund shall be closed.

Before any payment of money is made from the Costs of Issuance Fund, the City shall file with the Trustee a Written Request of the City substantially in the form of Exhibit B which contains the following items:

- (a) the name of the person or entity to whom payment is due;
- (b) the not to exceed amount of money to be paid; and
- (c) the purpose for which the obligation to be paid was incurred.

Each such Written Request of the City shall state and shall be conclusive evidence to the Trustee of the following:

- (w) that such payment complies with the requirements of this Indenture and any Supplemental Indentures; and
- (x) that an obligation in the stated amount has been properly incurred and that such obligation is a proper charge against the Costs of Issuance Fund.

Upon receipt of each Written Request described above the Trustee shall pay the amount set forth therein as directed by the terms thereof.

Section 3.6. Reserve Fund. The Reserve Fund is hereby created by the Trustee to be held in trust for the benefit of Bondholders.

On or before the first Business Day of each month, the City shall, from the remaining moneys in the System Revenue Fund, thereafter, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, transfer to the Trustee for deposit in the Reserve that sum, if any, necessary to restore the Reserve Fund to an amount equal to the Reserve Fund Requirement and otherwise replenish the Reserve Fund for any withdrawals (including draws upon the Reserve Policy or any credit facility) to pay the interest or principal due hereunder and necessary to restore such other reserve accounts to an amount equal to the amount required to be maintained therein; provided that payments to restore the Reserve Fund after a withdrawal may be made in monthly installments equal to 1/12 of the aggregate amount needed to restore the Reserve Fund to the Reserve Fund Requirement as of the date of the withdrawal. To the extent that draws on the Reserve Fund are from a credit facility, transfers hereunder to restore the Reserve Fund shall be made to reimburse the provider of such credit facility.

All amounts in the Reserve Fund shall be used and withdrawn by the Trustee solely for the purpose of making up any deficiency in the Interest Account or the Principal Account, or (together with any other funds available) for the payment or redemption of all Outstanding Bonds.

Earnings on amounts in the Reserve Fund in excess of the Reserve Fund Requirement shall be transferred to the Interest Account on November 1 of each year or as otherwise provided in a Written Request of the City.

Section 3.7. Additional Parity Obligations. The City may at any time enter into any Parity Obligations, provided:

- (1) The City shall be in compliance in all material respects with all agreements, conditions, covenants and terms contained herein required to be observed or performed by it, and a Certificate of the City to that effect shall have been filed with the Trustee.
- (2) The System Net Revenues for the most recent Fiscal Year for which audited results are available (or alternatively results for any 12 month period out of the last 18 months or more recent unaudited Fiscal Year results may be utilized), plus as applicable an allowance for increased System Net Revenues arising from any increase in the rates, fees and charges of the System or other change in operations

which was duly approved by the City Council of the City prior to the date of the execution of such Parity Obligations but which, during all or any part of such Fiscal Year (or other 12 month period), was not in effect, in an amount equal to the amount by which the System Net Revenues would have been increased if such increase in rates, fees and charges or change in operations had been in effect during the whole of such Fiscal Year (or other 12 month period), as shown by a Certificate of the City on file with the Trustee (the calculations and results in such Certificate shall be as of a date within 3 months of closing of such Parity Obligations), shall have produced a sum equal to at least 120% per cent of the Maximum Annual Debt Service (including such proposed Parity Obligations); provided, that the City may at any time issue Parity Obligations without compliance with the foregoing conditions in the event that such Parity Obligations is to be issued for the purpose of refunding and retiring any Parity Obligations then outstanding; and provided further, an adjustment shall be made in the amount of System Net Revenues as provided in Section 3.8 hereof.

Furthermore, nothing contained in this Section shall limit the issuance of any Subordinate Obligations.

Section 3.8. Rate Stabilization Fund. There is hereby authorized a special fund to be known as the “Rate Stabilization Fund” which shall be held by the City. The City may, during or within 310 days after a Fiscal Year, deposit surplus System Net Revenues transferred from the System Revenue Fund attributable to such Fiscal Year (on the basis of Generally Accepted Accounting Principles) into the Rate Stabilization Fund. The City may at any time withdraw moneys from the Rate Stabilization Fund and allocate such amounts into the System Revenue Fund. Notwithstanding anything to the contrary provided herein, System Net Revenues deposited into the Rate Stabilization Fund shall not be taken into account as System Net Revenues for purposes of the calculations in Sections 3.7 and 4.8 in the Fiscal Year to which such deposit is attributable, and amounts withdrawn from the Rate Stabilization Fund and deposited into the System Revenue Fund may be taken into account as System Revenues for purposes of the calculations required under Sections 3.7 and 4.8 in such Fiscal Year; provided that, for purposes of the calculation required under Section 3.7, the amount of System Net Revenues before any credits for withdrawals from the Rate Stabilization Fund may not be less than 100% of Maximum Annual Debt Service for outstanding Parity Debt and the proposed additional Parity Debt.

## ARTICLE IV

### COVENANTS OF THE CITY

Section 4.1. Punctual Payment. The City will punctually pay the interest on and principal of and redemption premiums, if any, to become due with respect to the Bonds in strict conformity with the terms hereof and of the Bonds, and will faithfully satisfy, observe and perform all agreements, conditions, covenants and terms hereof and of the Bonds.

Section 4.2. Tax Covenants and Matters. Notwithstanding any other provision of this Indenture, absent an Opinion of Bond Counsel that the exclusion from gross income of interest on the Bonds will not be adversely affected for federal income tax purposes, the City covenants to comply with all applicable requirements of the Code necessary to preserve such exclusion

from gross income and specifically covenants, without limiting the generality of the foregoing, as follows:

(a) Private Activity. The City will not take or omit to take any action or make any use of the proceeds of the Bonds or of any other moneys or property which would cause the Bonds to be “private activity bonds” within the meaning of Section 141 of the Code.

(b) Arbitrage. The City will make no use of the proceeds of the Bonds or of any other amounts or property, regardless of the source, or take or omit to take any action which would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code.

(c) Federal Guarantee. The City shall not make any use of the proceeds of the Bonds or omit to take any action that would cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

(d) Information Reporting. The City will take or cause to be taken all necessary action to comply with the informational reporting requirement of Section 149(e) of the Code.

(e) Compliance with Tax Certificate. The City will take no action inconsistent with its expectations stated in the Tax Certificate executed with respect to the Bonds and will comply with the covenants and requirements stated therein and incorporated by reference herein. In furtherance of the foregoing tax covenants of this Section 4.2, the City will comply with the provisions of the Tax Certificate, which is incorporated herein as if fully set forth herein. These covenants shall survive payment in full or defeasance of the Bonds.

#### Section 4.3. Rebate Fund.

(a) Establishment. The Trustee shall establish a separate fund for the Bonds designated the “Rebate Fund.” Within the Rebate Fund, the Trustee shall maintain such other accounts as it is instructed by the City as shall be necessary in order to comply with the terms and requirements of the Tax Certificate. Absent an Opinion of Bond Counsel that the exclusion from gross income for federal income tax purposes of interest on the Bonds will not be adversely affected, the City shall cause to be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to this Section and the Tax Certificate. Subject to the transfer provisions provided in Subsections (c) and (h) below, all money at any time deposited in the Rebate Fund shall be held by the Trustee in trust for payment to the United States Treasury, and no other person shall have any rights in or claim to such money. All amounts on deposit in the Rebate Fund for the Bonds shall be governed by this Section and the Tax Certificate for the Bonds, unless and to the extent that the City delivers to the Trustee an Opinion of Bond Counsel that the exclusion from gross income for federal income tax purposes of interest on the Bonds will not be adversely affected if such requirements are not satisfied. The Trustee shall be deemed conclusively to have complied with such provisions if it follows the directions of the City including supplying all necessary information in the manner provided in the Tax Certificate, shall not be required to take any actions thereunder, in the absence of written directions by the City, and shall have no liability or responsibility to enforce compliance by the City with the

terms of the Tax Certificate. The Trustee shall have no responsibility to make any independent calculations or determinations or to review the City's calculations hereunder.

(b) Computation. Within 45 days of the end of each fifth Bond Year (as defined in the Tax Certificate), the City shall calculate or cause to be calculated the amount of rebatable arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations, for this purpose treating the last day of the applicable Bond Year as a computation date, within the meaning of Section 1.148-1(b) of the Treasury Regulations (the "Rebate Amount"). The City shall not be required to calculate the Rebate Amount, and the Trustee shall not be required to deposit any amount to the Rebate Fund in accordance with this Subsection (b), with respect to all or a portion of the proceeds of the Bonds (including amounts treated as proceeds of the Bonds) (i) to the extent such proceeds satisfy the expenditure requirements of Section 148(f)(4)(B) or Section 148(f)(4)(C) of the Code or Section 1.148-7(d) of the Regulations, whichever is applicable, and otherwise qualify for the exception to the Rebate Requirement pursuant to whichever of said Sections is applicable, (ii) to the extent such proceeds are subject to an election by the City under Section 148(f)(4)(C)(vii) of the Code to pay a 1½% penalty in lieu of arbitrage rebate in the event any of the percentage expenditure requirements of Section 148(f)(4)(C) are not satisfied, or (iii) to the extent such proceeds qualify for the exception to arbitrage rebate under Section 148(f)(4)(A)(ii) of the Code for amounts in a "bona fide debt service fund." In such event, and with respect to such amounts, the City shall provide written direction to the Trustee that the Trustee shall not be required to deposit any amount to the Rebate Fund in accordance with this Subsection (b). The City shall obtain expert advice as to the Rebate Amount to comply with this Section.

(c) Transfer. Within 55 days of the end of each fifth Bond Year, upon the written request of the City an amount shall be deposited to the Rebate Fund by the Trustee from any legally available moneys for such purpose (as specified by the City in the aforesaid written Request), if and to the extent required, so that the balance in the Rebate Fund shall equal the Rebate Amount so calculated in accordance with Subsection (b). In the event that immediately following the transfer required by the previous sentence, the amount then on deposit to the credit of the Rebate Fund exceeds the amount required to be on deposit therein, upon written request of the City, the Trustee shall withdraw the excess from the Rebate Fund and then transfer the excess as directed by the City.

(d) Payment to the Treasury. The Trustee shall pay, as directed by request of the City to the United States Treasury, out of amounts in the Rebate Fund, subject to the exceptions contained in Subsection (b),

1. not later than 60 days after the end of (x) the fifth Bond Year, and (y) each applicable fifth Bond Year thereafter, an amount that, together with all previous rebate payments, is equal to at least 90% of the Rebate Amount (calculated as of the end of such Bond Year) and all previous rebate payments; and

2. not later than 60 days after the payment of all the Bonds, an amount equal to 100% of the Rebate Amount calculated as of the date of such payment and any income attributable to the Rebate Amount determined to be due and payable, computed in accordance with Section 1.148-3 of the Treasury Regulations.

(e) Deficiencies. In the event that, prior to the time of any payment required to be made from the Rebate Fund, the amount in the Rebate Fund is not sufficient to make such payment when such payment is due, the City shall calculate or cause to be calculated the amount of such deficiency and deposit an amount received from any legally available source equal to such deficiency prior to the time such payment is due.

(f) Withdrawals of Excess Amounts. In the event that immediately following the calculation required by Subsection (b) of this Section, but prior to any deposit made under said Subsection, the amount on deposit in the Rebate Fund exceeds the Rebate Amount calculated in accordance with said Subsection, upon written instructions from the City, the Trustee shall withdraw the excess from the Rebate Fund and transfer such excess as directed by the City.

(g) Disposition of Unexpended Funds. Any funds remaining in the Rebate Fund after redemption and payment in full of the Bonds and the payments described in Subsection (d) above being made may be withdrawn by the Trustee and remitted to the City and utilized in any lawful manner by the City.

(h) Rebate Payments. Each payment required to be made pursuant to Subsection (d) shall be made to the Internal Revenue Service Center, Ogden, Utah, on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T, which shall be completed by the City for execution by the City, or shall be made in such other manner as provided under the Code.

(i) Survival of Defeasance. Notwithstanding anything in this Section to the contrary, the obligation the obligation to remit the Rebate Amount to the United States and to comply with the requirements of this Section and the Tax Certificate shall survive the defeasance or payment in full or defeasance of the Bonds.

(j) Recordkeeping. The City shall retain records of all determinations made hereunder until six years after the complete retirement of the Bonds.

Section 4.4. Against Encumbrances. The City will not mortgage or otherwise encumber, pledge or place any charge upon any of the System Net Revenues except as provided herein, and will not issue any obligations secured by System Net Revenues senior to the Parity Obligations; *provided*, that the City may at any time issue any Subordinate Obligations.

Section 4.5. Against Sale or Other Disposition of the System. The City will not sell or otherwise dispose of the System or any part thereof essential to the proper operation of the System or to the maintenance of the System Net Revenues, unless the Bonds are no longer Outstanding or provision has been made therefor in accordance with Article 8.1 hereof. The City will not enter into any lease or agreement which impairs the operation of the System or any part thereof necessary to secure adequate System Net Revenues for the payment of the interest on or principal of the Bonds or which would otherwise materially impair the rights of the Owners with respect to the System Net Revenues or the operation of the System.

Section 4.6. Maintenance and Operation of System. The City will maintain and preserve the System in good repair and working order at all times and will operate the System in an efficient and economical manner.

Section 4.7. Insurance.

- (1) The City will procure and maintain at all times insurance on the System against such risks (including accident to or destruction of the System) as are usually insured in connection with operations similar to the System and, to the extent such insurance is available for reasonable premiums from a reputable insurance company, such insurance shall be adequate in amount and, as to the risks insured against, shall be maintained with responsible insurers; *provided*, that such insurance coverage may be satisfied under a self-insurance program which is actuarially sound.
- (2) The City shall procure and maintain or cause to be procured and maintained public liability insurance covering claims against the City (including its directors, officers and employees) for bodily injury or death, or damage to property occasioned by reason of the City's operations, including any use of the System, and such insurance shall afford protection in such amounts as are usually covered in connection with operations similar to the System; *provided*, that such insurance coverage may be satisfied under a self-insurance program which is actuarially sound.

Section 4.8. Amounts of Rates, Fees and Charges.

- (1) The City will, at all times while any of the Bonds remain Outstanding, set rates, fees and charges to the maximum extent permitted by law and manage the operation of the System for each Fiscal Year so as to yield System Revenues at least sufficient, after making reasonable allowances for contingencies and errors in the estimates, to pay the following amounts during such Fiscal Year:
  - (i) All current Operation and Maintenance Costs.
  - (ii) The interest on and principal of the Bonds and the payments for the other Parity Obligations and the payment of the Subordinate Obligations as they become due and payable.
  - (iii) All payments required for compliance with the terms hereof and of any Supplemental Indenture.
  - (iv) All payments to meet any other obligations of the City which are charges, liens or encumbrances upon, or payable from, the System Net Revenues.
- (2) In addition to the requirements of the foregoing subsection (a) of this Section, the City will, at all times while any the Bonds remain Outstanding, to the maximum extent permitted by law, set rates, fees and charges and manage the operation of the System for each Fiscal Year so as to yield System Net Revenues during such



Fiscal Year equal to at least 120% of the Annual Debt Service in such Fiscal Year; *provided*, an adjustment shall be made to the amount of System Net Revenues as provided in Section 3.8 hereof.

The City may make or permit to be made adjustments from time to time in such rates, fees and charges and may make or permit to be made such classification thereof as it deems necessary, but shall not reduce or permit to be reduced such rates, fees and charges below those then in effect unless the System Revenues from such reduced rates, fees and charges will at all times be sufficient to meet the requirements of this Section.

Section 4.9. Enforcement of and Performance Under Contracts. The City shall enforce all material provisions of any contracts to which it is a party, an assignee, successor in interest to a party or third-party beneficiary, in any case where such contracts provide for Service or provide for payments or services to be rendered to the City. Further, the City will comply with, keep, observe and perform all material agreements, conditions, covenants and terms, express or implied, required to be performed by it, contained in all contracts affecting or involving the System, to the extent that the City is a party thereto.

Section 4.10. Collection of Charges, Fees and Rates. The City will have in effect at all times rules and regulations requiring each user of the System to pay the applicable charges, fees and rates and providing for the billing thereof and for a due date and a delinquency date for each bill. In each case where such bill remains unpaid in whole or in part after it becomes delinquent, the City will enforce the collection procedures contained in such rules and regulations.

Section 4.11. No Free Service. The City will not permit any part of the System or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, or by any public agency (including the State of California and any city, county, public agency, political subdivision, public corporation or agency or any thereof), unless otherwise required by law or written agreements and such arrangement will not materially adversely affect the City's ability to perform its obligations hereunder.

Section 4.12. Payment of Claims. The City will pay and discharge any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the System or upon the System Net Revenues or any part thereof, or upon any funds held by the Trustee, or which might impair the security on the System Revenues created herein; *provided*, that nothing herein contained shall require the City to make any such payments so long as the City in good faith shall contest the validity of any such claims and such nonpayment will not materially adversely affect the City's ability to perform its obligations hereunder.

Section 4.13. Books of Record and Accounts; Financial Statements. The City will keep proper books of record and accounts in which complete and correct entries shall be made of all transactions relating to the System and the System Revenue Fund, and upon request will provide information concerning such books of record and accounts to the Trustee (the Trustee having no duty to request such information).

The City will prepare annually, not later than two hundred ten (210) days after the close of each Fiscal Year, so long as any Bonds remain Outstanding, an audited financial statement of

the City prepared by an Independent Certified Public Accountant. The City will furnish a copy of such audited financial statement to the Trustee upon request. The Trustee shall have no duty to review such audited financial statements.

Section 4.14. Payment of Taxes and Other Charges and Compliance with Governmental Regulations. The City will pay and discharge all taxes, service charges, assessments and other governmental charges which may hereafter be lawfully imposed upon the System or any properties owned by the City, or upon the System Revenues, when the same shall become due; *provided*, that nothing herein contained shall require the City to make any such payments so long as the City in good faith shall contest the validity of any such taxes, service charges, assessments or other governmental charges and such nonpayment will not materially adversely affect the City's ability to perform its obligations hereunder.

The City will duly comply with all applicable state, federal and local statutes and all valid regulations and requirements of any governmental authority relative to the operation of the System or any part thereof, but the City 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 and such noncompliance will not materially adversely affect the City's ability to perform its obligations hereunder.

Section 4.15. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Indenture, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default; however, any Participating Underwriter (as defined in the Continuing Disclosure Certificate) or any holder or beneficial owner of the Bonds may take such actions as described under the Continuing Disclosure Certificate to cause the City to comply with its obligations under this Section.

Section 4.16. Further Assurances. The City will adopt, make, execute and deliver any and all such further indentures, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof, and for the better assuring and confirming unto the Owners of the Bonds of the rights and benefits provided herein.

## **ARTICLE V**

### **THE TRUSTEE**

Section 5.1. The Trustee. U.S. Bank National Association, is hereby appointed Trustee hereunder for the purpose of receiving all money which the City is required to deposit with the Trustee hereunder and to allocate, use and apply the same as provided herein.

The City at any time may (prior to the occurrence of an Event of Default which shall then be continuing) remove the Trustee initially appointed and any successor thereto upon thirty (30) days written notice to the Trustee, and the City shall appoint a successor or successors thereto; *provided*, that any such successor shall be a bank or trust company doing business in California that has a combined capital (exclusive of borrowed capital) and surplus of at least fifty million dollars (\$50,000,000) and is subject to supervision or examination by federal or state authority.

If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Trustee may at any time resign by giving written notice to the City and by giving to the Owners notice of such resignation, which notice shall be mailed to the Owners at their addresses appearing in the registration books maintained under Section 2.8 hereof. Upon receiving such notice of resignation, the City shall promptly appoint a successor Trustee by an instrument in writing; *provided*, that if no such successor shall have been appointed by the City within thirty (30) days after the receipt by the City of such notice, the Trustee may petition any court of competent jurisdiction to appoint a successor Trustee. Any resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the appointment of and the acceptance of appointment by the successor Trustee.

The Trustee is hereby authorized to pay or redeem the Bonds when duly presented for payment at maturity or on redemption prior to maturity. The Trustee shall destroy all Bonds in accordance with its then current retention policy upon payment thereof or upon the surrender thereof by the City and shall, upon receipt of a Written Request of the City, deliver a certificate of such destruction to the City; *provided*, that the Trustee may require the City to pay all reasonable costs for copying the cancelled Bonds. The Trustee shall keep accurate records of all Bonds paid and discharged and destroyed by it.

The City shall from time to time, subject to any agreement between the City and the Trustee then in force, pay to the Trustee compensation for its services, reimburse the Trustee for all its advances and expenditures, including but not limited to advances to and fees and expenses of independent accountants, counsel (both in-house and outside) and engineers or other experts employed by it in the exercise and performance of its powers and duties hereunder, and indemnify and save the Trustee and its officers, directors, officials, employees and agents harmless from and against any costs, expenses, losses and liabilities not arising from its own negligence or willful misconduct which it may incur in the exercise and performance of its powers and duties hereunder. The Trustee's rights to indemnification and protection from liability hereunder and its rights to payment of its fees, charges and expenses shall survive its resignation or removal and final payment or defeasance of the Bonds.

Section 5.2. Liability of Trustee. The recitals of facts, agreements and covenants contained herein and in the Bonds shall be taken as statements, agreements and covenants of the City, and the Trustee does not assume any responsibility for the correctness of the same, or make any representation as to the validity or sufficiency hereof or of the Bonds, the adequacy of any security afforded thereunder, or the correctness or completeness of any information contained in any offering materials distributed in connection with the sale of the Bonds, or incur any responsibility in respect of any of the foregoing, other than in connection with the duties or obligations herein or in the Bonds explicitly assigned to or imposed upon it. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct.

The Trustee shall be under no obligation to exercise any of the rights or powers vested in it hereunder at the request or direction of any Owner pursuant hereto unless such Owner shall have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

Except during the continuance of an Event of Default,

(a) the Trustee undertakes to perform such duties and only such duties as are specifically set forth herein and no implied covenants or obligations shall be read herein against the Trustee; and

(b) in the absence of negligence or willful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements hereof, and shall be under no duty to make any investigation or inquiry into such matters.

In case an Event of Default has occurred and is then continuing, the Trustee shall exercise such rights and powers vested in it hereby, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

The Trustee in its individual or other capacity may become the owner or pledgee of the Bonds with the same rights it would have if it were not the Trustee.

The Trustee shall not be deemed to have knowledge of any Event of Default (other than a payment default hereunder) until it has actual knowledge at its Corporate Trust Office that an Event of Default has occurred. The Trustee shall not be bound to ascertain or inquire as to the performance or observance by any other party of any of the agreements, conditions, covenants or terms hereof or of any of the documents executed in connection with the Bonds.

No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any duties hereunder.

The Trustee may execute any of the trusts or powers hereof and perform the duties of it required hereunder by or through attorneys, accountants, agents or receivers, and may, in all cases, pay, and be reimbursed for, the reasonable fees and expenses thereof.

The immunities extended to the Trustee also extend to its directors, officers, employees and agents.

The Trustee shall not be liable for any action taken or not taken by it in accordance with the direction of a majority (or other percentage provided for herein) in aggregate principal amount of Bonds outstanding relating to the exercise of any right, power or remedy available to the Trustee.

The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty.

Section 5.3. Notice to Trustee. The Trustee shall be protected in acting upon any notice, indenture, request, requisition, consent, order, certificate, report, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, who may be counsel to the City, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted hereunder in good faith and in accordance therewith.

Whenever in the administration of its duties hereunder the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by a Certificate of the City and the Trustee is under no obligation to independently investigate or verify such matter, and such certificate shall be full warrant to the Trustee for any action taken or suffered under the provisions hereof upon the faith thereof, but in its discretion the Trustee may, but is not required to, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

## **ARTICLE VI**

### **AMENDMENT OF THE INDENTURE**

Section 6.1. Procedure for Amendment of the Indenture. The Indenture and the rights and obligations of the City and of the Owners hereunder may be amended at any time by a Supplemental Indenture which shall become binding when the written consents of the Owners of at least sixty per cent (60%) in aggregate principal amount of the Bonds then Outstanding (exclusive of Bonds disqualified as provided in Section 6.2 hereof) are filed with the Trustee; provided no consent of the Owners shall be required if the Bond Insurer consents to the amendment. No such amendment shall (1) extend the maturity of or reduce the interest rate on, or otherwise alter or impair the obligation of the City to pay the interest or principal or redemption premium, if any, of any Bond, without the express written consent of the Owner of the affected Bond, or (2) permit the creation by the City of any mortgage, pledge or lien upon the System Net Revenues superior to or on a parity with the pledge and lien created herein for the benefit of the Bonds, or (3) reduce the percentage of Bonds required for the written consent to any such amendment, or (4) modify the rights or obligations of the Trustee without its prior written assent thereto.

The Indenture and the rights and obligations of the City and of the Owners may also be amended at any time by a Supplemental Indenture which shall become binding upon execution, without the consent of any Owners, but only to the extent permitted by law and only for any one or more of the following purposes:

(a) To add to the agreements and covenants of the City other agreements and covenants thereafter to be observed, or to surrender any right or power herein reserved to or conferred upon the City;

(b) To make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision, or in regard to questions arising hereunder, as may deem necessary or desirable and not inconsistent herewith or therewith, and which shall not materially adversely affect the interests of the Owners of the Outstanding Bonds;

(c) To modify, amend or supplement the Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute, and which shall not materially adversely affect the interests of the Owners of the Bonds;

(d) To maintain the exclusion under the Code of interest on the Bonds from gross income for federal income tax purposes;

(e) To the extent necessary to maintain any then-existing rating by the Rating Agency or Agencies then rating the Bonds; or

(f) For any other purpose that does not materially adversely affect the interests of the Owners of the Outstanding Bonds.

Section 6.2. Disqualified Bonds. Bonds owned or held by or for the account of the City shall not be deemed Outstanding for the purpose of any consent or other action or any calculation of Outstanding Bonds provided for herein, and shall not be entitled to consent to, or take any other action provided for herein.

Section 6.3. Endorsement or Replacement of Bonds After Amendment. After the effective date of any action taken as hereinabove provided, the City may determine that the Bonds may bear a notation, by endorsement in form approved by the City, as to such action, and in that case upon demand of the Owner of any Bond Outstanding at such effective date and presentation of his Bond for the purpose at the Corporate Trust Office of the Trustee, a suitable notation as to such action shall be made on such Bond. If the City shall so determine, new Bonds so modified as, in the opinion of the City, shall be necessary to conform to such action shall be prepared and executed, and in that case upon demand of the Owner of any Bond Outstanding at such effective date such new Bonds shall be exchanged at the Corporate Trust Office of the Trustee, without cost to each Owner, for Bonds then Outstanding, upon surrender of such Outstanding Bonds. The cost of any services rendered or expenses incurred by the Trustee in connection with any endorsement or replacement of Bonds shall be paid by the City.

Section 6.4. Amendment by Mutual Consent. The provisions of this Article VI shall not prevent any Owner from accepting any amendment as to the particular Bonds held by him, provided that due notation thereof is made on such Bonds.

Section 6.5. Opinion of Counsel. The Trustee may conclusively rely upon and accept an opinion of counsel to the City that an amendment hereof is in conformity with the provisions of this Article VI without independent investigation.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES OF OWNERS

Section 7.1. Events of Default and Acceleration of Maturities. If one or more of the following events (herein an “Event of Default”) shall happen, that is to say:

(a) If default shall be made in the due and punctual payment of the interest on any Bond or when and as the same shall become due and payable; or

(b) If default shall be made in the due and punctual payment of the principal of any Bond (including any sinking fund payments) when and as the same shall become due and payable, whether at maturity as therein expressed, by declaration or otherwise; or

(c) If default shall be made by the City in the performance of any of the other agreements or covenants required herein to be performed by it, and such default shall have continued for a period of sixty (60) days after the City shall have been given notice in writing of such default by the Trustee; provided that such default shall not constitute an Event of Default hereunder, if the City shall commence to cure such default within such sixty (60) day period and thereafter diligently and in good faith shall proceed to cure such default within a reasonable period of time; or

(d) If the City 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 City 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 City or of the whole or any substantial part of its property; or

(e) If payment of the principal or interest of any Parity Obligations is in default or accelerated in accordance with its terms;

then, and in each and every such case during the continuance of such Event of Default, the Trustee may, and upon the written request of the Owners of not less than twenty-five per cent (25%) in aggregate principal amount of the Bonds at the time Outstanding, shall, by notice in writing to the City, declare the principal of the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything contained herein or in the Bonds to the contrary notwithstanding; *provided*, that if, at any time after the principal of the Bonds shall have been so declared due and payable and before any judgment or decree for the payment of the money due shall have been obtained or entered, there shall be deposited with the Trustee a sum sufficient to pay all principal on the Bonds matured prior to such declaration and all matured

installments of interest (if any) upon all the Bonds, and the expenses of the Trustee, including attorneys' fees, together with interest on any such amounts advanced as provided herein, and any and all other defaults known to the Trustee (other than in the payment of interest and principal on the Bonds 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 of at least a majority in aggregate principal amount of the Bonds then Outstanding, by written notice to the City and to the Trustee, may, on behalf of the Owners of all the Bonds, rescind and annul such declaration and its consequences; except that no such rescission or annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon.

Section 7.2. Application of Funds Upon Acceleration. All money in the accounts and funds provided for herein upon the date of the declaration of acceleration by the Trustee as provided in Section 7.1 hereof, and all System Revenues thereafter received by the City hereunder, shall be transmitted to the Trustee and shall be applied by the Trustee in the following order:

First, to the payment of the costs, fees and expenses of the Trustee, if any, including reasonable compensation to its agents, attorneys and counsel, and thereafter to the payment of the costs and expenses of the Owners in providing for the declaration of such Event of Default, including reasonable compensation to their agents, attorneys and counsel;

Second, to the payment of Operation and Maintenance Costs; and

Third, upon presentation of the Bonds, and the stamping thereon of the amount of the payment if only partially paid, or upon the surrender thereof if fully paid, to the payment of the whole amount then owing and unpaid upon the Bonds for interest and principal and in case such money shall be insufficient to pay in full the whole amount so owing and unpaid upon such Bonds then to the payment of such interest, principal, interest on overdue interest and principal and without preference or priority among such interest, principal, interest on overdue interest and principal and, ratably to the aggregate of such interest and principal and to the payment of any Parity Obligations.

Section 7.3. Other Remedies of Owners. Any Owner shall have the right for the equal benefit and protection of all Owners similarly situated:

(a) By mandamus or other suit or proceeding at law or in equity to enforce his rights hereunder or;

(b) By suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Owners.

Section 7.4. Non-Waiver. A waiver of any default or breach of duty or contract by any Owner 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, and no delay or omission by any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and



every power and remedy conferred upon the Owners by this Article VII may be enforced and exercised from time to time and as often as shall be deemed expedient by the Owners.

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

Section 7.5. Actions by Trustee as Attorney-in-Fact. Any suit, action or proceeding which any Owner shall have the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Owners, and the Trustee is hereby appointed (and the successive respective Owners of the Bonds issued hereunder, by taking and holding the same, shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the Owners for the purpose of bringing any such suit, action or proceeding and to do and perform any and all acts and things for and on behalf of the Owners as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact; *provided*, that the Trustee shall have no duty or obligation to enforce any right or remedy unless it has been indemnified by the Owners from any liability or expense including without limitation fees and expenses of its attorneys (both in-house and outside).

Section 7.6. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Owners is intended to be exclusive of any other remedy, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by law.

## ARTICLE VIII

### DEFEASANCE

Section 8.1. Discharge of Bonds. If there shall be paid, to the Owners of all or a portion of the Outstanding Bonds the interest thereon and principal thereof and redemption premiums, if any, thereon at the times and in the manner stipulated therein and herein, then the owners of such Bonds shall cease to be entitled to the pledge of System Net Revenues as provided herein, and all agreements, covenants and other obligations of the City to the Owners of such Bonds hereunder shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Trustee shall execute and deliver all such instruments as may be desirable to evidence such discharge and satisfaction, and the Trustee shall pay over or deliver to the City all money or securities held by it pursuant hereto which secure only such Bonds (or are properly allocable under the terms hereof to such Bonds to be defeased) which are not required for the payment of such interest, principal and redemption premiums, if any, on such Bonds, other than the money, if any, in the Rebate Fund.

Any Outstanding Bonds for the payment of which money shall have been set aside to be held in trust by the Trustee for such payment at the maturity or redemption date thereof shall be deemed, as of the date of such setting aside, to have been paid within the meaning and with the effect expressed in the first paragraph of this Section.

Any Outstanding Bonds shall prior to the maturity date thereof be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section if (1) there shall have been deposited with the Trustee either money in an amount which shall be sufficient, or Authorized Investments identified in paragraph 1(a) of the definition thereof (“Federal Securities”) which are not subject to redemption prior to maturity (including any Federal Securities issued or held in book-entry form on the books of the Department of Treasury of the United States of America) the interest on and principal of which when paid will provide money which, together with the money, if any, deposited with the Trustee at the same time, shall be sufficient (as evidenced by a report of an Independent Certified Public Accountant obtained by the City and filed with the Trustee) to pay when due the interest due and to become due on such Bonds on and prior to the maturity date or redemption date thereof, and the principal of and redemption premiums, if any, on such Bonds on the maturity date or redemption date thereof, and (2) the City shall have given the Trustee a Written Request of the City containing irrevocable instructions to mail, as soon as practicable, a notice to the Owners of such Bonds that the deposit required by (1) above has been made with the Trustee and that such Bonds are deemed to have been paid in accordance with this Section and stating the maturity date or redemption date upon which money is to be available for the payment of the principal of and redemption premiums, if any, on such Bonds; *provided*, that neither the Federal Securities nor any money deposited with the Trustee pursuant to this Section nor any interest or principal payments on any such Federal Securities shall be withdrawn or used for any purpose other than, and such Federal Securities shall be held in trust for, the payment of the interest on and principal of and redemption premiums, if any, on such Bonds as provided herein; and *provided further*, that any cash received from such interest or principal payments on such Federal Securities deposited with the Trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested as specified in a Written Request of the City in Federal Securities maturing at times and in amounts sufficient to pay when due the interest on and principal of and redemption premiums, if any, on such Bonds on and prior to such maturity date or redemption date thereof, and interest earned from such reinvestments shall be deposited in the Debt Service Fund.

Section 8.2. Unclaimed Money. Anything contained herein to the contrary notwithstanding, any money held by the Trustee for the payment and discharge of the interest on or principal of or redemption premiums, if any, on any of the Bonds, shall be held uninvested, and such money which remains unclaimed for two (2) years after the date when such payments have become due and payable, if such money was held by the Trustee at such date, or for two (2) years after the date of deposit of such money if deposited with the Trustee after the date when such payments became due and payable, shall be repaid by the Trustee to the City as its absolute property and free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Owners shall look only to the City for the making of such payments; *provided*, that before being required to make any such payment to the City, the Trustee shall, upon receipt of a Written Request of the City, cause to be mailed to the Owners of such Bonds (at the expense of the City) at their addresses as they appear in the registration books maintained under Section 2.8 hereof a notice that such money remains unclaimed and that, after a date named in such notice, which date shall not be less than thirty (30) days after the date of the mailing of such notice, the balance of such money then unclaimed will be returned to the City.

## ARTICLE IX

### MISCELLANEOUS

Section 9.1. Liability of City Limited to System Revenues and Other Funds. Notwithstanding anything contained herein, the City shall not be required to advance any money derived from any source of income other than the System Revenues, the System Revenue Fund and the other funds as provided herein for the payment of the interest on or the principal of or the redemption premiums, if any, on the Bonds or for the observance or performance of any agreements, conditions, covenants or terms contained herein.

The Bonds are limited obligations of the City and are payable, as to interest thereon and principal thereof and redemption premiums, if any, thereon, exclusively from the System Net Revenues and such other funds as provided hereunder, and the City is not obligated to pay them except from the System Revenues and such other funds. The obligation of the City to pay interest on, principal of and redemption premiums on, if any, the Bonds is a special obligation of the City payable solely from the System Net Revenues, and does not constitute a debt of the City or of the State of California or of any political subdivision thereof in contravention of any constitutional or statutory debt limitation or restriction.

Section 9.2. Benefits of Indenture Limited to Certain Parties. Nothing herein, expressed or implied, is intended to give to any person other than the City, the Trustee, and the Owners any right, remedy or claim under or by reason hereof. Any agreements, conditions, covenants or terms hereof required to be observed or performed by and on behalf of the City or any director, officer or employee thereof shall be for the sole and exclusive benefit of the Trustee and the Owners.

Section 9.3. Successor Is Deemed Included in All References to Predecessor. Whenever herein either the City or any director, officer or employee thereof is named or referred to, such reference shall be deemed to include the successor to the powers, duties and functions, with respect to the management, administration and control of the affairs of the City, that are presently vested in the City or such director, officer or employee, and all the agreements, conditions, covenants and terms contained herein required to be observed or performed by or on behalf of the City or any director, officer or employee thereof shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

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

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

acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

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

Section 9.5. Waiver of Personal Liability. No director, officer or employee of the City shall be individually or personally liable for the payment of the interest on or principal of or redemption premiums, if any, on the Bonds; but nothing contained herein shall relieve any director, officer or employee of the City from the performance of any official duty provided by law.

Section 9.6. Acquisition of Bonds by City. All Bonds acquired by the City, whether by purchase or gift or otherwise, shall be surrendered promptly to the Trustee for cancellation.

Section 9.7. Content of Certificates and Reports. Every certificate (other than a certificate of destruction of Bonds) or report with respect to compliance with an agreement, condition, covenant or term contained herein shall include (a) a statement that the person or persons making or giving such certificate or report have read such covenant or condition and the definitions herein relating thereto; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or report are based; (c) 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 covenant or condition has been complied with; and (d) a statement as to whether, in the opinion of the signers, such condition or covenant has been complied with.

Any such certificate made or given by an officer of the City may be based, insofar as it relates to legal matters, upon a certificate or opinion of or representation by counsel, unless such officer knows that the certificate or opinion or representation with respect to the matters upon which his certificate may be based, as aforesaid, are erroneous, or in the exercise of reasonable care should have known that the same were erroneous. Any such certificate or opinion or representation made or given by counsel may be based, insofar as it relates to factual matters and information with respect to which is in the possession of the City, upon the opinion of or representation by an officer or officers of the City, unless such counsel knows that the opinion or representation with respect to the matters upon which his opinion or representation may be based, as aforesaid, are erroneous, or in exercise of reasonable care should have known that the same were erroneous.

Section 9.8. Investment of Money in Funds and Accounts. Unless otherwise directed by the City, the Trustee is hereby directed to invest all money in the Costs of Issuance Fund, the Interest Fund, the Principal Fund, or the Rebate Fund in the Authorized Investments described in subparagraph (7) of the definition thereof. Upon receipt of a Written Request of the City by the Trustee at least two (2) Business Days prior to the date of such investment, moneys in such Funds shall be invested by the Trustee in those Authorized Investments specified in such Written Request of the City. Such Written Request shall contain a statement that each investment so

designated constitutes an Authorized Investment and can be made without violation of any provision hereof. The Trustee shall be entitled to rely on such Written Request without independent investigation and shall not be responsible or liable for any loss incurred in connection with any investment of funds made by it in accordance with the express provisions of this Indenture. If, at any time, the Trustee shall not receive such Written Request in a timely manner, the Trustee shall only acquire or invest in those Authorized Investments described in subparagraph (7) of the definition thereof. The Trustee shall not be responsible for monitoring the ratings of any Authorized Investment subsequent to its initial purchase; provided that if the Trustee has actual knowledge of a downgrading of the ratings on any Authorized Investment held hereunder then it shall notify the City in writing as soon as practicable.

For purposes of determining the amount on deposit in any fund or account held hereunder, all Authorized Investments or Federal Securities credited to such fund or account shall be valued at the market value thereof, and except as otherwise provided in this Section, Authorized Investments or Federal Securities representing an investment of money attributable to any account or fund and all investment profits or losses thereon shall be deemed at all times to be a part of such account or fund. Notwithstanding the foregoing, investment agreements shall be valued at the notional or face amount thereof. The Trustee is authorized to utilize computer pricing services including the valuation system utilized in its regular accounting system when valuing any fund or account held by it hereunder. The Trustee or an affiliate may act as principal or agent in the making or disposing of any Authorized Investment and shall be entitled to its customary fee therefore.

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

The Trustee may make any investments hereunder through its own bond or investment department or trust investment department, or those of its parent or any affiliate.

The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee hereunder.

If at any time there is no rating agency rating the Bonds, the provisions herein which make reference to rating categories of rating agencies “then rating the Bonds” shall be deemed to mean that at least one of such rating agencies shall have a rating as indicated in such provision.

Section 9.9. Accounts and Funds. Any account or fund required hereby to be established and maintained the Trustee may be established and maintained in the accounting records or the Trustee either as an account or fund, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as an account or as a fund; but all such records with respect to all such accounts and funds shall at all times be maintained in accordance with sound accounting practices and with due regard for the protection of the security of the Bonds and the rights of the Owners.

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, and 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,” “hereto,” “herewith,” “hereunder” and other words of similar import refer to the Indenture 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 or portions thereof provided herein to be observed or performed on the part of the City or of the Trustee should be contrary to law, then such agreement or agreements, such condition or conditions, such covenant or covenants, such term or terms or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements, conditions, covenants and terms or portions thereof and shall in no way affect the validity hereof or of the Bonds; but the Owners shall retain all the rights and benefits accorded to them under the Law or any other applicable provisions of law. The City hereby declares that it would have adopted the Indenture and each and every other section, paragraph, subdivision, sentence, clause and phrase hereof and would have authorized the issuance of the Bonds pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of the Indenture or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

Section 9.12. Execution in Several Counterparts. The Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the City and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

Section 9.13. Business Days. When any action is provided for herein to be done on a day named or within a specified time period, and the day or the last day of the period falls on a day that is not a Business Day, such action may be performed on the next ensuing Business Day with the same effect as though performed on the appointed day or within the specified period.

Section 9.14. Governing Law. The Indenture shall be governed and construed in accordance with the laws of the State of California.

Section 9.15. Notices. Whenever any notice is required to be given hereunder, such notice shall be mailed, first class mail, postage prepaid, to the following parties at the following addresses:

If to the City: City of Tulare  
411 East Kern Avenue  
Tulare, California 93274  
Attention: Finance Director

If to the Trustee: U.S. Bank National Association  
633 W. Fifth Street, 24<sup>th</sup> Floor

Los Angeles, California 90071  
Attention: Corporate Trust Services

[Section 9.16. Provisions Relating to Bond Insurer.]

IN WITNESS WHEREOF, the City of Tulare has caused the Indenture to be signed in its name by the President of the Council and Mayor of the City of Tulare and its seal to be hereunto affixed and to be attested by the Chief Deputy City Clerk and Clerk of the Council of the City of Tulare, and U.S. Bank National Association, as Trustee, in token of its acceptance of the trusts created hereunder, has caused the Indenture to be signed in its corporate name by its officer thereunto duly authorized, all as of the date and year first above written.

CITY OF TULARE

By: \_\_\_\_\_  
President of the Council and  
Mayor of the City of Tulare

ATTEST:

\_\_\_\_\_  
Chief Deputy City Clerk and Clerk of the  
Council of the City of Tulare

[SEAL]

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

By \_\_\_\_\_  
Authorized Officer



**EXHIBIT A  
FORM OF BONDS**

Unless this Bond is presented by an authorized representative of The Depository Trust Company, New York, New York (“DTC”), to the City or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. \_\_\_\_\_ \$ \_\_\_\_\_

**CITY OF TULARE  
WATER REVENUE BONDS SERIES 2019**

<u>INTEREST RATE:</u> _____ %	<u>MATURITY DATE:</u> December 1, 20__	<u>DATED DATE:</u> _____, 2019	<u>CUSIP</u>
----------------------------------	---	-----------------------------------	--------------

Registered Owner: CEDE & CO.

Principal Amount: \_\_\_\_\_ DOLLARS

The City of Tulare, a charter city, duly organized and existing under and pursuant to the laws of the State of California (the “City”), for value received hereby promises to pay (but only from the System Net Revenues and other funds hereinafter referred to) to the registered owner specified above, or registered assigns, on the maturity date specified above, the principal amount specified above, together with interest thereon from the interest payment date next preceding the date of registration of this Bond (unless this Bond is registered during the period from and including the Record Date (as that term is defined in the Indenture hereinafter referred to, and herein a “Record Date”) next preceding an interest payment date to and including such interest payment date, in which event it shall bear interest from such interest payment date, or unless this Bond is registered on or before the Record Date next preceding the first interest payment date, in which event it shall bear interest from its date of delivery) until the principal hereof shall have been paid, at the rate of interest specified above, payable semiannually on June 1 and December 1 in each year, commencing on June 1, 2020. Both the interest hereon and principal hereof and redemption premium, if any, hereon are payable in lawful money of the United States of America. The interest hereon is payable by check mailed by first class mail, postage prepaid, on each interest payment date to the person in whose name this Bond is registered at the close of business on the Record Date next preceding the applicable interest payment date at such person’s address as it appears on the registration books of the Trustee kept at the Corporate Trust Office (as that term is defined in the Indenture) or upon written request of an owner received prior to the Record Date preceding an interest payment date of at least one million dollars (\$1,000,000) in aggregate principal amount of Bonds, by wire transfer in immediately available funds to an

account designated by such owner within the continental United States of America, and the principal (or redemption price) hereof is payable upon surrender hereof at maturity or the earlier redemption hereof at the Corporate Trust Office of the Trustee.

This Bond is one of a duly authorized issue of City of Tulare Water Revenue Bonds Series 2019 (the “Bonds”), limited in aggregate principal amount to \$[Par Amount], all of like tenor and date (except for such variations, if any, as may be required to designate varying numbers, maturities, interest rates or redemption provisions), all issued under the provisions of relevant laws of the State of California including (1) the Freeholder’s Charter of the City and the City of Tulare Revenue Bond Law, enacted by Ordinance No. 1030, adopted by the Council of the City on February 1, 1972, as amended and/or (2) Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 (commencing with Section 53570) of the California Government Code (commonly referred to as the Refunding Bond Law). (the “Law”), and pursuant to the provisions of the Indenture, dated as of \_\_\_\_\_ 1, 2019, (the “Indenture”), by and between the City and U.S. Bank National Association, as trustee (the “Trustee”). All the Bonds are equally and ratably secured in accordance with the terms and conditions of the Indenture, and reference is hereby made to the Indenture, to any indentures supplemental thereto and to the Law for a description of the terms on which the Bonds are issued, for the provisions with regard to the nature and extent of the security provided for the Bonds and of the nature, extent and manner of enforcement of such security, and for a statement of the rights of the registered owners of the Bonds; and all the terms of the Indenture are hereby incorporated herein and constitute a contract between the City and the registered owner from time to time of this Bond, and to all the provisions thereof the registered owner of this Bond, by his acceptance hereof, consents and agrees; and each registered owner hereof shall have recourse to all the provisions of the Indenture and shall be bound by all the terms and conditions thereof.

The Bonds are limited obligations of the City and are payable, as to interest thereon and principal thereof and redemption premiums, if any, thereon, exclusively from the System Net Revenues (as that term is defined in the Indenture) and such other funds as provided hereunder, and the City is not obligated to pay them except from the System Net Revenues and such other funds. The obligation of the City to pay interest on, principal of and redemption premiums, if any, on the Bonds is a special obligation of the City payable solely from the System Net Revenues, and does not constitute a debt of the City or of the State of California or of any political subdivision thereof in contravention of any constitutional or statutory debt limitation or restriction.

The City hereby covenants and warrants that, for the payment of the interest on and principal of and redemption premium, if any, on this Bond and all other Bonds issued under the Indenture when due, there has been created and will be maintained by the City a special fund (the “System Revenue Fund”) into which all System Revenues shall be deposited, and the City has allocated the System Net Revenues to the payment of the interest on and principal of and redemption premiums, if any, on the Bonds, and the City will pay promptly when due the interest on and principal of and redemption premium, if any, on this Bond and all other Bonds of this issue out of the System Revenue Fund and such other funds, all in accordance with the terms and provisions set forth in the Indenture.

The Bonds are subject to redemption as provided in the Indenture.

If an Event of Default, as defined in the Indenture, shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture; except that the Indenture provides that in certain events such declaration and its consequences may be rescinded by the registered owners of at least a majority in aggregate principal amount of the Bonds then outstanding.

The Bonds are issuable only in the form of fully registered Bonds in denominations of five thousand dollars (\$5,000) or any integral multiple of five thousand dollars (\$5,000) (not exceeding the principal amount of Bonds maturing at any one time). The owner of any Bond or Bonds may surrender the same at the Corporate Trust Office of the Trustee, in exchange for an equal aggregate principal amount of Bonds of any other authorized denominations and of the same maturity date, in the manner, subject to the conditions and upon the payment of the charges provided in the Indenture.

This Bond is transferable, as provided in the Indenture, only upon a register to be kept for that purpose at the Corporate Trust Office of the Trustee, by the registered owner hereof in person, or by his duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer in substantially the form attached hereto duly executed by the registered owner or his duly authorized attorney, and thereupon a new Bond or Bonds, in the same aggregate principal amount and of the same maturity date, shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The City and the Trustee may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the interest hereon and principal hereof and redemption premium, if any, hereon and for all other purposes.

The rights and obligations of the City and of the registered owners of the Bonds may be amended at any time in the manner, to the extent and upon the terms provided in the Indenture.

This Bond shall not be entitled to any benefits under the Indenture or become valid or obligatory for any purpose until the certificate of authentication and registration hereon endorsed shall have been signed by the Trustee upon receipt of a Written Request of the City.

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

IN WITNESS WHEREOF, said City of Tulare has caused this Bond to be signed by the President of the Council and Mayor of the City and countersigned by the Chief Deputy City Clerk and Clerk of the Council of said City by her facsimile signature, and the corporate seal of said City to be imprinted hereon all as of the \_\_th day of December 2019.

CITY OF TULARE

By: \_\_\_\_\_  
President of the Council and  
Mayor of the City of Tulare

ATTEST:

\_\_\_\_\_  
Chief Deputy City Clerk and Clerk of the  
Council of the City of Tulare

[SEAL]

(FORM OF CERTIFICATE OF AUTHENTICATION AND REGISTRATION)

This is one of the Bonds described in the within-mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

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

By \_\_\_\_\_  
Authorized Officer

[STATEMENT OF INSURANCE]

FORM OF ASSIGNMENT)

For value received the undersigned do(es) hereby sell, assign and transfer unto \_\_\_\_\_ the within-mentioned registered Bond and hereby irrevocably constitutes and appoint(s) attorney to transfer the same on the books of the Trustee, with full power of substitution in the premises.

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

SIGNATURE GUARANTEED BY:

Note: The signatures to this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever, and the signatures must be guaranteed by an eligible guarantor institution.

Social Security Number, Taxpayer Identification Number or other Identifying Number of Assignee:

**EXHIBIT B**

**FORM OF COSTS OF ISSUANCE FUND REQUISITION**

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

TO: U.S. BANK NATIONAL ASSOCIATION  
633 West Fifth Street, 24th Floor  
Los Angeles, CA 90071  
Attention: Corporate Trust Services

You are hereby instructed to pay the amounts from the Series 2019 City of Tulare Costs of Issuance Fund as provided in Section 3.5 of the Indenture, dated as of \_\_\_\_\_ 1, 2019 (the “Indenture”) by and between U.S. Bank National Association, as trustee, and the City of Tulare to the persons and in the amounts as set forth in Schedule I hereto. These amounts have been properly incurred, are proper charges against the Series 2019 City of Tulare Costs of Issuance Fund.

IN WITNESS WHEREOF, I have hereunto set my hand on the date set forth above.

CITY OF TULARE

By \_\_\_\_\_  
Darlene J. Thompson  
Finance Director/Treasurer

**SCHEDULE I**

**COSTS OF ISSUANCE**

**Payee  
Name**

**Purpose of  
Obligation**

**Not to Exceed  
Amount**





**CITY OF TULARE  
NOTICE TO BIDDERS  
RFB #20-690  
Solids Hauling**

Notice is hereby given that the City of Tulare, State of California, will receive sealed bids for the service of biosolids transportation. Bids are to be mailed or hand delivered to the City of Tulare, City Clerk, 2<sup>nd</sup> floor, 411 East Kern Avenue, Tulare, California 93274. **Clearly mark on the outside of the sealed envelope the following:**

**RFB #20-690 "Solids Hauling"**

Company name and address shall be displayed on the outside of the envelope. The bid deadline is 2:00 p.m. on **Thursday, September 19, 2019** at which time the bids will be opened and read aloud.

Copies of the bid forms and specification documents may be obtained from the Water Pollution Control Facility Office at 1875 S. West St., Tulare, California 93274, or by calling (559) 684-3120. No bid will be received unless it is made on a proposal form furnished by the City.

An electronic set of documents including Bid/Contract Document are available for downloading at the City of Tulare website: [www.ci.tulare.ca.us](http://www.ci.tulare.ca.us)

*Under the "Departments" tab, select "Public Works".*

The City hereby affirmatively ensures that minority business enterprises will be afforded full opportunity to submit bids in response to this notice and will not be discriminated against on the basis of race, color, national origin, ancestry, handicap, gender or religion in any consideration leading to the award of contract.

No qualified handicapped person shall, on the basis of handicap, be excluded from participating in, be denied the benefits of, or otherwise be subjected to discrimination in any consideration leading to the award of contract.

The City reserves the right to accept or reject any or all bids and to award the contract to the lowest responsible bidder who best complies with the bid specifications as determined by the bid analysis.

For further information, please contact the City of Tulare at (559) 684-3120.

Published: Thursday, September 5, 2019 and Thursday, September 12, 2019

---

Trisha Whitfield/Public Works Director

**CITY OF TULARE  
NOTICE TO BIDDERS  
RFB #20-690  
Solids Hauling**

**INTENT OF SPECIFICATIONS:**

These specifications are intended to describe the type, size and quality of biosolids to be transported, which will best meet the needs of the City of Tulare, Wastewater Division. The mention herein of equipment or material merely serves to specify the quality or general type which is required and unless otherwise specified does not require a specific make or manufacturer's product. Any bid for the solids hauling received that does not contain a bid for the additional equipment equivalent will be rejected.

**TERMS:**

All services furnished under this contract shall conform to the best practices known for transportation, material handling, and safety of all facilities, equipment, and personnel involved.

After the award of contract to Contractor and prior to the start of work, Contractor and all Subcontractors doing work under this contract shall in accordance with Section 5.04.070 of the City of Tulare Municipal Code, obtain a "City of Tulare Business License." The current fee rates are available by contacting the City of Tulare, Finance Department, (559) 684-4232.

No payment will be made to the Contractor until the Contractor and all Subcontractors have obtained a City Business License. The Contractor shall also complete an Internal Revenue Service Form W-9, "Request for Taxpayer Identification Number and Certificate," and a State of California Franchise Tax Board Form 590, "Withholding Exemption Certificate."

**INFORMATION FOR BIDDERS:**

Services to be delivered to: City of Tulare Water Pollution Control Facility, 1875 S. West Street, Tulare, California, 93274.

Prices quoted shall exclude all Federal Excise Tax.

Prices quoted shall include applicable California state tax.

Proper exempt certificate will be issued by the City to the successful supplier.

Bids must be submitted on the forms supplied by the City of Tulare and include all applicable taxes and charges.

A five percent (5%) local preference will be extended to those businesses located within the City of Tulare. "Preference" shall mean an amount expressed in terms of a percentage, by which a bid or price may exceed the next lower submitted bid or price.

This bid requirements specified for solids hauling by the City or the use of a trade or specific names rather than a generic name for additional equipment does not confer a single source status to the named product, but indicates the required quality, capacity, or performance required. A product that fully meets the performance, capacity or quality of the named product may be used if approved by the City of Tulare. Determination of equivalency will be made before bids are received and by the City of Tulare only and its decision shall be final.

The City of Tulare reserves the right to reject any and all bids, to waive any informality in the bid and to select the bid which appears to be the most economical and advantageous to the Wastewater Department. Delivery shall be made within the time stated by the bidder and shall not exceed fourteen (14) calendar days from the date of notice of award.

This is not a prevailing wage job.

**INSURANCE REQUIREMENTS**

**A. Third Party Claims.**

- a. Indemnification and Defense. CONTRACTOR shall indemnify, defend, and hold harmless the City, and its employees, agents, and representatives (collectively "indemnitee"), against all liability, claims, costs, damages, and expenses (including reasonable attorney fees) incurred by indemnitee ("Losses") arising from or related to suits, actions, and claims brought as a result of CONTRACTOR's negligence related to performance of this contract or for CONTRACTOR's breach of contract with any third party related to the performance of this contract.
- b. Failure to Defend and Indemnify. Should CONTRACTOR fail to so defend and/or indemnify and save harmless, then, in such case, the City shall have full right to defend, pay or settle the third party claim on their own behalf without notice to CONTRACTOR for all fees, costs, and payments made or agreed to be paid to discharge the third party claim.
- c. Amount of Indemnification. The indemnification offered by this agreement shall be unlimited as to amount.

**B. Insurance Provisions.**

- a. CONTRACTOR shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONTRACTOR, its agents, representatives, or employees.

Coverage Required	Limits
General Liability	\$1,000,000 per occurrence or \$2,000,000 aggregate
Automobile Liability	\$1,000,000 per occurrence
Worker's Compensation	Statutory Limits

- b. The General Liability and Auto Liability policy(ies) are to contain or be endorsed to name the City/ Owner, its officers, officials, employees and volunteers as Additional Insured's as respects liability arising out of the activities performed in connection with this contract. CONTRACTOR's coverage shall be primary and shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. CONTRACTOR shall furnish the City/Owner original endorsements (affecting coverage required by this clause) signed by a person authorized to bind coverage on its behalf. The workers' compensation policy(ies) are to be endorsed to include a waiver of subrogation against the City, its officers, officials, employees, and agents.

## **AWARD AND EXECUTION OF CONTRACT**

**Award:** The award of the contract, if it be awarded, will be to the lowest responsible bidder whose proposal complies with all the requirements prescribed.

**Execution of the Contract:** The City will issue a City Purchase Order to the successful bidder.

**SPECIFICATIONS**  
**RFB #20-690**  
**Solids Hauling**

**COMPLY OR SPECIFICATIONS**

**Landfill:**

No landfill fees shall be included in the bid. The City will handle the landfill fees separately. For this bid the only requirements will be transportation of the biosolids to the landfill.

Comply \_\_\_\_\_

**Tonnage:**

Daily limit of tons to the landfill – 90 tons per day. The City requires that the hauler be able to transport four-thousand (4000) tons of material total. At a minimum rate of eighty (80) tons but not to exceed ninety (90) tons per day.

Comply \_\_\_\_\_

**Time:**

The City believes this project will take eight (8) hours per day, five (5) days per week (Monday-Friday) and last approximately eight (8) weeks.

Based on 2018 times and tonnage we calculate for this 2019 project to be completed in 8 weeks. will take 2 trucks @ 9.38 hrs which totals 750 hrs

**Hours:**

We operate between 6:00 am and 2:00 pm. We would like to begin hauling at 6:30 am. End time can be extended as long as the last load makes it to the landfill by 4:00 pm.

Comply \_\_\_\_\_

**DOCUMENTATION**

All documentation including workers comp and liability insurance shall be included.

Comply \_\_\_\_\_

**LIQUIDATED DAMAGES**

Time for delivery may be critical to the City's operation. The City will assess one hundred dollars (\$100.00) liquidated damages for each day that delivery of the solids hauling service is delayed beyond the bidder's stated delivery time. The liquidated damages shall be deducted from the bid price before any payment by the City.

Comply \_\_\_\_\_

The delivery date may be extended for good and sufficient reason if approved by the Director of Public Works. Delivery date will not be extended for trivial reasons nor for conditions under the bidder's control.

Comply \_\_\_\_\_

CITY OF TULARE  
BID FORM  
RFB #20-690  
Solids Hauling

SEALED bids shall be in the Office of the City Clerk, City Hall, 411 East Kern Avenue, Tulare, California, 93274, no later than **2:00 p.m. on Thursday, September 19, 2019.**

The undersigned proposes to furnish to the City of Tulare the following:

**Solids Hauling**

**THE UNDERSIGNED BIDS AS FOLLOWS:**

Service **Solids Hauling**

Hourly Rate \$ 120.<sup>00</sup> per hour  
Total estimated hours to complete project (4000 tons) 750 hours

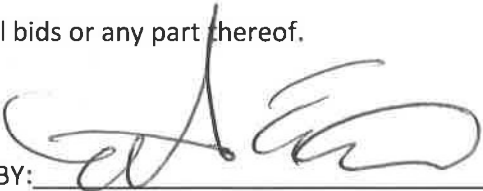
**NET BID (F.O.B. TULARE)** \$ 90,000 total project cost

**TERMS**

The City of Tulare agrees to pay the net bid amount thirty (30) days after delivery.

The City of Tulare reserves the right to reject any or all bids or any part thereof.

Honey's Sand & Gravel, LLC  
BIDDING FIRM

BY:   
Signature of Representative

Member  
TITLE

9181 Highway 41-Lemore  
BUSINESS ADDRESS CA, 93245

559.924.9229  
PHONE NUMBER

Instructions Regarding Signature: If bidder is an individual, state "Sole Owner" after signature. If bidder is a partnership, signature must be by General Partner, so stated after "Title". If bidder is a corporation, signature must be an authorized officer, so stated after "Title".

**CITY OF TULARE, CALIFORNIA  
BOARD OF PUBLIC UTILITIES COMMISSIONERS  
AGENDA ITEM TRANSMITTAL SHEET**

**Submitting Department:** Public Works / Wastewater Division

**For Board Meeting of:** October 3, 2019

**Documents Attached:**     Ordinance         Resolution         Other         None

---

**AGENDA ITEM:**

Award a three year contract with option to extend two additional one year periods if mutually agreed by both parties to FPM Group of Edwards, California to conduct semi-annual sampling, analysis and reporting of the groundwater monitoring network for \$62,034.34/year for the first three years and \$40,019.72/year for the two optional years and authorize the Public Works Director or City Manager to execute the contract subject to minor conforming and clarifying changes acceptable to the City Attorney.

**IS PUBLIC HEARING REQUIRED:**     Yes     No

**BACKGROUND/EXPLANATION:**

The City's 2013 Waste Discharge Requirements and Master Recycling Permit requires semi-annual sampling, analysis and reporting of the groundwater monitoring network. The two sampling events are to occur in October and April of each year with the October sampling event to include the "annual" requirements. In August 2019, the City completed construction of an additional fourteen (14) monitoring wells as required by the 2013 WDR through the Monitor Well Workplan. These new wells require quarterly sampling for the first three years.

The last contract for these services was bid in 2015 for the same contract period – an initial three year contract with two optional one year renewals. Previous to the RFP in 2015, the sampling and reporting were completed by FPM Group through contract extensions going back to 2002.

The Request for Proposals was advertised in early September for a firm to provide groundwater well sampling, analysis and reporting services. The following proposals were received and evaluated:

<u>Consultant</u>	<u>Location</u>	<u>Points</u>
FPM Group	Edwards, CA	169
BSK Associates	Fresno, CA	168
Cardno	Ventura, CA	164
Orion	Long Beach, CA	148
Stantec	Walnut Creek, CA	141

\*Cost includes sampling and analyzing of 24 of 43 groundwater wells. Contract will be amended if or when more wells have water.



The proposals were evaluated by the Public Works Director and the Public Works Management Analyst. Based on the review of the proposals, the firm most qualified to provide the services we require is FPM Group. Performance by FPM Group under the previous contracts has been excellent and their price for service is within the budgeted amount.

**STAFF RECOMMENDATION:**

Award a three year contract with option to extend two additional one year periods if mutually agreed by both parties to FPM Group of Edwards, California to conduct semi-annual sampling, analysis and reporting of the groundwater monitoring network for \$62,034.34/year for the first three years and \$40,019.72/year for the two optional years and authorize the Public Works Director or City Manager to execute the contract subject to minor conforming and clarifying changes acceptable to the City Attorney.

**CITY ATTORNEY REVIEW/COMMENTS:** Yes N/A

**IS ADDITIONAL (NON-BUDGETED) FUNDING REQUIRED:** Yes No N/A

**FUNDING SOURCE/ACCOUNT NUMBER:**

Submitted by: Trisha Whitfield

Title: Public Works Director

Date: September 26, 2019

City Manager Approval:     RH

**CITY OF TULARE, CALIFORNIA  
BOARD OF PUBLIC UTILITIES COMMISSIONERS  
AGENDA ITEM TRANSMITTAL SHEET**

**Submitting Department:** Public Works – Water Division

**For Board Meeting of:** October 3, 2019

**Documents Attached:**    Ordinance        Resolution        Other        None

---

**AGENDA ITEM:**

Review and authorize the City Manager, or designee, to sign a Purchase and Sale Agreement and Escrow Instructions with First Pentecostal Church DBA Abundant Life Center for the purchase of property adjacent to Well 35, subject only to minor conforming or clarifying changes acceptable to the City Attorney.

**IS PUBLIC HEARING REQUIRED:**    Yes    No

**BACKGROUND/EXPLANATION:**

Well 35 is located at the southeast corner of Mooney Blvd. and Bardsley Avenue, just east of First Pentecostal Church (Church). This well is one of the sites in the Group 3 projects for TCP Mitigation. Staff has been working with the Church to acquire the additional property needed for the addition of treatment vessels to the well site.

The City has offered \$18,000 for a 26'x100' of property at the north east corner of the Church parking lot to expand Well 35 for the addition of treatment vessels. In conjunction with the purchase of the property, the Church, per this agreement, will connect to the City water system and disconnect a private on-site well. As part of the agreement, the City will cover the installation of the water meter and box and connection to the City mainline on Bardsley.

The Church has reviewed the agreement and is agreeable to the terms. The City Attorney has reviewed the recommended agreement.

**STAFF RECOMMENDATION:**

Review and authorize the City Manager, or designee, to sign a Purchase and Sale Agreement and Escrow Instructions with First Pentecostal Church DBA Abundant Life Center for the purchase of property adjacent to Well 35, subject only to minor conforming or clarifying changes acceptable to the City Attorney.

**CITY ATTORNEY REVIEW/COMMENTS:**    Yes    N/A

**IS ADDITIONAL (NON-BUDGETED) FUNDING REQUIRED:**    Yes    No    N/A

**FUNDING SOURCE/ACCOUNT NUMBER:**

**Submitted by: Trisha Whitfield**

**Title: Public Works Director**

**Date: September 27, 2019**

**City Manager Approval:     RH**

## PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

\* \* \* \* \*

This PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (“**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 (“**Effective Date**”), by and between XXXXXXXXX (“**Seller**”), and THE CITY OF TULARE, (“**City**”) a municipal corporation (“**Buyer**”). Seller and Buyer are sometimes collectively referred to herein as the “**Parties**” and singularly as a “**Party**.” This Agreement is made with reference to the following facts:

### RECITALS

WHEREAS, Seller owns that real property located at the southeast corner of the intersection of Mooney Blvd. and Bardsley Avenue, Tulare, California, APN 184-150-002; and

WHEREAS, Buyer wishes to purchase a portion of the Property more particularly described in the attached Exhibit 'A', which is incorporated herein by reference (“**Well Property**”); and

WHEREAS, Seller wishes to abandon a water well located on their real property and have a City commercial water connection provided by the Buyer; and

WHEREAS, Buyer desires to purchase the Well Property and Seller is willing to sell the Well Property to Buyer.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

**1. Purchase and Sale.** Subject to the terms, conditions and provisions of this Agreement and for the consideration set forth herein, Seller agrees to sell to Buyer and Buyer agrees to buy at the Closing, as defined in this Agreement, the Well Property. The sale and purchase of the Well Property shall be consummated by means of an escrow (“**Escrow**”) opened at the offices of:

CHICAGO TITLE COMPANY,  
1905 Hillman Street,  
Tulare, California 93274.

Buyer agrees to open Escrow within ten (10) days of execution of this Agreement. This Agreement shall constitute the instructions for the Escrow upon acceptance by Escrow Holder. The Parties shall also execute such additional escrow instructions as may be required by the Escrow Holder, but the same shall be consistent with this Agreement and not modify the terms hereof unless specifically approved by the Parties, such approval to be given or withheld in their sole discretion.

2. **Purchase Price.** The purchase price for the Well Property shall be Eighteen Thousand Dollars (\$18,000.00) (“**Purchase Price**”). The Purchase Price shall be paid in full on the Closing Date, as defined below in Section 20 of this Agreement. Upon connection and the commencement of commercial City water service, the charges for the water main connection and the meter in the amount of \$3,300 will be waived, in addition past unpaid penalties on account will be waived, as defined in Exhibit “B”.

3. **Buyer’s and Seller’s Post-Closing Obligations.**

- (a) The Buyer shall prepare and complete at its sole expense, the connection to the City water main and installation of a water meter and box and provide a City metered commercial water connection to the Sellers real property, no later than three (3) months after the date of the close. The meter reading at the time of the completion of the install shall be the beginning meter reading for the commercial service to the Seller and the start of the commercial water service charges to the Seller. Meter shall be located using the existing availability of the water main along Bardsley Avenue in as close a proximity to the Sellers desired connection point as City standards permit.

Upon the availability of City commercial water service to the Sellers Real property, the Seller shall at its sole expense obtain the necessary permitting, and will make the connection to the City provided water meter in accordance to the current required City standards and specifications, the current cost for the permitting, and concurrently open with the City a commercial water service account. Obligation to purchase water by the Seller, will commence at the time of the completed connection of City commercial water service to the Sellers Real Property.

Sellers estimated charges and fees for the permitting is defined in Exhibit “B”.

- (b) Within sixty (60) days after the installation and commencement of the City commercial water service, the Seller at its sole expense, shall completely abandon its water well in accordance with all state, county and local laws and regulations and Seller shall provide to the City satisfactory evidence the well has been abandoned and is no longer able to provide water to the Seller’s real property the “Abandonment Period”.

Should Seller fail to satisfy the requirements described in this Section in the abandonment of the well, Buyer may, following the expiration of the “Abandonment Period”, physically disconnect the Sellers well from providing water to the Sellers real property.

- (c) Seller has unpaid charges and penalties of \$2,541.06, for City of Tulare utility account # 010063-00 that will be waived by the Buyer at the completion of the connection to City commercial water service. Charges for solid waste refuse service shall remain unchanged for the Seller and Seller will be obligated for payments on their account going forward at regular service rates.

The provisions of this Section, for the abandonment of the Sellers well, and the Sellers connection and commencement of City commercial water service, shall run with the Sellers real property, and to any subsequent owners of the property from the Seller.

4. **Possession.** Seller shall deliver legal and actual possession of the Well Property to Buyer at the Closing.

5. **Condition of Title to Real Property.** Seller shall convey fee title to the Well Property to Buyer, subject only to those encumbrances, contracts, agreements, rights, easements, rights of way, and mineral leases, rights and reservations as set forth in a preliminary report of title to the Well Property to be prepared by Escrow Holder ("**Title Report**") promptly after the opening of the Escrow. Upon receipt of the Title Report, and each document shown as an exception or encumbrance in the Title Report, Buyer shall have five (5) calendar days within which to notify Seller and Escrow Holder in writing of any exceptions to title shown therein that Buyer disapproves ("**Objectionable Exceptions**") plus any endorsements to title Buyer requires for the subject title policy. If Buyer notifies Seller and Escrow Holder of one (1) or more Objectionable Exceptions, Seller shall have ten (10) calendar days from receipt of such written notice to (i) remove the Objectionable Exception(s), or (ii) refuse to remove the Objectionable Exception(s), in which case Buyer may elect to waive its objection(s) and consummate this transaction, or terminate this Agreement and receive a refund of the Deposit and accrued interest, whereupon neither Party shall have any further obligation to sell or purchase the Real Property. Buyer's failure to provide Seller and Escrow Holder with written notice of Objectionable Exceptions within said five (5) calendar day period shall constitute Buyer's approval of the Title Report and all exceptions shown therein (collectively "**Permitted Exceptions**"). After Buyer's approval of the Title Report, Seller shall not allow, cause, or permit any additional exceptions to the condition of title to occur without Buyer's approval, other than ongoing real property taxes and assessments already of record.

6. **Title Insurance.** At the Closing, and as a condition to Buyer's obligation to purchase and Seller's obligation to sell the Real Property, Escrow Holder shall commit to issue its standard CLTA Owner's Policy of Title Insurance ("**Title Policy**"), subject only to the Permitted Exceptions as determined in accordance with this Agreement. The premium for the Title Policy shall be paid as set forth in Section 19 of this Agreement. Buyer may, however, acquire extended Title Policy coverage at its sole expense.

7. **Condition of Property.** Except for representations made in writing by the Seller prior to the Closing Date:

(a) Buyer expressly acknowledges that Buyer is buying the Well Property in an "AS IS AND WHERE AS" condition, and that they have not relied on any warranties, promises, understandings or representations, express or implied, of Seller or any employee, agent or representative of Seller, or any document relating to the Real Property, except as are specifically set forth in this Agreement. Buyer acknowledges that any and all reports, environmental assessments, engineering studies and other information of any type that Buyer has received or may receive from Seller or its agents are furnished on the express

condition that Buyer shall make an independent verification of the accuracy of any and all such information, all such information being furnished without any warranty whatsoever.

(b) Buyer acknowledges and agrees that neither Seller nor any employee, agent or representative of Seller has made any representation or warranty to Buyer concerning the Real Property, including, without limitation, the suitability of the Well Property for Buyer's intended use or its compliance with any statutes, ordinances, rules or regulations. Buyer shall perform and rely solely upon its own independent investigation concerning the Well Property and the Real Property's compliance with any applicable law. Buyer acknowledges that it is acquiring the Well Property subject to all existing laws, ordinances, rules and regulations, and that neither Seller nor any of Seller's representatives, agents or employees have made any warranties, representations or statements regarding any laws, ordinances, rules and regulations of any governmental or quasi-governmental body, entity, district or agency having authority with respect to the use, condition or occupancy of the Real Property.

(c) Buyer shall perform and rely solely upon its own investigation concerning Buyer's intended use of the Real Property, the Real Property's fitness therefor, and the permissibility of such intended use under applicable statutes, ordinances, rules and regulations.

(d) Except as expressly set forth in this Agreement, from and after the Closing, Buyer will indemnify, defend, and hold Seller harmless and hereby waives, releases, remises, acquits and forever discharges Seller and its elected and appointed officials, officers, employees, and agents, and their respective heirs, successors, personal representatives and assigns, of and from any and all suits, causes of action, legal, equitable or administrative proceedings, claims, demands, actual damages, punitive damages, losses, costs, liabilities, interest, attorney's fees and expenses of whatever kind and nature, in law or in equity, known or unknown, arising out of or in any way connected with, directly or indirectly, or based upon or arising out of the condition, status, quality, nature or environmental state of the Real Property; provided however, such duty to indemnify, defend, and hold harmless shall not apply with respect to Seller's gross negligence or intentional misconduct. It is the intention of this Agreement that, except for Seller's gross negligence and intentional misconduct and except as otherwise expressly set forth herein, any and all responsibilities and obligations of Seller to Buyer, and any and all rights or claims of Buyer, its successors and assigns and affiliated entities, with respect to, or as against Seller arising by virtue of, the physical or environmental condition of the Well Property are by this release provision declared to be, from and after Closing, null and void and of no present or future effect as to such parties. With respect to the matters released by Buyer pursuant to this Section 7, Buyer waives the benefits of Section 1542 of the Civil Code of the State of California, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

**8. Existing Surveys and Reports.** Within ten (10) calendar days after Seller's execution of this Agreement, Seller shall furnish Buyer with copies of all existing surveys, soil reports, engineering studies, environmental audits or reports, site plans, and other information in Seller's possession pertaining to the Well Property.

**9. Covenants, Warranties and Representations of Seller.** Seller hereby makes the following covenants, representations and warranties:

(a) Except as otherwise disclosed herein, Seller's execution of this Agreement and performance of its obligations hereunder will not violate any agreement, option, covenant, condition, obligation or undertaking of Seller.

(b) Seller is not a "foreign person" as defined in Section 1445(f) of the Internal Revenue Code of 1986, as amended. At the Closing, Seller shall provide Buyer Affidavits of Non-Foreign Status made under penalty of perjury, if required by Escrow Holder.

(c) Except as otherwise disclosed herein, there are no liens on title or actions, suits, or proceedings of any kind or nature whatsoever, legal or equitable, pending or to the best of Seller's knowledge, threatened against Seller, or the Well Property, and relating to or arising out of the ownership, management, or operation of the Well Property, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, agency, or other governmental instrumentality.

(d) The Well Property is not subject to any third party leases or other use rights, with the exception of those rights, if any, which may be reflected in the Title Report.

(e) Seller will not market the Well Property for sale or disposition to any other party while this Agreement is in effect.

(f) To Seller's current actual knowledge, the Well Property currently is in compliance in all respects with the rules, regulations, ordinances and laws of all governmental authorities having jurisdiction over the Real Property.

(g) Seller shall notify Buyer immediately if Seller becomes aware of any new information or material change concerning the Well Property that affects the representations and warranties of Seller under this Agreement.

**10. Covenants, Warranties and Representations of Buyer and Seller.** Buyer and Seller hereby makes the following covenants, representations and warranties:

(a) Buyer has the authority to enter into this Agreement, purchase the Well Property, and to otherwise perform as set forth herein. The person executing this Agreement on behalf of Buyer has the full legal authority and is duly authorized to sign this Agreement on behalf of Buyer and to bind Buyer to all of the terms and conditions of this Agreement.

(b) Buyer and Seller's execution of this Agreement and performance of its obligations



hereunder will not violate any agreement, option, covenant, condition, obligation or undertaking of Buyer.

(c) There are no actions, suits, or proceedings of any kind or nature whatsoever, legal or equitable, pending or, to the best of Seller's knowledge, threatened against Seller, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, agency, or other governmental instrumentality seeking to challenge Buyer's ability to purchase the Well Property.

**11. Survival of Warranties.** The satisfaction, truth, accuracy and completeness of each of the representations, warranties and covenants of Buyer and Seller contained in this Agreement, as of the date hereof and as of the Closing, shall constitute a condition precedent to the obligations of Seller and Buyer, respectively, hereunder. All representations, warranties, covenants, obligations, responsibilities and agreements set forth herein shall survive the Closing, and Seller and Buyer each agree to indemnify, defend and hold the other harmless from any claim, demand, liability, loss or cost (including without limitation, reasonable attorneys' fees and costs) which the other may sustain arising out of any breach of and provision of this Section 11.

**12. Brokerage Commissions.** Buyer and Seller each represents and warrants to the other that it has not engaged the services of any real estate broker, salesperson, agent or finder, nor done any other act nor made any statement, promise or undertaking which would result in the imposition of liability for the payment of any real estate brokerage commission, finder's fee or otherwise in connection with the transaction described in this Agreement. In the event that any person or entity perfects a claim for a brokerage commission, finder's fee or otherwise, based upon any agreement, statement or act, the Party through whom such person or entity makes such claim shall be responsible therefor and shall defend, indemnify and hold the other Party and the Well Property harmless from and against such claim and all loss, costs and expense associated therewith, including attorneys' fees.

**13. Conditions Precedent to Seller's Obligations to Perform.** Seller's obligation to perform as set forth herein is hereby expressly conditioned on satisfaction of each and every one of the following conditions precedent:

- (a) Buyer shall have timely performed each of the acts to be performed by it hereunder.
- (b) Each of Buyer's representations and warranties set forth herein shall be true at the Closing as if affirmatively made at that time.
- (c) Buyer shall not have timely exercised any right set forth in this Agreement to cancel the Escrow or terminate this Agreement.
- (d) Buyer's execution of a "Purchase and Sale Agreement and Escrow Instructions" to be recorded.

**14. Conditions Precedent to Buyer's Obligations to Perform.** Buyer's obligation to perform as set forth herein is hereby expressly conditioned on satisfaction of each and every one

of the following conditions precedent:

- (a) Seller shall have timely performed each of the acts to be performed by it hereunder.
- (b) Each of Seller's representations and warranties set forth herein shall be true at the Closing as if affirmatively made at that time.
- (c) Seller shall not have timely exercised any right set forth in this Agreement to cancel the Escrow or terminate this Agreement.
- (d) Escrow Holder is committed to issue the Title Policy as set forth above.
- (e) Seller has satisfied all legal requirements for the sale of the Well Property in order to grant clear title to Buyer, subject to those conditions and Permitted Exceptions approved by Buyer.

**15. Establishment of Escrow.** Upon execution of this Agreement by the Parties, a true and correct copy of this Agreement shall be deposited with Escrow Holder. The general provisions of Escrow Holder's escrow instructions shall not impose any additional obligations or liabilities on the parties. If any of the general provisions conflict with the provisions of this Agreement, the provisions of this Agreement shall control.

**16. Deposits into Escrow.** The Parties shall make the following deposits into Escrow at or prior to the Closing:

- (a) Seller shall deposit an executed and acknowledged original Grant Deed conveying good and marketable title to the Real Property, subject to all Permitted Exceptions.
- (b) Buyer shall deposit all funds when and as required hereby including without limitation the Purchase Price, all amounts necessary to pay Buyer's share of the closing costs, and such other amounts as Buyer has agreed to pay under this Agreement, or as required by Escrow Holder, and a preliminary change of ownership report for Tulare County.
- (c) Both Parties shall execute and deliver such additional documents as Escrow Holder reasonably may deem necessary in order to effectuate the transaction set forth in this Agreement and to close the Escrow.

**17. Prorations.** Escrow Holder shall prorate the following items, as of the Closing, using a 365 day year: all real and personal property taxes and all other charges or assessments relating to the Well Property using the latest tax bills. Buyer is exempt from any supplemental taxes assessed pursuant to Chapter 3.5 (Section 75) of the California Revenue and Taxation Code resulting from the sale of the Well Property to Buyer. Escrow Holder is not responsible for utility or insurance costs and premiums, all of which shall be prorated outside the Escrow by the Parties.

**18. Title Insurance.** At the Closing, Escrow Holder shall issue, effective as of that

date, the Title Policy described in this Agreement.

**19. Costs and Expenses.** Closing costs shall be borne by the Parties as follows:

- (a) The Title Policy premium shall be paid by Buyer, except that any endorsements which are requested by Buyer as an accommodation and at the request of Seller shall be paid by Seller;
- (b) Documentary transfer taxes and costs of preparing and recording all documents shall be paid by Buyer; and
- (c) All Escrow fees shall be paid by Buyer.

All other costs of closing the Escrow, including, without limitation, filing fees, other recording fees, and otherwise, shall be paid by the Buyer. Each Party shall bear its own legal fees and costs. Buyer shall deposit additional funds into Escrow in an amount equal to the closing costs as determined by Escrow Holder.

**20. Closing Date.** Unless otherwise extended by the Parties in writing or as specified herein, the closing of Escrow for the Well Property shall occur as soon as possible or thirty (30) calendar days following the Effective Date, subject to the prior satisfaction (or waiver) of the conditions precedent to the Closing identified in Sections 13 and 14 of this Agreement (“**Closing**”). The date on which Closing occurs is referred to herein as “**the Closing Date.**” If the Escrow is not in a condition to close by the Closing Date, Escrow Holder, except as otherwise provided herein, shall cancel the Escrow upon receipt of written notice from either Party of such cancellation; provided, however, that if Escrow is not in a condition to close by the Closing Date due to the failure of only one Party to perform, and such failure to perform constitutes a default under this Agreement, and the other Party has fully performed all of the obligations required of it in order to close the Escrow, only the performing Party shall be entitled to provide Escrow Holder with written notice of cancellation. In the absence of any written notice of cancellation, Escrow Holder shall proceed to close the Escrow as soon as possible.

**21. Procedure for Closing.** Escrow Holder shall close the Escrow by doing the following:

- (a) Pay from funds deposited by Buyer all claims, demands and liens necessary to place title to the Well Property in the condition set forth in this Agreement;
- (b) Pay from funds deposited by Buyer (other than the Purchase Price), Buyer's share of closing costs;
- (c) Prorate real and personal property taxes and all other charges or assessments as set forth in Section 17 of this Agreement;
- (d) Record Seller's Grant Deed in the Official Records of Tulare County and direct the County Recorder to affix the transfer tax after recording, return the recorded Grant Deed

to Buyer with a conformed copy to Seller, and file Buyer's preliminary change of ownership report in Tulare County, as appropriate; and

(e) Unless otherwise instructed by Seller, unilaterally deliver the remaining funds held in Escrow, less payments authorized hereunder, to Seller by Escrow Holder's check.

**22. Failure to Close.** If Escrow shall fail to close as a result of Buyer's breach of any of its obligations hereunder, then, in accordance with the provisions hereinabove, upon demand of Seller, Escrow Holder shall terminate the Escrow, immediately deliver the Deposit, accrued interest on the Deposit, and all documents that Seller previously deposited into Escrow (collectively "**Seller's Documents**") to Seller, deliver Buyer's preliminary change of ownership report to Buyer, and charge Buyer for any cancellation charges. If the Escrow shall fail to close as a result of Seller's breach of any of its obligations hereunder, or upon Buyer's election to terminate in accordance with the provisions of this Agreement, then upon demand of Buyer, Escrow Holder shall terminate the Escrow, immediately deliver Seller's Documents to Seller, deliver Buyer's preliminary change of ownership report to Buyer, and charge Seller for any cancellation charges. If the Escrow fails to close through no fault of either Buyer or Seller, upon the demand of either Party, Escrow Holder shall return Buyer's preliminary change of ownership report to Buyer, return Seller's Documents to Seller, return the entire Deposit and accrued interest to Buyer, and cancel the Escrow, with all cancellation charges to be borne equally by Buyer and Seller.

**23. Termination by the Seller.** In the event that prior to the conveyance of title to the Buyer;

(a) The Buyer transfers or assigns this Agreement or any parts herein to another party, or

(b) There is a significant change in ownership or identity of the Buyer, or

(c) The Buyer fails to deposit the full Purchase Price into Escrow by the date required, or

(d) The Buyer fails to take title to the Well Property upon tender of conveyance by the Seller, or

(e) The Buyer is in default or in breach of any term of this Agreement;

The Seller at its option may terminate this Agreement or allow Buyer to seek a cure within 30 days or such longer time as is reasonably required for the Buyer to seek a cure. Such option by the Seller shall be provided in writing to the Buyer.

**24. Attorneys' Fees.** In the event of any action between Buyer and Seller seeking enforcement of any of the terms and conditions of this Agreement, or in connection with the Real Property, the prevailing Party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable attorneys' fees, costs and expenses. Seller and Buyer agree that any

such action shall be venued in Tulare County, California or in the Federal District Court in Fresno, California.

**25. Indemnification of Escrow Holder.** Escrow Holder shall be indemnified and held harmless by Buyer and Seller against any and all costs, damages, attorneys' fees, expenses and liabilities which it incurs or sustains in connection with the Escrow, except for such items as may be caused by Escrow Holder's misconduct or negligence.

**26. Notice.** Except as otherwise expressly provided herein, any notice, consent, authorization or other communication to be given hereunder shall be in writing and shall be deemed duly given and received when delivered personally, when transmitted by facsimile or e-mail if receipt is acknowledged by the addressee, one (1) business day after being deposited for next-day delivery with a nationally recognized overnight delivery service, or five (5) business days after being mailed by first class mail, charges and postage prepaid, properly addressed to the party to receive such notice at the last address furnished for such purpose by the party to whom notice is directed and addressed as follows:

To Buyer: CITY OF TULARE  
Attention Rob Hunt, Interim City Manager  
411 East Kern Ave.  
Tulare, CA 93274  
Phone: (559) 684-4200  
Email: RHunt@tulare.ca.gov

To Buyer's Legal Counsel: Mario U. Zamora, Interim City Attorney  
GRISWOLD, LaSALLE, COBB,  
DOWD & GIN, L.L.P.  
111 East Seventh Street  
Hanford, CA 93230  
Phone: (559) 584-6656  
Email: zamora@griswoldlasalle.com

To Seller: XXXXXXXX  
XXXXXX.  
XXXXXXXXXXXX  
XXXXXXXXXXXX  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**27. Sole and Only Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the matters set forth herein and contains all of the covenants and agreements between the parties regarding said matters. Except as is otherwise provided herein, each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which are not embodied in this Agreement and no other agreement, statement or promise shall be valid or binding.

**28. Successors and Assigns.** Buyer may not, without the Seller's consent, which consent may be withheld in Seller's sole discretion, assign any duties or rights hereunder to a third party as long as Seller owns the Real Property. Should Seller consent to an assignment of this Agreement, Buyer shall guarantee in writing the performance of this Agreement by their successor-in-interest.

**29. Further Action.** The Parties agree to perform all further acts, and to execute, acknowledge, and deliver any documents that may be reasonably necessary, appropriate or desirable to carry out the purposes of this Agreement, including but not limited to Grant Deed.

**30. Waiver.** A waiver of any breach of this Agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision of this Agreement.

**31. Choice of Laws.** This Agreement shall be governed by the laws of the State of California and any question arising hereunder shall be construed or determined according to such law.

**32. Headings.** Headings at the beginning of each numbered Section of this Agreement are solely for the convenience of the Parties and are not a part of this Agreement.

**33. Survival.** All of the provisions of this Agreement shall survive the Closing and shall remain binding upon the Parties.

**34. Time.** Time is of the essence, it being understood that each date set forth herein, particularly the Closing, and the obligations of the Parties to be satisfied by such dates have been the subject of specific negotiations by the Parties.

**35. Counterparts.** This Agreement may be signed by the Parties in different counterparts and the signature pages combined to create a document binding on all Parties.

**36. Nondiscrimination and Non-segregation Provisions.** The Buyer herein covenants by and for itself and its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease or sublease, transfer, use, occupancy, tenure, or enjoyment of the Well Property herein conveyed, nor shall Buyer or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number or use or occupancy of tenants, lessees, subtenants, sub lessees, or vendees in the Well Property herein conveyed. The foregoing covenants shall run with the land and shall be included in the deed transferring title of the Well Property to Buyer.

**IN WITNESS WHEREOF,** the Parties have executed this Agreement on the date first hereinabove written.

**“SELLER”**

CITY OF TULARE, a municipal corporation

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Rob Hunt, Interim City Manager

**“BUYER”**

XXXXXXXX

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name and Title)

**EXHIBIT "A"**

City of Tulare  
Well No. 35 Expansion  
APN 184-150-002 (portion)

That portion of Lot 1 of Shadow Wood Unit No. 1, per the map thereof recorded in Volume 37 of Maps at Page 16, Tulare County Records, situated in the Northwest Quarter of Section 18, Township 20 South, Range 25 East, Mount Diablo Base and Meridian, in the City of Tulare, County of Tulare, State of California, according to the official plat thereof, described as follows:

Beginning at the Northeast corner of said Lot 1; thence

South 0°47'32" West, along the East line of said Lot 1, a distance of 100.56 feet, more or less, to the Southwest corner of Lot 29 of Cedar Grove Estates, per the map thereof recorded in Volume 41 of Maps at Page 7; thence

North 90°00'00" West, along the westerly extension of the South line of said Lot 29, a distance of 26.00 feet; thence

North 0°47'32" East, parallel with said East line, 100.56 feet, more or less, to the North line of said Lot 1; thence

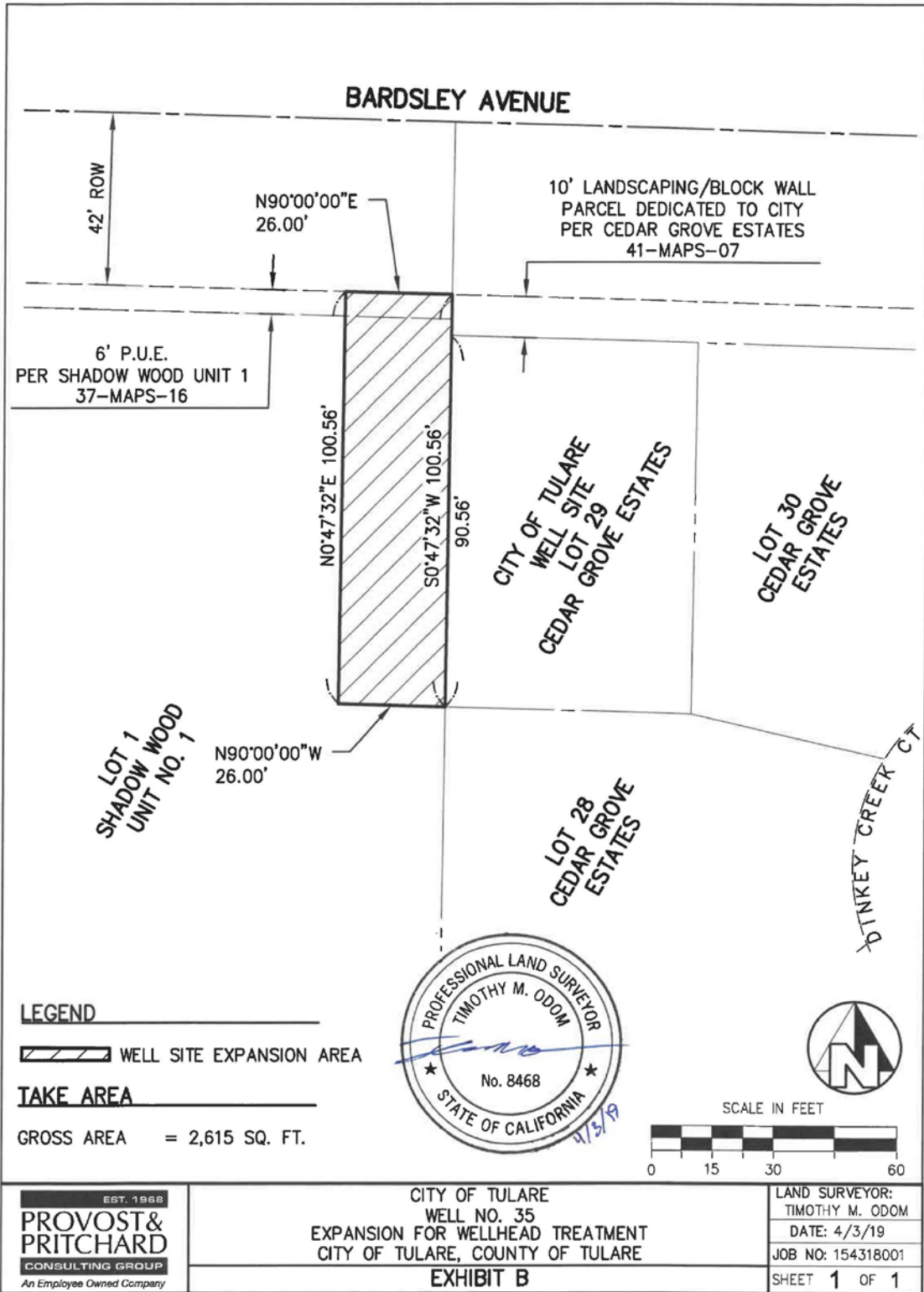
North 90°00'00" East, along said North line, 26.00 feet to the POINT OF BEGINNING.

Containing an area of 2,615 square feet, more or less.

END OF DESCRIPTION







**EXHIBIT "B"**

2201 E Bardsley Ave Water Estimate

**Water Connection Fees Estimate**

Water Main Charge Per Foot	=	\$17.50
Lot Front Footage (ft)	=	413.70
		<u>\$ 7,239.75</u>
# Water Meter Services		
— 1" Service	=	\$ -
— 1 1/2" Service	=	\$ -
— 2" Service	=	\$ -
— Utility Trench Fee	=	\$ -
— Building Permit Fee	=	\$ 100.08
<b>Total</b>		<b><u>\$ 7,339.83</u></b>

NOTE: if there is an existing well, it will need to be abandoned. This will require an application for Well Abandonment and a separate building permit. The well abandonment permit is \$149.62  
Estimate does not include cost of 2" service installation. That cost to be borne by City of Tulare.