

ESCROW DEPOSIT AND TRUST AGREEMENT

by and among the

CITY OF OXNARD FINANCING AUTHORITY,

CITY OF OXNARD, CALIFORNIA,

and

**WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Escrow Agent**

Dated as of _____, 2021

ESCROW DEPOSIT AND TRUST AGREEMENT

This ESCROW DEPOSIT AND TRUST AGREEMENT (the “Escrow Agreement”) is made and entered into as of _____, 2021, by and among the City of Oxnard Financing Authority, a joint exercise of powers authority organized and existing under the laws of the State of California (the “Authority”), CITY OF OXNARD, a municipal corporation organized and existing by virtue of Constitution and laws of the State of California (the “City”) and Wells Fargo Bank, National Association, as Escrow Agent (the “Escrow Agent”);

WITNESSETH:

WHEREAS, the City and the Authority have heretofore entered into an Installment Purchase Agreement, dated as of _____, 2010 (the “2010 Agreement”);

WHEREAS, payments by the City of installment payments pursuant to the 2010 Agreement (the “2010 Payments”) are applied to the payment of a portion of the \$16,455,000 City of Oxnard Financing Authority Water Revenue Project Bonds, Series 2010A (the “2010 Bonds”);

WHEREAS, the 2010 Agreement provides that in the event that the City deposits, or causes the deposit on its behalf of, moneys and certain securities (as defined in Section 10.01 of the 2010 Indenture) in an amount, together with investment earnings and certain funds held under the 2010 Indenture (defined below), sufficient to pay and discharge all or a portion of the indebtedness of the 2010 Agreement at or before maturity, then the obligations of the City under the 2010 Agreement shall cease and terminate with respect to the obligations so discharged, except only the obligation of the City to pay or cause to be paid to the Authority all sums due thereon out of the Escrow Fund with respect to the obligations so discharged and thereafter such Net Water System Revenues (as defined in the 2010 Agreement) shall be released from the lien of the 2010 Agreement; and

WHEREAS, pursuant to the 2010 Agreement, the Authority assigned to the Prior Trustee its rights to installment receive payments from the City under the 2010 Agreement and the right to exercise such rights and remedies conferred on the Authority under the 2010 Agreement to enforce payment of the prior payments; and

WHEREAS, pursuant to a 2010 Indenture, relating to and dated as of the same date as the 2010 Agreement, by and between the Authority and the Prior Trustee (the “2010 Indenture”), the 2010 Bonds were issued, secured in part by the prior payments; and

WHEREAS, the City has determined that it is in the best interests of the Authority at this time to refinance the City's obligation to make the installment payments under the 2010 Agreement and, as a result thereof, to provide for the payment of such installment payments through [_____, 2021] and to prepay such installment payments on said [_____, 2021], at a prepayment price of 100% of the principal amount thereof, plus accrued interest; and

WHEREAS, the Authority and the City propose to make the deposit of moneys and to appoint the Escrow Agent as its agent for the purpose of applying said deposit to the payment of

Prior Payments in accordance with the instructions provided by this Escrow Agreement and of applying said Prior Payments to the payment and redemption of a portion of the 2010 Bonds in accordance with the 2010 Indenture and 2010 Agreement, and the Escrow Agent will accept said appointment; and

WHEREAS, to obtain moneys to make such deposit, the City and the Authority propose to issue \$_____ City of Oxnard Financing Authority Water Revenue Bonds, Series 2021A pursuant to that certain Indenture of Trust, dated as of _____, 2021, (the “Indenture”), by and among the City, the Authority and the Trustee; and

WHEREAS, the City wishes to make such a deposit with the Escrow Agent and to enter into this Escrow Agreement for the purpose of providing the terms and conditions for the deposit and application of amounts so deposited; and

WHEREAS, the Escrow Agent has full powers to act with respect to the irrevocable escrow and trust created herein and to perform the duties and obligations to be undertaken pursuant to this Escrow Agreement.

NOW, THEREFORE, in consideration of the above premises and of the mutual promises and covenants herein contained and for other valuable consideration, the parties hereto do hereby agree as follows:

Section 1. Definition of Federal Securities. As used herein, the term “Federal Securities” means direct non-callable obligations of the United States of America, Refcorp interest strips, or securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, provided, that the full faith and credit of the United States of America has been pledged to any such obligation or guarantee.

Section 2. Appointment of Escrow Agent. The City and the Authority hereby appoint the Escrow Agent as Escrow Agent for all purposes of this Escrow Agreement and in accordance with the terms and provisions of this Escrow Agreement, and the Escrow Agent hereby accepts such appointment.

Section 3. Establishment of Escrow Fund. There is hereby created by the City and the Authority with, and to be held by, the Escrow Agent, as security for the payment of the Prior Payments as hereinafter set forth, an irrevocable escrow to be maintained in trust by the Escrow Agent on behalf of the City and the Authority and for the benefit of the owners of the 2010 Bonds, said escrow to be designated the “Escrow Fund.” All moneys and Federal Securities deposited in the Escrow Fund shall be held as a special fund for the payment of the Prior Payments in accordance with the provisions of the 2010 Agreement. If at any time the Escrow Agent shall receive actual knowledge that the moneys and Federal Securities in the Escrow Fund will not be sufficient to make any payment required by Section 5 hereof, the Escrow Agent shall notify the City of such fact and the City shall immediately cure such deficiency.

Section 4. Deposit into Escrow Fund; Investment of Amounts. Concurrently with delivery of the Bonds, the City and the Authority shall cause to be transferred to the Escrow Agent for deposit into the Escrow Fund the amount of \$_____ in immediately available funds. All amounts deposited to the Escrow Fund shall be held as cash uninvested.

Section 5. Instructions as to Application of Deposit; Authority Retains Right of Optional Redemption. The City and the Authority hereby irrevocably direct and instruct the Escrow Agent to apply the interest on and maturing principal amount of the Escrowed Federal Securities and Cash to pay the Prior Payments relating to the 2010 Agreement, through [March ___, 2021] and to prepay the remaining Prior Payments in full on [_____, 2021] at a prepayment price of 100% of the principal amount hereof. For such purpose of call and prepayment prior to maturity of a portion of the 2010 Bonds, the City and the Authority have previously instructed the Escrow Agent to give notice of prepayment, of the 2010 Bonds subject to prepayment, and such notice of prepayment has been given timely for prepayment of the 2010 Bonds on [February ___, 2021], in accordance with the applicable provisions of the 2010 Indenture. Any funds remaining in the Escrow Fund after [_____, 2021], shall be delivered to the City.

Section 6. Application of Certain Terms of 2010 Indenture. All of the terms of the 2010 Indenture relating to the making of payments of principal and interest with respect to the 2010 Bonds are incorporated in this Escrow Agreement as if set forth in full herein. The provisions of the 2010 Indenture relating to the limitations from liability and protections afforded the Prior Trustee and the resignation and removal of the Prior Trustee are also incorporated in this Escrow Agreement as if set forth in full herein and shall be the procedure to be followed with respect to any resignation or removal of the Escrow Agent hereunder.

Section 7. Compensation to Escrow Agent. The City shall pay the Escrow Agent full compensation for its duties under this Escrow Agreement, including out-of-pocket costs such as publication costs, prepayment or redemption expenses, legal fees and other costs and expenses relating hereto and, in addition, fees, costs and expenses relating to the purchase of any Federal Securities after the date hereof, pursuant to a separate agreement between the City and the Escrow Agent. Under no circumstances shall amounts deposited in the Escrow Fund be deemed to be available for said purposes.

Section 8. Liabilities and Obligations of Escrow Agent. The Escrow Agent shall have no obligation to make any payment or disbursement of any type or incur any financial liability in the performance of its duties under this Escrow Agreement unless the City shall have deposited sufficient funds with the Escrow Agent to satisfy such obligation. The Escrow Agent may rely and shall be protected in acting upon the written instructions of the City or its agents relating to any matter or action as Escrow Agent under this Escrow Agreement.

The Escrow Agent undertakes such duties as specifically set forth herein and no implied duties or obligations shall be read into this Escrow Agreement against the Escrow Agent.

The City hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and hold harmless the Escrow Agent and its respective successors, assigns, agents and servants from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, at any time, the Escrow Agent (whether or not also indemnified against by any other person under any other agreement or instrument) and in any way relating to or arising out of the execution and delivery of this Escrow

Agreement, the establishment of the Escrow Fund, the retention of the moneys therein and any payment, transfer or other application of moneys or securities by the Escrow Agent in accordance with the provisions of this Escrow Agreement, or as may arise by reason of any act, omission or error of the Escrow Agent made in good faith in the conduct of its duties; provided, however, that the City shall not be required to indemnify the Escrow Agent against its own negligence or misconduct. The indemnities contained in this Section 10 shall survive the termination of this Escrow Agreement and the resignation and removal of the Escrow Agent.

The Escrow Agent shall not have any liability hereunder except to the extent of its own negligence or willful misconduct. In no event shall the Escrow Agent be liable for any special indirect or consequential damages.

The Escrow Agent may consult with counsel of its own choice and the opinion of such counsel shall be full and complete authorization to take or suffer in good faith any action hereunder in accordance with such opinion of counsel.

The Escrow Agent shall not be responsible for any of the recitals or representations contained herein.

Whenever in the administration of this Escrow Agreement the Escrow Agent 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 Escrow Agent, be deemed to be conclusively proved and established by a certificate of an authorized representative of the City and Authority, and such certificate shall, in the absence of negligence or willful misconduct on the part of the Escrow Agent, be full warrant to the Escrow Agent for any action taken or suffered by it under the provisions of this Escrow Agreement upon the faith thereof.

The liability of the Escrow Agent to make the payments required by this Escrow Agreement shall be limited to the moneys and Federal Securities in the escrow Fund.

The Escrow Agent shall not be liable for the accuracy of any calculations provided as to the sufficiency of the moneys or Federal securities deposited with it to pay the principal, interest, or premiums, if any, on the Bonds.

No provision of this Escrow Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder, or in the exercise of its rights or powers.

The Escrow Agent may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care, and shall not be responsible for any willful misconduct or negligence on the part of any agent, attorney, custodian or nominee so appointed.

The Escrow Agent agrees to accept and act upon instructions or directions pursuant to this Escrow Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Escrow Agent shall have received an

incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Utility Authority elects to give the Escrow Agent e-mail or facsimile instructions (or instructions by a similar electronic method) and the Escrow Agent in its discretion elects to act upon such instructions, the Escrow Agent's understanding of such instructions shall be deemed controlling. The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Utility Authority agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

The Utility Authority acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Utility Authority the right to receive brokerage confirmations of security transactions as they occur, the Utility Authority specifically waives receipt of such confirmations to the extent permitted by law. The Escrow Agent will furnish the Utility Authority periodic cash transaction statements which include detail for all investment transactions made by the Escrow Agent hereunder.

Section 9. Amendment. This Escrow Agreement may be modified or amended at any time by a supplemental agreement which shall become effective when the written consents of the owners of one hundred percent (100%) in aggregate principal amount of the 2010 Bonds then outstanding shall have been filed with the Escrow Agent. This Escrow Agreement may be modified or amended at any time by a supplemental agreement, without the consent of any such owners, but only (1) to add to the covenants and agreements of any party, other covenants to be observed, or to surrender any right or power herein or therein reserved to the City, (2) to cure, correct or supplement any ambiguous or defective provision contained herein, (3) in regard to questions arising hereunder or thereunder, as the parties hereto or thereto may deem necessary or desirable and which, in the opinion of counsel, shall not adversely affect the interests of the owners of the 2010 Bonds or the Bonds, and that such amendment will not cause interest on the 2010 Bonds or the Bonds to become subject to federal income taxation.

Section 10. Termination; Unclaimed Money. This Escrow Agreement shall terminate when the Prior Payments have been paid; provided, however, that (i) money held by the Escrow Agent pursuant to this Escrow Agreement for the payment and discharge of any of the Prior Payments (which shall not be payable as to interest from and after the date set for redemption) which remain unclaimed for two (2) years after such payments were due, shall be repaid by the Escrow Agent to the City free from the trust created by the 2010 Indenture and this Escrow Agreement, and the Escrow Agent shall thereupon be released and discharged with respect thereto and hereto and all liability of the Escrow Agent with respect to such money shall thereupon cease and (ii) excess moneys held by the Escrow Agent not needed for the payment and discharge of the Prior Payments shall be transferred to the Bond Fund under the Indenture.

Section 11. Severability. If any section, paragraph, sentence, clause or provision of this Escrow Agreement shall for any reason be held to be invalid or unenforceable, the invalidity

or unenforceability of such section, paragraph, sentence, clause or provision shall not affect any of the remaining provisions of this Escrow Agreement.

Section 12. Notice of Escrow Agent, Authority and City. Any notice to or demand upon the Escrow Agent may be served and presented, and such demand may be made, at the principal corporate trust office of the Escrow Agent as specified by the Escrow Agent as Prior Trustee in accordance with the provisions of the 2010 Indenture or by physical delivery with confirmation of receipt or by confirmed telecopy. Any notice to or demand upon the City or the Authority shall be deemed to have been sufficiently given or served for all purposes by being mailed by registered or certified mail, and deposited, postage prepaid, in a post office letter box, addressed to such party as provided in the 2010 Agreement (or such other address as may have been filed in writing by the City or the Authority with the Escrow Agent).

Section 13. Merger or Consolidation of Escrow Agent. Any company into which the Escrow Agent may be merged or converted or with which may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Escrow Agent may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible to act as Trustee under the Indenture and the 2010 Indenture, shall be the successor hereunder to the Escrow Agent without the execution or filing of any paper or any further act.

Section 14. Governing Law. This Escrow Agreement shall be construed and governed in accordance with the laws of the State of California.

Section 15. Execution in Several Counterparts. This Escrow Agreement 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 shall constitute but one and the same instrument.

(Signature page follows)

IN WITNESS WHEREOF, the Authority, the City and the Escrow Agent have each caused this Escrow Agreement to be executed by their duly authorized officers all as of the date first above written.

CITY OF OXNARD

By: _____
Kevin Riper
Chief Finance Officer

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Escrow Agent

By: _____
Authorized Officer

CITY OF OXNARD FINANCING
AUTHORITY

By: _____
Kevin Riper
Chief Financial Officer

*-Signature Page-
Escrow Deposit and Trust Agreement*

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