

**INTER-FUND LOAN AND REPAYMENT  
AGREEMENT**

**(Water Utility Fund to Water Capacity Fund)**

**by the**

**CORONA UTILITY AUTHORITY**

**and the**

**CITY OF CORONA**

**with reference to the**

**WATER UTILITY FUND**

**and**

**WATER CAPACITY FUND**

## **INTER-FUND LOAN AND REPAYMENT AGREEMENT**

THIS INTER-FUND LOAN AND REPAYMENT AGREEMENT (the "Agreement") is made as of June 21<sup>st</sup>, 2017, by the CORONA UTILITY AUTHORITY, a joint powers authority established under the Joint Powers Law (Articles 1 through 4 of Chapter 5, Division 7, Title 1 of the California Government Code (the "Authority") and by the CITY OF CORONA, a general law city and California municipal corporation organized under the constitution and laws of the State of California (the "City"), with reference to the Water Utility Fund (the "Water Utility Fund") and the Water Capacity Fund (the "Water Capacity Fund") and the following recited facts:

### **RECITALS**

A. WHEREAS, as authorized by Corona Municipal Code Chapter 13.14 and Ordinance No. 2353 adopted by the City Council on June 3, 1998, the City imposes and collects a Water Development Fee that is used to improve existing water facilities or construct new water facilities, such as pipelines, reservoirs, booster pump stations, treatment facilities, wells, and other sources of water, as necessary to serve new development within the City; and

B. WHEREAS, the Water Development Fee is deposited into the Water Capacity Fund (Fund 507); and

C. WHEREAS, funds in the Water Capacity Fund have been used to construct capital improvement projects, such as water storage tanks, reservoirs, wells, waterline extension and connections, to serve not only new development for which the Water Development Fee was paid, but also prospective development within the City that will pay the Water Development Fee in the future prior to construction of such development ("Water Facilities"); and

D. WHEREAS, the amount of Water Development Fees collected to date and deposited into the Water Capacity Fund have been insufficient to pay for the entire cost to construct the Water Facilities; and

E. WHEREAS, in order to allow construction of the Water Facilities to proceed, loans in the total amount of \$10,850,000 ("Interfund Loan") have been authorized and transferred from the Water Utility Fund (Fund 570) to the Water Capacity Fund since Fiscal Year 2009-10; and

F. WHEREAS, the City and the Authority desire to memorialize the Interfund Loan in this Agreement and establish the terms for the repayment of the Interfund Loan from the Water Capacity Fund.

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES SET FORTH IN THIS AGREEMENT AND OTHER GOOD AND VALUABLE CONSIDERATION, THE AUTHORITY AND THE CITY AGREE, AS FOLLOWS:

### **ARTICLE 1**

## DEFINITIONS

1.1 **Defined Terms.** In addition to the usage of certain words, terms or phrases that are defined elsewhere in this Agreement, the following words, terms and phrases are used in this Agreement, as follows, unless the particular context of usage of a word, term or phrase requires another interpretation:

1.1.1 **"Due Date"** means the last day of each fiscal year.

1.1.2 **"Available Revenues"** means all fees and revenues allocated and paid to the Water Capacity Fund, less all of the following: (i) payment of debt service or other amounts relating to any outstanding bonds, notes, installment payment agreements, or other forms of indebtedness to which the Water Capacity Fund is pledged, whether existing as of the Effective Date or issued after the Effective Date; (ii) satisfaction of all obligations of the Water Capacity Fund under existing agreements (exclusive of this Agreement); and (iii) any other obligations of the Water Capacity Fund, incurred, established or agreed to prior to the Effective Date or to which this Agreement is subordinated by the terms of this Agreement or by separate written agreement or consent by the City.

1.1.3 **"Effective Date"** means the date on which this Agreement is approved by the City Council of the City and the Corona Utility Authority.

1.1.4 **"Interest Rate"** means the Local Agency Investment Fund (LAIF) published rate at June 30 of each year.

1.1.5 **"Interfund Loan "** means Ten Million Eight Hundred Fifty Thousand Dollars (\$10,850,000) plus interest as set forth in Section 3.4 of this Agreement.

1.1.6 **"Person"** means any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

## ARTICLE 2

### WATER UTILITY LOAN

2.1 **Interfund Loan Authorization.** As previously authorized, the Water Utility Fund has loaned to the Water Capacity Fund the Interfund Loan to provide sufficient funding for the Water Facilities.

## ARTICLE 3

### INTERFUND LOAN REPAYMENT

2.1 **Interfund Loan Repayment.** The Water Capacity Fund shall repay the Interfund

Loan from Available Revenues. On or before the Due Date each fiscal year, any and all Available Revenues shall be transferred from the Water Capacity Fund to the Water Utility Fund to repay the Interfund Loan. If Available Revenues are not sufficient to pay off the Interfund Loan, any unpaid balance (whether principal or interest) shall be carried forward without default to the next fiscal year.

**2.2 No Separate Instrument.** The obligation of the Water Capacity Fund to repay the Interfund Loan and all accrued and unpaid interest thereon shall be evidenced solely by this Agreement and shall not require any separate instrument to perfect the lien on Available Revenues of the Water Capacity Fund.

**3.3 Application of Payments.** Each transfer from the Water Capacity Fund to the Water Utility Fund shall be credited in the following order: (i) interest payable under this Agreement, and (ii) outstanding principal of the Interfund Loan.

**3.4 Interest.** The Interfund Loan shall bear interest on the unpaid principal amount at the Interest Rate per annum until paid.

**3.5 Usury.** This Agreement is expressly limited, so that in no event or contingency, whether because of the advancement of the proceeds or otherwise, shall the amount paid or agreed to be paid to the Water Utility Fund for the use, forbearance, or retention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable law. If, under any circumstances, fulfillment of any provision of this Agreement, after timely performance of such provision is due, shall involve exceeding the limit of validity prescribed by law that a court of competent jurisdiction deems applicable, then, ipso facto, the obligations to be fulfilled shall be reduced to the maximum limit of such validity. If, under any circumstances, the Water Utility Fund shall ever receive as interest an amount that exceeds the highest lawful rate, the amount that would be excessive interest shall be applied to reduce the unpaid principal balance of the Interfund Loan, and not to pay interest, or, if such excessive interest exceeds the unpaid principal balance of the Interfund Loan, such excess shall be refunded to the Water Capacity Fund.

**3.6 Not a Pledge of Water Capacity Fund Revenues.** Notwithstanding any other provision of this Agreement, the Water Capacity Fund's obligations under this Agreement do not constitute a formal pledge of Available Revenues or any other revenues of the Water Capacity Fund. The Water Capacity Fund's repayment obligations under this Agreement shall be a special, limited fund obligation of the Water Capacity Fund, payable solely from Available Revenues as described herein. The Water Capacity Fund's obligations under this Agreement are subject and subordinate to payment of debt service or other amounts relating to any outstanding bonds, notes, installment payments, or other evidences of indebtedness, to which the Water Capacity Fund is pledged and that were issued before or after the Effective Date, satisfaction of all obligations of the Water Capacity Fund under existing agreements of the City (exclusive of this Agreement) and any other obligations of the Water Capacity Fund, incurred, established or agreed to prior to the Effective Date or to which this Agreement is subordinated by the terms of this Agreement or by separate agreement. The Water Capacity Fund's obligations regarding repayment under this Agreement shall be automatically junior and subordinate to any bonded indebtedness to which the Water Capacity

Fund is pledged after the Effective Date, without further notice or action.

## **ARTICLE 4**

### **GENERAL PROVISIONS**

4.1 **Incorporation of Recitals.** The recitals of fact set forth preceding this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

4.2 **Calculation of Time Periods.** Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to business days in this Agreement shall mean and refer to business days of the City.

4.3 **Amendment.** No amendment or modification of this Agreement shall be effective, unless it is made in writing by the City, following approval by the City Council of the City and the Corona Utility Authority.

4.4 **Severability.** If any provision of this Agreement as applied to any Person or to any circumstance is adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, this fact shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision regarding another Person or under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

4.5 **Construction.** Unless otherwise indicated, all article and section references are to the articles and sections of this Agreement. The headings used in this Agreement are provided for convenience of reference only and this Agreement shall be interpreted without reference to any headings. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. If the date on which any action is required to be taken under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day. The use of the word "or" in this Agreement shall also include the word "and." The use of the word "including" in this Agreement shall be interpreted as though followed by the phrase "without limitation."

4.6 **Governing Law.** This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California, without application of conflicts of laws principals.

4.7 **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the City.

4.8 **Binding on Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and assigns.

4.9 **Entire Agreement.**

4.9.1 This Agreement includes six (6) pages that constitute the entire understanding and agreement regarding the subjects addressed in this Agreement.

4.9.2 This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all previous agreements with respect to the subjects addressed in this Agreement.

**[SIGNATURES ON THE NEXT PAGE]**

SIGNATURE PAGE TO  
INTER-FUND LOAN AND REPAYMENT AGREEMENT  
(Water Utility Fund to Water Capacity Fund)

IN WITNESS WHEREOF, the City on behalf of the General Fund and Electric Fund executes this Agreement to evidence the obligations of each such fund under the terms and conditions of this Agreement.

CITY OF CORONA

CORONA UTILITY AUTHORITY

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
President

ATTEST:

ATTEST:

By: \_\_\_\_\_  
City Clerk

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

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
General Counsel