

LOAN AGREEMENT (POTABLE WATER SYSTEM)

This LOAN AGREEMENT (POTABLE WATER SYSTEM) (this “Loan Agreement”), dated as of August 13, 2021, is between BANC OF AMERICA PUBLIC CAPITAL CORP, a corporation duly organized and existing under the laws of the State of Kansas, as lender (including its successors and assigns, the “Lender”), and the TRIUNFO WATER & SANITATION DISTRICT, a county sanitation district duly organized and existing under the County Sanitation District Act of the State of California, as borrower (the “District”).

BACKGROUND:

1. The District owns and operates a system for the supply, treatment and distribution of potable water within its service area (as further defined herein, the “Potable Water System”).

2. To finance capital improvements to the Potable Water System, the District previously entered into the Prior Obligation (as defined herein).

3. To realize interest rate savings and more flexibility in managing its long-term obligations, the District has determined to borrow an aggregate amount of \$6,453,000 from the Lender under this Loan Agreement and to make loan repayments (the “Loan Repayments”) to the Lender, to be secured by a pledge of and lien on the Net Revenues as set forth in this Loan Agreement.

4. The District is authorized to borrow amounts for the purpose of refinancing the Prior Obligation under the laws of the State of California, including the provisions of Articles 10 and 11, Chapter 3, Part 1, Division 2 of Title 5 of the California Government Code, commencing with Section 53570 of said Code.

AGREEMENT:

In consideration of the foregoing and the material covenants hereinafter contained, the District and the Lender formally covenant, agree and bind themselves as follows:

ARTICLE I DEFINITIONS AND APPENDICES

SECTION 1.1. *Definitions.* All terms defined in this Section 1.1 have the meanings herein specified for all purposes of this Loan Agreement.

“Additional Revenues” means, with respect to the issuance of any Parity Obligations, any or all of the following amounts:

- (i) Net Revenues projected from any additions or improvements to or extensions of the Potable Water System to be financed from the proceeds of such Parity Obligations, or from any other source but in any case which, during all or any part of the most recently completed

Fiscal Year for which audited financial statements are available or for any more recent 12-month period selected by the District, were not in service, in an amount equal to ninety percent (90%) of the estimated additional average annual Net Revenues to be derived from such additions, improvements and extensions for the first thirty-six (36) month period in which each addition, improvement or extension is respectively to be in operation, all as shown in the written report of an Independent Consultant engaged by the District.

- (ii) Net Revenues projected from any increase in any rates or charges of the Potable Water System which has been approved by the Board prior to the incurring of such Parity Obligations but which, during all or any part of the most recently completed Fiscal Year for which audited financial statements are available or for any more recent 12-month period selected by the District, were not in effect, in an amount equal to the estimated Net Revenues that would have been generated if such rates or charges had been in effect during the whole of such Fiscal Year or such 12-month period, all as shown in the written report of an Independent Consultant engaged by the District. For this purpose, rates and charges shall be considered to have been approved by the Board and may be considered in this calculation if part of a multi-year rate increase that has been approved by the Board, even if the specific rate or charge will not take effect until a subsequent Fiscal Year.

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

“Bond Counsel” means (a) Jones Hall, A Professional Law Corporation, or (b) any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to obligations the interest on which is excludable from gross income for purposes of federal income taxation under Section 103 of the Tax Code.

“Bond Year” means any twelve-month period commencing on May 16 in a year and ending on the next succeeding May 15, both dates inclusive; except that the first Bond Year commences on the Closing Date and ends on May 15, 2022.

“Business Day” means a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the State of California are closed.

“Closing Date” means the date of execution and delivery of this Loan Agreement by the District and the Lender, being August 13, 2021.

“Corporation” means the Triunfo Public Facilities Corporation, a non-profit public benefit corporation duly organized and existing under the laws of the State of California.

“District” means the Triunfo Water & Sanitation District, a county sanitation district duly formed and existing under the County Sanitation District Act (constituting Division 5, Part 3, Chapter 3 of the California Health & Safety Code, commencing with Section 4700).

“District Representative” means the General Manager of the District, Finance Director of the District, or any other person authorized by resolution of the Board to act on behalf of the District under or with respect to this Loan Agreement.

“Event of Default” means any of the events of default as defined in Section 5.1.

“Federal Securities” means: (a) non-callable 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.

“Fiscal Year” means each 12-month period during the Term of this Loan Agreement commencing on July 1 in any calendar year and ending on June 30 in the next succeeding calendar year, or any other 12-month period selected by the District as its fiscal year period.

“Independent Accountant” means any certified public accountant or firm of such certified public accountants appointed and paid by the District, and who, or each of whom (a) is in fact independent and not under domination of the District; (b) does not have any substantial interest, direct or indirect, with the District; and (c) is not connected with the District as an officer or employee of the District, but who may be regularly retained to make annual or other audits of the books of or reports to the District.

“Independent Consultant” means any financial or engineering consultant (including without limitation any Independent Accountant) with an established reputation in the field of public utility matters or firm of such consultants appointed and paid by the District, and who, or each of whom (a) is in fact independent and not under domination of the District; (b) does not have any substantial identity of interest, direct or indirect, with the District; and (c) is not and no member of which is connected with the District as an officer or employee of the District, but who may be regularly retained to make annual or other audits of the books of or reports to the District.

“Lender” means Banc of America Public Capital Corp, a corporation duly organized and existing under the laws of the State of Kansas, its successors and assigns.

“Loan” means, collectively, the Series A (Potable Water) Loan and the Series B (Potable Water) Loan.

“Loan Agreement” means this Loan Agreement dated as of the Closing Date, between the Lender and the District, as may be amended in accordance with the terms hereof.

“Loan Repayment Dates” means November 15, 2021, and each succeeding May 15 and November 15 until repayment of the Loan in full.

“Loan Repayments” means all payments required to be paid by the District under Section 3.4 with respect to the Series A (Potable Water) Loan and the Series B (Potable Water) Loan.

“Maximum Annual Debt Service” means with respect to the Loan Repayments and any Parity Obligations, as of the date of any calculation, the maximum sum obtained for the current or any future Bond Year by totaling the following amounts for such Bond Year:

- (a) the principal amount of the Loan Repayments and the principal amount of any Parity Obligations and coming due and payable by their terms in such Bond Year, including the principal amount required to be paid by operation of mandatory sinking fund redemption in such Bond Year; and
- (b) the amount of interest which would be due during such Bond Year on the aggregate principal amount of the Loan Repayments and any Parity Obligations which would be outstanding in such Bond Year if the Loan Repayments and any Parity Obligations are retired as scheduled. Notwithstanding the foregoing, with respect to any Parity Obligations which then bear interest at a variable rate, such interest shall be assumed to bear interest at the highest of: (i) the actual rate on the date of calculation, or if such Parity Obligations are not yet outstanding, the initial rate (if established and binding), (ii) if such Parity Obligations have been outstanding for at least 12 months, the average rate of the 12 months immediately preceding the date of calculation, (iii)(A) if interest on such Parity Obligations is excludable from gross income under the Tax Code, the most recently published Bond Buyer 25 Bond Revenue Index (or comparable index if no longer published) plus 50 basis points, or (B) if interest is not so excludable, the interest rate on direct United States Treasury obligations with comparable maturities plus fifty (50) basis points; *provided, however*, that for purposes of any rate covenant measuring actual debt service coverage during a certain period, variable rate indebtedness shall be deemed to bear interest at the actual rate per annum applicable during such period.

“Net Revenues” means, for any period, an amount equal to the Revenues received during such period minus the amount required to pay all Operation and Maintenance Costs coming payable during such period.

“Operation and Maintenance Costs” means, for any period, the reasonable and necessary costs paid or incurred by the District for maintaining and operating the Potable Water System, including but not limited to (a) all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Potable Water System in good repair and working order, and (b) all administrative costs of the District that are charged directly or apportioned to the operation of the Potable Water System, such as salaries and wages of employees, employee benefits (including actuarial annual pension payment), overhead, taxes (if any) and insurance.

The term “Operation and Maintenance Costs” does not include (i) administrative costs which the District is required to pay under this Loan Agreement or any Parity Obligations Documents, (ii) the Loan Repayments or debt service on bonds, notes or other obligations issued by the District with respect to the Potable Water System (including Parity Obligations), (iii) depreciation, replacement and obsolescence charges or reserves

therefor, and (iv) amortization of intangibles or other bookkeeping entries of a similar nature (including, without limitation, GASB year-end adjustments attributable to pension and other post-employment benefits).

“Parity Obligations” means any bonds, notes or other obligations of the District payable from and secured by a pledge of and lien on the Net Revenues on a parity with the Loan Repayments, issued or incurred by the District in accordance with Section 4.7.

“Potable Water System” means the system owned by the District for the supply, treatment, storage and distribution of potable water within its service area, including but not limited to the facilities, properties and improvements (or portions thereof) at any time owned, controlled or operated by the District for such purpose, and any necessary lands, rights, entitlements and other property useful in connection therewith, together with all extensions thereof and improvements thereto at any time acquired, constructed or installed by the District, in each case as determined by the District in its sole discretion.

The term “Potable Water System” does not include (i) the facilities, properties, and improvements (or portions thereof) at any time owned, controlled or operated by the District for the purpose of providing sewerage services, and any necessary lands, rights, entitlements and other property useful in connection therewith, in each case as determined by the District in its sole discretion, or (ii) the facilities, properties, and improvements (or portions thereof) at any time owned, controlled or operated by the District for the purpose of providing recycled water services, and any necessary lands, rights, entitlements and other property useful in connection therewith, in each case as determined by the District in its sole discretion.

“Parity Obligations Documents” means any documents authorizing any Parity Obligations, issued or incurred by the District in accordance with Section 4.7.

“Prior Obligation” means, collectively, the 2011 Obligation and the 2014 Obligation.

“Rate Stabilization Fund” means any fund of that name established and held by the District pursuant to Section 4.11.

“Revenue Fund” means the fund which the District has previously established for the receipt and deposit of Revenues derived from the Potable Water System.

“Revenues” means all gross income and revenue received by the District from the ownership and operation of the Potable Water System, including, but not limited to:

(a) all income, rents, rates, fees, capacity fees (connection fees), charges or other moneys derived from the services, facilities and commodities sold, furnished or supplied through the Potable Water System,

(b) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or under applicable law to the Potable Water System, and

(c) the proceeds derived by the District directly or indirectly from the sale, lease or other disposition of a part of the Potable Water System.

The term “Revenues” does not include (i) customers’ deposits or any other deposits subject to refund until such deposits have become the property of the District, (ii) the proceeds of any ad valorem property taxes levied for the purpose of paying general obligation bonds of the District, and (iii) the proceeds of any special assessments or special taxes levied upon real property within any improvement district for the purpose of paying special assessment bonds or special tax obligations of the District.

“Series A (Potable Water) Loan” means the loan made by the Lender to the District in the aggregate principal amount of \$4,925,000 under Section 3.1 for the purpose of refinancing the 2011 Obligation.

“Series B (Potable Water) Loan” means the loan made by the Lender to the District in the aggregate principal amount of \$1,528,000 under Section 3.1 for the purpose of refinancing the 2014 Obligation.

“Subordinate Obligations” means any bonds, notes or other obligations of the District payable from and secured by a pledge of and lien on the Net Revenues on a basis subordinate to the Loan Repayments, issued or incurred by the District in accordance with Section 4.8.

“Tax Code” means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published thereunder.

“Term of this Loan Agreement” or “Term” means the time during which this Loan Agreement is in effect, as provided in Section 3.3.

“2011 Obligation” means the Installment Purchase Agreement between the District and the Corporation, dated as of February 1, 2011, which agreement was assigned to Bank of America, N.A. pursuant to an Assignment Agreement, dated as of February 1, 2011.

“2014 Obligation” means the Master Equipment Lease/Purchase Agreement between the District and Bank of America, N.A., dated as May 22, 2014, including Exhibit A (Schedule of Property No. 001) which is a part thereof.

SECTION 1.2. *Appendix A.* The following Appendix is attached to, and by reference made a part of, this Loan Agreement:

APPENDIX A: The schedule of Loan Repayments to be paid by the District during the Term, consisting of repayments with respect to the Series A (Potable Water) Loan and the Series B (Potable Water) Loan.

ARTICLE II REPRESENTATIONS, WARRANTIES AND COVENANTS

The District represents, warrants and covenants to the Lender as follows:

- (a) Due Organization and Existence. The District is a county sanitation district, duly organized and existing under the County Sanitation District Act (constituting Division 5, Part 3, Chapter 3 of the California Health & Safety Code, commencing with Section 4700).
- (b) Authorization. The District is authorized under the laws of the State of California to enter into this Loan Agreement, to enter into the transactions contemplated hereby and to carry out its obligations hereunder, and the Board has duly adopted its resolution authorizing the execution and delivery of this Loan Agreement.
- (c) No Violations. Neither the execution and delivery of this Loan Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrances whatsoever upon any of the property or assets of the District, other than as set forth herein. No consent of the holder of any indebtedness of the District (or any trustee therefor) or the voters of the District, and no consent, permission or authorization of any governmental authority, is necessary in connection with the execution and delivery of this Loan Agreement, or the consummation of the transactions effected hereby, except as have been obtained.
- (d) No Prior Indebtedness. The District has not issued or incurred any obligations which are outstanding on the Closing Date having any priority in payment out of the Revenues or Net Revenues over the payment of the Loan Repayments. The District has no outstanding indebtedness other than the 2011 Obligation, the 2014 Obligation and the indebtedness represented by the Lease Purchase Agreement between the District and the Corporation dated as of February 1, 2017, all of which are being refunded on the Closing Date.
- (e) Financial Condition. The audited financial statements of the District for the fiscal year ended June 30, 2020, supplied to the Lender (i) were prepared in accordance with generally accepted accounting principles, consistently applied, and (ii) fairly present the District's financial condition as of the date of the statements. Other than as described in such financial statements or otherwise disclosed to the Lender, there has been no material adverse change in the District's financial condition subsequent to June 30, 2020.

- (f) No Financial Advisory or Fiduciary Relationship. The District represents, warrants and covenants that: (i) the transaction contemplated herein is an arm's length commercial transaction among the District and the Lender and its affiliates, (ii) in connection with such transaction, the Lender and its affiliates are acting solely as a principal and not as an advisor including, without limitation, a "Municipal Advisor" as such term is defined in Section 15B of the Securities and Exchange Act of 1934, as amended, and the related final rules (the "Municipal Advisor Rules"), agent or a fiduciary of the District, (iii) the Lender and its affiliates are relying on the bank exemption in the Municipal Advisor Rules, (iv) the Lender and its affiliates have not provided any advice or assumed any advisory or fiduciary responsibility in favor of the District with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (whether or not the Lender, or any affiliate of the Lender, has provided other services or advised, or is currently providing other services or advising the District on other matters), (v) the Lender and its affiliates have financial and other interests that differ from those of the District, and (vi) the District has consulted with their own financial, legal, accounting, tax and other advisors, as applicable, to the extent it deemed appropriate.
- (g) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the District after reasonable investigation, threatened against or affecting the District or the assets, properties or operations of the District which, if determined adversely to the District or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Agreement or upon the financial condition, assets, properties or operations of the District, and the District is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement, or the financial condition, assets, properties or operations of the District.
- (h) Rates. The District is empowered to set rates and charges for the Potable Water System without review or approval by any state or local governmental agency.

ARTICLE III TERMS OF THE LOAN

SECTION 3.1. *Obligation to Make Loan; Amount of Loan.* The Lender hereby agrees to lend to the District, and the District hereby agrees to borrow from the Lender, the Series A (Potable Water) Loan in the amount of \$4,925,000 and the Series B (Potable Water) Loan in the amount of \$1,528,000, in each case, under the terms and provisions set forth in this Loan Agreement.

SECTION 3.2. *Application of Loan Proceeds.*

(a) Refunding of 2011 Obligation. Of the amount specified in Section 3.1, the Lender shall wire on the Closing Date a portion of the Series A (Potable Water) Loan in the amount of \$4,880,349.04 to the Lender in full satisfaction of amounts owed with respect to the 2011 Obligation.

(b) Refunding of 2014 Obligation. Of the amount specified in Section 3.1, the Lender shall wire on the Closing Date a portion of the Series B (Potable Water) Loan in the amount of \$1,513,503.61 to the lender in full satisfaction of amounts owed with respect to the 2014 Obligation.

(c) Costs of Issuance. The Lender shall wire on the Closing Date the remaining amounts of the Series A (Potable Water) Loan and Series B (Potable Water) Loan (in aggregate, \$90,839.77) to the payees in the amounts set forth in a written request signed by a District Representative and delivered to the Lender as costs of issuance. The fees and disbursements of counsel to the District, the fees and disbursements of the placement agent and municipal advisor to the District, fees of the California Debt and Investment Advisory Commission ("CDIAC"), fees of Lender's counsel, the structuring fee payable to Bank of America N.A., and other miscellaneous expenses of the District incurred in connection with this Loan Agreement (if any) shall all be the obligation of the District. The Lender shall have no responsibility for any expenses incurred by the District associated with this Loan Agreement, including, but not limited to, the expenses identified above as the obligation of the District.

SECTION 3.3. *Term.* The Term of this Loan Agreement commences on the Closing Date, and ends on the date on which the Loan is paid in full or provision for such payment is made as provided herein.

SECTION 3.4. *Loan Repayments.*

(a) Obligation to repay Series A (Potable Water) Loan. The District hereby agrees to repay the Series A (Potable Water) Loan to the Lender in the aggregate principal amount of \$4,925,000, together with interest on the unpaid principal balance thereof calculated at a rate of 1.960% on the basis of a 360-day year of twelve 30-day months.

(b) Obligation to repay Series B (Potable Water) Loan. The District hereby agrees to repay the Series B (Potable Water) Loan to the Lender in the aggregate principal amount of \$1,528,000, together with interest on the unpaid principal balance thereof calculated at a rate of 1.700% on the basis of a 360-day year of twelve 30-day months.

(c) Schedule of Loan Repayment. The Loan Repayments shall be payable in semi-annual Loan Repayments on the Loan Repayment Dates and in the amounts set forth on Appendix A.

(d) Optional Prepayment. Without limiting the provisions of Section 6.1, the District may prepay, in whole but not in part, the unpaid principal balance of the Series A (Potable Water) Loan and/or the Series B (Potable Water) Loan on any Loan Repayment Date beginning November 15, 2026, at a prepayment price equal to the amount of principal being prepaid, plus accrued interest thereon to the prepayment date, without premium.

(e) Loan Repayments Generally. Each Loan Repayment shall be paid in lawful money of the United States of America. In the event the District fails to make any of the payments required to be made by it under this section, such payment shall continue as an obligation of the District until such amount shall have been fully paid; and the District agrees to pay the same with interest accruing thereon at the rate or rates of interest then applicable to the remaining unpaid principal balance of the Loan Repayments if paid in accordance with their terms.

SECTION 3.5. *Nature of District's Obligations.*

(a) Special Obligation. The District's obligation to pay the Loan Repayments is a special obligation of the District limited solely to the Net Revenues. Under no circumstances is the District required to advance moneys derived from any source of income other than the Net Revenues for the payment of the Loan Repayments, and no other funds or property of the District are liable for the payment of the Loan Repayments. Notwithstanding the foregoing provisions of this Section, however, nothing herein prohibits the District from voluntarily making any payment due hereunder from any source of available funds of the District.

(b) Obligations Absolute. The obligation of the District to pay the Loan Repayments from the Net Revenues and the obligation of the District to perform and observe the other agreements contained herein, are absolute and unconditional and are not subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach by the Lender of any obligation to the District or otherwise with respect to the Potable Water System or the Revenues, whether hereunder or otherwise. Until such time as all of the Loan Repayments have been fully paid or prepaid, the District shall:

- (i) not suspend or discontinue payment of any Loan Repayments,
- (ii) perform and observe all other agreements contained in this Loan Agreement, and
- (iii) not terminate this Loan Agreement for any cause, including, without limitation, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Potable Water System, sale of the Potable Water System, the taking by eminent domain of title to or temporary use of any component of the Potable Water System, commercial frustration of purpose, any change in the tax or other laws of the United States of America or the State of California or any

political subdivision of either thereof or any failure of the Lender to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Loan Agreement.

SECTION 3.6. *Pledge and Application of Net Revenues.*

(a) Pledge; Security Interest. All of the Net Revenues are hereby irrevocably pledged to the punctual payment of the Loan Repayments, on a parity with the pledge and lien which secures the Parity Obligations, if any. The Net Revenues may not be used for any other purpose so long as the Loan Repayments remain unpaid. Pursuant to Section 5451 of the Government Code of the State of California, the pledge of the Net Revenues by the District for the repayment of the principal and interest components of the Loan Repayments constitutes a first lien and security interest which immediately attaches to such Net Revenues, and is effective and binding against the District and its successors and creditors and all others asserting rights therein irrespective of whether those parties have notice of the pledge, irrespective of whether such amounts are or may be deemed to be a fixture and without the need for physical delivery, recordation, filing or further act. The District will not make any pledge of or place any lien or permit any lien to be placed on any Net Revenues or the moneys in the Revenue Fund, other than the lien securing Loan Repayments, any lien securing the Parity Obligations, and any lien securing other obligations on a basis subordinate to the Loan Repayments.

(b) Deposit of Revenues; Flow of Funds. The District has heretofore established a special fund designated the Revenue Fund, which the District agrees to continue to maintain so long as any Loan Repayments remain unpaid. The District shall continue to deposit all Revenues in the Revenue Fund promptly upon the receipt thereof. The District shall apply amounts in the Revenue Fund as set forth in this Loan Agreement and in the Parity Obligations Documents, if any.

The District shall apply amounts on deposit in the Revenue Fund to pay when due the following amounts in the following order of priority:

- (i) all Operation and Maintenance Costs;
- (ii) the Loan Repayments, and all payments of principal of and interest on the Parity Obligations, if any;
- (iii) any other payments required to comply with the provisions of this Loan Agreement or any Parity Obligations Document; and
- (iv) any other purposes authorized under subsection (d) of this Section.

(c) No Preference or Priority. Not later than each Loan Repayment Date, the District shall, from moneys in the Revenue Fund, transfer to the Lender the Loan Repayment due and payable on that Loan Repayment Date. Payment of the Loan Repayments and the principal of and interest on any Parity Obligations shall be made without preference or priority. If the amount of Net Revenues on deposit in the Revenue Fund is any time insufficient to enable the District to pay when due the Loan Repayments

and the principal of and interest on any Parity Obligations, such payments shall be made by the District on a pro rata basis among them.

(d) Other Uses Permitted. The District shall manage, conserve and apply the Revenues in such a manner that all deposits required to be made under the preceding provisions of this Section 3.6 will be made at the times and in the amounts so required. Subject to the foregoing sentence and Section 4.7, so long as no Event of Default has occurred and is continuing hereunder, the District may at any time and from time to time use and apply the Revenues for (i) the acquisition and construction of improvements to the Potable Water System; (ii) the prepayment of unpaid principal under this Loan Agreement or any Parity Obligations Document to the extent permitted thereby; or (iii) any other lawful purpose of the District.

ARTICLE IV COVENANTS OF THE DISTRICT

SECTION 4.1. *Release and Indemnification Covenants*. The District shall indemnify and hold the Lender and its officers, agents, successors and assigns harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of the following:

- (a) the use, maintenance, condition or management of, or from any work or thing done on or about the Potable Water System by the District,
- (b) any breach or default on the part of the District in the performance of any of its obligations under this Loan Agreement,
- (c) any intentional misconduct or negligence of the District or of any of its agents, contractors, servants, employees or licensees with respect to the Potable Water System, and
- (d) any intentional misconduct or negligence of any lessee of the District with respect to the Potable Water System.

No indemnification is made under this Section 4.1 or elsewhere in this Loan Agreement for willful misconduct, gross negligence, or breach of duty under this Loan Agreement by the Lender, its officers, agents, employees, successors or assigns.

SECTION 4.2. *Sale or Eminent Domain of Potable Water System*. Except as provided herein, the District covenants that the Potable Water System will not be encumbered, sold, leased, pledged, any charge placed thereon, or otherwise disposed of, as a whole or in any material part if such encumbrance, sale, lease, pledge, charge or other disposition would materially impair the ability of the District to pay the Loan Repayments or would materially adversely affect its ability to comply with the terms of this Loan Agreement and the Parity Obligations Documents. The District shall not enter into any agreement which impairs the operation of the Potable Water System or any part of it necessary to secure adequate Net Revenues to pay the Loan Repayments or any Parity Obligations, or which otherwise would impair the rights of the Lender with respect to the Net Revenues. If any substantial part of the Potable Water System is sold, the payment

therefor must either (a) be used for the acquisition or construction of improvements and extensions or replacement facilities or (b) be applied to prepay or fund a security deposit for the Loan Repayments and/or any Parity Obligations, as determined by the District in its sole discretion.

Any amounts received as awards as a result of the taking of all or any part of the Potable Water System by the lawful exercise of eminent domain, if and to the extent that such right can be exercised against such property of the District, shall either (a) be used for the acquisition or construction of improvements and extension of the Potable Water System, or (b) be applied to prepay or fund a security deposit for the Loan Repayments and/or any Parity Obligations, as determined by the District in its sole discretion.

SECTION 4.3. *Insurance.* The District shall at all times maintain with responsible insurers all such insurance on the Potable Water System as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to the Potable Water System. If any useful part of the Potable Water System is damaged or destroyed, such part shall be restored to usable condition. All amounts collected from insurance against accident to or destruction of any portion of the Potable Water System shall be used to repair or rebuild such damaged or destroyed portion of the Potable Water System, and to the extent not so applied, shall be applied to pay the Loan Repayments and/or any Parity Obligations in the manner provided in this Loan Agreement and the Parity Obligations, as determined by the District in its sole discretion. The District shall also maintain, with responsible insurers, worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the District and the Lender. Any insurance required to be maintained hereunder may be maintained by the District in the form of self-insurance or in the form of participation by the District in a program of pooled insurance.

SECTION 4.4. *Records and Accounts; Audited Financials; Budget.* The District shall keep proper books of records and accounts of the Potable Water System, separate from all other records and accounts, in which complete and correct entries are made of all transactions relating to the Potable Water System. Said books shall, upon prior request, be subject to the reasonable inspection of the Lender. The District shall cause the books and accounts of the Potable Water System to be audited annually by an Independent Accountant, and shall furnish a copy of such report to the Lender not more than 270 days after the close of such Fiscal Year; provided, that the audit of the accounts of the Potable Water System may be included as part of a general District-wide audit. In addition, the District shall provide to the Lender (a) a copy of the District's annual budget, as adopted or amended, within 30 days of such adoption or amendment and (b) in a reasonably timely manner, such other financial or operational information of the District as requested by the Lender from time-to-time (for example, long-term capital improvement plans).

SECTION 4.5. *Rates and Charges.* The District shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Potable Water System during each Fiscal Year which are sufficient to yield Net Revenues which are at least equal to 110% of the Loan Repayments and the principal of and interest on all outstanding Parity Obligations coming due and payable during such Fiscal Year.

For the purpose of computing the amount of Net Revenues in any Fiscal Year for purposes of this Section 4.5, the District shall be permitted to include as Revenues amounts transferred from the Rate Stabilization Fund into the Revenue Fund (except that

amounts that were transferred into the Rate Stabilization Fund from Revenues received by the District in the applicable Fiscal Year shall not be double-counted), and such transfers may be made until (but not after) 270 days after the end of the applicable Fiscal Year.

SECTION 4.6. *No Priority for Additional Obligations; Compliance with Parity Obligations Documents.* The District may not issue or incur any bonds or other obligations having any priority in payment of principal or interest out of the Revenues or Net Revenues over the Loan Repayments. The District shall observe and perform all of the covenants, agreements and conditions on its part required to be observed and performed under the Parity Obligations Documents. The District shall not take or omit to take any action within its control which would, or which if not corrected with the passage of time would, constitute an event of default under any Parity Obligations Document.

SECTION 4.7. *Issuance of Additional Parity Obligations.* The District may enter into, issue or incur Parity Obligations, subject to the following specific conditions which are hereby made conditions precedent to the issuance and delivery of any such Parity Obligation:

(a) No Event of Default has occurred and is continuing.

(b) Net Revenues, as shown by the books of the District for the latest Fiscal Year or any other 12-month period selected by the District ending not more than 90 days prior to the date of issuance of such Parity Obligations, in either case verified by a certificate or opinion of an Independent Accountant employed by the District, plus (at the option of the District) the Additional Revenues, are at least equal to 110% of the amount of Maximum Annual Debt Service with respect to the Loan Repayments and all Parity Obligations (including the Parity Obligations then proposed to be issued).

SECTION 4.8. *Issuance of Subordinate Obligations.* The District may enter into, issue or incur Subordinate Obligations, subject to the following specific conditions which are hereby made conditions precedent to the issuance and delivery of any such Subordinate Obligation:

(a) No Subordinate Obligations may have as a remedy for default thereon the acceleration of the payment obligations thereunder.

(b) Each Subordinate Obligation shall have substantially level payments of principal and interest over its term.

SECTION 4.9. *Assignment by the Lender.* The Lender has the right to assign its interests herein, but no such assignment will be effective as against the District unless and until the Lender provides the District written notice thereof. The District shall pay all Loan Repayments hereunder under the written direction of the Lender named in the most recent assignment or notice of assignment provided to the District. During the Term of this Loan Agreement, the District shall keep a complete and accurate record of all such notices of assignment.

SECTION 4.10. *Assignment by the District.* Neither the Loan nor this Loan Agreement may be assigned by the District, other than to a public agency which succeeds

to the interests of the District in and to the Potable Water System and which (by operation of law, by contract or otherwise) becomes legally bound to all of the terms and provisions hereof.

SECTION 4.11. *Rate Stabilization Fund.* The District may establish a fund to be held by it and administered in accordance with this Section 4.10, for the purpose of stabilizing the rates and charges imposed by the District with respect to the Potable Water System. From time to time, the District may deposit amounts in the Rate Stabilization Fund from any source of legally available funds, including but not limited to Net Revenues which are released from the pledge and lien which secures the Loan Repayments.

The District may, but is not required to, withdraw any amounts on deposit in the Rate Stabilization Fund and deposit such amounts in the Revenue Fund for the purpose of paying the Loan Repayments coming due and payable in such Fiscal Year. Amounts so transferred from the Rate Stabilization Fund to the Revenue Fund shall constitute Revenues for such Fiscal Year (except as otherwise provided herein), and shall be applied for the purposes of the Revenue Fund.

Amounts on deposit in the Rate Stabilization Fund shall not be pledged to or otherwise secure the Loan Repayments or any Parity Obligations. The District has the right at any time to withdraw any or all amounts on deposit in the Rate Stabilization Fund and apply such amounts for any lawful purposes of the District relating to the Potable Water System.

SECTION 4.12. *Tax Covenants.*

(a) Generally. The District shall not take any action or permit to be taken any action within its control which would cause or which, with the passage of time if not cured would cause, the interest components of the Loan Repayments to become includable in gross income for federal income tax purposes.

(b) Private Activity Bond Limitation. The District shall assure that the proceeds of the Loan are not so used as to cause the Loan to satisfy the private business tests of section 141(b) of the Tax Code or the private loan financing test of section 141(c) of the Tax Code.

(c) Federal Guarantee Prohibition. The District may not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Loan Repayments to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

(d) No Arbitrage. The District may not take, or permit or suffer to be taken, any action with respect to the proceeds of the Loan Repayments which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date would have caused the Loan Repayments to be “arbitrage bonds” within the meaning of Section 148(a) of the Tax Code.

(e) Arbitrage Rebate. The District shall take any and all actions necessary to assure compliance with section 148(f) of the Tax Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Loan.

(f) Acquisition, Disposition and Valuation of Investments. Except as otherwise provided in the following sentence, the District covenants that all investments of amounts deposited in any fund or account created by or pursuant to this Loan Agreement, or otherwise containing gross proceeds of the Loan (within the meaning of section 148 of the Tax Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Loan Agreement or the Tax Code) at Fair Market Value. Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code shall be valued at their present value (within the meaning of section 148 of the Tax Code).

For purposes of this subsection (f), the term "Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Tax Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, (iii) the investment is a United States Treasury Security – State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the District and related parties do not own more than 10% beneficial interest therein if the return paid by the fund is without regard to the source of the investment.

ARTICLE V EVENTS OF DEFAULT AND REMEDIES

SECTION 5.1. *Events of Default Defined*. The following are Events of Default under this Loan Agreement:

- (a) Failure by the District to pay any Loan Repayment or other payment required hereunder within 5 days after the date on which such Loan Repayment or other payment becomes due.
- (b) Failure by the District to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in the preceding clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the District by the Lender.
- (c) The filing by the District of a voluntary petition in bankruptcy, or failure by the District promptly to lift any execution, garnishment or attachment, or adjudication of the District as a bankrupt, or

assignment by the District for the benefit of creditors, or the entry by the District into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the District in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

- (d) The occurrence of any event of default under and as defined in any of the Parity Obligations Documents.

SECTION 5.2. *Remedies on Default.* Upon the occurrence and during the continuation of an Event of Default, the Lender may, at its option and without any further demand or notice:

- (a) declare all principal components of the unpaid Loan Repayments, together with accrued interest thereon, to be immediately due and payable, whereupon the same will immediately become due and payable; and
- (b) take whatever action at law or in equity may appear necessary or desirable to collect the Loan Repayments then due or thereafter to become due during the Term of this Loan Agreement, or enforce performance and observance of any obligation, agreement or covenant of the District under this Loan Agreement, including without limitation by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the District or any director, officer or employee thereof, and to compel the District or any such director, officer or employee to perform and carry out its or their duties.

The provisions of the preceding clause (a) are subject to the condition that if, at any time after the principal components of the unpaid Loan Repayments have been so declared due and payable under the preceding clause (a), and before any judgment or decree for the payment of the moneys due have been obtained or entered, the District deposits with the Lender a sum sufficient to pay all principal components of the Loan Repayments coming due prior to such declaration and all matured interest components (if any) of the Loan Repayments, with interest on such overdue principal and interest components calculated at the rate set forth in the applicable provisions of Section 3.4, and a sum sufficient to pay all reasonable costs and expenses incurred by the Lender in the exercise of its rights and remedies hereunder, and any and all other defaults known to the Lender (other than in the payment of the principal and interest components of the Loan Repayments due and payable solely by reason of such declaration) have been made good, then, and in every such case, the Lender may, by written notice to the District, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

SECTION 5.3. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Lender is exclusive, and every such remedy is cumulative and in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default impairs any such right or power or operates as a waiver thereof, but any such right

and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lender to exercise any remedy reserved to it in this Article V it is not necessary to give any notice, other than such notice as may be required in this Article V or by law.

SECTION 5.4. *Agreement to Pay Attorneys' Fees and Expenses.* If an Event of Default occurs and is continuing, and the Lender employs attorneys (including in-house counsel) or incurs other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the District herein contained, the District will on demand therefor pay to the Lender the reasonable fees of such attorneys (including those of in-house counsel) and such other expenses so incurred by the Lender. In connection with any suit, action or proceeding to interpret or enforce the provisions of this Loan Agreement, the prevailing party shall be entitled to the payment by the other party of the reasonable fees and costs of such attorneys, at trial and on appeal.

SECTION 5.5. *No Additional Waiver Implied by One Waiver.* If any agreement contained in this Loan Agreement is breached by the District and thereafter waived by the Lender, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE VI SECURITY DEPOSIT; DISCHARGE OF DISTRICT'S OBLIGATIONS

SECTION 6.1. *Security Deposit; Discharge of District's Obligations.* Notwithstanding any other provision of this Loan Agreement, the District may (but is not required to) on any date secure the payment of Loan Repayments in whole or in part, by irrevocably depositing with a trustee, escrow agent or other fiduciary an amount of cash which, together with other available amounts, is invested in whole or in part in Federal Securities in such amount as will, in the opinion of an Independent Accountant, together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay all such Loan Repayments when due, as the District instructs at the time of the deposit.

In the event of a security deposit under this Section 6.1 for the payment in full of all remaining Loan Repayments, (i) the District hereby grants a first priority security interest in and lien on the security deposit and all proceeds thereof in favor of the Lender, and (ii) the pledge of Net Revenues to secure payment of the Loan Repayments and all other obligations of the District under this Loan Agreement will cease and terminate, except the District's obligation to pay the Loan Repayments from the security deposit.

ARTICLE VII MISCELLANEOUS

SECTION 7.1. *Notices; Address for Loan Repayments.* Any notice, request, complaint, demand or other communication under this Loan Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below. Notice shall be effective either (a) 48 hours after deposit in the United States of America first class mail, postage prepaid, or (b) in the case of personal delivery to any person, upon actual receipt. The District or the Lender may, by written notice to the other, from time to time modify the address or number to which communications are to be given hereunder.

If to the District: Triunfo Water & Sanitation District
1001 Partridge Drive, Suite 150
Ventura, California 93003
Attention: General Manager

If to the Lender: Banc of America Public Capital Corp
14636 N. Scottsdale Road, Suite 250
Scottsdale, AZ 85254
Attention: Jill M. Forsyth

SECTION 7.2. *Binding Effect; Amendments.* This Loan Agreement inures to the benefit of and is binding upon the Lender and the District and their respective successors and permitted assigns. This Loan Agreement may be amended pursuant to a written amendment by and between the District and the Lender (including any successor or assign).

SECTION 7.3. *Severability.* If any provision of this Loan Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

SECTION 7.4. *Further Assurances and Corrective Instruments.* The Lender and the District shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Loan Agreement.

SECTION 7.5. *Execution in Counterparts.* This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 7.6. *Applicable Law.* This Loan Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 7.7. *Captions.* The captions or headings in this Loan Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Loan Agreement.

SECTION 7.8. *Waiver of Sovereign Immunity.* To the extent permitted by law, the District hereby expressly waives, and agrees not to claim, any sovereign immunity in any suits or judicial proceedings related to or arising out of this Loan Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Lender has caused this Loan Agreement to be executed in its name by its duly authorized officer and the District has caused this Loan Agreement to be executed in its name by its duly authorized officer, as of the date first above written.

**BANC OF AMERICA PUBLIC CAPITAL
CORP, as lender**

By: _____
Authorized Officer

**TRIUNFO WATER & SANITATION
DISTRICT, as borrower**

By: _____
Ray Tjulander
Chair

Attest:

By: _____
Fidela Garcia
Clerk of the Board

Appendix A
Schedule of Loan Repayments –
Series A (Potable Water) Loan (refunding 2011 Obligation) and
Series B (Potable Water) Loan (refunding 2014 Obligation)

<u>Loan Repayment Date</u>	<u>Series A Principal</u>	<u>Series A Interest</u>	<u>Series B Principal</u>	<u>Series B Interest</u>	<u>Total Loan Repayment</u>
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Totals
