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**SERIES 2019 UTILITY SYSTEM REVENUE PURCHASE AGREEMENT**

by and between

**ZIONS BANCORPORATION, NATIONAL ASSOCIATION,**  
as Seller

and

**THE CITY OF FLAGSTAFF, ARIZONA,**  
as Purchaser

Dated as of June 1, 2019

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SERIES 2019 UTILITY SYSTEM REVENUE PURCHASE AGREEMENT

THIS SERIES 2019 UTILITY SYSTEM REVENUE PURCHASE AGREEMENT, dated as of June 1, 2019 (this “Agreement”), by and between ZIONS BANCORPORATION, NATIONAL ASSOCIATION, a national banking association, authorized to exercise trust powers in the State of Arizona, as trustee under the Series 2019 Utility System Revenue Trust Agreement, dated as of even date herewith (the “Trust Agreement”) but in its separate capacity as seller, and THE CITY OF FLAGSTAFF, ARIZONA, a municipal corporation of the State of Arizona, as purchaser,

W I T N E S S E T H:

WHEREAS, pursuant to Ordinance No. 2019-06 adopted on May 7, 2019, the Mayor and Council of the City (as such term and all other undefined terms used herein are defined in the Trust Agreement) determined that the Series 2019 Obligations be sold and executed and delivered; and

WHEREAS, pursuant to the Trust Agreement, the Trustee has caused deposits to be made to the Improvements Fund and the Delivery Costs Fund; and

WHEREAS, the City is a municipal corporation duly incorporated and validly existing under the laws of the State; the Constitution and the laws of the State authorize the City to enter into this Agreement and the transactions contemplated by this Agreement; the City has duly authorized and executed this Agreement; this Agreement is a lawful, valid and binding obligation of the City, enforceable against the City in accordance with its terms; all required procedures for execution and performance of this Agreement, including publication of notice, public hearing or competitive bidding, if applicable, have been or will be complied with in a timely manner; the Payments will be paid when due out of funds which are legally available for such purposes; neither the execution and delivery of this Agreement or the Trust Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the City; the City has disclosed in writing to the Seller all facts that do or will materially adversely affect the properties, operations or financial condition of the City and that any financial statements, notices or other written statements provided by the City to the Seller pursuant hereto will not contain any untrue statement of a material fact or omit any material fact necessary to make such statements or information not misleading and the Projects comply with all applicable environmental laws, rules and regulations (including, without limitation, all federal, state and local laws) and with Title III of the Americans with Disabilities Act and the regulations issued thereunder by the United States Department of Justice concerning accessibility of places of public accommodation and commercial facilities if and to the extent such Act and regulations apply to the Projects; and

WHEREAS, the Seller has full legal authority and is duly empowered to enter into this Agreement and has taken all actions necessary to the execution and delivery hereof;

NOW, THEREFORE, pursuant to law and for and in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

**ARTICLE I**  
**APPLICATION OF PROCEEDS OF SERIES 2019 OBLIGATIONS**

*Section 1.1 Improvements Fund.*

(a) The City shall establish and maintain a separate fund known as the “*Improvements Fund*,” which shall be funded from amounts paid by the Trustee pursuant to Article V of the Trust Agreement. Amounts in the Improvements Fund shall be disbursed by the City for the following purposes and for no other purposes:

(i) to the extent not paid by the Trustee from the Delivery Costs Fund established under the Trust Agreement, Delivery Costs;

(ii) payment for labor, services, materials and other necessities used or furnished in the acquisition, improvement and construction of the Projects, and all real and personal property deemed necessary in connection with the Projects and for the miscellaneous expenses incidental to any of the foregoing including the premium on each performance and payment bond;

(iii) reimbursement of capital expenditures relating to the Projects advanced prior to the execution and delivery of the Series 2019 Obligations; and

(iv) payment of interest on the Series 2019 Obligations during the acquisition, construction and improvement of the Projects.

(b) Before any of the foregoing payments may be made, the City shall maintain a record with respect to each such payment to the effect that: (i) none of the items for which the payment is proposed to be made has formed the basis for any payment previously made from the Improvements Fund, (ii) each item for which payment is proposed to be made is or was necessary in connection with the Projects and (iii) each item for which payment is proposed is for a purpose permitted by this Section.

(c) In the case of any contract providing for the retention of a portion of the contract price, there shall be paid from the Improvements Fund only the net amount remaining after deduction of any such portion.

The City shall notify the Trustee of the completion date of the Projects by a certificate signed by the City Representative stating that (i) acquisition, construction and improvement of the Projects has been completed and (ii) all obligations and costs in connection with the Projects and payable out of the Improvements Fund have been paid and discharged, except for amounts retained by the City for payment of costs of the Projects not yet due and payable. Any moneys held in the Improvements Fund upon delivery of such certificate which

are not needed to pay costs of the Projects shall be transferred by the City to the Trustee for deposit to the Interest Account.

## **ARTICLE II AGREEMENT OF SALE; PURCHASE PRICE**

*Section 2.1 Agreement of Sale.* In order to finance the costs of the Projects, the City hereby sells and conveys any interests it has in the Projects to the Seller, without recourse, representation or warranty, for the sum of \$10.00 and other valuable consideration had and received. The Seller in turn hereby sells and conveys back to the City, without recourse, representation or warranty, and the City hereby purchases for the amounts payable pursuant hereto and accepts, from the Seller, such interests the Seller has in the Projects.

*Section 2.2 Possession of and Title to Projects.* The City shall be entitled to possession of, and full and unencumbered title to, the Projects, without suit, trouble or hindrance from the Seller. The Projects shall be made a part of the System and shall be used in accordance with all applicable laws.

*Section 2.3 Amounts Payable After Execution and Delivery of Series 2019 Obligations Including for Purchase Price.* After paying any amounts due to the Trustee pursuant to the Trust Agreement, Net Revenues provided for by Section 3.1 shall be paid for the following purposes and in the following order of priority, after decreasing any such payment for any interest income or gain received, or increasing such payment for any loss realized, during the preceding month in the account to which such payment is to be deposited:

(i) Amounts due pursuant to Section 7.2(d)(ii).

(ii) Commencing on January 1, 2020, and each July 1 and January 1 thereafter, the portion of each installment designated as interest on the Series 2019 Obligations and coming due during the six-month period (or portion thereof) preceding the next Obligation Payment Date for deposit to the Interest Account, calculated as described in Section 2.2(a) of the Trust Agreement.

(iii) Commencing on July 1, 2020, and each July 1 thereafter, the principal coming due (whether because of maturity or mandatory prepayment) with respect to the Series 2019 Obligations on the next Obligation Payment Date for deposit to the Principal Account.

This Agreement shall be deemed and construed to be a “*net purchase agreement*,” and the payments provided for in this Section shall be an absolute net return to the Seller, free and clear of any expenses or charges whatsoever, except as otherwise specifically provided herein.

*Section 2.4 Obligations of City Hereunder Unconditional.* The obligations of the City to make the payments required in Section 2.3 and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, regardless of the continued existence of the Projects or their physical condition. The City (a) shall not diminish, suspend or discontinue any payments provided for in Section 2.3, (b) shall perform and observe all of its

other agreements contained in this Agreement and (c) shall not terminate this Agreement for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, loss, theft or destruction of or damage to the Projects, or any part thereof, frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either thereof, or any failure of the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement. Nothing contained in this Section shall be construed to release the Seller from the performance of any of the agreements on its part herein contained, and in the event the Seller shall fail to perform any such agreement on its part, the City may institute such action against the Seller as the City may deem necessary to compel performance or recover its damages for non-performance so long as such action shall not violate or impair the effectiveness of the agreements on the part of the City contained in the next two preceding sentences. The City may, however, at its own cost and expense and in its own name or in the name of the Seller, prosecute or defend any action or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to secure or protect its rights of ownership, possession and use hereunder, and in such event the Seller hereby agrees to cooperate fully with the City and to take all action necessary to effect the substitution of the City for the Seller in any such action or proceeding if the City shall so request.

*Section 2.5 Termination of Payment of Purchase Price; Excess Payments.*

(a) Upon full payment or provision for payment of the Purchase Price and provided that the City has performed all the covenants and agreements required by the City to be performed hereunder, this Agreement shall cease and expire. Upon the expiration of this Agreement, the Seller shall cause the Trustee under the Trust Agreement to release any interest which the Trustee may have in Net Revenues from the lien of the Trust Agreement.

(b) In the event of payment of the Purchase Price in full or provision for the payment thereof in full such that the Trust Agreement shall be discharged by its terms as a result of such prepayment and payment of any fees and charges due and owing to the Trustee, all amounts then on deposit in the Obligation Fund shall be credited toward the amounts then required to be so prepaid at the direction of the City Representative. Upon the payment thereof in accordance with the Trust Agreement such that the Trust Agreement shall be discharged by its terms, any money remaining which is not otherwise required to be applied to the payment of debt service on the Series 2019 Obligations or to the payment of any other amounts due under the Trust Agreement shall be paid over to the City.

*Section 2.6 Prepayment of Purchase Price Generally.* The City shall be permitted to prepay all or a part of the Purchase Price to the extent and in the manner permitted by the Trust Agreement. If such prepayment is made in compliance with the terms of the Trust Agreement, the Trustee shall accept such prepayment to the extent required to provide for a permitted prepayment or provision for payment of such Obligations as shall be directed by the City. No other prepayment of the Purchase Price shall be permitted. In the event of prepayment of the Purchase Price in full or provision for the payment thereof in full such that the Trust Agreement shall be discharged by its terms as a result of such prepayment, all amounts then on deposit in the Obligation Fund Account shall be credited toward the amounts then required to be so prepaid.

Upon the payment thereof in accordance with the Trust Agreement such that the Trust Agreement shall be discharged by its terms, any money remaining in the Obligation Fund Account which is not otherwise required to be applied to the payment of debt service on Obligations or to the payment of any other amounts due under the Trust Agreement shall be paid over to the City.

*Section 2.7 Effect of Partial Payment or Prepayment.* Upon any partial payment or prepayment of the Purchase Price resulting in a prepayment of Obligations, each installment of interest which shall thereafter be payable as a part of the Purchase Price shall be reduced, taking into account the interest rate or rates on the Obligations remaining outstanding after the prepayment of Obligations from the proceeds of such partial payment or prepayment so that the interest remaining payable as a part of the Purchase Price shall be sufficient to pay the interest on such outstanding Obligations when due.

### **ARTICLE III SOURCE OF PURCHASE PRICE; RATE COVENANT; PARITY OBLIGATIONS**

*Section 3.1 Limitation of Source of City Payments.*

(a) This Agreement is a limited, special obligation of the City, payable solely and secured as to the payment in accordance with the terms and the provisions hereof.

(b) All payments with respect hereto shall be made only from Net Revenues as hereinafter provided. Nothing, however, shall preclude the City, in the sole and absolute discretion of the Mayor and Council of the City, from paying such amounts from other moneys of the City. Under no circumstances shall amounts paid under this Agreement from such moneys (other than Net Revenues) constitute a pledge thereof, and amounts payable by the City hereunder shall never constitute a general obligation of the City or a pledge of *ad valorem* property taxes by the City.

(c) Net Revenues are hereby pledged by the City to the payment of all amounts due under this Agreement, and the repayment of such amounts shall be secured by a lien on and pledge of Net Revenues on parity with the pledge and lien granted by the City for the payment and security of the Outstanding Parity Obligations and Additional Parity Obligations. The amounts due under this Agreement, the Outstanding Parity Obligations and Additional Parity Obligations shall be equally and ratably secured by said pledge and lien without one having priority over the other. The City intends that this pledge shall be a prior and paramount lien on and a first pledge of Net Revenues as will be sufficient to make all payments on this Agreement, and the City covenants to make the payments under this Agreement from Net Revenues, except to the extent that it chooses to make such payments from other legally available funds at its sole option. In no event shall the City be required to make the payments on this Agreement from any revenues, receipts or sources not derived from Net Revenues.

(d) All Net Revenues shall be immediately subject to such pledge without any physical delivery thereof or further act, and the lien of this pledge shall be valid and binding as

against all persons having claims of any kind in tort, contract or otherwise against the City, irrespective of whether such persons have notice thereof. Nothing contained in this Section shall be construed as limiting any authority granted elsewhere herein to incur the Outstanding Parity Obligations, this Agreement or Additional Parity Obligations nor be deemed a limitation upon the issuance of bonds, notes or other obligations under any law pertaining to the City secured by moneys, income and funds other than Net Revenues and other moneys and investments pledged hereunder or under the Trust Agreement. After the application of Net Revenues for the purposes herein and in the Trust Agreement, they may be used for any lawful purpose.

*Section 3.2 Rate Covenant.* The City will establish, maintain and collect user rates, fees and charges from all persons using the System sufficient at all times, after making due and reasonable allowance for contingencies and for a margin of error in the estimates, to carry on the efficient operation, maintenance, repairs and replacement of the System, to produce an amount of Net Revenues in each fiscal year in an amount not less than one hundred twenty percent (120%) of the aggregate of the amounts payable pursuant to the Outstanding Parity Obligations, this Agreement and any Additional Parity Obligations in such fiscal year and to maintain any required reserves and other required fund balances with respect to all such obligations, if any.

*Section 3.3 Additional Parity Obligations Generally.* Additional Parity Obligations having a lien upon and payable from Net Revenues may be issued or incurred on parity with this Agreement, but only as provided herein and only to provide funds for any purpose relating to the System which is permitted by law, subject to the following conditions:

(a) The City will not, at the time of the issuance or incurrence of such Additional Parity Obligations, be in default under the Outstanding Parity Obligations, this Agreement or Additional Parity Obligations or under any resolution related thereto or providing for the issuance thereof or any related credit or reserve fund credit instrument (including Purchase Events of Default and Trust Agreement Events of Default) and

(b) The annual Net Revenues for the twelve (12) consecutive months ending with the calendar month next preceding the date of the adoption by the Mayor and Council of the City of the ordinance or resolution authorizing the issuance or incurrence and sale of the Additional Parity Obligations, or for the last full fiscal year preceding the adoption of such ordinance or resolution, as shown by an audit certificate of an independent public accountant employed by the City, and which may be adjusted to reflect projected Net Revenues as described below, are equal to at least 120 percent of Maximum Annual Debt Service. Net Revenues for such fiscal year or 12-month period (as shown on such audit certificate) may be adjusted to reflect projected annual Net Revenues on a *pro forma* basis, as stated by the report of an independent engineer or firm of such engineers having a favorable reputation with respect to such matters. In preparing such projection, Net Revenues may be adjusted by such engineer or firm (i) for rate increases for the System service which have been adopted by the Mayor and Council of the City as of the date of issuance or incurrence of such Additional Parity Obligations and which are scheduled to be in effect during all subsequent years in which such debt service or payments are due; (ii) for additional Net Revenues attributable to additions or acquisitions to the System completed subsequent to the commencement of the fiscal year or 12-month period covered by the audit certificate, but prior to the issuance or incurrence of such Additional Parity

Obligations and (iii) for additional Net Revenues attributable to properties or facilities or a utility undertaking to be acquired or added to the System and financed from the proceeds of the Additional Parity Obligations or other sources of funds which are identified by the City at the time of the projections. For purposes hereof, in determining the debt service or other amounts payable in a year with respect to obligations which bear interest at a rate which varies or fluctuates from time to time, interest shall be calculated at a rate which is 125 percent of the greater of (i) the rate per annum which was in effect with respect to such obligations on the last business day of the calendar month preceding the date on which the calculation is to be made or, if no rate was in effect on such date, the rate per annum which was in effect on the date on which the calculation is to be made or (ii) the weighted average rate per annum for the most recent twelve (12) full calendar months or for such lesser period as such obligations have been outstanding.

**ARTICLE IV**  
**COVENANTS REGARDING THE SYSTEM,**  
**MAINTENANCE, INVESTMENTS AND TAXES**

*Section 4.1 Maintenance of the System in Good Condition.* All maintenance and repair of the Projects and utilities therefor shall be the responsibility of the City. (In exchange for the payment of the amounts due hereunder, the Seller shall provide nothing more than the Projects.) The City shall (a) maintain the System in good and working condition, (b) operate the same in a proper and economical manner and at reasonable cost and (c) faithfully and punctually perform all duties with reference to the System required by the Constitution and laws of the State.

*Section 4.2 Insurance.* The City shall maintain insurance on the System (which may take the form of or include an adequately-funded program of self-insurance), for the benefit of the Owner or Owners of the Series 2019 Obligations payable wholly or in part from the Revenues, for the full insurable value of all buildings and machinery and equipment therein, against loss or damage by fire, lightning, tornado or winds, and all other combustible property against loss or damage by fire or lightning, and other coverages and amounts of insurance (including public liability and damage to property of others to the extent deemed prudent by the City), normally carried by others on similar operations. The cost of such insurance may be paid as an Operation and Maintenance Expense. All money received for losses under any such insurance policies, except public liability policies, is hereby pledged by the City as security for the payment of this Agreement until and unless such proceeds are paid out in making good the loss or damage in respect of which such proceeds are received, including repairing the System. Self-insurance may be maintained for the System either separately or in connection with any general self-insurance retention program or other insurance program maintained by the City; provided that (a) any such program has been adopted by the City and (b) an independent insurance or actuarial consultant appointed by the City annually reviews and certifies to the City in writing that any such program is adequate and actuarially sound. All proceeds of any condemnation awards with respect to the System shall be deposited with the Trustee and applied to the *pro rata* payment of the Series 2019 Obligations.

*Section 4.3 No Sale; Lease or Encumbrance Exceptions.*

(a) The City shall not sell, lease, encumber or in any manner dispose of the System as a whole until all of the Series 2019 Obligations and all interest thereon shall have been paid in full or provision for payment has been made in accordance with the Trust Agreement.

(b) The City may sell, lease or otherwise dispose of any of the property comprising a part of the System if such property is not necessary for the operation of the System, such property is not useful in the operation of the System, such property is not profitable in the operation of the System or the disposition of such property will be advantageous to the System and will not adversely affect the security for the Owners of the Series 2019 Obligations or the payment of the principal or interest components of the Series 2019 Obligations.

(c) The City may sell or otherwise transfer the System as a whole to any political subdivision or agency of one or more political subdivisions of the State to which may be delegated the legal authority to own and operate the System on behalf of the public, and which undertakes in writing, filed with the Management Services Director, the City's obligations hereunder; provided that there shall be first filed with the Management Services Director a Special Counsel's Opinion to the effect that such sale will not cause interest on any of the Series 2019 Obligations to become subject to federal income taxation, such sale will not materially diminish the security of the Owners of the Series 2019 Obligations and the obligations of the City hereunder have been validly assumed by such transferee and are the valid and legally binding obligations of such transferee.

(d) Notwithstanding the above provisions, the City may sell or lease all or any part of the System in connection with the issuance of Additional Parity Obligations to finance additional improvements to the System or refinance the Series 2019 Obligations or Additional Parity Obligations provided that such sale or lease does not permit foreclosure, or other loss by the City, of such portion of the System.

*Section 4.4 Books, Records and Accounts.* The City shall cause to be kept proper books, records and accounts of the System in accordance with standard accounting practices and procedures customarily used for systems of similar nature.

*Section 4.5 Satisfaction of Liens.* The City shall, from time to time, duly pay and discharge or cause to be paid and discharged all taxes, assessments and other governmental charges, if any, lawfully imposed upon the System or any part thereof or upon Net Revenues, as well as any lawful claims for labor, materials or supplies which if unpaid might by law become a lien or charge upon the System or the revenues or any part thereof or which might impair the security or payment of the Series 2019 Obligations, except when the City in good faith contests its liability to pay the same.

*Section 4.6 Disconnection of Service for Non-Payment; No Free Service.*

(a) The City shall diligently enforce payment of all bills for services supplied by the System. If a bill becomes delinquent and remains so for a period to be determined in accordance with City policy from time to time, the City shall discontinue service in accordance

with the laws of the State to any premises the owner or occupant of which shall be so delinquent, and will not recommence such service to such premises until all delinquent charges with penalties shall have been paid in full or provisions for such payment satisfactory to the City shall have been made. The City shall do all things and exercise all remedies reasonably available to assure the prompt payment of charges for all services supplied by the System.

(b) No free service shall be furnished by the System to the City or any department thereof or to any person, firm or corporation, public or private, or to any public agency or instrumentality, except as provided herein. The reasonable cost and value of all service rendered to the City and its various departments by the System shall be charged against the City and will be paid for as the service occurs from the City's current funds. All payments so made shall be considered Operating Revenues and shall be applied in the manner herein provided for the application of the Revenues of the System.

*Section 4.7 No Competing System.* The City shall not, to the extent permitted by law, grant a franchise or permit for the operation of any competing system in the City.

*Section 4.8 Taxes.* All taxes of any type or nature charged to the Seller or affecting the Projects or affecting the amount available to the Seller from payments received hereunder for the payment of the Series 2019 Obligations (including charges assessed or levied by any governmental agency, district or corporation having power to levy taxes) shall upon receipt of invoices therefor be paid by the City. Upon written request of the City, the Seller shall take whatever steps are necessary to contest the amount of tax, or to recover any tax paid if the City believes such tax or assessment to be improper or invalid. The City shall reimburse the Seller for any and all costs, including reasonable attorneys' fees and expenses, thus incurred by the Seller.

*Section 4.9 No Material Change* There has not been any Material Adverse Effect with respect to the City or the System since June 30, 2018.

*Section 4.10 Conflicts with Outstanding Parity Obligations* To the extent of any conflict between the provisions of this Article and those of the Outstanding Parity Obligations, the provisions of the Outstanding Parity Obligations shall prevail so long as amounts remain unpaid or unprovided for pursuant to the Outstanding Parity Obligations.

## **ARTICLE V INDEMNIFICATION**

To the extent permitted by law, the City hereby indemnifies and holds the Seller, its directors, officers, agents, attorneys and employees, harmless for, from and against any and all claims, expenses, liens, judgments, liability or loss whatsoever, including reasonable legal fees and expenses, relating to or in any way arising out of (a) this Agreement, the Trust Agreement, financing statements, supplements, amendments or additions thereto or the enforcement of any of the terms thereof; (b) the Series 2019 Obligations; (c) the sale and execution and delivery of the Series 2019 Obligations or the transactions contemplated in any of the aforementioned acts, agreements or documents; or (d) the acquisition, purchase, ownership, lease, possession, rental, use, operation, sale or disposition of the Projects hereunder or in connection herewith (including,

without limitation, expense, liability or loss relating to or in any way arising out of injury to persons, property or the environment, patent or invention rights or strict liability in tort). The right of the Seller to indemnification from the City shall not extend to claims, suits and actions successfully brought against the Seller for, or losses, liabilities or expenses incurred as a result of, the negligence, or willful misconduct of the Seller. To the extent that the City makes or provides for payment to the satisfaction of the Seller under the indemnity provisions hereof, the City shall be subrogated to the rights of the Seller with respect to such event or condition and shall have the right to determine the settlement of claims thereon, it being agreed that, except to the foregoing extent, the Seller shall have the right to determine such settlement. The City shall pay all amounts due hereunder promptly upon notice thereof from the Seller. In case any action, suit or proceeding is brought against the Seller, if any, by reason of any act or condition which requires indemnification by the City hereunder, the Seller shall notify the City promptly of such action, suit or proceeding, and the City may (and shall upon the request of the Seller), at the expense of the City, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended, by counsel designated by the City and approved by the Seller. If the Seller desires to participate in the defense of such action, suit or proceeding through its own counsel, it may do so at its own expense; provided, however, that the fees and expenses of such counsel shall be paid by the City if (i) the employment of such counsel has been authorized by the City or, (ii) the City shall have failed promptly after receiving notice of such action from the Seller to assume the defense of such action and employ counsel reasonably satisfactory to the Seller or (iii) the named parties to any such action (including any impleaded parties) include the Seller and the City, and the Seller shall have been advised by counsel that there may be one or more legal defenses available to such party which are different from or in addition to those available to the City or (iv) the Seller shall have been advised by counsel that there is a conflict on any issue between the Seller and the City. The Seller, its directors, officers, agents, attorneys, and employees, shall not be liable to the City or to any other party whomsoever for any death, injury or damage that may result to any person or property by or from any cause whatsoever in connection with the Projects. These indemnity provisions shall survive the satisfaction and expiration of this Agreement and the Trust Agreement and the earlier removal or resignation of the Seller as Trustee.

## **ARTICLE VI DEFAULT AND REMEDIES**

*Section 6.1 Purchase Events of Default.* Any one or more of the following events (herein called "*Purchase Events of Default*") shall constitute a default hereunder:

(a) failure by the City to pay, or cause to be paid, when due any payment due pursuant to Section 2.3(ii), (iii) or (iv);

(b) failure by the City to make, or cause to be made, any required payments of principal, redemption premium, if any, and interest with respect to any bonds, notes or other obligations of the City for borrowed money (other than as described in paragraph (a) of this Section), after giving effect to the applicable grace period, the payments of which are secured by Net Revenues;

(c) failure by the City to perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Agreement, other than as referred to in paragraph (a) of this Section, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the City by the Seller, provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, it shall not be deemed a Purchase Event of Default so long as the City diligently tries to remedy the same and such failure does not continue for a period of more than 60 days;

(d) the institution of any proceeding, with the acquiescence of the City, for the purpose of effecting a composition between the City and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are payable from Net Revenues;

(e) a determination that any material representation made by or on behalf of the City contained in this Agreement, or in any instrument furnished in compliance with or reference to this Agreement, is false or misleading in any material respect; and

(f) the filing of a petition by or against the City under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Agreement or thereafter enacted, unless in the case of any such petition filed against the City such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal; or the City becoming insolvent or bankrupt or making an assignment for the benefit of its creditors; or the appointment of a custodial (including, without limitation, a receiver, liquidator or trustee of the City or any of its property including the System) by court order, or possession of the City or its property or assets is taken if such order remains in effect or such possession continues for more than thirty (30) days.

*Section 6.2 Remedies on Default by City.* Whenever a Purchase Event of Default shall have occurred and be continuing, the Seller shall, but only if requested by the Trustee, have the right to take any action permitted or required pursuant to this Agreement and to take whatever other action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due on their scheduled payment dates or to enforce the performance and observance of any duty, covenant, obligation or agreement of the City hereunder, including, without limitation, appointment of a receiver of the System, however, under no circumstances may amounts due hereunder be accelerated. The Seller may assign any or all of its rights and privileges under this Section to the Trustee, and upon furnishing evidence of such assignment to the City, the Trustee may exercise any or all of such rights or privileges as it may deem advisable.

*Section 6.3 Default by Seller.* The Seller shall in no event be in default in the performance of any of its obligations hereunder unless and until the Seller shall have failed to perform such obligation within thirty (30) days or such additional time as is reasonably required to correct any such default after notice by the City to the Seller properly specifying wherein the Seller has failed to perform any such obligation. No default by the Seller shall relieve the City of its obligations to make the various payments herein required, so long as any of the Series 2019 Obligations remain Outstanding; however, the City may exercise any other remedy available at

law or in equity to require the Seller to remedy such default so long as such remedy does not interfere with or endanger the payments required to be made to the Trustee under the Trust Agreement.

## **ARTICLE VII MISCELLANEOUS**

### *Section 7.1 Arizona Law to Govern; Entire Agreement.*

(a) This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State as the same from time to time exist.

(b) This Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or by representation to the other party with respect to the matters covered hereby which is not expressly set forth in this Agreement.

### *Section 7.2 Federal Tax Covenants.*

(a) As provided in further detail in the Tax Certificate, no direction for the making of any investment or other use of the proceeds of any of the Series 2019 Obligations or of the Projects which would cause such Series 2019 Obligations to be “arbitrage bonds” as that term is defined in section 148 of the Code or “private activity bonds” as that term is defined in section 141 of the Code and the requirements of such sections of the Code and the related Regulations shall be complied with throughout the term of the Series 2019 Obligations. Particularly, the City shall be the owner of the Projects for federal income tax purposes. The City shall not enter into (i) any management or service contract with any entity other than a governmental entity for the operation of any portion of the Projects unless the management or service contract complies with the requirements of such authority as may control at the time or (ii) any lease or other arrangement with any entity other than a governmental entity that gives such entity special legal entitlements with respect to any portion of the Projects. Also, the payment of principal and interest with respect to the Series 2019 Obligations shall not be guaranteed (in whole or in part) by the United States or any agency or instrumentality of the United States. The proceeds of the Series 2019 Obligations, or amounts treated as proceeds of the Series 2019 Obligations, shall not be invested (directly or indirectly) in federally insured deposits or accounts, except to the extent such proceeds (i) may be so invested for an initial temporary period until needed for the purpose for which the Series 2019 Obligations are being executed and delivered, (ii) may be so used in making investments of a *bona fide* debt service fund or (iii) may be invested in obligations issued by the United States Treasury. In consideration of the purchase and acceptance of the Series 2019 Obligations by the Owners thereof from time to time and of retaining such exclusion and as authorized by Title 35, Chapter 3, Article 7, Arizona Revised Statutes, the City covenants, and the appropriate officials of the City are hereby directed, to take all action required by the Code to preserve such exclusion or to refrain from taking any action prohibited by the Code which would adversely affect in any respect such exclusion.

(b) (i) The City shall take all necessary and desirable steps, as determined by the City Representative, to comply with the requirements hereunder in order to ensure that the interest components of the Series 2019 Obligations is excluded from gross income for federal income tax purposes under the Code; provided, however, compliance with any such requirement shall not be required in the event the City receives a Special Counsel's Opinion addressed to the City and the Trustee that either (A) compliance with such requirement is not required to maintain the exclusion from gross income of interest on the Series 2019 Obligation, or (B) compliance with some other requirement will meet the requirements of the Code relating to such exclusion. In the event the City receives such a Special Counsel's Opinion, this Utility System Purchase Agreement shall be amended to conform to the requirements set forth in such opinion.

(ii) If for any reason any requirement hereunder is not complied with, the City shall take all necessary and desirable steps, as determined by the City Representative, to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered and the City shall pay any required interest or penalty under Regulations section 1.148-3(h).

(c) Written procedures have been established for the City to ensure that all nonqualified obligations are remediated according to the requirements under the Code and related Regulations and to monitor the requirements of section 148 of the Code relating to arbitrage, with which the City will comply.

(d) (i) Undefined terms used in this subsection shall have the meanings given to them in the Tax Certificate, the Code and the Regulations.

(ii) Unless an exception to such requirement is available to the satisfaction of the City Representative, within 60 days after the end of each Bond Year, the City shall cause the Rebate Requirement to be calculated and shall pay to the United States of America:

(A) not later than 60 days after the end of the fifth Bond Year and every fifth Bond Year thereafter, an amount which, when added to the future value of all previous rebate payments with respect to the Series 2019 Obligations (determined as of such Computation Date), is equal to at least 90 percent of the sum of the Rebate Requirement (determined as of the last day of such Bond Year) plus the future value of all previous rebate payments with respect to the Series 2019 Obligations (determined as of the last day of such Bond Year) and

(B) not later than 60 days after the retirement of the last Series 2019 Bond, an amount equal to 100 percent of the Rebate Requirement (determined as of the date of retirement of the last Series 2019 Obligation).

Each payment required to be made under this Section shall be filed with the Internal Revenue Service Center, Ogden, Utah 84201, on or before the date such payment is due, and shall be accompanied by IRS Form 8038-T.

(iii) No Nonpurpose Investment shall be acquired for an amount in excess of its fair market value. No Nonpurpose Investment shall be sold or otherwise disposed of for an amount less than its fair market value.

(iv) For purposes of subsection (iii), whether a Nonpurpose Investment has been purchased or sold or disposed of for its fair market value shall be determined as follows:

(A) The fair market value of a Nonpurpose Investment generally shall be the price at which a willing buyer would purchase the Nonpurpose Investment from a willing seller in a bona fide arm's length transaction. Fair market value shall be determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding.

(B) Except as provided in Subsection (v) or (vi), a Nonpurpose Investment that is not of a type traded on an established securities market, within the meaning of Code section 1273, is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value.

(C) If a United States Treasury obligation is acquired directly from or sold or disposed of directly to the United States Treasury, such acquisition or sale or disposition shall be treated as establishing the fair market value of the obligation.

(v) The purchase price of a certificate of deposit that has a fixed interest rate, a fixed payment schedule and a substantial penalty for early withdrawal is considered to be its fair market value if the yield on the certificate of deposit is not less than:

(A) the yield on reasonably comparable direct obligations of the United States and

(B) the highest yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(vi) A guaranteed investment contract shall be considered acquired and disposed of for an amount equal to its fair market value if:

(A) A bona fide solicitation in writing for a specified guaranteed investment contract, including all material terms, is timely forwarded to all potential providers. The solicitation must include a statement that the submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the City or any other person (whether or not in connection with the Series 2019 Obligations), and that the bid is not being submitted solely as a

courtesy to the City or any other person for purposes of satisfying the requirements in the Regulations that the City receive bids from at least one reasonably competitive provider and at least three providers that do not have a material financial interest in the Series 2019 Obligations.

(B) All potential providers have an equal opportunity to bid, with no potential provider having the opportunity to review other bids before providing a bid.

(C) At least three reasonably competitive providers (i.e. having an established industry reputation as a competitive provider of the type of investments being purchased) are solicited for bids. At least three bids must be received from providers that have no material financial interest in the Series 2019 Obligations (e.g., a lead underwriter within 15 days of the issue date of the Series 2019 Obligations or a financial advisor with respect to the investment) and at least one of such three bids must be from a reasonably competitive provider. If the City uses an agent to conduct the bidding, the agent may not bid.

(D) The highest-yielding guaranteed investment contract for which a qualifying bid is made (determined net of broker's fees) is purchased.

(E) The determination of the terms of the guaranteed investment contract takes into account as a significant factor the reasonably expected deposit and drawdown schedule for the amounts to be invested.

(F) The terms for the guaranteed investment contract are commercially reasonable (i.e. have a legitimate business purpose other than to increase the purchase price or reduce the yield of the guaranteed investment contract).

(G) The provider of the investment contract certifies the administrative costs (as defined in Regulations section 1.148-5(e)) that it pays (or expects to pay) to third parties in connection with the guaranteed investment contract.

(H) The City retains until three years after the last Outstanding Series 2019 Obligation is retired, (A) a copy of the guaranteed investment contract, (B) a receipt or other record of the amount actually paid for the guaranteed investment contract, including any administrative costs paid by the City and a copy of the provider's certification described in (G) above, (C) the name of the person and entity submitting each bid, the time and date of the bid, and the bid results and (D) the bid solicitation form and, if the terms of the guaranteed investment contract deviates from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose of the deviation.

(vii) Such experts and consultants shall be employed to make, as necessary, any calculations in respect of rebates to be made to the United States of America in accordance with section 148(f) of the Code with respect to the Series 2019 Obligations.

*Section 7.3 Assignment and Pledge of Seller's Interest in Utility System Purchase Agreement.* The Seller assigns, mortgages, hypothecates and pledges to the Trustee all and every part of the right, privilege and interest of the Seller in this Agreement. The City consents to such assignment, mortgage hypothecation and pledge.

*Section 7.4 Recordation and Filing of Instruments.* The City shall prepare all documents of every kind and description, make all filings and recordings and shall deliver all Opinions of Counsel to the Seller and to the Trustee required under any provision of the Trust Agreement.

*Section 7.5 Right of Seller and Trustee to Perform City's Obligations Hereunder.* In the event that the City should fail for any reason to make any payment or perform any obligation hereunder, and such failure shall continue for a period of 30 days after written notice has been given to the City by the Seller or the Trustee specifying such failure and requesting that it be remedied, the Seller or the Trustee on its behalf, may but shall not be required to make any such payment or to perform any such duty. The amount of such payment and all expenses reasonably incurred by the Seller and the Trustee in making such payment and performing such duty shall be additional items payable hereunder and shall be paid by the City immediately upon invoices by the Seller or the Trustee with interest at the Default Rate from the date said payment was due or expenses incurred to the date of payment by the City.

*Section 7.6 Notices; Mailing Addresses.* All notices, consents or other communications required or permitted hereunder shall be deemed sufficient if given in writing addressed and mailed by registered or certified mail, delivered, or transmitted by telecopy, telex or other electronic transmission that produces written evidence of its delivery, to the party for which the same is intended, as follows:

To the Seller: Zions Bancorporation, National Association  
6001 North 24th Street, Building B  
Phoenix, Arizona 85016  
Attention: Corporate Trust Services

To the City: City of Flagstaff, Arizona  
211 West Aspen Avenue  
Flagstaff, Arizona 86001  
Attention: Management Services Director

To the Trustee: Zions Bancorporation, National Association  
6001 North 24th Street, Building B  
Phoenix, Arizona 85016  
Attention: Corporate Trust Services

or to such other address as such party may hereafter designate by notice in writing addressed and mailed or delivered to the other party hereto.

*Section 7.7 Amendments Hereto.* This Agreement may only be amended with the express written consent of the Trustee and in accordance with the provisions of the Trust Agreement.

*Section 7.8 Severability.* If any term or provision of this Agreement or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

*Section 7.9 Counterparts.* This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all together shall constitute but one Agreement, and it is also understood and agreed that separate counterparts of this Agreement may separately be executed by the Seller and the City, all with the same full force and effect as though the same counterpart had been executed by both the Seller and the City.

*Section 7.10 Assignment by City.* Neither this Agreement nor any interest of the City herein may at any time after the date hereof be mortgaged, pledged, assigned or transferred by the City by voluntary act or by operation of law or otherwise. The City shall at all times remain liable for the performance of all of the covenants and conditions on its part to be performed, notwithstanding any such action.

*Section 7.11 Certain Statutory Notices.*

(a) To the extent applicable by provision of law, the Seller acknowledges that this Agreement is subject to cancellation pursuant to Section 38-511, Arizona Revised Statutes, the provisions of which are incorporated herein and which provides that the City may within three (3) years after its execution cancel any contract (including this Agreement) without penalty or further obligation made by the City if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City is at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

(b) To the extent applicable under Section 41-4401, Arizona Revised Statutes, the Seller shall comply with all federal immigration laws and regulations that relate to its employees and its compliance with the E-verify requirements under Section 23-214(A), Arizona Revised Statutes. The breach by the Seller of the foregoing shall be deemed a material breach of this Agreement and may result in the termination of the services of the Seller by the City. The City retains the legal right to randomly inspect the papers and records of the Seller to ensure that the Seller is complying with the above-mentioned warranty. The Seller shall keep such papers and records open for random inspection during normal business hours by the Seller. The Seller

shall cooperate with the random inspections by the City including granting the City entry rights onto its property to perform such random inspections and waiving its respective rights to keep such papers and records confidential. The City shall preserve the confidentiality of any information, records or papers the City views, accesses or otherwise obtains during any and every such random inspection, including, without limitation, such information.

(c) Pursuant to Section 35-393 et. seq., Arizona Revised Statutes, the Seller hereby certifies it is not currently engaged in, and for the duration of this Agreement shall not engage in, a boycott of Israel. The term “boycott” has the meaning set forth in Section 35-393, Arizona Revised Statutes. If the City determines that the Seller’s certification above is false or that it has breached such agreement, the City may impose remedies as provided by law.

*Section 7.12 Holidays.* When any action is provided herein to be done on a day named or within a time period named, and the day or the last day of the period falls on a day other than a Business Day, it may be performed on the next ensuing Business Day with effect as though performed on the appointed day or within the specified period.

[Signature page follows.]

IN WITNESS WHEREOF, the City and the Seller have executed this Agreement as of the day of and year first above written.

ZIONS BANCORPORATION, NATIONAL ASSOCIATION, as the Seller

By.....

Print Name:.....

Title:.....

THE CITY OF FLAGSTAFF, ARIZONA, as purchaser

By.....

Mayor

ATTEST:

.....  
Clerk