



---

DATE: November 19, 2014

TO: Honorable Mayor and City Councilmembers  
Chairman and Members, Oceanside Public Financing Authority

FROM: City Treasurer's Office

SUBJECT: **AMENDMENT NO. 1 TO THE WATER REVENUE REFUNDING BONDS, SERIES 2013A INDENTURE OF TRUST AND AMENDMENT NO. 1 TO THE SEWER REVENUE REFUNDING BONDS, SERIES 2013A INDENTURE OF TRUST MODIFYING THE ARBITRAGE REBATE CALCULATION REQUIREMENT**

### **SYNOPSIS**

Staff recommends that the City Council and Oceanside Public Financing Authority approve Amendment No. 1 to the Water Revenue Refunding Bonds, Series 2013A Indenture of Trust and Amendment No. 1 to the Sewer Revenue Refunding Bonds, Series 2013A Indenture of Trust modifying the arbitrage rebate calculation requirement to every five years rather than annually; and authorize the City Manager/Executive Director to execute the amendments.

### **BACKGROUND**

In 2013 the Oceanside Public Financing Authority (OPFA) issued Water and Sewer revenue refunding bonds to achieve annual debt service cost savings and provide funding for capital projects. The bonds are subject to Federal arbitrage rebate requirements (the payment of any profit from investment earnings on bond proceeds) that mandate a rebate calculation be performed at least every five years. The Indentures of Trust for the 2013 Water Bonds and 2013 Sewer Bonds require the calculation to be performed annually, resulting in additional unnecessary expenses.

### **ANALYSIS**

Arbitrage is the ability to obtain tax-exempt bond proceeds and invest the funds in higher yielding taxable securities, resulting in a profit. Tax-exempt bonds issued on or after September 1, 1986, are subject to Federal arbitrage rebate requirements. The arbitrage rebate requirements state that arbitrage is to be rebated to the Internal Revenue Service (IRS) based on a rebate computation that is required to be made at least every five years, and upon final redemption or maturity of the bonds.

Historically, the City contracted to have their rebate computations performed annually based on best practice recommendations during the high interest rate environment experienced prior to the economic downturn in 2008. Following the contract renewal for arbitrage reporting services in January 2013, Treasury staff reviewed the necessity for annual computations and concluded that it was more cost effective to have the calculation performed every five years as allowed by IRS code. Based on current contract pricing, the change in calculation timing results in a savings of \$3,380 each five-year period.

During the issuance of the 2013 Water bonds and 2013 Sewer bonds, Treasury staff did not realize that the language in the Indentures of Trust pertaining to the rebate computation requirements for each bond issue reflected an annual computation. Through consultation with bond counsel and the bond trustee, it was determined that the Indentures could be amended by Council to allow for the calculation every five years instead of annually. Staff is requesting Council approval of the amendments to the Indentures.

**FISCAL IMPACT**

Approval of the amendments will result in savings of \$23,660 over the next 20 years (based on current arbitrage reporting contract prices). The comparison of the cost of an annual calculation vs. every 5 years calculation is shown in the table below.

<u>Issue</u>	<u>Number of Bond Years</u>	<u>Cost of Annual Calcs</u>	<u>Cost of 5th Year Calcs</u>	<u>Difference</u>
2013 Water Bonds	20	\$ 19,900	\$ 6,380	\$ 13,520
2013 Sewer Bonds	15	\$ 14,925	\$ 4,785	\$ 10,140
<b>Total Savings</b>				<b>\$ 23,660</b>

If the amendments are approved, the arbitrage reporting fees for the fifth bond year calculation will be budgeted in Fiscal Year 2017-2018 (Sewer) and Fiscal Year 2018-2019 (Water).

**INSURANCE REQUIREMENTS**

Does not apply.

**COMMISSION OR COMMITTEE REPORT**

Does not apply.

**CITY ATTORNEY'S ANALYSIS**

The referenced documents have been reviewed by the City Attorney and approved as to form.

**RECOMMENDATION**

Staff recommends that the City Council and Oceanside Public Financing Authority approve Amendment No. 1 to the Water Revenue Refunding Bonds, Series 2013A Indenture of Trust and Amendment No. 1 to the Sewer Revenue Refunding Bonds, Series 2013A Indenture of Trust modifying the arbitrage rebate calculation requirement to every five years rather than annually; and authorize the City Manager/Executive Director to execute the amendments.

PREPARED BY:



Michele C. Lund  
Treasury Manager

SUBMITTED BY:



Steven R. Jepsen  
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Assistant City Manager

Gary Ernst, City Treasurer

Cari Dale, Water Utilities Director

James Riley, Financial Services Director



**ATTACHMENTS**

1. Amendment No. 1 to the Indenture of Trust between the Oceanside Public Financing Authority and The Bank of New York Mellon Trust Company, N.A., as Trustee Relating to the \$19,490,000 Oceanside Public Financing Authority Water Revenue/Refunding Bonds, Series 2013A
2. Amendment No. 1 to the Indenture of Trust between the Oceanside Public Financing Authority and The Bank of New York Mellon Trust Company, N.A., as Trustee Relating to the \$15,535,000 Oceanside Public Financing Authority Sewer Revenue Refunding Bonds, Series 2013A

**AMENDMENT NO. 1 TO INDENTURE OF TRUST**

**by and between**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
as Trustee**

**and**

**OCEANSIDE PUBLIC FINANCING AUTHORITY,  
as Issuer**

**Relating to**

**\$19,490,000  
OCEANSIDE PUBLIC FINANCING AUTHORITY  
WATER REVENUE/REFUNDING BONDS, SERIES 2013A**

**Dated as of October 1, 2014**

## AMENDMENT NO. 1 TO INDENTURE OF TRUST

This AMENDMENT NO. 1 TO INDENTURE OF TRUST (the "Agreement") is executed and entered into as of October 1, 2014 by and between THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association duly organized and existing under and by virtue of the laws to the United States of America (the "Trustee") and OCEANSIDE PUBLIC FINANCING AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California (the "Issuer");

### WITNESSETH:

WHEREAS, the Trustee and the Issuer previously executed and entered into an Indenture of Trust (the "Indenture"), dated as of August 1, 2013, in connection with the issuance of the \$19,490,000 Oceanside Public Financing Authority Water Revenue/Refunding Bonds, Series 2013A (the "Bonds"), and

WHEREAS, pursuant to Section 5.03(a)(i) of the Indenture the Issuer is currently required to calculate the amount of rebatable arbitrage due on the Bonds within 55 days of the end of each Bond Year; and

WHEREAS, pursuant to Section 9.01(c) of the Indenture, the Issuer desires to amend Section 5.03(a)(i) of the Indenture without the consent of the Owners so that the amount of rebatable arbitrage due on the Bonds is required to be calculated within 55 days of the end of every fifth Bond Year; and

WHEREAS, the Issuer states that such amendment is not materially adverse to the interests of the Owners;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

Section 1. Amendments to Section 5.03(a)(i) of Indenture. Section 5.03(a)(i) of the Indenture is hereby stricken in its entirety and the following substituted therefor:

"Computation. Within 55 days of the end of every fifth Bond Year (as such term is defined in the Tax Certificate), the Issuer shall calculate or cause to be calculated the amount of rebatable arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations (taking into account any applicable exceptions with respect to the computation of the rebatable arbitrage, described, if applicable, in the Tax Certificate (e.g., the temporary investments exception of Section 148(f)(4)(B) and the construction expenditure exception of Section 148(f)(4)(C) of the Code or Section 1.148-7(d) of the Treasury Regulations), and taking into account whether the election pursuant to Section 148(f)(4)(C)(vii) of the Code (the "1½% Penalty") has been made), for this purpose treating the last day of the applicable Bond Year as a computation date, within the meaning of Section 1.148-1(b) of the Treasury Regulations (the "Rebatable Arbitrage"). The Issuer shall obtain expert advice as to the amount of the Rebatable Arbitrage to comply with this Section."

Section 2. Definitions. The terms not defined herein shall have the meaning ascribed to them in the Indenture.

Section 3. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]*

IN WITNESS WHEREOF, the parties hereto have executed and entered into the Amendment No. 1 to Indenture of Trust by their officers thereunto duly authorized as of the day and year first above written.

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee

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

OCEANSIDE PUBLIC FINANCING AUTHORITY

By: \_\_\_\_\_  
Executive Director

ATTEST:

\_\_\_\_\_  
Secretary

**AMENDMENT NO. 1 TO INDENTURE OF TRUST**

**by and between**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
as Trustee**

**and**

**OCEANSIDE PUBLIC FINANCING AUTHORITY,  
as Issuer**

**Relating to**

**\$15,135,000  
OCEANSIDE PUBLIC FINANCING AUTHORITY  
SEWER REVENUE REFUNDING BONDS, SERIES 2013A**

**Dated as of October 1, 2014**

## AMENDMENT NO. 1 TO INDENTURE OF TRUST

This AMENDMENT NO. 1 TO INDENTURE OF TRUST (the "Agreement") is executed and entered into as of October 1, 2014 by and between THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association duly organized and existing under and by virtue of the laws to the United States of America (the "Trustee") and OCEANSIDE PUBLIC FINANCING AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California (the "Issuer");

### WITNESSETH:

WHEREAS, the Trustee and the Issuer previously executed and entered into an Indenture of Trust (the "Indenture"), dated as of May 1, 2013, in connection with the issuance of the \$15,135,000 Oceanside Public Financing Authority Sewer Revenue Refunding Bonds, Series 2013A (the "Bonds"), and

WHEREAS, pursuant to Section 5.03(a)(i) of the Indenture the Issuer is currently required to calculate the amount of rebatable arbitrage due on the Bonds within 55 days of the end of each Bond Year; and

WHEREAS, pursuant to Section 9.01(c) of the Indenture, the Issuer desires to amend Section 5.03(a)(i) of the Indenture without the consent of the Owners so that the amount of rebatable arbitrage due on the Bonds is required to be calculated within 55 days of the end of every fifth Bond Year; and

WHEREAS, the Issuer states that such amendment is not materially adverse to the interests of the Owners;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

Section 1. Amendments to Section 5.03(a)(i) of Indenture. Section 5.03(a)(i) of the Indenture is hereby stricken in its entirety and the following substituted therefor:

"Computation. Within 55 days of the end of every fifth Bond Year (as such term is defined in the Tax Certificate), the Issuer shall calculate or cause to be calculated the amount of rebatable arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations (taking into account any applicable exceptions with respect to the computation of the rebatable arbitrage, described, if applicable, in the Tax Certificate (e.g., the temporary investments exception of Section 148(f)(4)(B) and the construction expenditure exception of Section 148(f)(4)(C) of the Code or Section 1.148-7(d) of the Treasury Regulations), and taking into account whether the election pursuant to Section 148(f)(4)(C)(vii) of the Code (the "1½% Penalty") has been made), for this purpose treating the last day of the applicable Bond Year as a computation date, within the meaning of Section 1.148-1(b) of the Treasury Regulations (the "Rebatable Arbitrage"). The Issuer shall obtain expert advice as to the amount of the Rebatable Arbitrage to comply with this Section."

Section 2. Definitions. The terms not defined herein shall have the meaning ascribed to them in the Indenture.

Section 3. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]*

IN WITNESS WHEREOF, the parties hereto have executed and entered into the Amendment No. 1 to Indenture of Trust by their officers thereunto duly authorized as of the day and year first above written.

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee

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

OCEANSIDE PUBLIC FINANCING AUTHORITY

By: \_\_\_\_\_  
Executive Director

ATTEST:

\_\_\_\_\_  
Secretary