

Attachment 4

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**INSTALLMENT SALE AGREEMENT**

Dated as of \_\_\_\_\_ 1, 2018

between the

**CALISTOGA PUBLIC FACILITIES CORPORATION**  
*as Seller*

and the

**CITY OF CALISTOGA,**  
*as Purchaser*

**Relating to**

**\$ \_\_\_\_\_**  
**2018 Water and Wastewater Revenue**  
**Certificates of Participation**

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## INSTALLMENT SALE AGREEMENT

This INSTALLMENT SALE AGREEMENT (this "Agreement"), dated as of October 1, 2018, is between the CALISTOGA PUBLIC FACILITIES CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation"), as seller, and the CITY OF CALISTOGA, a municipal corporation duly organized and existing under the laws of the State of California (the "City"), as purchaser.

### *B A C K G R O U N D :*

1. The City owns and operates facilities for (i) the collection, treatment and supply of water (the "Water System") within the service area of the City, and (ii) the collection and treatment of wastewater (the "Wastewater System" and together, the "Enterprises") within the service area of the City; and

2. For the Wastewater System the City previously entered into:

(i) an Installment Purchase Agreement, dated as of August 1, 2001 (the "2001 Wastewater Installment Purchase Agreement") with the California Statewide Communities Development Authority (the "Authority"), pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$3,500,000 (the "2001 Wastewater Installment Payments") for the purpose of financing certain improvements to the Wastewater System, and in connection therewith the Authority issued its Water and Wastewater Revenue Bonds (Pooled Financing Program), Series 2001B (the "2001 Bonds"), pursuant to an Indenture, dated as of August 1, 2001, between the Authority and Union Bank of California, N.A., as trustee; and,

(ii) an Installment Purchase Agreement, dated as of May 18, 2005 (the "2005 Wastewater Installment Purchase Agreement") with the Calistoga Public Facilities Corporation (the "Corporation"), pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$2,028,500 (the "2005 Wastewater Installment Payments") for the purpose of financing certain improvements to the Wastewater System, which 2005 Installment Payments are payable on a parity basis to the 2001 Installment Payments, and in connection therewith the Corporation issued its 2005 Certificates of Participation (the "2005 Certificates"), pursuant to a Trust Agreement, dated May 18, 2005, among the Corporation, the City and the City Treasurer of the City of Calistoga, as trustee, and

(iii) a State Revolving Fund Loan Program Loan Contract dated as of October 3, 1999, and amendments thereto, with the State of California, acting by and through the State Water Resources Control Board, pursuant to which the City agreed to make certain loan payments in the aggregate principal amount of \$5,450,364 (the "1999 Wastewater Loan Payments") for the purpose of financing certain improvements to the Wastewater System, and

3. For the Water System the City previously entered into:

(i) an Installment Purchase Agreement, dated as of November 1, 2005 (the "2005 Water Installment Purchase Agreement") with the Authority, pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$5,290,000 (the "2005 Water Installment Payments") for the purpose of financing and refinancing certain improvements to the Water System, and in connection therewith the Authority issued its Water and Water

Revenue Bonds, Series 2005D (the "2005 Bonds"), pursuant to an Indenture, dated as of November 1, 2005, between the Authority and Union Bank of California, N.A. (now known as MUFG Union Bank, N.A.), as trustee; and

(ii) an Installment Purchase Agreement, dated as of March [ ], 2008 (the "2008 Water Installment Purchase Agreement") with the Calistoga Public Facilities Corporation (the "Corporation"), pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$2,511,170 (the "2008 Water Installment Payments") for the purpose of financing certain improvements to the Water System, and in connection therewith the Corporation issued its 2008 Certificates of Participation (the "2008 Certificates"), pursuant to a Trust Agreement, dated March 27, 2008, among the Corporation, the City and the City Treasurer of the City of Calistoga, as trustee; and

(iii) an Installment Purchase Agreement, dated as of July 7, 2011 (the "2011 Water Installment Purchase Agreement") with the Corporation, pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$3,750,000 (the "2011 Water Installment Payments") for the purpose of financing certain improvements to the Water System, and in connection therewith the Corporation issued its 2011 Certificates of Participation (the "2011 Certificates"), pursuant to a Trust Agreement, dated July 7, 2011, among the Corporation, the City and the City Treasurer of the City of Calistoga, as trustee; and

4. The City, after due investigation and deliberation, has determined that it is in the interests of the City at this time to provide for the refunding of (i) the 2001 Wastewater Installment Purchase Agreement and the 2005 Wastewater Installment Purchase Agreement of the Wastewater System, secured on parity with the 1999 Wastewater Loan Payments which will remain outstanding, and (ii) the 2005 Water Installment Purchase Agreement and 2008 Water Installment Purchase Agreement of the Water System, secured on parity with the 2011 Water Installment Payments which will remain outstanding (collectively as to the obligations refunded, the "Prior Obligations").

5. The Corporation has the power to assist the City in the financing and refinancing of facilities and property useful to the City, and the Corporation has proposed to enter into this Agreement with the City under which the Corporation has agreed to provide funding for the refunding of the Prior Obligations and refinancing of the projects financed by the Prior Obligations (the "Prior Projects") and sell the Prior Projects to the City in consideration of the agreement by the City to pay the purchase price of the Prior Projects in semiannual installments (the "Installment Payments").

6. The obligation of each Enterprise to pay its share of the Installment Payments will be secured by an irrevocable pledge of the Enterprise's Net Revenues, as defined herein, for payment of each Enterprise's Allocable Share (as defined herein) of the Installment Payments; and

7. For the purpose of obtaining the moneys required to refinance the Prior Projects in accordance with the terms hereof, the Corporation has assigned and transferred certain of its rights under this Agreement to MUFG Union Bank, N.A., as trustee (the "Trustee"), under a Trust Agreement dated as of \_\_\_\_\_ 1, 2018 (the "Trust Agreement"), between the Corporation, the City and the Trustee, under which the Trustee has executed and delivered 2018 Water and Wastewater Revenue Certificates of Participation in the aggregate principal amount of \$ \_\_\_\_\_ (the "Certificates"), evidencing direct, undivided fractional interests in the Installment Payments.

## AGREEMENT:

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

### ARTICLE I

#### DEFINITIONS; RULES OF INTERPRETATION

SECTION 1.1. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Agreement have the respective meanings given them in Appendix A to the Trust Agreement. In addition, when used in this Agreement the following defined terms have the meanings given those terms in this Section 1.1.

"Additional Payments" means the amounts payable by the City under Section 4.8.

"Additional Revenues" means, as to each Enterprise, with respect to the projection of Net Revenues to be received in any Fiscal Year in connection with the issuance of any Parity Debt under Section 5.8, any or all of the following amounts:

- (i) An allowance for Net Revenues from any additions or improvements to or extensions of the Enterprise to be made by the City from the proceeds of such Parity Debt, in an amount equal to 100% of the estimated additional Net Revenues to be received in such Fiscal Year from properties to which service will be provided by such additions, improvements and extensions.
- (ii) An allowance for Net Revenues arising from any increase in the charges made for service from the Enterprise which has been adopted prior to the incurring of such Parity Debt, in an amount equal to 100% of the estimated additional Net Revenues which are projected to be received in such Fiscal Year from such increased charges.

"Allocable Share" means (i) with respect to the Wastewater System, Installment Payments Attributable to the Wastewater System due in a particular Fiscal Year divided by Installment Payments due in the same Fiscal Year, and (ii) with respect to the Water System, Installment Payments Attributable to the Water System due in a particular Fiscal Year divided by Installment Payments due in the same Fiscal Year.

"Debt Service" means, for any period of calculation, the sum of: (a) the Installment Payments coming due and payable in such period, except to the extent that interest thereof is payable from the proceeds of the Certificates, plus (b) the principal of and interest on all outstanding Parity Debt coming due and payable in such period, except to the extent that interest thereof is payable from the proceeds of the Parity Debt; but less the earnings to be derived from the investment of amounts on deposit in the Reserve Fund or in any debt service reserve funds established for Parity Debt.

"Enterprise Funds" means, collectively, the Water Fund and the Wastewater Fund.

“Enterprises” means, collectively, the Water System and the Wastewater System.

“Escrow Agreement” means the Escrow Deposit and Trust Agreement, dated as of \_\_\_\_\_ 1, 2018, by and between the City and the Escrow Bank.

“Escrow Bank” means MUFG Union Bank, N.A., as escrow bank under the Escrow Agreement.

“Fiscal Consultant” means any consultant or firm of such consultants appointed by the City and who, or each of whom: (a) is judged by the City to have experience in matters relating to the financing of water and wastewater systems; (b) is in fact independent and not under domination of the City; (c) does not have any substantial interest, direct or indirect, with the City other than as purchaser of the Certificates or any Parity Debt; and (d) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make reports to the City.

“Gross Revenues” means, as to each Enterprise, all gross income and revenue received by the City from the ownership and operation of the Enterprise, including but not limited to the following:

- (a) all income, rents, rates, fees, charges and other moneys received for, and all other gross income and receipts derived by the City from, the ownership and operation of the Enterprise or otherwise arising from the Enterprise;
- (b) all amounts levied by the City as a fee for connecting to the Enterprise, as such fee is established from time to time under the applicable laws of the State of California;
- (c) the earnings on and income derived from the investment of the foregoing 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 Enterprise;
- (d) the proceeds derived by the City directly or indirectly from the sale, lease or other disposition of a part of the Enterprise as permitted in this Agreement; and
- (e) amounts transferred from a Rate Stabilization Fund to the respective Wastewater Fund or Water Fund in any Fiscal Year under Section 4.6.

The term “Gross Revenues” does not include (i) customers’ deposits or any other deposits subject to refund until such deposits have become the property of the City, and (ii) 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 City relating to the Enterprises.

“Installment Payment Date” means the third Business Day preceding April 1 and October 1 in each year, commencing October 1, 2018, so long as any of the Certificates remain Outstanding.

“Net Revenues” means, with respect to the Water System or the Wastewater System for any period, all of the Gross Revenues received from the respective Enterprise during such period

minus the amount required to pay all Operation and Maintenance Costs of the respective Enterprise which are payable during such period.

“1999 Wastewater Loan Payments” means the payments due under the 1999 Wastewater SRF Loan.

“1999 Wastewater SRF Loan” means the payments due under the State Revolving Fund Loan Program Loan Contract dated as of October 3, 1999, and amendments thereto, with the State of California, acting by and through the State Water Resources Control Board, pursuant to which the City agreed to make the Loan Payments in the aggregate principal amount of \$5,450,364 for the purpose of financing certain improvements to the Wastewater System.

“Operation and Maintenance Costs” means, with respect to the Water System or the Wastewater System, all costs paid or incurred by the City for maintaining and operating the Water System or the Wastewater System, as the case may be, determined in accordance with generally accepted accounting principles, including but not limited to (a) all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Water System or the Wastewater System in good repair and working order, (b) all administrative costs of the City that are charged directly or apportioned to the operation of the Water System or the Wastewater System, such as salaries and wages of employees, overhead, taxes (if any) and insurance, and (c) administrative costs of the Certificates which the City is required to pay hereunder, including Additional Payments. “Operation and Maintenance Costs” do not include (i) payments of debt service on bonds, notes, contracts or other obligations issued by the City with respect to the Water System or the Wastewater System, (ii) depreciation, replacement and obsolescence charges or reserves therefor, and (iii) amortization of intangibles or other bookkeeping entries of a similar nature.

“Overdue Rate” means the highest rate of interest represented by any of the Outstanding Certificates.

“Parity Debt” means, as to each Enterprise, any bonds, notes, leases, installment sale agreements, contracts or other obligations of the City which are secured by a pledge of and lien upon any of the Gross Revenues of the Enterprise and which are payable from the Net Revenues of the Enterprise on a parity with the Enterprise’s Allocable Share of the Installment Payments, entered into or issued under and in accordance with Section 5.8.

“Parity Debt Documents” means, collectively, the indenture of trust, trust agreement, contract or other document which authorizes the issuance of any Parity Debt or otherwise establishes or evidences Parity Debt.

“Prior Projects” means the improvements to the respective Enterprises funded by the Wastewater Prior Obligations and Water Prior Obligations.

“Rate Stabilization Fund” means any fund established and held by the City as a fund for the stabilization of rates and charges imposed by the City with respect to the respective Enterprise, which fund is established, held and maintained in accordance with Section 4.6.

“Term” means the time during which this Agreement is in effect, as provided in Section 4.2.



“2001 Wastewater Installment Purchase Agreement” means the Installment Purchase Agreement, dated as of August 1, 2001 with the California Statewide Communities Development Authority pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$3,500,000 for the purpose of financing certain improvements to the Wastewater System.

“2001 Wastewater Installment Payments” means the Installment Payments due under the 2001 Installment Purchase Agreement.

“2001 Wastewater Bonds” means the Water and Wastewater Revenue Bonds (Pooled Financing Program), Series 2001B issued by the California Statewide Communities Development Authority to finance projects for the Wastewater System.

“2005 Wastewater Installment Purchase Agreement” means the Installment Purchase Agreement, dated as of May 18, 2005 with the Corporation pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$2,028,500 for the purpose of financing certain improvements to the Wastewater System.

“2005 Wastewater Installment Payments” means the Installment Payments due under the 2005 Installment Purchase Agreement.

“2005 Wastewater Certificates of Participation” means the 2005 Certificates of Participation executed and delivered by the Corporation to finance projects for the Wastewater System.

“2005 Water Installment Purchase Agreement” means the Installment Purchase Agreement, dated as of November 1, 2005 with the California Statewide Communities Development Authority pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$5,290,000 for the purpose of financing certain improvements to the Water System.

“2005 Water Installment Payments” means the Installment Payments due under the 2005 Installment Purchase Agreement.

“2005 Water Bonds” means the Water and Wastewater Revenue Bonds (Pooled Financing Program), Series 2005D issued by the California Statewide Communities Development Authority to finance projects for the Water System.

“2008 Water Installment Purchase Agreement” means the Installment Purchase Agreement, dated as of May 18, 2008 with the Corporation pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$2,511,170 for the purpose of financing certain improvements to the Water System.

“2008 Water Installment Payments” means the Installment Payments due under the 2008 Installment Purchase Agreement.

“2008 Water Certificates of Participation” means the 2008 Certificates of Participation executed and delivered by the Corporation to finance projects for the Water System.

“Wastewater Fund” means the fund or funds established and held by the City with respect to the Enterprise for the deposit of Gross Revenues from the Wastewater System.

“Wastewater Prior Obligations” means, collectively, the 2001 Wastewater Installment Purchase Agreement and the 2005 Wastewater Installment Purchase Agreement.

“Wastewater System” means the entire wastewater collection, treatment and disposal system owned or operated by the City, including but not limited to all facilities, properties and improvements at any time owned or operated by the City for the collection, treatment and disposal of wastewater within the service area of the City, together with 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 City.

“Water Fund” means the fund or funds established and held by the City with respect to the Enterprise for the deposit of Gross Revenues from the Water System.

“Water Prior Obligations” means, collectively, the 2005 Wastewater Installment Purchase Agreement and the 2008 Wastewater Installment Purchase Agreement.

“Water System” means the entire water supply, storage and distribution system of the City, including but not limited to all facilities, properties and improvements at any time owned, controlled or operated by the City for the supply, treatment and storage of water to residents of the City and adjacent areas, 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 City.

#### SECTION 1.2. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and includes the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

SECTION 2.1. *Representations, Covenants and Warranties of the City.* The City represents, covenants and warrants to the Corporation as follows:

(a) Due Organization and Existence. The City is a municipal corporation duly organized and validly existing under the laws of the State of California, has full legal right, power and authority under said laws to enter into this

Agreement and the Trust Agreement and to carry out and consummate all transactions contemplated hereby and thereby, and by proper action the City Council of the City has duly authorized the execution and delivery of this Agreement and the Trust Agreement.

- (b) Due Execution. The representatives of the City executing this Agreement and the Trust Agreement are fully authorized to execute the same.
- (c) Valid, Binding and Enforceable Obligations. This Agreement and the Trust Agreement have been duly authorized, executed and delivered by the City and constitute the legal, valid and binding agreements of the City enforceable against the City in accordance with their respective terms; except as the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and except as such enforceability may be subject to the exercise of judicial discretion in accordance with principles of equity.
- (d) No Conflicts. The execution and delivery of this Agreement and the Trust Agreement, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement and the Trust Agreement or the financial condition, assets, properties or operations of the City, including but not limited to the performance of the City's obligations under this Agreement and the Trust Agreement.
- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Agreement or the Trust Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.
- (f) 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 City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City 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 the Trust Agreement, or upon the financial condition, assets, properties or operations of the City, and the City 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 adversely affect the consummation of the transactions contemplated by this Agreement or the Trust Agreement, or the financial conditions, assets, properties or operations of the City, including but not limited to the payment and performance of the City's obligations under this Agreement and the Trust Agreement.

- (g) Prior Indebtedness. The City has not issued or incurred any obligations which are currently outstanding having any priority in payment out of the Gross Revenues or the Net Revenues over the payment of the Installment Payments as provided herein, other than the Prior Debt which will be refunded from a portion of the proceeds of the Certificates.

SECTION 2.2. *Representations, Covenants and Warranties of Corporation.* The Corporation represents, covenants and warrants to the City as follows:

- (a) Due Organization and Existence. The Corporation is a corporation organized and existing under the laws of the State of California, and has power to enter into this Agreement and the Trust Agreement and to perform the duties and obligations imposed on it hereunder and thereunder. The Board of Directors of the Corporation has duly authorized the execution and delivery of this Agreement and the Trust Agreement.
- (b) Due Execution. The representatives of the Corporation executing this Agreement and the Trust Agreement are fully authorized to execute the same.
- (c) Valid, Binding and Enforceable Obligations. This Agreement and the Trust Agreement have been duly authorized, executed and delivered by the Corporation and constitute the legal, valid and binding agreements of the Corporation, enforceable against the Corporation in accordance with their respective terms; except as the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and except as such enforceability may be subject to the exercise of judicial discretion in accordance with principles of equity.
- (d) No Conflicts. The execution and delivery hereof and of the Trust Agreement, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Corporation is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the

Corporation, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially adversely affect the consummation of the transactions contemplated hereby and by the Trust Agreement or the financial condition, assets, properties or operations of the Corporation, including but not limited to the performance of the Corporation's obligations under this Agreement and the Trust Agreement.

- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Corporation, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery hereof or of the Trust Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.
  
- (f) 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 Corporation after reasonable investigation, threatened against or affecting the Corporation or the assets, properties or operations of the Corporation which, if determined adversely to the Corporation 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 the Trust Agreement, or upon the financial condition, assets, properties or operations of the Corporation, and the Corporation 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 adversely affect the consummation of the transactions contemplated by this Agreement or the Trust Agreement or the financial conditions, assets, properties or operations of the Corporation, including but not limited to the performance of the Corporation's obligations hereunder and under the Trust Agreement.

## **ARTICLE III**

### **ISSUANCE OF CERTIFICATES; APPLICATION OF PROCEEDS**

SECTION 3.1. *The Certificates.* The Corporation shall cause the Certificates to be executed and delivered under the Trust Agreement in the aggregate principal amount of \$\_\_\_\_\_. The City hereby approves the Trust Agreement, the assignment thereunder to the Trustee of certain rights of the Corporation, and the execution and delivery of the Certificates.

SECTION 3.2. *Deposit and Application of Funds.* The proceeds received by the Trustee from the sale of the Certificates to the Original Purchaser shall be deposited in the respective funds and accounts, and in the respective amounts, as set forth in Section 3.01 of the Trust Agreement. As provided in Section 3.01(c) of the Trust Agreement, a portion of the proceeds of sale of the Certificates shall be transferred to the Escrow Bank to be applied to refund the Prior Obligations as provided in the Escrow Agreement and the Trust Agreement.

## **ARTICLE IV**

### **SALE OF PROJECTS; INSTALLMENT PAYMENTS**

SECTION 4.1. *Sale.*

(a) Upon refinancing of the payment obligations evidenced by 2001 Wastewater Installment Purchase Agreement and 2005 Water Installment Purchase Agreement, the City shall be owner of the Prior Projects financed thereby, which the City concurrently with the execution of this Agreement sells to the Corporation and the Corporation hereby sells those Prior Projects to the City and the City hereby purchases those Prior Projects from the Corporation, upon the terms and conditions set forth in this Agreement.

(b) The Corporation has previously sold to the City, and the City has previously purchased from the Corporation, all of the Prior Projects related to the 2005 Wastewater Installment Purchase Agreement and 2008 Water Installment Purchase Agreement. Title to those Prior Projects shall remain vested in the City, without interruption by virtue of the execution of this Installment Sale Agreement, pursuant to which the City and the Corporation are refinancing the City's payment obligations under the 2005 Wastewater Installment Purchase Agreement and 2008 Water Installment Purchase Agreement.

SECTION 4.2. *Term.* The Term of this Agreement commences on the Closing Date, and ends on October 1, 20\_\_, or such later or earlier date on which the Certificates cease to be Outstanding under the Trust Agreement.

SECTION 4.3. *Title.* Title to the Projects, and each component thereof, will be deemed conveyed by the Corporation to and vested in the City upon the satisfaction of all obligations of the City under this Agreement. The Corporation and the City will execute, deliver and cause to

be recorded any and all documents reasonably required by the City to consummate such transfer of title.

#### SECTION 4.4. *Installment Payments.*

(a) Obligation to Pay. The City hereby agrees to pay to the Corporation, as the purchase price of the Projects hereunder, the aggregate principal amount of \$\_\_\_\_\_ together with interest (calculated on the basis of a 360-day year of twelve 30-day months) on the unpaid principal balance thereof, payable in semiannual Installment Payments in the respective amounts and on the respective Interest Payment Dates specified in Appendix A. On each Installment Payment Date, the City shall deposit with the Trustee, as assignee of the Corporation under the Trust Agreement, an amount which, together with amounts then held by the Trustee in the Installment Payment Fund, is equal to the full amount of such Installment Payment coming due and payable on the next Interest Payment Date. The Installment Payments shall be secured by and payable solely from the sources specified in Section 4.5.

(b) Effect of Prepayment. If the City prepays all remaining Installment Payments in full under Section 7.2, the City's obligations under this Agreement will thereupon cease and terminate, including but not limited to the City's obligation to pay Installment Payments therefor under this Section 4.4; *provided, however*, that the City's obligations to compensate and indemnify the Trustee under Sections 4.8 and 5.2 shall survive such prepayment. If the City prepays the Installment Payments in part but not in whole under Section 7.2, the principal component of each succeeding Installment Payment will be reduced as provided in such Section, and the interest component of each remaining Installment Payment will be reduced by the aggregate corresponding amount of interest which would otherwise be payable with respect to the Certificates thereby prepaid under Section 4.01(a) of the Trust Agreement.

(c) Rate on Overdue Payments. If the City fails to make any of the payments required in this Section 4.4 and Section 4.8, the payment in default will continue as an obligation of the City until fully paid, and the City shall pay the same with interest thereon, from the date of default to the date of payment, at the Overdue Rate.

(d) Assignment. The City understands and agrees that certain rights of the Corporation, including but not limited to the right of the Corporation to receive payment of the Installment Payments, have been assigned by the Corporation to the Trustee in trust under the Trust Agreement, for the benefit of the Owners of the Certificates, and the City hereby consents to such assignment. The Corporation hereby directs the City, and the City hereby agrees, to pay to the Trustee at its Trust Office all payments due under this Section 4.4 and all amounts due under Article VII.

#### SECTION 4.5. *Pledge and Application of Net Revenues.*

(a) Pledge. Subject to the limitations set forth in this Agreement with respect to the respective Allocable Shares of the Water System and the Wastewater System, including those set forth in subsection (b), all of the Net Revenues and all moneys on deposit in any of the funds and accounts established and held by the Trustee under the Trust Agreement are hereby irrevocably pledged, charged and assigned to the punctual payment of the Installment Payments. Such pledge, charge and assignment constitute a lien on and security interest in the Net Revenues and such other moneys for the payment of the Installment Payments in accordance with the terms hereof, on a parity with the pledge and lien which secures any Parity Debt of the respective Enterprise.

(b) Limitations Relating to Allocable Share. The Installment Payments Attributable to the Water System and the Installment Payments Attributable to the Wastewater System are separately identified on Exhibit A hereto. The City hereby acknowledges, covenants and warrants that:

(i) it shall not pay from Net Revenues of the Wastewater System either (A) the Installment Payments Attributable to the Water System, (B) the Water System's Allocable Share of Operation and Maintenance Costs or (C) any other amounts payable hereunder if such amounts constitute the Water System's Allocable Share, and

(ii) it shall not pay from Net Revenues of the Water System either (A) the Installment Payments Attributable to the Wastewater System, (B) the Wastewater System's Allocable Share of Operation and Maintenance Costs or (C) any other amounts payable hereunder if such amounts constitute the Wastewater System's Allocable Share.

(c) Deposit of Gross Revenues Into Enterprise Funds; Transfers to Make Payments. The City has previously established the Enterprise Funds, which the City shall continue to hold and maintain for the purposes and uses set forth herein. The City shall deposit all Gross Revenues from the Water System into the Water Fund, and all of the Gross Revenues from the Wastewater Fund into the Wastewater Fund, immediately on receipt. The City shall apply amounts in the respective Enterprise Funds as set forth in this Agreement and any Parity Debt Documents. The City shall apply amounts on deposit in the respective Enterprise Funds to pay when due the respective Allocable Share of the following amounts in the following order of priority:

- (i) all Operation and Maintenance Costs of the respective Enterprise;
- (ii) the Allocable Shares of Installment Payments and all payments of principal of and interest on any respective Parity Debt;
- (iii) to the Trustee Allocable Shares of the amount of any deficiency in the Reserve Fund established for the Certificates and in any reserve fund established for Parity Debt, the notice of which deficiency has been given to the City in accordance with the Trust Agreement and the related Parity Debt Documents, respectively;
- (iv) any other payments required to comply with the provisions of this Agreement and any respective Parity Debt Documents; and
- (v) any other purposes authorized under subsection (e) of this Section 4.5.

(d) No Preference or Priority. Payment of the Installment Payments and the principal of and interest on any Parity Debt shall be made without preference or priority. If the amount of Gross Revenues on deposit in the Enterprise Funds is any time insufficient to enable the City to pay when due the Allocable Share of Installment Payments and the principal of and interest on any respective Parity Debt, such payments will be made on a pro rata basis.

(e) Other Uses Permitted. The City shall manage, conserve and apply the amounts on deposit in the Enterprise Funds in such a manner that all deposits required to be made under the preceding subsection (c) will be made at the times and in the amounts so required. Subject to the foregoing sentence, so long as no Event of Default has occurred and is continuing, the City



may use and apply moneys in the Enterprise Funds for (i) the payment of any respective subordinate obligations or any unsecured obligations, (ii) the acquisition and construction of improvements to the respective Enterprise, (iii) the prepayment of any other obligations of the City relating to the Enterprises, or (iv) any other lawful purposes of the City.

SECTION 4.6. *Establishment of Rate Stabilization Fund.* The City has the right (but not the obligation) at any time to establish a fund to be held by it and administered in accordance with this Section 4.6, for the purpose of stabilizing the rates and charges imposed by the City with respect to either or both of the Enterprises. From time to time the City 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 Installment Payments and any Parity Debt, as the City may determine.

The City may, but is not be required to, withdraw any amounts from the Rate Stabilization Fund and deposit such amounts in the respective Enterprise Fund in any Fiscal Year for the purpose of paying the Installment Payments or the principal of and interest on any Parity Debt. Amounts so transferred from a Rate Stabilization Fund to an Enterprise Fund will constitute Gross Revenues for such Fiscal Year (except as otherwise provided herein), and will be applied for the purposes set forth in Section 4.5. Amounts on deposit in the Rate Stabilization Fund are not pledged to and do not secure the Installment Payments or any Parity Debt. The City may at any time withdraw any or all amounts on deposit in a Rate Stabilization Fund and apply such amounts for any other lawful purposes of the City.

SECTION 4.7. *Special Obligation of the City; Obligations Absolute.* The City's obligation to pay the Installment Payments and any other amounts coming due and payable hereunder is a special obligation of the City limited solely to the respective Net Revenues. Under no circumstances is the City required to advance moneys derived from any source of income other than the Net Revenues and other sources specifically identified herein for the payment of the Installment Payments and such other amounts. No other funds or property of the City are liable for the payment of the Installment Payments and any other amounts coming due and payable hereunder.

The obligations of the City to make the Installment Payments from the Net Revenues and to perform and observe the other agreements contained herein are absolute and unconditional and are not subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach by the Corporation or the Trustee of any obligation to the City or otherwise with respect to the Enterprises, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Corporation or the Trustee. Until such time as all of the Installment Payments, all of the Additional Payments and all other amounts coming due and payable hereunder have been fully paid or prepaid, the City (a) will not suspend or discontinue payment of any Installment Payments, Additional Payments or such other amounts, (b) will perform and observe all other agreements contained in this Agreement, and (c) will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Enterprises, failure to complete the acquisition and construction of the Projects by the estimated completion date thereof, sale of the Enterprises, the taking by eminent domain of title to or temporary use of any component of the Enterprises, commercial frustration of purpose, any change in the tax or law 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 Corporation or the Trustee to perform and observe any agreement, whether

express or implied, or any duty, liability or obligation arising out of or connected with the Trust Agreement or this Agreement.

Nothing contained in this Section 4.7 releases the Corporation from the performance of any of the agreements on its part contained herein or in the Trust Agreement, and if the Corporation fails to perform any such agreements, the City may institute such action against the Corporation as the City deems necessary to compel performance so long as such action does not abrogate the obligations of the City contained in the preceding paragraph. The City may, however, at the City's own cost and expense and in the City's own name or in the name of the Corporation 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 the City's rights hereunder, and in such event the Corporation hereby agrees to cooperate fully with the City and to take such action necessary to effect the substitution of the City for the Corporation in such action or proceeding if the City may request.

**SECTION 4.8. *Additional Payments.*** In addition to the Installment Payments, the City shall pay when due the following Allocable Share of amounts to the following parties:

- (a) to the Corporation, all costs and expenses incurred by the Corporation to comply with the provisions of this Agreement and the Trust Agreement;
- (b) to the Trustee upon request therefor, all of its costs and expenses payable as a result of the performance of and compliance with its duties hereunder or under the Trust Agreement or any related documents;
- (c) to the Corporation and the Trustee, all amounts required to indemnify the Corporation and the Trustee under Section 5.2 hereof and Section 10.03 of the Trust Agreement; and
- (d) all costs and expenses of auditors, engineers and accountants.

Subject to the provisions of Section 7.03 of the Trust Agreement, the Additional Payments are payable from, but are not secured by a pledge or lien upon, the Net Revenues. The rights of the Trustee and the Corporation under this Section 4.8, and the obligations of the City under this Section 4.8, survive the termination of this Agreement.

## **ARTICLE V**

### **COVENANTS OF THE CITY**

**SECTION 5.1. *Disclaimer of Warranties.*** The Trustee makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City of the Projects or any component thereof, or any other representation or warranty with respect to any of the Projects or any component thereof. The Corporation is not liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Agreement or the Trust Agreement for the existence, furnishing, functioning or use of the Projects.

SECTION 5.2. *Release and Indemnification Covenants.* The City agrees to indemnify the Corporation and the Trustee, and their respective officers, agents, successors and assigns, against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on or about the Enterprises by the City, (b) any breach or default on the part of the City in the performance of any of its obligations under this Agreement or the Trust Agreement, (c) any act or omission of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Enterprises, and (d) any act or omission of any lessee of the City with respect to the Enterprises. No indemnification is made under this Section 5.2 or elsewhere in this Agreement for willful misconduct or negligence under this Agreement by the Corporation or the Trustee, or their respective officers, agents, employees, successors or assigns. The provisions of this Section 5.2 survive the termination of this Agreement.

SECTION 5.3. *Sale or Eminent Domain of Enterprises.* Except as provided herein, the City covenants that the Enterprises shall not be encumbered, sold, leased, pledged, any charge placed thereon, or otherwise disposed of, as a whole or substantially as a whole if such encumbrance, sale, lease, pledge, charge or other disposition would materially impair the ability of the City to pay the respective Allocable Share of Installment Payments or the principal of or interest on any Parity Debt, or would materially adversely affect its ability to comply with the terms of this Agreement or any Parity Debt Documents. The City may not enter into any agreement which impairs the operation of the Enterprises or any part of it necessary to secure adequate Net Revenues to pay the respective Allocable Share of Installment Payments or any Parity Debt, or which otherwise would impair the rights of the Certificate Owners or the Trustee with respect to the Net Revenues. If any substantial part of the Enterprises is sold, the payment therefor shall either (a) be used for the acquisition or construction of improvements and extensions or replacement facilities or (b) be applied to prepay the respective Allocable Share of Installment Payments or any Parity Debt.

Any amounts received as awards as a result of the taking of all or any part of the Enterprises by the lawful exercise of eminent domain, if and to the extent that such right can be exercised against such property of the City, shall either (a) be used for the acquisition or construction of improvements and extension of the Enterprises, or (b) be applied prepay the Installment Payments or any Parity Debt.

SECTION 5.4. *Insurance.* The City shall at all times maintain with responsible insurers all such insurance on the Enterprises as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to the Enterprises. All amounts collected from insurance against accident to or destruction of any portion of the Enterprises shall be used, at the option of the City, either (a) be used for the acquisition or construction of improvements and extension of the Enterprises, or (b) be applied prepay the Installment Payments or any Parity Debt.

The City will maintain, with responsible insurers, worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the interests of the City, the Corporation, the Trustee and the Owners of the Certificates.

Any policy of insurance required under this Section 5.4 may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance.

SECTION 5.5. *Records and Accounts.* The City will keep proper books of record and accounts of the Enterprises in which complete and correct entries shall be made of all transactions relating to the Enterprises. Said books shall, upon prior request, be subject to the reasonable inspection of the Owners of not less than 10% of the Outstanding Certificates, or their representatives authorized in writing, upon not less than two Business Days' prior notice to the City.

The City will cause the books and accounts of the Enterprises to be audited annually by an Independent Accountant not more than nine months after the close of each Fiscal Year, and shall make a copy of such report available for inspection by the Certificate Owners at the office of the City and at the Trust Office of the Trustee. Such report may be part of a combined financial audit or report covering all or part of the City's finances.

SECTION 5.6. *Rate Covenants.*

(a) Covenant to Maintain Water Revenues. The City shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Water System during each Fiscal Year, which are at least sufficient, after making allowances for contingencies and error in the estimates, to yield Gross Revenues from the Water System sufficient to pay 100% of the following amounts in the following order of priority:

(i) all Operation and Maintenance Costs of the Water System estimated by the City to become due and payable in such Fiscal Year;

(ii) the Installment Payments Attributable to the Water System during such Fiscal Year;

(iii) all other payments required for compliance with this Indenture and the instruments pursuant to which any Parity Debt relating to the Water System shall have been issued; and

(iv) all payments required to meet any other obligations of the City which are charges, liens, encumbrances upon or payable from the Gross Revenues of the Water System or the Net Revenues of the Water System.

In addition, the City shall fix, prescribe, revise and collect charges for the Water System during each Fiscal Year which are sufficient to yield Net Revenues of the Water System which, when added to other funds transferred from stabilization reserve funds for the Water System, and which are lawfully available to the City for payment of the items listed in clauses (ii) and (iii) above during such Fiscal Year, will aggregate an amount at least equal to one hundred twenty percent (120%) of the amounts payable under the preceding clauses (ii) and (iii) in such Fiscal Year for the Allocable Share of the Installment Payments and any Parity Debt which have a lien on such Net Revenues.

(b) Covenant to Maintain Wastewater Revenues. The City shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Wastewater System during each Fiscal Year, which are at least sufficient, after making allowances for contingencies and error in the estimates, to yield Gross Revenues from the Wastewater System sufficient to pay 100% of the following amounts in the following order of priority:

(i) all Operation and Maintenance Costs of the Wastewater System estimated by the City to become due and payable in such Fiscal Year;

(ii) the Installment Payments Attributable to the Wastewater System;

(iii) all other payments required for compliance with this Indenture and the instruments pursuant to which any Parity Debt relating to the Wastewater System shall have been issued; and

(iv) all payments required to meet any other obligations of the City which are charges, liens, encumbrances upon or payable from the Gross Revenues of the Wastewater System or the Net Revenues of the Wastewater System.

In addition, the City shall fix, prescribe, revise and collect charges for the Wastewater System during each Fiscal Year which are sufficient to yield Net Revenues of the Wastewater System which, when added to other funds transferred from stabilization reserve funds for the Wastewater System, and which are lawfully available to the City for payment of the items listed in clauses (ii) and (iii) above during such Fiscal Year, will aggregate an amount at least equal to one hundred twenty percent (120%) of the amounts payable under the preceding clauses (ii) and (iii) in such Fiscal Year for the Allocable Share of the Installment Payments and any Parity Debt which have a lien on such Net Revenues.

(c) Transfers from Rate Stabilization Fund. For purposes of this Section 5.6, the amount of Net Revenues or Gross Revenues of an Enterprise for a Fiscal Year will include amounts transferred into the Water Fund or the Wastewater Fund, as applicable, from the Rate Stabilization Fund during such Fiscal Year.

SECTION 5.7. *Superior and Subordinate Obligations.* As to each Enterprise, the City may not issue or incur any additional bonds or other obligations during the Term of this Agreement having any priority in payment of principal or interest out of the respective Gross Revenues or Net Revenues over the respective Installment Payments. Nothing herein limits or affects the ability of the City to issue or incur (a) Parity Debt under Section 5.8, or (b) obligations which are either unsecured or which are secured by an interest in such Net Revenues which is junior and subordinate to the pledge of and lien upon the respective Net Revenues established hereunder.

SECTION 5.8. *Issuance of Parity Debt.* Except for obligations incurred to prepay or discharge the Installment Payments or any Parity Debt, the City may not issue or incur any Parity Debt during the Term hereof unless:

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

(b) The City shall file with the Trustee a report of a Fiscal Consultant showing that for each of the five full Fiscal Years following the issuance of such Parity Debt, the Net Revenues (excluding any amounts derived from a Rate Stabilization Fund) which the City is projected to receive in such Fiscal Year will be at least equal to 120% of Debt Service coming due in such Fiscal Year. In computing the amount of Net Revenues which are projected to be received in any Fiscal Year, such report may take into account any Additional Revenues which are projected to be received in such Fiscal Year.

- (c) The trustee or fiscal agent, if any, for such Parity Debt is the same entity performing the functions of Trustee under the Trust Agreement.

SECTION 5.9. *Operation of Enterprises in Efficient and Economical Manner.* The City covenants and agrees to operate the Enterprises in an efficient and economical manner and to operate, maintain and preserve the Enterprises in good repair and working order.

SECTION 5.10. *Compliance with Parity Debt Documents.* The City will observe and perform all of the obligations imposed on it under any Parity Debt Documents. The City shall not take any action which constitutes an event of default under and as defined in any Parity Debt Documents, and shall not take any action which, if not cured, with the passage of time would constitute an event of default under and as defined any Parity Debt Documents.

SECTION 5.11. *Assignment and Amendment Hereof.* This Agreement may not be assigned by the City in whole or in part. This Agreement may be amended by the City and the Corporation, but only (a) for the purpose of providing for the issuance of any Parity Debt under and in accordance with Section 5.8, or (b) otherwise under the circumstances and to the extent permitted under Sections 8.01 or 8.02 of the Trust Agreement.

## **ARTICLE VI**

### **EVENTS OF DEFAULT**

SECTION 6.1. *Events of Default Defined.* The following are Events of Default:

- (a) Failure by the City to pay any Installment Payment when due and payable hereunder.
- (b) Failure by the City to pay any Additional Payment when due and payable hereunder, and the continuation of such failure for a period of 30 days.
- (c) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in the preceding clauses (a) or (b), for a period of 60 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Corporation or the Trustee; *provided, however*, that if the City notifies the Corporation and the Trustee that in its reasonable opinion the failure stated in the notice can be corrected, but not within such 60-day period, such failure will not constitute an event of default hereunder if the City commences to cure such failure within such 60 day period and thereafter diligently and in good faith cures the failure in a reasonable period of time.
- (d) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of

the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

- (e) The occurrence of any event defined to be an event of default under any Parity Debt Documents.

SECTION 6.2. *Remedies on Default.* Whenever any Event of Default has occurred and is continuing, the Trustee as assignee of the Corporation has the right, at its option and without any further demand or notice, to take any one or more of the following actions:

- (a) Declare all principal components of the unpaid Installment Payments, together with accrued interest thereon at the Overdue Rate from the immediately preceding Interest Payment Date on which payment was made, to be immediately due and payable, whereupon the same shall immediately become due and payable. Notwithstanding the foregoing provisions of this subsection (a), however, if, at any time after the principal components of the unpaid Installment Payments have been so declared due and payable under this subsection (a), and before any judgment or decree for the payment of the moneys due has been obtained or entered, the City deposits with the Trustee a sum sufficient to pay all principal components of the Installment Payments coming due prior to such declaration and all matured interest components (if any) of the Installment Payments, with interest on such overdue principal and interest components calculated at the Overdue Rate, and the reasonable expenses of the Trustee (including any fees and expenses of its attorneys), and any and all other defaults known to the Trustee (other than in the payment of the principal and interest components of the Installment Payments due and payable solely by reason of such declaration) have been made good, then, and in every such case, the Trustee will rescind and annul such declaration and its consequences. However, no such rescission and annulment extends to or affects any subsequent default, or impairs or exhausts any right or power consequent thereon. As provided in Section 6.6, the Trustee is required to exercise the remedies provided herein in accordance with the Trust Agreement.
- (b) Take whatever action at law or in equity may appear necessary or desirable to collect the Installment Payments then due or thereafter to become due during the Term of this Agreement, or enforce performance and observance of any obligation, agreement or covenant of the City under this Agreement.
- (c) As a matter of right, in connection with the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and the Certificate Owners hereunder, cause the appointment of a receiver or receivers of the Gross Revenues and other amounts pledged hereunder, with such powers as the court making such appointment may confer.

SECTION 6.3. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive and every such remedy will be cumulative and in addition to every other remedy given under this 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 will be construed to be a waiver thereof. Each right and power may be exercised from time to time and as often as the Trustee deems expedient. In order to entitle the

Corporation to exercise any remedy reserved to it in this Article VI, it is not necessary to give any notice, other than such notice as may be required in this Article VI or by law.

SECTION 6.4. *Agreement to Pay Attorneys' Fees and Expenses.* If either party to this Agreement defaults under any of the provisions hereof and the nondefaulting party, the Trustee or the Owner of any Certificates employs attorneys 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 defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party, the Trustee or such Owner, as the case may be, the reasonable fees of such attorneys and such other expenses so incurred. The provisions of this Section 6.4 survive the expiration of the Term of this Agreement.

SECTION 6.5. *No Additional Waiver Implied by One Waiver.* If any agreement herein is breached by either party and is thereafter waived by the other party, such waiver is limited to the particular breach so waived and does not waive any other breach.

SECTION 6.6. *Trustee and Certificate Owners to Exercise Rights.* Such rights and remedies as are given to the Corporation under this Article VI have been assigned by the Corporation to the Trustee under the Trust Agreement, to which assignment the City hereby consents. The Trustee and the Owners of the Certificates will exercise such rights and remedies as provided in the Trust Agreement.

## **ARTICLE VII**

### **PREPAYMENT OF INSTALLMENT PAYMENTS**

SECTION 7.1. *Security Deposit.* Notwithstanding any other provision hereof, the City may on any date secure the payment of Installment Payments, in whole or in part, by irrevocably depositing with the Trustee an amount of cash which, together with other available amounts, is either (a) sufficient to pay all such Installment Payments, including the principal and interest components thereof, when due under Section 4.4(a), or (b) invested in whole or in part in non-callable Federal Securities in such amount as will, in the opinion of an Independent Accountant (which opinion is addressed and delivered to the Trustee), together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay all such Installment Payments when due under Section 4.4(a) or when due on any optional prepayment date under Section 7.2, as the City instructs at the time of said deposit.

If the City posts a security deposit under this Section for the payment of all remaining Installment Payments, all obligations of the City hereunder, and the pledge of Net Revenues and all other security provided by this Agreement for said obligations, will cease and terminate, excepting only the obligation of the City to make, or cause to be made, all Installment Payments from such security deposit. Said security deposit constitutes a special fund for the payment of such Installment Payments in accordance with the provisions hereof.

SECTION 7.2. *Optional Prepayment.* The City may exercise its option to prepay the principal components of the Installment Payments in whole or in part on any date on which the Certificates are subject to optional prepayment under Section 4.01(a) of the Trust Agreement. Such option shall be exercised by payment of a prepayment price equal to the sum of (a) the aggregate principal components of the Installment Payments to be prepaid, (b) the interest



component of the Installment Payment required to be paid on or accrued to such date, and (c) the premium (if any) then required to be paid upon the corresponding prepayment of the Certificates under Section 4.01(a) of the Trust Agreement. The Trustee will deposit such prepayment price in the Installment Payment Fund to be applied to the prepayment of Certificates under Section 4.01(a) of the Trust Agreement. If the City prepays the Installment Payments in part but not in whole, the principal components will be prepaid among such maturities and in such integral multiples of \$5,000 as the City designates in written notice to the Trustee.

SECTION 7.3. *Credit for Amounts on Deposit.* If the City prepays the Installment Payments in full under this Article VII, such that the Trust Agreement is discharged by its terms, and upon payment in full of all Additional Payments and other amounts then due and payable hereunder, all available amounts then on deposit in the funds and accounts established under the Trust Agreement will be credited towards the amounts then required to be so prepaid.

## ARTICLE VIII

### MISCELLANEOUS

SECTION 8.1. *Further Assurances.* The City will execute and deliver any and all such further agreements, instruments, financing statements or other assurances as may be reasonably necessary or requested by the Corporation or the Trustee to carry out the intention or to facilitate the performance of this Agreement, including, without limitation, to perfect and continue the security interests herein intended to be created.

SECTION 8.2. *Notices.* Any notice, request, complaint, demand or other communication under this Agreement must be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopier or other form of telecommunication, at its number set forth below. Notice is effective either (a) upon transmission by fax or other form of telecommunication, (b) upon actual receipt after deposit in the United States of America mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Corporation, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

*If to the City:* City of Calistoga  
1232 Washington Street  
Calistoga, California 94515  
Attention: City Manager

*If to the Corporation:* Calistoga Public Facilities Corporation  
1232 Washington Street  
Calistoga, California 94515  
Attention: Executive Director

*If to the Trustee:*

MUFG Union Bank, N.A.  
Corporate Trust Services  
350 California Street, 17th Floor  
San Francisco, California 94104  
Fax: 415-273-2492  
Email: CashControlGroup-LosAngeles@unionbank.com

SECTION 8.3. *Governing Law.* This Agreement shall be construed in accordance with and governed by the laws of the State of California.

SECTION 8.4. *Binding Effect.* This Agreement inures to the benefit of and is binding on the Corporation, the City and their respective successors and assigns, subject to the limitations contained herein.

SECTION 8.5. *Severability of Invalid Provisions.* If any one or more of the provisions contained in this Agreement is for any reason held invalid, illegal or unenforceable in any respect, then such provision or provisions will be deemed severable from the remaining provisions contained in this Agreement and such invalidity, illegality or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Corporation and the City each hereby declares that it would have entered into this Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Agreement may be held illegal, invalid or unenforceable.

SECTION 8.6. *Article and Section Headings and References.* The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, are solely for convenience of reference and do not affect the meaning, construction or effect of this Agreement. All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof; and words of the masculine gender shall mean and include words of the feminine and neuter genders.

SECTION 8.7. *Payment on Non-Business Days.* Whenever any payment is required to be made hereunder on a day which is not a Business Day, such payment shall be made on the immediate preceding Business Day.

SECTION 8.8. *Execution of Counterparts.* This Agreement may be executed in any number of counterparts, each of which is an original and all of which together constitute one and the same instrument.

SECTION 8.9. *Waiver of Personal Liability.* No member of the City Council, officer, agent or employee of the City has any individual or personal liability for the payment of Installment Payments or Additional Payments or be subject to any personal liability or accountability by reason of this Agreement. Nothing herein relieves any such member of the City Council, officer, agent or employee from the performance of any official duty provided by law or by this Agreement.

SECTION 8.10. *Trustee as Third Party Beneficiary.* The Trustee is hereby made a third party beneficiary hereof and shall be entitled to the benefits of this Agreement with the same force and effect as if the Trustee were a party hereto.

IN WITNESS WHEREOF, the Corporation and the City have caused this Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

**CALISTOGA PUBLIC FACILITIES CORPORATION,**  
*as Seller*

By \_\_\_\_\_  
Secretary/Treasurer

**CITY OF CALISTOGA,**  
*as Purchaser*

By \_\_\_\_\_  
City Manager

ATTEST:

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

## APPENDIX A

### SCHEDULE OF INSTALLMENT PAYMENTS

#### Aggregate Installment Payments

<u>Installment Payment Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Installment Payment</u>
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#### Installment Payments Attributable to the Wastewater System

<u>Installment Payment Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Installment Payment</u>
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#### Installment Payments Attributable to the Water System

<u>Installment Payment Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Installment Payment</u>
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- (1) Installment Payment Dates are the third (3<sup>rd</sup>) Business Day immediately preceding each Interest Payment Date shown in the table.