

10-16-18 Jones Hall Draft

INSTALLMENT SALE AGREEMENT

This Installment Sale Agreement (this "Agreement"), dated as of November 1, 2018, is between the CITY OF MOUNTAIN VIEW CAPITAL IMPROVEMENTS FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California, as seller (the "Financing Authority"), and the CITY OF MOUNTAIN VIEW, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California, as purchaser (the "City").

B A C K G R O U N D :

1. The City operates an enterprise system for the collection, transmission, treatment and disposal of wastewater within the service area of the City (as defined more completely in this Agreement, the "Wastewater System").

2. The City owns and operates facilities and property for the collection and transmission of wastewater.

3. The City transmits its wastewater for treatment to a system of transmission, treatment and disposal of wastewater (the "Joint System") owned and administered by the City of Palo Alto.

4. The Joint System is governed by an agreement entitled "Basic Agreement Between the City of Palo Alto, the City of Mountain View and the City of Los Altos for Acquisition, Construction and Maintenance of a Joint Wastewater System," dated October 10, 1968 (the "Basic Agreement"), which Basic Agreement has been previously supplemented and amended (as the Basic Agreement has been supplemented or amended, the "Joint Agreement"):

(i) "Addendum No. 1 to Basic Agreement between the City of Palo Alto, the City of Mountain View and the City of Los Altos," dated December 5, 1977;

(ii) "Addendum No. 2 to Basic Agreement between the Cities of Palo Alto, Mountain View, and Los Altos for Acquisition, Construction and Maintenance of a Joint Wastewater System," dated January 14, 1980;

(iii) "Addendum No. 3 to an Agreement by and between the Cities of Palo Alto, Mountain View and Los Altos for Acquisition, Construction and Maintenance of a Joint Wastewater System," dated April 9, 1985;

(iv) "A Industrial Waste Control and Pretreatment Enforcement Agreement by and between the City of Palo Alto and the City of Mountain View, A Contributing Jurisdiction, Supplemental to the Basic Agreement dated October 10, 1968, as amended," dated the October 31, 1989;

(v) "Addendum No. 4 to the Agreement by and between the Cities of Mountain View, Los Altos, and Palo Alto," dated May 30, 1991;

(vi) "Addendum No. 5 to Basic Agreement between the Cities of Palo Alto, Mountain View and Los Altos for Acquisition, Construction and Maintenance of a Joint Wastewater System," dated July 31, 1992;

(vii) "Addendum No. 6 to Basic Agreement between the City of Palo Alto, the City of Mountain View and the City of Los Altos for Acquisition, Construction and Maintenance of a Joint Wastewater System," dated March 16, 1998 (the "Sixth Addendum");

(viii) "Addendum No. Seven to the Basic Agreement between the City of Palo Alto, the City of Mountain View and the City of Los Altos for the Acquisition, Construction and Maintenance of a Joint Wastewater System," dated April 15, 2009; and

(ix) Addendum No. Eight to the Basic Agreement between the City of Palo Alto, the City of Mountain View and the City of Los Altos for the Acquisition, Construction and Maintenance of a Joint Wastewater System," dated October 17, 2016.

5. The City wishes to finance the improvements to the Wastewater System listed on Appendix B (the "Project").

6. The City has determined that to accomplish such financing it is necessary and desirable to purchase the Project from the Financing Authority on an installment basis as provided in this Agreement, and the Financing Authority has agreed to provide the funds required for construction of the Project in consideration of the agreement by the City to enter into this Agreement.

7. The City will agree to make installment payments under this Agreement in order to purchase the Project from the Financing Authority.

8. The obligations of the City under this Agreement will be secured by a pledge of, lien on and security interest in the net revenues of the Wastewater System, as described in this Agreement.

9. The rights, title and interest of the Financing Authority hereunder, including the right to receive the installment payments which are payable by the City hereunder, have been assigned to Opus Bank, a California commercial bank (the "Assignee") under an Assignment Agreement dated the date hereof, between the Financing Authority and the Assignee.

A G R E E M E N T :

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

ARTICLE I

DEFINITIONS AND APPENDICES

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

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

- (i) An allowance for revenues from any additions to or improvements or extensions of the Wastewater System to be constructed with the proceeds of such additional obligations, and also for Net Revenues from any such additions, improvements or extensions which have been constructed from any source of funds but which, during all or any part of such Fiscal Year, were not in service, all in an amount equal to estimated additional average annual Net Revenues to be derived from such additions, improvements and extensions for the first 36-month period following issuance of the proposed Parity Debt, all as shown by the certificate or opinion of a Fiscal Consultant.

- (B) An allowance for earnings arising from any increase in the charges made for service from the Wastewater System which has become effective prior to the incurring of such additional obligations but which, during all or any part of such Fiscal Year, was not in effect, in an amount equal to 100% of the amount by which the Net Revenues would have been increased if such increase in charges had been in effect during the whole of such Fiscal Year and any period prior to the incurring of such additional obligations, as shown by the certificate or opinion of a Fiscal Consultant.

“Arbitrage Rebate Fund” means the fund (if any) which is established and held by the City under Section 5.10(e).

“Assignee” means Opus Bank, a California commercial bank, as assignee of certain rights of the Financing Authority hereunder, its successors and assigns.

“Assignment Agreement” means the Assignment Agreement dated as of November 1, 2018, between the Financing Authority and the Assignee, including any authorized amendments thereto.

“Authorized Amount” means the maximum amount of the purchase price to be funded by the Assignee, which amount shall not exceed \$10,100,000, except as otherwise agreed by the City and Assignee.

“Authorized Representative” means: (a) with respect to the Financing Authority, its President, Vice President, Manager, Treasurer or Secretary, or any other person

designated as an Authorized Representative of the Financing Authority by a Written Certificate of the Financing Authority signed by its President, Manager or Treasurer and filed with the City; and (b) with respect to the City, its City Manager, Finance and Administrative Services Director or any other person designated as an Authorized Representative of the City by a Written Certificate of the City signed by its City Manager or Finance and Administrative Services Director and filed with the Financing Authority.

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

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

“City” means the City of Mountain View, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California.

“Closing Date” means November 7, 2018, being the date of execution and delivery of this Agreement.

“Date of Taxability” means the date from and for the interest component of the Installment Payments is subject to federal or State income taxation as a result of a Determination of Taxability.

“Default Rate” means the interest rate set forth in 4.4(e).

“Determination of Taxability” means and shall be deemed to have occurred on the first to occur of the following:

- (i) on that date when the City files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have occurred;
- (ii) on the date when the Assignee notifies the City that it has received a written opinion from Bond Counsel to the effect that an Event of Taxability has occurred, which notice shall be accompanied by a copy of such opinion of Bond Counsel, unless, within 180 days after receipt by the City of such notification and copy of such opinion from the Assignee, the City shall deliver to the Assignee a ruling or determination letter issued to or on behalf of the City by the Commissioner or any District Director of the Internal Revenue Service (or any other governmental official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;
- (iii) on the date when the City shall be advised in writing by the Commissioner or any District Director of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar

function from time to time) that, based upon any review or audit or upon any other ground whatsoever, an Event of Taxability has occurred; or

- (iv) on that date when the City shall receive notice from the Assignee that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed the interest component of the Installment Payments as includable in the gross income of the Assignee due to the occurrence of an Event of Taxability;

provided, however, that no Determination of Taxability shall occur under subparagraph (iii) or subparagraph (iv) above unless the City has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; *provided further, however*, that upon demand from the Assignee, the City shall reimburse the Assignee for any payments, including any taxes, interest, penalties or other charges, such Assignee shall be obligated to make as a result of the Determination of Taxability.

“Event of Taxability” means a change in law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the City, or the failure to take any action by the City, or the making by the City of any misrepresentation in this Agreement or the certificate regarding federal arbitrage which has been executed and delivered by the City in connection with this Agreement) which has the effect of causing the interest component of the Installment Payments to be includable, in whole or in part, in the gross income of the Assignee for federal income tax purposes.

“Excess Investment Earnings” means an amount required to be rebated to the United States of America under Section 148(f) of the Tax Code due to investment of gross proceeds of the Installment Payments at a yield in excess of the yield on the Installment Payments.

“Event of Default” means an event of default as described in Section 6.1.

“Federal Securities” means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged; and (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are directly or indirectly secured or guaranteed by the full faith and credit of the United States of America.

“Final Funding Request” means the final Funding Request submitted by the City to Assignee pursuant to Section 4.4(c).

“Financing Authority” means the City of Mountain View Capital Improvements Financing Authority, a joint exercise of powers authority formed, operating and acting pursuant to the laws of the State of California.

“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 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 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.

“Fiscal Year” means the twelve-month period beginning on July 1 of any year and ending on June 30 of the next succeeding year, or any other twelve-month period selected by the City as its fiscal year.

“Funding Request” means a written request in the form of Appendix C submitted by the City to Assignee for further funding of the purchase price under Section 4.4(b).

“Governmental Authority” means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other person with authority to bind a party at law.

“Gross Revenues” means all gross income and revenue received by the City from the ownership and operation of its Wastewater System, including, without limiting the generality of the foregoing, (a) all income, rents, rates, fees, connection fees, charges or other moneys derived from the services, facilities and commodities sold, furnished or supplied through the facilities of its Wastewater System, (b) reserves on deposit in the Wastewater Fund, including unrestricted cash available and (c) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to the law to its Wastewater System (including interest earnings on reserves); provided, however, that the term “Gross Revenues” shall not include customers' deposits or any other deposits subject to refund until such deposits have become the property of the City.

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

“Installment Payment Date” means June 1 and December 1 in each year, commencing June 1, 2019.

“Installment Payments” means all payments required to be paid by the City on any date under Section 4.4, including any amounts payable upon delinquent installments and including any prepayment thereof under Sections 7.2 or 7.3.

“Material Adverse Effect” means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business, facilities or operations of the Wastewater System, (b) the ability of the City to operate the Wastewater System in the manner conducted as of the date of this Agreement or to meet or perform its obligations under this Agreement on a timely basis, (c) the validity or enforceability of this Agreement, or (d) the exclusion of the interest component of the Installment Payments from gross income for federal income tax purposes or the exemption of such interest for state income tax purposes.

“Material Litigation” means any action, suit, proceeding, inquiry or investigation against the City in any court or before any arbitrator of any kind or before or by any Governmental Authority, of which the City has notice or knowledge and which, (i) if determined adversely to the City, may have a Material Adverse Effect, (ii) seek to restrain or enjoin any of the transactions contemplated hereby or by this Agreement, or (iii) may adversely affect (A) the exclusion of the interest component of the Installment Payments from gross income for federal income tax purposes or the exemption of such interest for state income tax purposes or (B) the ability of the City to perform its obligations under this Agreement.

“Maximum Annual Debt Service” means, as of the date of any calculation, the maximum sum obtained for the current or any future Fiscal Year during the Term of this Agreement by totaling the following amounts for such Fiscal Year:

- (a) The aggregate amount of the Installment Payments coming due and payable in such Fiscal Year.
- (b) The principal amount of all outstanding Parity Debt, if any, coming due and payable by their terms in such Fiscal Year (including any mandatory sinking fund installments).
- (c) The amount of interest which would be due during such Fiscal Year on the aggregate principal amount of all outstanding Parity Debt, if any, which would be outstanding in such Fiscal Year if such Parity Debt are retired as scheduled. With respect to any Parity Debt the interest on which is computed at a variable rate, such Parity Debt shall be assumed to bear interest at the highest of: (i) the actual rate on the date of calculation, or if the indebtedness is not yet outstanding, the initial rate (if established and binding), (ii) if the indebtedness has been outstanding for at least 12 months, the average rate over the 12 months immediately preceding the date of calculation, or if no debt is outstanding for the 12 months under the authorizing document, the average rate borne by reference to an index comparable to that to be utilized in determining the interest rate for the debt to be issued, and (iii) (A) if interest on the indebtedness is excludable from gross income under the applicable provisions of the Tax Code, the most recently published Bond Buyer “Revenue Bond Index” (or comparable index if no longer published),

or (B) if interest is not so excludable, the interest rate on direct U.S. Treasury obligations having comparable maturities.

Notwithstanding the foregoing:

- (i) if any issue of Parity Debt has more than 25% of the aggregate principal amount thereof coming due in any Fiscal Year, the amount of debt service on such Parity Debt shall be calculated on the assumption that the amount of principal of and interest on such Parity Debt were payable over a 25-year term on a level debt service basis;
- (ii) as to any Parity Debt or portions thereof bearing no interest but which are sold at a discount and which discount accretes with respect to such Bonds or Parity Debt or portions thereof, such accreted discount shall be treated as interest in the calculation of debt service; and
- (iii) the amount on deposit in a debt service reserve fund on any date of calculation of principal of any Parity Debt shall be deducted from the amount of principal due at the final maturity of the Parity Debt for which such debt service reserve fund was established and in each preceding year until such amount is exhausted.

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

“Operation and Maintenance Costs” means all expenses and costs of management, operation, maintenance and repair of the Wastewater System, but excluding debt service or other similar payments on Parity Debt or other obligations and depreciation and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature, and any expense classified as discretionary by Mountain View to the operation of its Wastewater System.

“Parity Debt” means (i) the City’s Proportionate Share of Debt Service pursuant to the Joint Agreement and (ii) any bonds, notes, loans, leases, installment sale agreements or other obligations of the City payable from and secured by a pledge of and lien upon any of the Net Revenues on a parity with the Installment Payments, entered into or issued under and in accordance with Section 5.8.

“Parity Debt Documents” means, collectively, (i) the Joint Agreement and (ii) the indenture of trust, trust agreement or other document authorizing the issuance of any Parity Debt or any securities which evidence Parity Debt.

“Project” means, collectively, the facilities, improvements and other property constituting part of the Wastewater System, the acquisition and construction of which are financed in accordance with this Agreement, as described more fully in Appendix B attached hereto, as that Appendix may be amended from time to time.

“Project Costs” means all costs of the acquisition, construction and installation of the Project, including but not limited to:

- (a) all costs required to be paid to any person under the terms of any agreement for or relating to the acquisition, construction and installation of the Project;
- (b) obligations incurred for labor and materials in connection with the acquisition, construction and installation of the Project;
- (c) the cost of performance or other bonds and any and all types of insurance that may be necessary or appropriate to have in effect in connection with the acquisition, construction and installation of the Project;
- (d) all preliminary costs of the Project, including but not limited to design, environmental, engineering and architectural services, costs for testing, surveys, estimates, plans and specifications and preliminary investigations therefor, development fees and costs for supervising construction, as well as for the performance of all other duties required by or consequent to the proper acquisition, construction and installation of the Project;
- (e) any sums required to reimburse the City for advances made for any of the above items or for any other costs incurred and for work done which are properly chargeable to the acquisition, construction and installation of the Project;
- (f) all financing costs incurred in connection with the acquisition, construction and installation of the Project; and
- (g) the interest components of the Installment Payments during the period of acquisition, construction and installation of the Project.

“Project Fund” means the fund or account by that name established and held by the City under Section 3.3.

“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 Wastewater System, which fund is established, held and maintained in accordance with Section 4.6. *The provisions of this Agreement related to the Rate Stabilization Fund shall be effective upon amendment of the Joint Agreement either to incorporate or consent to such provisions.*

“Restricted Project Fund” means the fund or account by that name, if any, established and held in the name of the City under Section 3.3.

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

regulations promulgated, and applicable official guidance published, under the Tax Code.

“Taxable Rate” means 4.63%.

“Term” means the time during which this Agreement is in effect, as provided in Section 4.3.

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

“Wastewater System” means any and all properties and assets, real and personal, tangible and intangible, of the City, now or hereafter existing, used or pertaining to the disposal or reuse of wastewater, including sewage treatment plants, intercepting and collecting sewers, outfall sewers, force mains, pumping stations, ejector stations, pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, treatment, purification or disposal of sewage, and any necessary lands, rights of way and other real or personal property useful in connection therewith, and all additions, extensions, expansions, improvements and betterments thereto and equipments thereof, including the Project.

“Wastewater System Obligations” means all debt obligations of the City which are payable from Gross Revenues or Net Revenues, including but not limited to the Installment Payments, Parity Debt and subordinate obligations.

SECTION 1.2. *Appendices.* The following Appendices are attached to, and by this reference are made a part of, this Agreement:

Appendix A: Amortization Schedule

Appendix B: Description of Project

Appendix C: Funding Request

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

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

- (a) The City is a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California, and is empowered, among other things, to maintain and operate the Wastewater System and to acquire in the name of the City any interest in real or personal property necessary or convenient for the operation of the Wastewater System.

- (b) The laws of the State authorize the City to enter into this Agreement, and to enter into the transactions contemplated hereby and to carry out its obligations hereunder.
- (c) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a material 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.
- (d) The City has duly authorized, executed and delivered this Agreement in accordance with the laws of the State of California. This Agreement is legal, valid and binding obligation of the City, enforceable in accordance with its terms, subject only to laws related to insolvency or bankruptcy and general equitable principles.
- (e) There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, educational 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 and the Assignment Agreement or upon the financial condition, assets, properties or operations of the City and the City's ability to make the Installment Payments, 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, educational or other Governmental Authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement and the Assignment Agreement or the financial conditions, assets, properties or operations of the City.
- (f) During the term of this Agreement, the Project will be used by the City only for the purpose of the Wastewater System.
- (g) The statement of financial position of the Wastewater System as of June 30, 2017, and the related statement of activities and statement of cash flows and changes in financial position for the year then ended and the auditors' reports with respect thereto, copies of which have heretofore been furnished to the Assignee, are complete and correct and fairly present the financial condition, changes in financial position and results of operations of the Wastewater System at such date and for such period, and were prepared in accordance with generally accepted accounting principles. Since the most current date of the information, financial or otherwise, supplied by the City to the Assignee:

- (i) There has been no change in the assets, liabilities, financial position or results of operations of the Wastewater System that might reasonably be anticipated to cause a Material Adverse Effect.
 - (ii) The Wastewater System has not incurred any obligations or liabilities which might reasonably be anticipated to cause a Material Adverse Effect.
 - (iii) The Wastewater System has not (A) incurred any material indebtedness, other than the Installment Payments or as previously disclosed to Assignee, and trade accounts payable arising in the ordinary course of the City's business and not past due, or (B) guaranteed the indebtedness of any other person.
- (h) All information, reports and other papers and data furnished by the City to the Assignee were, at the time the same were so furnished, complete and accurate in all material respects and insofar as necessary to give the Assignee a true and accurate knowledge of the subject matter and were provided in expectation of the Assignee' reliance thereon in entering into the transactions contemplated by this Agreement. No fact is known to the City which has had or, so far as the City can now reasonably foresee, may in the future have a Material Adverse Effect, which has not been set forth in the financial statements previously furnished to the Assignee or in other such information, reports, papers and data or otherwise disclosed in writing to the Assignee prior to the Closing Date. Any financial, budget and other projections furnished to the Assignee by the City or its or their agents were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of the conditions existing at the time of delivery of such financial, budget or other projections, and represented, and as of the date of this representation, represent the City's best estimate of the Wastewater System's future financial performance. No document furnished nor any representation, warranty or other written statement made to the Assignee in connection with the negotiation, preparation or execution of this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state (as of the date made or furnished) any material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were or will be made, not misleading.
- (i) The City has structured fees, estimated revenues and/or taken other lawful actions necessary to ensure that the pledge of and lien on Net Revenues are sufficient to pay all Installment Payments when due and payable, and such moneys have been and will continue to be applied in the funds and accounts as required herein and towards payment of all Installment Payments when due and payable.

- (j) The City has an immediate need for, and expects to make immediate use of, the Project, which need is not temporary or expected to diminish during the Term of this Agreement. To the extent the City is or may be required to use additional revenues or spend additional money to complete the Project or make the Project useable, the City represents, warrants and covenants to take all required actions to complete the Project and make the Project useable. The City presently intends to continue this Agreement and make all Installment Payments required hereunder for the entire Term of this Agreement.
- (k) The City acknowledges that (i) Opus Bank, as the Assignee under the Assignment Agreement, is acting solely for its own loan account and not as a fiduciary for the City or in the capacity of broker, dealer, placement agent, municipal securities underwriter or municipal advisor, (ii) the Assignee has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of the City or with respect to the Installment Payments, and (iii) the Assignee has expressed no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, or the correctness of any legal interpretation made by counsel to any other party with respect to any such matters.

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

- (a) The Financing Authority is a joint exercise of powers authority duly organized, operating and existing under the laws of the State of California; has all requisite powers and authority to enter into this Agreement and the Assignment Agreement; is possessed of full power and authority to own and hold real and personal property, and to sell the same; and has duly authorized the execution and delivery of this Agreement and the Assignment Agreement.
- (b) Neither the execution and delivery of this Agreement and the Assignment 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 material breach of the terms, conditions or provisions of any restriction or any agreement, instrument, regulation or law to which the Financing Authority is now a party or by which the Financing Authority is bound, or constitutes a default under any of the foregoing.
- (c) The Financing Authority has good and marketable title to the Project, which is otherwise free and clear of encumbrances, except as previously disclosed to the Assignee and the City.

- (d) The Financing Authority has duly authorized, executed and delivered this Agreement in accordance with the laws of the State of California. This Agreement is legal, valid and binding obligation of the Financing Authority, enforceable in accordance with its terms, subject only to laws related to insolvency or bankruptcy and general equitable principles.
- (e) The Financing Authority shall cooperate fully with the Assignee at the expense of the City in filing any proof of loss with respect to any insurance policy maintained pursuant to Article V of this Agreement and shall cooperate fully with the City in contesting any lien filed or established against the Project, upon the request and at the expense of the City pursuant to Article V of this Agreement.

ARTICLE III

SALE OF PROJECT TO FINANCING AUTHORITY; DEPOSIT AND APPLICATION OF SALE PROCEEDS; ACQUISITION AND CONSTRUCTION OF THE PROJECT

SECTION 3.1. *Sale of Project to Financing Authority; Deposit of Moneys.* The City hereby sells and conveys the Project to the Financing Authority, and the Financing Authority hereby purchases the Project from the City. The purchase price shall be the amount funded by the Assignee on a draw-down basis as described in Section 4.4(b).

On the Closing Date, the Financing Authority shall cause the Assignee to fund an initial amount of the purchase price, which the City will apply as set forth in Section 3.2 and Section 3.3.

All amounts subsequently funded by the Assignee pursuant to Section 4.4(b) shall be deemed to have been paid by the Financing Authority to the City and shall be deposited with the Assignee for deposit in the Project Fund or the Restricted Project Fund, as applicable.

SECTION 3.2. *Payment of Financing Costs.* On the Closing Date, \$_____ of the purchase price that is initially funded by Assignee shall be applied to pay the financing costs identified by the City in a written requisition submitted by the City on the Closing Date.

SECTION 3.3. *Project Fund and Restricted Project Fund.*

(a) The City shall establish and maintain an interest-bearing account with the Assignee that is designated as the "Project Fund".

(b) On the Closing Date, the Financing Authority shall cause \$_____ of the amount initially funded by Assignee to be deposited into the Project Fund, which amount will be used to pay the costs under Section 3.2 and to pay Project Costs.

Additional amounts may be deposited into the Project Fund pursuant to Sections 4.4(b) and 4.4(c).

(c) The City may elect in the Final Funding Request to have any portion or all of the undrawn portion of the Authorized Amount deposited into the Restricted Project Fund. The City shall establish and maintain an interest-bearing account with the Assignee that is designated as the "Restricted Project Fund". Amounts may be deposited into and withdrawn from the Restricted Project Fund pursuant to Section 4.4(c).

(d) Except as otherwise provided herein, moneys in the Project Fund and Restricted Project Fund shall be used solely for the payment of (or reimbursement to the City for) the Project Costs. The City shall maintain accurate records showing all disbursements from the Project Fund and Restricted Project Fund.

SECTION 3.4. *Construction of the Project.* The Financing Authority hereby appoints the City as its agent to carry out all phases of the acquisition, construction and installation of the Project under and in accordance with the provisions hereof. The City hereby accepts such appointment and assumes all rights, liabilities, duties and responsibilities of the Financing Authority regarding the acquisition, construction and installation of the Project. As agent of the Financing Authority hereunder, the City shall enter into, administer and enforce all purchase orders or other contracts relating to the Project.

Payment of Project Costs shall be made by the City from amounts requisitioned from the Project Fund or Restricted Project Fund, as applicable, in accordance with the provisions of this Agreement. If and to the extent the amounts on deposit in the Project Fund or Restricted Project Fund, as applicable, are insufficient to enable the City to complete the Project in full, the City has the sole responsibility for completing the Project and the City will finance such completion from any source of legally available funds of the City.

The City hereby agrees with due diligence to supervise and provide for, or cause to be supervised and provided for, the acquisition, construction and installation of the Project in accordance with the plans and specifications, purchase orders, construction contracts and other documents relating thereto and approved by the City under all applicable requirements of law. All contracts for, and all work relating to, the acquisition, construction and installation of the Project are subject to all applicable provisions of law relating to the acquisition and construction of public works by the City. The City has the right to specify the exact scope, nature and identification of the Project and the respective components thereof, and to modify the description of the Project or any component thereof.

The failure to complete the Project by its estimated completion date does not constitute an Event of Default hereunder or a ground for termination hereof, nor will any such failure result in the diminution, abatement or extinguishment of the obligations of the City hereunder to pay the Installment Payments when due. Nothing contained herein shall be deemed to be waiver of the Financing Authority's or the Assignee's rights and remedies should the City fail to complete the Project and to complete other improvement and modification of the Project as represented, warranted and covenanted herein.

Upon the completion of the Project, but in any event not later than 30 days following such completion, the City shall execute and deliver to the Assignee a written certificate which states that the acquisition, construction and installation of the Project has been completed. All amounts in the Project Fund or Restricted Project Fund, as applicable, not required for payment of future Project Costs will be applied by the City to pay the principal portion of the Installment Payments in inverse order of maturity in accordance with Section 7.2.

ARTICLE IV

INSTALLMENT SALE OF PROJECT TO CITY; INSTALLMENT PAYMENTS

SECTION 4.1. *Sale of Project to City.* The Financing Authority hereby sells and conveys the Project back to the City, and the City hereby purchases the Project from the Financing Authority upon the terms and conditions set forth in this Agreement.

SECTION 4.2. *Title; Taxes.* Title to the Project shall be vested in the City on the Closing Date. The Financing Authority shall take all actions necessary to vest in the City all of the Financing Authority's rights in and title to the Project. Such title shall be held by the City in trust pending the satisfaction of the payment obligations under this Agreement.

The parties to this Agreement contemplate that the Project will be used for a governmental or proprietary purpose of the City and, therefore, that the Project will be exempt from all property taxes, including any licensing fees. The Installment Payments payable by the City under this Agreement have been established to reflect the savings resulting from this exemption from taxation. The City will take such actions necessary under applicable law to obtain said exemption. Nevertheless, if the use, possession or acquisition of the Project is determined to be subject to taxation, or licensing fees, or later becomes subject to such taxes, or licensing fees, the City shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to the Project.

SECTION 4.3. *Term of this Agreement.* The Term of this Agreement commences on the Closing Date and ends on December 1, 2033 (provided the City has paid all Installment Payments and other amounts due hereunder through such date), unless such term is extended or sooner terminated as hereinafter provided.

SECTION 4.4. *Installment Payments.*

(a) Obligation to Pay. The City agrees to pay to the Financing Authority, its successors and assigns, as the purchase price of the Project, the Installment Payments, consisting of components of principal and interest, on the Installment Payment Dates.

The Installment Payments shall be secured by and payable from Net Revenues as hereinafter provided.

The amount of each Installment Payment shall be specified by Assignee in a written invoice to City at least 10 Business Days prior to each Installment Payment Date, which invoice shall include sufficient detail for City to verify the calculated amount of the Installment Payment.

Except as otherwise provided in this Agreement, the interest components of the Installment Payments shall be calculated based on the unpaid principal components of the Installment Payments at an interest rate of 3.36% per annum, on the basis of a 360-day year of twelve 30-day months. Any Installment Payment which is not paid in full on the applicable Installment Payment Date shall accrue interest at the Default Rate, subject to the provisions of Article VI.

From and after the Date of Taxability, if applicable, the interest rate with respect to the Installment Payments shall increase to the Taxable Rate. The City shall inform the Assignee promptly upon the occurrence of a Determination of Taxability.

The principal component of each Installment Payment shall be set forth in the amortization schedule attached as Appendix A. The initial amortization schedule included in Appendix A on the Closing Date reflects the assumption that all of the Authorized Amount has been requested by the City and funded by Assignee. Following the Final Funding Request, the initial amortization schedule will be replaced with a final amortization schedule to be mutually agreed by the Assignee and the City that reflects the amount actually funded by Assignee.

(b) Initial Funding of the Purchase Price; Additional Funding. On the Closing Date, Assignee shall fund an initial amount of the purchase price for the Project as set forth in Section 3.2 and Section 3.3. The initial principal component of the Installment Payments shall be the amount funded by Assignee on the Closing Date. Thereafter, the City may cause an increase in the funded amount of the purchase price and a corresponding deposit into the Project Fund or Restricted Project Fund, as applicable, in an amount that does not result in the aggregate amount of deposits into the Project Fund and Restricted Project Fund to exceed the Authorized Amount.

The City may ask the Assignee to increase the funded amount of the purchase price once each month over an 18-month period, commencing on the Closing Date, by submitting to Assignee a Funding Request, substantially in the form attached hereto as Appendix C, which Funding Request must be approved by the Assignee. Provided that all conditions are met as set forth therein, the Assignee shall approve all Funding Requests submitted by the City in substantially the form of Appendix C. Any such funded amounts shall be deposited into the Project Fund or Restricted Project Fund, as applicable, as set forth in the Funding Request. The Assignee shall fund the draws within three (3) Business Days of receiving the requests in the form acceptable to the Assignee. Following each such increase in the funded amount of the purchase price, the funded amount shall be added to the outstanding principal amount of the Installment Payments and shall begin to accrue interest as described in subsection (a) above.

Amounts deposited in the Project Fund may be withdrawn from the Project Fund by the City to pay Project Costs without further approval from Assignee.

(c) Final Funding Request. On or before May 1, 2020, the City shall submit the Final Funding Request to Assignee, in which the City shall notify Assignee that it elects one or more of the following:

(i) the City does not intend to increase the funded amount of the purchase price pursuant to this Section 4.4,

(ii) the City wishes to relinquish some of the unfunded Authorized Amount,

(iii) the City wishes to draw all or a remaining portion of the Authorized Amount for deposit in the Project Fund, and

(iv) the City wishes to draw all or a remaining portion of the Authorized Amount for deposit in the Restricted Project Fund.

Amounts deposited in the Restricted Project Fund may be withdrawn by the City to pay Project Costs only after the City provides the Assignee with the supporting evidence required by Appendix C.

If the City notifies Assignee that it elects the option described in clause (i) or clause (ii) of the first sentence of this Section 4.4(c), the amount not so advanced shall lapse and apply against the principal portion of the Installment Payments in inverse order and the total amount advanced, including the amount of such final advance, shall be the total principal component of the Installment Payments.

(d) Reduction Upon Partial Prepayment. If the City prepays less than all of the remaining principal components of the Installment Payments under Article VII, the amount of such prepayment shall be applied to the Installment Payments in inverse order of maturity.

(e) Rate on Overdue Payments. If the City fails to make any of the payments required in this Section on or before the due date therefor, the Installment Payment in default shall continue as an obligation of the City until the amount in default shall have been fully paid and the City agrees to pay the same with interest thereon, to the extent permitted by law, from the date thereof at the Default Rate, or, if lower, the maximum rate then permitted by law.

(f) Assignment. The City understands and agrees that all Installment Payments have been assigned by the Financing Authority to the Assignee under the Assignment Agreement, and the City hereby assents to such assignment. The Financing Authority hereby directs the City, and the City hereby agrees, to pay to the Assignee all payments payable by the City under this Section and all amounts payable by the City under Article VII.

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

(a) Pledge. All of the Net Revenues are hereby irrevocably pledged, charged and assigned to the punctual payment of the Installment Payments. Such pledge, charge and assignment constitutes a lien on the Net Revenues for the payment of the Installment Payments in accordance with the terms hereof, which lien shall be on a parity with the pledge and lien which secures any Parity Debt. The Net Revenues shall

constitute a trust fund for the security and payment of the Installment Payments and any Parity Debt.

(b) Deposit of Net Revenues Into Wastewater Fund; Transfers to Make Payments. The City has previously established the Wastewater Fund, which the City shall continue to hold and maintain for the purposes and uses set forth herein. The City shall deposit all Gross Revenues in the Wastewater Fund immediately on receipt. The City shall apply amounts in the Wastewater Fund as set forth in this Agreement and any Parity Debt Documents. Amounts on deposit in the Wastewater Fund shall be applied by the City to pay when due the following amounts in the following order of priority:

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

For each Fiscal Year, after the City has made any required payments described in clauses (i) through (iv) above, any remaining Net Revenues in the Wastewater Fund shall be released from the lien of this Agreement and shall be available for any lawful purpose of the City.

(c) 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 Net Revenues on deposit in the Wastewater Fund are at any time insufficient to enable the City to pay when due the Installment Payments and the principal of and interest on any Parity Debt, such payments will be made on a pro rata basis.

(d) Other Uses of Net Revenues Permitted. The City shall manage, conserve and apply the Net Revenues on deposit in the Wastewater Fund in such a manner that all deposits required to be made under the preceding subsection (b) will be made at the times and in the amounts so required. Subject to the foregoing sentence and the terms, conditions and covenants contained herein, so long as no Event of Default has occurred and is continuing, the City may use and apply moneys in the Wastewater Fund for (i) the payment of any subordinate obligations or any unsecured obligations, (ii) the acquisition and construction of improvements to the Wastewater System, (iii) the prepayment of any other obligations of the City relating to the Wastewater System, or (iv) any other lawful purposes of the City.

(e) Budget and Appropriation of Installment Payments. During the Term of this Agreement, the City shall adopt all necessary budgets and make all necessary appropriations of the Installment Payments from the Net Revenues. If any Installment

Payment requires the adoption by the City of a supplemental budget or appropriation, the City shall promptly adopt the same. The covenants on the part of the City contained in this subsection (e) are non-cancellable obligations and duties imposed by law and it is the duty of each and every public official of the City to take such actions and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this subsection (e).

SECTION 4.6. *Establishment of Rate Stabilization Fund. The provisions of this Agreement related to the Rate Stabilization Fund shall be effective upon amendment of the Joint Agreement either to incorporate or consent to such provisions.*

The City has the right at any time to establish a fund to be held by it and administered in accordance with this Section, for the purpose of stabilizing the rates and charges imposed by the City with respect to the Wastewater System. 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 required to, withdraw from any amounts on deposit in the Rate Stabilization Fund and deposit such amounts in the Wastewater Fund in any Fiscal Year for the purpose of paying any lawful expenses of the Wastewater System, including the Installment Payments and any Parity Debt. Amounts so transferred from the Rate Stabilization Fund to the Wastewater Fund constitute Gross Revenues for the Fiscal Year (except as otherwise provided herein), and shall be applied for the purposes of the Wastewater Fund. Amounts on deposit in the Rate Stabilization Fund may not be pledged to or otherwise secure the Installment Payments or any Parity Debt. All interest or other earnings on amounts in the Rate Stabilization Fund shall be retained therein or, at the option of the City, be applied for any other lawful purposes. The City has the right at any time to withdraw any or all amounts on deposit in the Rate Stabilization Fund and apply such amounts for any 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 shall be a special obligation of the City limited solely to the 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, and no other funds or property of the City are liable for the payment of the Installment Payments.

The obligation of the City to pay the Installment Payments, and the obligation of the City to perform and observe the other agreements contained herein, are absolute and unconditional and are not subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach of the Financing Authority or the Assignee of any obligation to the City or otherwise with respect to the Wastewater System, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Financing Authority or the Assignee. Until such time as all of the Installment Payments have been fully paid or prepaid, the City:

- (i) will not suspend or discontinue payment of any Installment Payments,
- (ii) will perform and observe all other agreements contained in this Agreement, and
- (iii) 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 Wastewater System, the sale of the Wastewater System, the taking by eminent domain of title to or temporary use of any component of the Wastewater System, commercial frustration of purpose, any change in the tax or other laws of the United States of America or the State of California or any political subdivision of either thereof or any failure of the Financing Authority to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement.

ARTICLE V

COVENANTS OF THE CITY

SECTION 5.1. *Disclaimer of Warranties.* Neither the Financing Authority nor the Assignee makes any 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 Project or any component thereof, or any other representation or warranty with respect to any of the Project or any component thereof. In no event is the Financing Authority or the Assignee liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Agreement for the existence, furnishing, functioning or use of the Project.

SECTION 5.2. *Release and Indemnification Covenants.* The City agrees to indemnify the Financing Authority and the Assignee, 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 Wastewater System or the selection, construction or sale of the Project by or to the City, its employees, agents, contractors, vendors, and subcontractors;
- (b) any breach or default on the part of the City in the performance of any of its representation, warranties, covenants, and obligations under this Agreement,
- (c) any act or omission of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Wastewater System or the Project,

- (d) any act or omission of any lessee of the City with respect to the Wastewater System or Project;
- (e) Any loss, claim, damage to the environment relating to the Project or the Wastewater System, including but not limited to any investigation, cleanup, remedial, or other costs; and
- (f) any strict liability under the laws or judicial decisions of any state or the United States.

No indemnification is made under this Section or elsewhere in this Agreement for willful misconduct or negligence under this Agreement by the Financing Authority or the Assignee, or their respective officers, agents, employees, successors or assigns. The provisions of this Section survive the expiration of the Term of this Agreement.

SECTION 5.3. *Sale or Eminent Domain of Wastewater System.* Except as provided herein, the City covenants that the Wastewater System will 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 any Wastewater System Obligations, 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 Wastewater System or any part of it necessary to secure adequate Net Revenues to pay the Installment Payments or any Parity Debt, or which otherwise would impair the rights of the Financing Authority with respect to the Net Revenues.

If any substantial part of the Wastewater System is sold, the payment therefor shall, with the prior written consent of the Assignee, either (a) be used for the acquisition or construction of improvements and extensions or replacement facilities or (b) be applied on a pro rata basis to prepay the Installment Payments and any Parity Debt on the next available prepayment date.

Any amounts received as awards as a result of the taking of all or any part of the Wastewater System 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, with the prior written consent of the Assignee, either (a) be used for the acquisition or construction of improvements and extension of the Wastewater System, or (b) be applied on a pro rata basis to prepay the Installment Payments and any Parity Debt on the next available prepayment date.

SECTION 5.4. *Insurance.* The City shall at all times maintain with responsible insurers all such insurance on the Wastewater System as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to the Wastewater System. Such insurance shall include coverage for casualty losses to the facilities constituting part of the Wastewater System. All amounts collected from insurance against accident to or destruction of any portion of the Wastewater System shall, with the prior written consent of the Assignee, either (a) be used to repair or rebuild such damaged or destroyed portion of the Wastewater System, or (b) be applied

on a pro rata basis to prepay the Installment Payments and any Parity Debt on the next available prepayment date.

The City shall also maintain, with responsible insurers, worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the interests of the City and the Financing Authority.

Any policy of insurance required under this Section 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. The City shall file evidence of all insurance policies maintained under this Section at least annually with the Financing Authority and the Assignee.

SECTION 5.5. *Records and Accounts.* The City shall keep proper books of record and accounts of the Wastewater System in which complete and correct entries shall be made of all transactions relating to the Wastewater System. Said books shall, upon prior request, be subject to the reasonable inspection of the Financing Authority upon not less than two Business Days' prior notice to the City.

The City shall cause the books and accounts of the Wastewater System to be audited annually by an Independent Accountant by no later than the April that immediately succeeds the close of each Fiscal Year, and shall file a copy of such report with the Financing Authority. Such report may be part of a combined financial audit or report covering all or part of the City's finances.

SECTION 5.6. *Rates and Charges.*

(a) 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 (excluding any amounts derived from the Rate Stabilization Fund) sufficient to pay the following amounts in the following order of priority:

- (i) All Operation and Maintenance Costs estimated by the City to become due and payable in the Fiscal Year.
- (ii) All Installment Payments and all payments of principal of and interest on any Parity Debt as they become due and payable during the Fiscal Year, without preference or priority. If interest with respect to any Parity Debt is computed at a variable rate, the amount required to be taken into account for any Fiscal Year under this Section shall be the actual rate borne by such Parity Debt during such Fiscal Year.
- (iii) All payments required to meet any other obligations of the City which are charges, liens, encumbrances upon, or which are otherwise payable from, the Gross Revenues or the Net Revenues during such Fiscal Year.

(b) In addition, 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 sufficient to yield Net Revenues which are at least equal to 125% of the aggregate amount of the Installment Payments and payments on Parity Debt coming due in the Fiscal Year.

The provisions of this Agreement related to the Rate Stabilization Fund shall be effective upon amendment of the Joint Agreement either to incorporate or consent to such provisions. For purposes of this Section 5.6(b), (i) any transfers into the Wastewater Fund from the Rate Stabilization Fund during a Fiscal Year are included in the calculation of Gross Revenues for that Fiscal Year, and (ii) any deposits into the Rate Stabilization Fund in a Fiscal Year are deducted from Gross Revenues, but only to the extent that such deposits are made from Gross Revenues received by the City during that Fiscal Year.

SECTION 5.7. *Superior and Subordinate Obligations.* The City may not issue or incur any additional bonds or other obligations during the Term of this Agreement having any preference or priority in payment of principal or interest out of the Gross Revenues or the Net Revenues over the Installment Payments.

Nothing herein limits or affects the ability of the City to issue or incur (a) Parity Debt under and in compliance with Section 5.8, or (b) obligations which are either unsecured or which are secured by an interest in the Net Revenues which is junior and subordinate to the pledge of and lien upon the Net Revenues established hereunder so long as the Net Revenues (excluding any amounts derived from a Rate Stabilization Fund), calculated in accordance with generally accepted accounting principles, as shown by the books of the City for the most recent completed Fiscal Year for which audited financial statements of the City are available, or for any more recent consecutive 12-month period selected by the City ending not more than sixty (60) days prior to the adoption of the resolution authorizing the subordinate obligation, in either case verified by an Independent Accountant or a Fiscal Consultant or shown in the audited financial statements of the City, plus (at the option of the City) any Additional Revenues, are at least equal to 100% of Maximum Annual Debt Service and Maximum Annual Debt Service on all subordinate obligations (taking into account the subordinate obligation then proposed to be issued)..

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; and
- (b) the Net Revenues (excluding any amounts derived from a Rate Stabilization Fund), calculated in accordance with generally accepted accounting principles, as shown by the books of the City for the most recent completed Fiscal Year for which audited financial statements of the City are available, or for any more recent consecutive 12-month period selected by the City ending not more than sixty (60) days prior to the adoption of the resolution authorizing the Parity Debt, in either case verified by an Independent Accountant or a Fiscal Consultant or shown in the

audited financial statements of the City, plus (at the option of the City) any Additional Revenues, are at least equal to 125% of Maximum Annual Debt Service (taking into account the Parity Debt then proposed to be issued).

SECTION 5.9. *Operation of Wastewater System in Efficient and Economical Manner.* The City shall operate the Wastewater System in an efficient and economical manner and maintain and preserve the Wastewater System in good repair and working order.

SECTION 5.10. *Tax Covenants.*

(a) Generally. The City shall not take any action or permit to be taken any action or omission which would cause or which, with the passage of time if not cured would cause, the interest components of the Installment Payments to become includable in gross income of the Financing Authority or its Assignee for federal income tax purposes.

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

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

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

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

The City may in its discretion establish and maintain a special fund designated as the “Arbitrage Rebate Fund”. The City shall deposit into the Arbitrage Rebate Fund any amounts provided by the City for that purpose. Amounts on deposit in the Arbitrage Rebate Fund shall be disbursed by the City for the purpose of making payments of Excess Investment Earnings in accordance with this subsection (e). If the City determines that any amounts held by it in the Arbitrage Rebate Fund are not required to make payments of Excess Investment Earnings, the City may apply amounts in the Arbitrage Rebate Fund for any other lawful purposes of the City.

(f) Record Retention. The City will retain its records of all accounting and monitoring it carries out with respect to this Agreement for at least three years after the

payment or prepayment in full of the Installment Payments, whichever is earlier, or for such lesser period of time as may be permitted under the Tax Code.

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

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

SECTION 5.11. *Disclaimer of Warranties.* THE FINANCING AUTHORITY 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 FOR THE PROJECT, THE WASTEWATER SYSTEM OR ANY ITEM THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROJECT, THE WASTEWATER SYSTEM OR ANY ITEM THEREOF. IN NO EVENT SHALL THE FINANCING AUTHORITY BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT FOR THE EXISTENCE, FURNISHING, FUNCTIONING OR CITY'S USE OF THE PROJECT OR THE WASTEWATER SYSTEM.

SECTION 5.12. *Access to the Wastewater System and Records.* To the extent permitted by law, the City agrees that the Financing Authority, any Authorized Representative of the Financing Authority, and the Financing Authority's successors or assigns, including the Assignee, shall have the right at all reasonable times to enter upon and to examine and inspect the Wastewater System. The City further agrees that the Financing Authority, any Authorized Representative of the Financing Authority, and the Financing Authority's successors or assigns, including the Assignee, shall have such

rights of access to the Wastewater System as may be reasonably necessary to cause the proper maintenance of the Wastewater System in the event of failure by the City to perform its obligations hereunder. In addition, the City agrees that the Financing Authority, any Authorized Representative of the Financing Authority, and the Financing Authority's successors or assigns, including the Assignee, shall have the right at all reasonable times to inspect and examine all books, papers and records of the City pertaining to the Wastewater System, to make copies thereof and to take non-privileged memoranda therefrom or with respect thereto as may be desired.

SECTION 5.13. *Assignment by the Financing Authority.* The rights and interest of the Financing Authority in this Agreement and the Installment Payments have been assigned to the Assignee under the Assignment Agreement, to which assignment the City hereby consents. In no event is the City required to allocate any Installment Payment among more than one person or entity or make a payment to more than one address or wire transfer destination, and the person or entity to whom Installment Payments are to be made shall be authorized to give all consents and approvals to be obtained from the Financing Authority hereunder on behalf of and for all transferees. No further action will be required by the Financing Authority, any other owner of an interest therein or the City to evidence any such assignment, but the City shall acknowledge each such assignment in writing if so requested and shall keep a complete and accurate record of all such assignments in a manner that complies with section 149(a) of the Tax Code and the regulations thereunder. Nothing contained herein shall be deemed to be restriction on the sale or assignability of this Agreement or the rights of the Assignee hereunder. However, the Assignee agrees to reasonably comply with all applicable rules, laws and regulations, which may from time to time affect the assignability of this Agreement and the right to receive Installment Payments made hereunder.

SECTION 5.14. *Reporting and Filing Requirements.* During the Term of this Agreement, the City shall make the following filings with the Assignee:

- (a) Audited Financial Statements. The City shall file with the Assignee the City's audited financial statements that include the accounting of the Wastewater System for each Fiscal Year for which they are prepared in accordance with Section 5.5, by no later than the April 1 that immediately succeeds the close of such Fiscal Year.
- (b) Annual Budgets. The City shall file with the Assignee the preliminary annual budget that includes the budget for the Wastewater System for each Fiscal Year along with the resolution of the City Council approving the final such budget within 30 days of the adoption but not more than 30 days after the commencement of such Fiscal Year.
- (c) Certificate of Compliance with Rate Covenant. The City shall file with the Assignee a Certificate of the City stating that it is in compliance with the covenants set forth in Section 5.6 relating to the rates and charges for the Wastewater System for each Fiscal Year, by no later than the April 1 that immediately succeeds the close of such Fiscal Year.
- (d) Event of Default. The City shall immediately notify the Assignee by email, promptly confirmed in writing, of any event, action or failure to take any action which constitutes an Event of Default under this Agreement, together

with a detailed statement by an Authorized Representative of the City of the steps being taken by the City to cure the effect of such Event of Default.

- (e) Action, Suit or Proceeding. The City shall promptly notify the Assignee in writing (i) of any action, suit or proceeding or any investigation, inquiry or similar proceeding by or before any court or other Governmental Authority, domestic or foreign, against the City or any of the Wastewater System or the Gross Revenues which involve claims equal to or in excess of \$1,000,000 or that seeks injunctive relief that would have a Material Adverse Effect or (ii) of any loss or destruction of or damage to any portion of the Wastewater System in excess of \$1,000,000.
- (f) Material Litigation. The City shall promptly notify the Assignee in writing of any Material Litigation, or any investigation, inquiry or similar proceeding by any Governmental Authority with respect to any matter that could have a Material Adverse Effect.
- (g) Cancellation of Insurance or Loss. The City shall promptly notify the Assignee in writing in the event of any termination or cancellation of any insurance policy which the City is required to maintain under this Agreement, or any uninsured or partially uninsured loss through liability or property damage, or through fire, theft or any other cause affecting the Wastewater System in excess of an aggregate of \$1,000,000.
- (h) Additional Information. The City shall file with the Assignee such additional information as the Assignee may reasonably request in writing, within a reasonable period of time after the receipt of such written request by the City.

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

SECTION 6.1. *Events of Default Defined.* Any one or more of the following events shall constitute Events of Default hereunder:

- (a) Failure by the City to pay any Installment Payment by the Installment Payment Date or failure to make any other payment required to be paid hereunder at the time specified herein.
- (b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed in this Agreement, including failure to provide financial information, other than as referred to in clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Assignee or the Financing Authority; *provided, however*, that if the failure stated in the notice cannot be corrected within the applicable period, the Financing Authority and the Assignee shall not unreasonably

withhold their consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected, provided that such period shall not extend beyond 60 days.

- (c) The filing by the City of a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or the approval by a court of competent jurisdiction of a petition filed with or without the consent of the City seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction assumes custody or control of the City or of the whole or any substantial part of its property.
- (d) The occurrence of any event defined to be an event of default under any Parity Debt Documents.
- (e) Any statement, representation or warranty made by the City in or pursuant to this Agreement or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made.

SECTION 6.2. *Remedies on Default.* Whenever any Event of Default has happened and is continuing, the Financing Authority shall have the right, at its option and without any further demand or notice, to:

- (a) declare all principal components of the unpaid Installment Payments, together with accrued interest thereon to be immediately due and payable, whereupon the same shall become due and payable; and
- (b) apply to and obtain from any court of competent jurisdiction such decree or order as may be necessary to require officials of the City to charge and collect rates for services provided by the City and the Wastewater System sufficient to meet all requirements of this Agreement; and
- (c) take whatever action at law or in equity, including specific enforcement, mandamus, or any equitable remedies available, as may be desirable and permitted by law 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.

In addition, the City is liable for, and hereby agrees to pay, all legal costs and expenses, including court costs, incurred by the Financing Authority or the Assignee in the enforcement of any of the remedies listed above or any other remedy available to the Financing Authority.

So long as there has occurred and is continuing an Event of Default, the interest under this Agreement shall accrue, at the option of the Assignee, at the Default Rate.

SECTION 6.3. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Financing Authority is intended to be exclusive and every such remedy shall be cumulative and shall be 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 shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Financing Authority to exercise any remedy reserved to it in this Article VI it shall not be necessary to give any notice, other than such notice as may be required in this Article VI or by law.

SECTION 6.4. *Prosecution and Defense of Suits.* The City shall promptly, upon request of the Financing Authority, the Assignee, or its assignee, from time to time take or cause to be taken such action as may be necessary or proper to remedy or cure any defect in or cloud upon the title to the Wastewater System whether now existing or hereafter developing and shall prosecute all such suits, actions and other proceedings as may be appropriate for such purpose.

SECTION 6.5. *No Additional Waiver Implied by One Waiver.* If any agreement contained in this Agreement is breached by either party and thereafter waived by the other party, such waiver is limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

SECTION 6.6. *Liability Limited to Net Revenues.* Notwithstanding any provision of this Agreement, the City's liability to pay the Installment Payments and other amounts hereunder is limited solely to Net Revenues as provided in Article IV. If the Net Revenues are insufficient at any time to pay an Installment Payment in full, the City is not liable to pay or prepay such Installment Payment other than from Net Revenues.

SECTION 6.7. *Rights of Assignee.* Such rights and remedies as are granted to the Financing Authority under this Article VI or under this Agreement shall be exercised by the Assignee, as assignee of the rights of the Financing Authority hereunder, in accordance with the provisions of the Assignment Agreement.

ARTICLE VII

PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 7.1. *Prepayment.* The City has the right to prepay the Installment Payments, but only in the manner, at the times and in all respects in accordance with the provisions of this Article VII.

SECTION 7.2. *Optional Prepayment.* The City has the right at its option to prepay the Installment Payments in whole or in part, on any date on or after December 1, 2028, without premium. Notwithstanding the preceding sentence, the City may prepay the

Installment Payments in part, on any date once each calendar year, in an annual amount not to exceed 10% of the remaining principal component of Installment Payments, without premium, as long as the prepayment is not funded from the proceeds of Wastewater System Obligations or any other borrowing.

Prepayments of Installment Payments in part shall be applied to the principal component of remaining Installment Payments in inverse order of maturity.

Notice of prepayment, which may be conditioned upon receipt of funds, shall be given by the City not less than 30 days prior to the prepayment date, to the Financing Authority and the Assignee at their respective addresses set forth in Section 8.1 or at such other address as is furnished to the City in writing by the Financing Authority or the Assignee. Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Financing Authority or the Assignee receives such notice.

If notice of prepayment is given as aforesaid, the Installment Payments shall become due and payable at the prepayment price and on the Installment Payment Date therein designated and if, on the Installment Payment Date, money for the payment of the prepayment price have been paid, then from and after the prepayment date, interest on the principal amount of the Installment Payments, shall cease to accrue and become payable.

SECTION 7.3. *Prepayment From Net Proceeds of Insurance or Eminent Domain.* The City may prepay the unpaid principal balance of the Installment Payments in whole or in part, on any date, if and to the extent the City (with the prior written consent of the Assignee) determines to apply any proceeds of insurance award or condemnation award with respect to the Wastewater System for such purpose in accordance with Sections 5.3 or 5.4, at a prepayment price equal to 100% of the principal amount to be prepaid plus accrued interest to the prepayment date, without premium.

SECTION 7.4. *No Surrender of Agreement Required.* No surrender of this Agreement shall ever be required as a condition for payment or otherwise. The Financing Authority, the City, and the Assignee agree that this Agreement shall terminate, excepting those provisions expressly surviving termination of this Agreement, at the earliest of as provided in Section 4.3 or as provided in Article VII.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.1. *Notices.* All notices, certificates or other communications hereunder shall be in writing and shall be deemed to have been properly given on the earlier of (i) when delivered in person, (ii) the third Business Day following deposit in the United States Mail, with adequate postage, and sent by registered or certified mail, with return receipt requested to the appropriate party at the address set forth below, or (iii) the first Business Day following deposit with Federal Express, Express Mail or other overnight delivery service for next day delivery, addressed to the appropriate party at the address set out below.

If to the City: City of Mountain View
500 Castro St.
Mountain View, CA 94041
Attention: Finance and Administrative Services
Director

If to the Financing Authority: City of Mountain View Capital Improvements
Financing Authority
500 Castro St.
Mountain View, CA 94041
Attention: Treasurer

If to the Assignee: Opus Bank
131 W. Commonwealth Ave.
Fullerton, CA 92832
DL-LoanServiceDepartment@opusbank.com
Fax: (714) 578-7518
Loan #: 530000007635

The Financing Authority, the City and the Assignee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

SECTION 8.2. *Third Party Beneficiary.* The Assignee is hereby made a third-party beneficiary under this Agreement with all rights of a third-party beneficiary.

SECTION 8.3. *Binding Effect.* This Agreement inures to the benefit of and is binding upon the Financing Authority, the City and the Assignee, and their respective successors and assigns.

SECTION 8.4. *Severability.* If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

SECTION 8.5. *Amendments Changes and Modifications.* This Agreement may be amended or any of its terms modified with the written consent of the City and the Financing Authority.

SECTION 8.6. *Net Contract.* This Agreement shall be deemed and construed to be a "net contract" and the City hereby agrees that the Installment Payments shall be an absolute net return to the Financing Authority, free and clear of any expenses, charges or set-offs whatsoever.

SECTION 8.7. *Further Assurances and Corrective Instruments.* The Financing Authority and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project hereby sold or intended so to be or for carrying out the expressed intention of this Agreement.

SECTION 8.8. *Execution in Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 8.9. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 8.10. *Financing Authority and City Representatives.* Whenever under the provisions of this Agreement the approval of the Financing Authority or the City is required, or the Financing Authority or the City is required to take some action at the request of the other, such approval or such request shall be given for the Financing Authority by an Authorized Representative of the Financing Authority and for the City by a City Representative, and any party hereto shall be authorized to rely upon any such approval or request.

SECTION 8.11. *Defeasance.* If and when all of the Installment Payments shall be paid in any one or more of the following ways:

- (a) by paying or causing to be paid the principal of and interest and prepayment premium (if any) with respect to the Installment Payments as and when the same become due and payable in good and indefeasible funds via check or wire transfer as may from time to time be directed by the Assignee or any subsequent Assignee;
- (b) with the prior written consent of the Assignee or any subsequent Assignee, which shall not unreasonably be withheld, by depositing with an escrow agent or other fiduciary, in trust, at or before the final stated Installment Payment Date, money which is fully sufficient to pay and discharge the Installment Payments, including all principal and interest and prepayment premium, (if any) at or before their respective Installment Payment Dates;
- (c) with the prior written consent of the Assignee or any subsequent Assignee, which shall not unreasonably be withheld, by depositing with an escrow agent or other fiduciary, in trust, Federal Securities in such amount as an independent certified public accountant shall determine in writing will, together with the interest to accrue thereon and without reinvestment, be fully sufficient to pay and discharge the Installment Payments, including all principal and interest and prepayment premium, (if any), at or before their respective Installment Payment Dates; or
- (d) with the prior written consent of the Assignee or any subsequent Assignee, which shall not unreasonably be withheld, by depositing with an escrow agent or other fiduciary, under an escrow deposit and trust agreement, security for the payment and discharge of the Installment Payments, including all principal and interest and prepayment premium (if any) in form and substance acceptable to the Financing Authority, or its assign, in its sole discretion, said security to be applied to pay the Installment Payments, including all

principal and interest and prepayment premium (if any) in full on the earliest possible date;

all obligations of the City with respect to this Agreement shall cease and terminate and this Agreement shall be discharged, except for any provision herein which expressly states that it survives termination. The City shall provide to the Financing Authority and the Assignee 30 days prior written notice of its intent to discharge its obligations with respect to this Agreement by satisfying the conditions of this Section, and shall provide the Financing Authority and the Assignee with an opinion of Bond Counsel stating that (i) the deposit and application of funds under this Section does not, of itself, cause the interest components of the Installment Payments to be includable in gross income for federal tax purposes, and (ii) as a result of the deposit and application of funds under this Section, all obligations of the City with respect to this Agreement have ceased and terminated and this Agreement has been discharged.

SECTION 8.12. *Captions.* The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision, Article or Section of this Agreement.

SECTION 8.13. *Dispute Resolution.*

- (a) *Judicial Reference.* Prior to the initiation of any action, proceeding or hearing (hereinafter, a "Claim") based upon or arising out of, directly or indirectly, this Agreement or any of the related documents, any dealings between the City or the Assignee relating to the subject matter of the transactions contemplated by this Agreement or any related transactions, and/or the relationship that is being established between the City and the Assignee, the City and the Assignee hereby agree to participate in nonbinding mediation of the Claim in Santa Clara County before a retired state or federal judge mutually agreed to by the parties. The mediation proceeding shall be conducted within thirty (30) days or any mutually agreed upon longer time after referral by City or Assignee, and shall continue until such times as (1) the dispute is resolved; or (2) the date either party concludes, in good faith, that mediation is no longer a satisfactory remedy. All costs of mediation shall be shared equally by both parties involved. Each party shall bear its own attorney fees and costs related to the mediation. In the event the parties are unable to resolve the dispute through mediation, then in addition to any other remedies, either party may initiate a legal action.
- (b) *Provisional Remedies, Self Help and Foreclosure.* No provision of this Section 8.13 shall limit the right of either the City or the Assignee, as the case may be, to (i) exercise such self-help remedies as might otherwise be available under applicable law, or (ii) obtain or oppose provisional or ancillary remedies, including without limitation injunctive relief, writs of possession, the appointment of a receiver, and/or additional or supplementary remedies from a court of competent jurisdiction before, after, or during the pendency of any mediation. The exercise of, or opposition to, any such remedy does not waive the right of the City or the Assignee to participate in the nonbinding mediation pursuant to Section 8.13(a).

IN WITNESS WHEREOF, the Financing Authority has caused this Agreement to be executed in its name by its duly authorized officers; and the City has caused this Agreement to be executed in its name by its duly authorized officers, as of the date first above written.

**CITY OF MOUNTAIN VIEW CAPITAL
IMPROVEMENTS FINANCING
AUTHORITY, as Seller**

By _____
Manager

CITY OF MOUNTAIN VIEW, as Purchaser

By _____
Finance and Administrative Services
Director

ATTEST:

By _____
City Clerk

**ACKNOWLEDGED AND AGREED AS TO
SECTION 4.4:**

OPUS BANK, as Assignee

By _____
Dmitry Semenov, Senior Managing Director,
Public Finance

APPENDIX A
AMORTIZATION SCHEDULE

(As of _____, 2018)

<u>Payment Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Aggregate Installment Payment</u>
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Note: This amortization schedule included in Appendix A on the Closing Date reflects the assumption that all of the Authorized Amount has been requested by the City and funded by Assignee. It is intended for illustrative purposes. Prior to the City's submission of the Final Funding Request, the actual amounts of each Installment Payment shall be as notified by the Assignee to the City under Section 4.4(a). Following the Final Funding Request, this initial amortization schedule will be replaced with a final amortization schedule that reflects the amount actually funded by Assignee.

APPENDIX B

DESCRIPTION OF PROJECT

Middlefield Road Sewer Replacement
Interceptor Force Trunk Main Rehabilitation
San Antonio Sewer Improvements
Long Term Sewage Pump Station Repairs
Water/Sewer Main Replacement Crossing Highway 101
Such other projects identified by the City Manager for financing

APPENDIX C

FUNDING REQUEST NO. _____
OPUS BANK LOAN # _____

The undersigned hereby states and certifies that:

(i) I am the duly appointed, qualified and acting _____ of the City of Mountain View, a charter city and municipal corporation duly organized and existing under the Constitution and the laws of the State of California (the "City") and as such, am familiar with the facts herein certified and am authorized to certify the same;

(ii) I am an "Authorized Representative," as such term is defined in that certain Installment Sale Agreement, dated as of November 1, 2018 (the "Installment Sale Agreement"), by and between the City and City of Mountain View Capital Improvements Financing Authority ("Financing Authority").

(iii) Under Section 4.4(b) of the Installment Sale Agreement, the City may request additional funding of the purchase price of the Project (as defined in the Installment Sale Agreement) by submitting a Funding Request (as defined in the Installment Sale Agreement) that has been approved by Opus Bank (the "Assignee"), the assignee under the Assignment Agreement dated as of November 1, 2018, between the Financing Authority and the Assignee.

[(iv) This Funding Request is not the final Funding Request. Under Section 4.4(b) of the Installment Sale Agreement, the undersigned hereby requests that Assignee fund the sum of \$_____ to the City. The amounts funded by Assignee shall be deposited into the Project Fund (Opus Bank Account # _____).

The amount requested for funding shall be spent on Project Costs (as defined in the Installment Sale Agreement) or used to reimburse the City for Project Costs previously paid for by the City. The supporting evidence for each requested Project Cost item is enclosed. No portion of the amount herein requested to be disbursed was set forth in any Requisition or Funding Request previously submitted to Assignee by City.]

[(iv) This Funding Request constitutes the final Funding Request. Under Section 4.4(c) of the Installment Sale Agreement, the undersigned hereby requests the following (please mark one or more of the following options with an X to the extent applicable):

_____ That Assignee fund the sum of \$_____ to the City. The amounts funded by Assignee shall be deposited into the Project Fund (Opus Bank Account # _____). The amount requested for funding shall be spent on Project Costs (as defined in the Installment Sale Agreement) or used to reimburse the City for Project Costs previously paid for by the City. The supporting evidence for each requested Project Cost item is enclosed. No portion of the amount herein requested to be disbursed was set forth in any Requisition or Funding Request previously submitted to Assignee by City.

_____ That Assignee fund the sum of \$_____ to the City. The amounts funded by Assignee shall be deposited into the Restricted Project Fund (Opus Bank Account # _____). The City agrees to submit to the Assignee the supporting evidence for each requested Project Cost item for which such supporting evidence is not currently available, at which point an amount equal to such Project Costs will be released from the Restricted Project Fund.

_____ The City hereby relinquishes _____ of the remaining Authorized Amount.

(v) After Assignee funds the amount requested in this Funding Request, the total amount funded by Assignee will be \$_____.

(vi) No Event of Default has occurred or is continuing under the Installment Sale Agreement and each representation and warranty set forth in the Installment Sale Agreement remains true and correct except for such representations and warranties that are no longer true due to the passage of time.

Dated: _____

CITY OF MOUNTAIN VIEW

By: _____

Its: _____

Acknowledged and Accepted:
OPUS BANK,

By: _____

Its: _____