

CITY OF YUBA CITY
STAFF REPORT

Date: March 21, 2017

To: Honorable Mayor & Members of the City Council, and
Chairman & Members of the Board of the Public Financing Authority

From: Finance Department

Presentation by: Robin Bertagna, CPA, Finance/IT Director

Summary

Subject: Financing Water System Energy Facilities

Recommendation:

- A. Acting as the City Council and Public Financing Authority authorize the issuance of Clean and Renewable Energy Bonds (CREBs) to finance energy improvements at the City's water plant
- B. Adopt a Resolution of the Board of Directors of the Yuba City Public Approving Documents and Actions Relating to the Financing of Water System Energy Facilities
- A. Adopt a Resolution of the City Council of the City of Yuba City Approving Documents and Actions Relating to the Financing of Water System Energy Facilities
- B. Approve the Installment Sale Agreement and the Assignment Agreement

Fiscal Impact: The net savings to the Water Fund, after debt service, are projected to be approximately \$550,000 over the 20-year useful life of the battery storage project

Purpose:

Reduce operating expenses for the City's Water Fund through a reduction in annual expenses for electricity.

Background:

The California Public Utilities Commission ("CPUC") now mandates time of use ("TOU") pricing for electric rates for non-residential customers, such as the City of Yuba City's water treatment plant. In October 18, 2016, the Council approved a contract with OpTerra Energy Services to develop a battery storage facility at the City's water treatment plant capable of providing power to the plant during daily periods of peak TOU pricing (the "Project"). The City submitted a successful application for a clean and renewable energy bond allocation ("CREB") in October 2016 for \$2,124,216. The CREB is a low-cost tax credit bond that will allow the City to finance the Project.

Analysis:

The Project is projected by OpTerra Energy Services to save the Water Fund approximately \$550,000 over its 20-year useful life. Actual energy cost savings will be a function of actual energy

costs and the final CREB effective interest rate determined at the time of sale. The CREB is a taxable municipal bond that carries a higher nominal interest rate than the tax-exempt water revenue bonds previously sold by the City. However, CREBs receive a reimbursement from the Internal Revenue Service after each payment representing a portion of the interest payment. The reimbursement from the IRS will vary depending on whether there is continued sequestration but is anticipated to be between 50% to 70% of the semi-annual interest payment due on CREB. The City's finance team estimates a taxable rate on the CREB of 5%. With the IRS subsidy, the actual net interest rate would be about 2.5%. This rate is significantly lower than it would be if the City sold tax exempt bonds not subject to the CREBs reimbursement from the IRS.

Note that there is no legal guarantee that the IRS will make the reimbursement payments for the full term of the debt. The reimbursement payments are subject to annual appropriation by Congress. The related bond documents will contain provisions that allow the City to call the bonds early (refinance them or pay them off using reserve funds) if the IRS subsidy isn't approved by Congress or drops below expected levels for any reason.

The City's finance team recommends that this debt obligation be financed through a private placement, due to its relatively small size and unique characteristics. The City has engaged Stifel Nicolaus to serve as a placement agent who will solicit bids from a number of interested banks. Bids will be sought for both 15 and 20-year maturities.

Bond Issuance:

At this time, the Board of Directors for the Public Financing Authority and the City Council of the City of Yuba City will consider taking action to adopt resolutions for the proposed CREB for the water treatment plant battery storage facility.

This document has been thoroughly reviewed by City staff, the City's municipal advisor, and bond counsel. Should the City Council and the Public Financing Authority approve the attached resolutions, the financing is anticipated to close prior to April 18, 2017, which is the expiration date of the CREB allocation. Given the private placement recommendation for the CREB, no preliminary official statement or disclosure document is required as part of the approval process.

Fiscal Impact:

As noted above, OpTerra Energy Services projects that the Project will result in net savings to the Water Fund of approximately \$550,000 over the 20-year useful life of the Project.

Alternatives:

Do not proceed with the financing and discontinue the Project with OpTerra Energy Services. If this option is chosen, the Water Fund will receive no net savings in operating expenses.

Recommendation:

- A. Acting as the City Council and Public Financing Authority authorize the issuance of Clean and Renewable Energy Bonds (CREBs) to finance energy improvements at the City's water plant
- B. Adopt a Resolution of the Board of Directors of the Yuba City Public Approving Documents and Actions Relating to the Financing of Water System Energy Facilities
- C. Adopt a Resolution of the City Council of the City of Yuba City Approving Documents and Actions Relating to the Financing of Water System Energy Facilities
- D. Approve the Installment Sale Agreement and the Assignment Agreement

Attachments:

- **Authorizing Resolution for the Yuba City Public Financing Authority.** The CREB is legally structured as an installment sale of the Project between the Yuba City Public Financing Authority, as the lessor, and the City of Yuba City, as the lessee, the Public Financing Authority must approve the transaction as well as the City Council.
- **Authorizing Resolution for the City of Yuba City.** The authorizing resolution for the City approves the transaction in the amount of \$2,124,216, as well as the installment sale agreement and the assignment agreement. The resolution also names the firm of Stifel Nicolaus as placement agent for the purpose of securing bids from investors, NHA Advisors, as municipal advisor to the City, and Jones Hall, as bond counsel for the City.
- **Installment Sale Agreement.** This document sets forth the basic terms and conditions for the CREB. The obligation to make installment sale payments is solely secured by a pledge of net revenues of the water utility.
- **Assignment Agreement.** This document transfers the right to receive installment sale payments from the City from the Public Financing Authority to the investor who purchases the CREB.

Prepared By:

/s/ Robin Bertagna

Robin Bertagna, CPA
Finance/IT Director

Reviewed By:

City Attorney

Submitted By:

/s/ Steven C. Kroeger

Steven C. Kroeger
City Manager

BY EMAIL

RESOLUTION NO. ____

RESOLUTION OF THE BOARD OF DIRECTORS OF THE YUBA CITY PUBLIC FINANCING AUTHORITY APPROVING DOCUMENTS AND ACTIONS RELATING TO THE FINANCING OF WATER SYSTEM ENERGY FACILITIES

WHEREAS, the City of Yuba City (the “City”) owns and operates facilities and property for the supply, treatment and distribution of water within the service area of the City (the “Water System”), and the City wishes to provide funds for the acquisition, construction and installation of certain improvements to the Water System, consisting generally of energy storage facilities at the water treatment plant (the “Water Energy Project”); and

WHEREAS, the City has received an allocation from the Internal Revenue Service to finance the Water Energy Project through the issuance of new clean renewable energy bonds under Section 54C of the Internal Revenue Code of 1986, as amended, in the aggregate principal amount of \$2,124,216; and

WHEREAS, the Board of Directors of the Authority has been presented with a financing plan for the installment sale financing of the Water Energy Project on a private placement basis, through the use of an installment sale agreement between the City and the Yuba City Public Financing Authority (the “Authority”); and

WHEREAS, the final form of the legal documentation relating to the financing has been prepared by bond counsel, and the Board of Directors of the Authority wishes at this time to approve such legal documentation;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Yuba City Public Financing Authority as follows:

SECTION 1. Approval of Installment Sale Agreement. The Board of Directors hereby approves the Installment Sale Agreement relating to the financing of the Water Energy Project, between the City and the Authority, in the form thereof on file with the Secretary together with any changes therein or additions thereto deemed advisable by the Executive Director or the Treasurer (each, an “Authorized Officer”), and the execution thereof by the Chair or the Executive Director shall be conclusive evidence of the approval of any such changes or additions. The Chair and the Executive Director are each hereby authorized and directed for and in the name and on behalf of the Authority to execute, and the Secretary is hereby authorized and directed to attest, the final form of the Installment Sale Agreement.

SECTION 2. Assignment by the Authority. The Board of Directors hereby approves the assignment by the Authority of its rights under the Installment Sale Agreement, including the right to receive the Installment Payments, to Branch Banking & Trust or its designee; provided that in the event such entity fails to provide financing for any reason, an Authorized Officer is hereby directed to designate another bank, investment banking firm or other financial institution to serve as lender for the financing. Such assignment shall be made pursuant to the terms and provisions of the Assignment Agreement between the Authority and the lender in the form thereof on file with the

Secretary together with any changes therein or additions thereto deemed advisable by an Authorized Officer; provided that the execution thereof by the Chair or the Executive Director shall be conclusive evidence of the approval of any such changes or additions. The Chair and the Executive Director are each hereby authorized and directed for and in the name and on behalf of the Authority to execute, and the Secretary is hereby authorized and directed to attest, the final form of the Assignment Agreement.

SECTION 3. Professional Services. The firm of Stifel, Nicolaus & Company, Incorporated is hereby designated to serve as placement agent, the firm of NHA Advisors is hereby designated to serve as financial advisor, and the firm of Jones Hall, A Professional Law Corporation, is hereby designated to serve as Bond Counsel to the City and the Authority in connection with the financing transactions described in this Resolution. An Authorized Officer is hereby authorized and directed to execute an agreement with each of such firms in the forms on file with the Secretary.

SECTION 4. Official Actions. The Chair, the Executive Director, the Treasurer, the Secretary, the Authority Attorney and all other officers of the Authority are each authorized and directed in the name and on behalf of the Authority to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they or any of them deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution. Whenever in this resolution any officer of the Authority is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf if such officer is absent or unavailable.

SECTION 5. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

* * * * *

The foregoing resolution was adopted at a regular meeting of the Board of Directors of the Yuba City Public Financing Authority held on March 21, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Stanley Cleveland, Jr., Chair
Yuba City Public Financing Authority

ATTEST:

Patricia Buckland, Secretary
Yuba City Public Financing Authority

RESOLUTION NO. ____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY APPROVING DOCUMENTS AND ACTIONS RELATING TO THE FINANCING OF WATER SYSTEM ENERGY FACILITIES

WHEREAS, the City of Yuba City (the “City”) owns and operates facilities and property for the supply, treatment and distribution of water within the service area of the City (the “Water System”), and the City wishes to provide funds for the acquisition, construction and installation of certain improvements to the Water System, consisting generally of energy storage facilities at the water treatment plant (the “Water Energy Project”); and

WHEREAS, the City has received an allocation from the Internal Revenue Service to finance the Water Energy Project through the issuance of new clean renewable energy bonds under Section 54C of the Internal Revenue Code of 1986, as amended, in the aggregate principal amount of \$2,124,216; and

WHEREAS, the City Council has been presented with a financing plan for the installment sale financing of the Water Energy Project on a private placement basis, through the use of an installment sale agreement between the City and the Yuba City Public Financing Authority (the “Authority”); and

WHEREAS, the final form of the legal documentation relating to the financing has been prepared by bond counsel, and the City Council wishes at this time to approve such legal documentation;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Yuba City as follows:

SECTION 1. Approval of Installment Sale Agreement. The City Council hereby approves the Installment Sale Agreement relating to the financing of the Water Energy Project, between the City and the Authority, in the form thereof on file with the City Clerk together with any changes therein or additions thereto deemed advisable by the City Manager or the Finance Director (each, an “Authorized Officer”); provided that the execution thereof by the Mayor or the City Manager shall be conclusive evidence of the approval of any such changes or additions. The Mayor and the City Manager are each hereby authorized and directed for and in the name and on behalf of the City to execute, and the City Clerk is hereby authorized and directed to attest, the final form of the Installment Sale Agreement.

SECTION 2. Assignment by the Authority. The City Council hereby approves the assignment by the Authority of its rights under the Installment Sale Agreement, including the right to receive the Installment Payments, to Branch Banking & Trust or its designee; provided that in the event such entity fails to provide financing for any reason, an Authorized Officer is hereby directed to designate another bank, investment banking firm or other financial institution to serve as lender for the financing. Such assignment shall be made pursuant to the terms and provisions of the Assignment Agreement between the Authority and the lender in the form thereof on file with the City Clerk, which is hereby approved.

SECTION 3. Professional Services. The firm of Stifel, Nicolaus & Company, Incorporated is hereby designated to serve as placement agent, the firm of NHA Advisor is hereby designated to serve as financial advisor, and the firm of Jones Hall, A Professional Law Corporation, is hereby designated to serve as Bond Counsel to the City and the Authority in connection with the financing transactions described in this Resolution. An Authorized Officer is hereby authorized and directed to execute an agreement with each of such firms in the forms on file with the City Clerk.

SECTION 4. Official Actions. The Mayor, the City Manager, the Finance Director, the City Clerk, the City Attorney and all other officers of the City are each authorized and directed in the name and on behalf of the City to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they or any of them deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution. Whenever in this resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf if such officer is absent or unavailable.

SECTION 5. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

* * * * *

The foregoing resolution was adopted at a regular meeting of the City Council of the City of Yuba City held on March 21, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Stanley Cleveland, Jr., Mayor
City of Yuba City

ATTEST:

Patricia Buckland, City Clerk
City of Yuba City

INSTALLMENT SALE AGREEMENT

This INSTALLMENT SALE AGREEMENT (this "Agreement"), dated as of April __, 2017, is between the YUBA CITY PUBLIC FINANCING AUTHORITY, a public body corporate and politic duly organized and existing under the laws of the State of California, as seller (the "Authority"), and the CITY OF YUBA CITY, a municipal corporation duly organized and existing under the laws of the State of California, as purchaser (the "City").

B A C K G R O U N D :

1. The City owns and operates facilities and property for the supply, treatment and distribution of water within the service area of the City (the "Water System"), and the City wishes to provide funds for the acquisition, construction and installation of certain improvements to the Water System, consisting generally of energy storage facilities at the water treatment plant (the "Project").

2. The City has received an allocation from the Internal Revenue Service to finance the Project through the issuance of new clean renewable energy bonds under Section 54C of the Internal Revenue Code of 1986, as amended.

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

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

5. 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 Water System on a parity with certain outstanding obligations of the City, as well as by refundable credit payments which are received by the City under the new clean renewable energy bond program.

6. The rights, title and interest of the Authority hereunder, including the right to receive the installment payments which are payable by the City hereunder, have been assigned to _____ (the "Assignee") under an Assignment Agreement dated the date hereof, between the 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 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:

- (a) An allowance for Net Revenues from any additions or improvements to or extensions of the Water System to be made by the City during the 36 month period following the issuance of such Parity Debt, in an amount equal to 100% of the estimated additional average annual Net Revenues to be derived from all properties which are improved with a structure the construction of which has been completed prior to the date of issuance of such Parity Debt and to which service will be provided by such additions, improvements and extensions, all as shown by the certificate or opinion of a Financial Consultant.
- (b) An allowance for Net Revenues arising from any increase in the charges made for service from the Water System which has become effective prior to the incurring of such Parity Debt but which, during all or any part of 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 under Section 5.08(b), was not in effect, in an amount equal to the total 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 or 12-month period, all as shown by the certificate or opinion of a Financial Consultant.

“Assignee” means _____, as assignee of certain rights of the Authority hereunder, its successors and assigns.

“Assignment Agreement” means the Assignment Agreement dated as of April __, 2017, between the Authority and the Assignee, including any authorized amendments thereto.

“Authority” means the Yuba City Public Financing Authority, a public body corporate and politic duly organized and existing under Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the California Government Code, and under the laws of the State of California.

“Authorized Representative” means: (a) with respect to the Authority, its Executive Director, Treasurer or any other person designated as an Authorized Representative of the Authority by a Written Certificate of the Authority signed by its Executive Director and filed with the City; and (b) with respect to the City, its City Manager, Finance 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 and filed with the Authority.

“Available Project Proceeds” means (a) the proceeds of this Agreement, (b) less financing costs of this Agreement which are paid from such proceeds (not exceeding 2% of the proceeds of this Agreement), plus (iii) investment earnings on the difference between (a) - (b).

“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 Yuba City, a municipal corporation duly organized and existing under the laws of the State of California.

“Closing Date” means April __, 2017, being the date of execution and delivery of this Agreement.

“Default Rate” means [to be provided by the Assignee].

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

“Expenditure Period” means the “expenditure period” defined in Section 54A(d)(2)(B)(ii) of the Tax Code and consists of the period beginning on the date of execution and delivery of this Agreement and ending on the later of the date three years after the date of execution and delivery of this Agreement or such later date, if any, as permitted by the Internal Revenue Service in response to a request to extend the Expenditure Period.

“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.

“Fiscal Consultant” means any consultant or firm of such consultants appointed by the City and who, or each of whom:

- (a) is judged by the City to have experience in matters relating to the financing of water 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.

“Gross Revenues” means all gross charges (including surcharges, if any) received for, and all other gross income and receipts derived by the City from, the ownership and operation of the Water System or otherwise arising from the Water System, including but not limited to (a) connection charges, (b) any amounts transferred to the Water Fund from a Rate Stabilization Fund, and (c) investment earnings on amounts held in the Water Fund or in any other fund established with respect to the Water System.

Gross Revenues do not include (i) refundable deposits made to establish credit, (ii) the proceeds of any *ad valorem* property taxes, (iii) the proceeds of any special assessments or special taxes levied upon real property within any improvement district served by the City for the purpose of paying special assessment bonds or special tax obligations of the City relating to the Water System, and (iv) revenues which have been levied for the sole purpose of paying debt service on any portion of the SRF Loans.

“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 December 1, 2017.

“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, 7.3 or 7.4.

“Maximum Annual Debt Service” means, as of the date of any calculation, the maximum sum obtained for the current or any future Fiscal Year so long as any of the Installment Payments remain unpaid by totaling the following amounts for such Fiscal Year:

- (a) the aggregate amount of Installment Payments coming due and payable in such Fiscal Year; and
- (b) the aggregate amount of Net Debt Service on the SRF Loans coming due and payable in such Fiscal Year.
- (c) the aggregate amount of principal of and interest on all outstanding Parity Debt coming due and payable by their terms in such Fiscal

Year, including the principal of any Parity Debt coming due and payable by operation of mandatory sinking fund redemption.

“Net Debt Service on the SRF Loans” means, with respect to any period, the amount of principal and interest coming due and payable on the SRF Loans during such period, excluding the portion thereof for which the City has levied a charge which may only be used for the purpose of paying such portion of principal and interest.

“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 the reasonable and necessary costs and expenses paid by the City for maintaining and operating the Water System, including but not limited to (a) the reasonable expenses of management and repair and other costs and expenses necessary to maintain and preserve the Water System in good repair and working order and (b) the reasonable administrative costs of the City attributable to the operation and maintenance of the Water System; but in all cases excluding (i) interest expense relating to subordinate obligations and unsecured obligations of the City, (ii) depreciation, replacement and obsolescence charges or reserves therefor, and (iii) amortization of intangibles or other bookkeeping entries of a similar nature.

“Parity Debt” means, collectively, all of the following outstanding obligations of the City which are payable from and secured by a pledge of and lien on the Net Revenues on a parity with the pledge and lien which secures the Installment Payments:

- (a) the City of Yuba City 2013 Water Revenue Refunding Bonds issued in the aggregate principal amount of \$21,710,000 under the Indenture of Trust dated as of May 1, 2013, between the City and Union Bank, N.A., as trustee;
- (b) the SRF Loans; and
- (c) any additional bonds, notes, leases, installment sale agreements or other obligations of the City entered into or issued under and in accordance with Section 5.7.

“Parity Debt Documents” means, collectively, the indenture of trust, trust agreement or other document authorizing the issuance of any Parity Debt or any securities which evidence Parity Debt. With respect to the SRF Loans, the term “Parity Debt Documents” means the SRF Loan Agreements.

“Project” means, collectively, the facilities, improvements and other property constituting part of the Water System, which have been approved for financing by the City and that are identified in the notification to the City from the Internal Revenue Service, dated October 20, 2016.

“Project Costs” means all costs of the acquisition, construction and installation of the Project which are paid from moneys on deposit in the Project Fund, 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 3.4.

“Qualified Purpose” means capital expenditures for one or more qualified renewable energy facilities as described in section 54C(a)(1) and 54C(d)(1) of the Tax Code.

“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 Water System, which fund is established, held and maintained in accordance with Section 4.8.

“Refundable Credit Payments” means the amounts which are payable with respect to this Agreement by the federal government under Section 6431 of the Tax Code.

“SRF Loans” means, collectively, the loans made to the City under the SRF Loan Agreements in the maximum principal amount of \$6,817,375 and \$19,133,209, respectively.

“SRF Loan Agreements” means, collectively, (a) the Funding Agreement entered into between the City and the Department of Public Health of the State of California, designated Construction Loan/Grant Agreement No. SRF10CX101 relating to Project Number 5115001-001, as originally entered into or as amended from time to time in accordance with its terms, and (b) the Funding Agreement entered into between the City and the Department of Public Health of the State of California, designated Construction Loan/Grant Agreement No. SRF10CX102 relating to Project Number 5115001-001, as originally entered into or as amended from time to time in accordance with its terms.

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

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

“Water Fund” means the existing fund by that name established and held by the City with respect to the Water System.

“Water System” means the entire system of the City for the supply, storage, treatment and distribution of water within the service area of the City, including but not limited to all facilities, properties, lands, rights, entitlements and other property useful in connection therewith, together with all extensions thereof and improvements thereto at any time acquired, constructed or installed by the City.

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

Appendix A: Schedule of Installment Payments

Appendix B: Description of Project

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

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

- (a) The City is a municipal corporation duly organized and existing under the laws of the State of California, and is empowered, among other things, to maintain and operate the Water 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 Water 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, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the City, threatened against or affecting the City or affecting the corporate existence of the City or the titles of its officers to their respective offices or seeking to prohibit, restrain or enjoin the entering into of this Agreement or in any way contesting or affecting the transactions contemplated hereby or the validity or enforceability of this Agreement, or contesting the powers of the City or any authority for the execution and delivery of this Agreement.
- (f) No lease, rental agreement, installment sale agreement, lease-purchase agreement, loan, note, payment agreement or contract for purchase to which the City has been a party at any time during the past ten years has been terminated by the City as a result of either insufficient funds available in any Fiscal Year, or due to the non-payment of required payments. No event has occurred which would constitute a payment-related event of default under any debt, note, revenue bond or obligation which the City has issued during the past ten years.
- (g) The financial information concerning the City heretofore delivered to the Assignee is complete and correct and fairly presents the financial condition of the City for the period(s) referred to and has been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the period(s) involved. There are no liabilities (of the type required to be reflected on balance sheets prepared in accordance with generally accepted accounting principles), direct or indirect, fixed or contingent, of the City as of the date of such financial information which are not reflected therein. There has been no material adverse change in the financial condition or operations of the City since the date of such information (and to the City's knowledge no such material adverse change is pending or threatened), and the City has not

guaranteed the obligations of, or made any investment in or loans to, any person except as disclosed in such information. The City has good and marketable title to all of its properties and assets related to the Project, and all of such properties and assets are free and clear of encumbrances, except as reflected in such financial information.

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

- (a) The Authority is a public body corporate and politic duly organized 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 corporate 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 Authority is now a party or by which the Authority is bound, or constitutes a default under any of the foregoing.
- (c) The 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 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 Authority, enforceable in accordance with its terms, subject only to laws related to insolvency or bankruptcy and general equitable principles.

ARTICLE III

SALE OF PROJECT TO THE AUTHORITY; ACQUISITION AND CONSTRUCTION OF THE PROJECT

SECTION 3.1. *Sale of Project to Authority; Deposit of Moneys.* The City hereby sells and conveys the Project to the Authority, and the Authority hereby purchases the Project from the City, for a purchase price equal to \$_____, which amount shall be paid by the Authority on the Closing Date. On the Closing Date, the Authority shall transfer such amount to the City for deposit in the Project Fund.

SECTION 3.2. *Payment of Financing Costs.* The City shall pay all costs of the financing which are provided by this Agreement from amounts held by it in the Project Fund, to the maximum extent permitted by the Tax Code. To the extent not payable from such sources, such financing costs shall be paid by the City from amounts held by it in the Water Fund.

SECTION 3.3. *Project Fund.* The City shall establish and maintain a special fund or account designated as the "Project Fund" to be held by the City and which shall be accounted for as a separate fund or account. Except as otherwise provided herein, moneys in the Project Fund shall be used solely for the payment of the Project Costs. The City shall disburse moneys in the Project Fund from time to time to pay Project Costs (or to reimburse the City for payment of Project Costs). The City shall maintain accurate records showing all disbursements from the Project Fund. The City shall invest proceeds in the Project Fund in investments authorized by California law and the City's investment policy.

SECTION 3.4. *Construction of the Project.* The 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 Authority regarding the acquisition, construction and installation of the Project. As agent of the 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 held in the Project Fund in accordance with the provisions of this Agreement. If and to the extent the amounts on deposit in the Project Fund 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 failure to complete the Project by its estimated completion date does not constitute an Event of Default hereunder or a grounds 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 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.

Any amounts remaining on deposit in the Project Fund at the end of the Expenditure Period shall be applied to the extraordinary mandatory prepayment of the Installment Payments under Section 7.4.

SECTION 3.5. *Plans and Specifications; Modification of Project Description.* The City has the right to specify the exact scope, nature and identification of the Project and the respective components thereof. Before any payment is made for the Project or any component thereof from amounts on deposit in the Project Fund, the City shall prepare detailed plans and specifications relating thereto. The City may from time to time amend any the plans and specifications, and thereby change or modify the description of the Project or any component thereof. Notwithstanding the foregoing, no changes to the description of the Project shall cause this Agreement to cease to be used for a Qualified Purpose or otherwise cause the elimination or reduction of the Refundable Credit Payments.

SECTION 3.6. *Completion of Project.* 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.

ARTICLE IV

INSTALLMENT SALE OF PROJECT BACK TO CITY; INSTALLMENT PAYMENTS

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

SECTION 4.2. *Title.* Title to the Project shall be vested in the City on the Closing Date. The Authority shall take all actions necessary to vest in the City all of the 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.

SECTION 4.3. *Term of this Agreement.* The Term of this Agreement commences on the Closing Date and ends on June 1, 20__ (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 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 and in the amounts specified in Appendix A hereto. The Installment Payments shall be secured by and payable from Net Revenues and the Refundable Credit Payments as hereinafter provided. The interest components of the Installment Payments have been calculated based on the unpaid principal components of the Installment Payments at an interest rate of ____% 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 continue to accrue interest at the rate of ____% per annum until paid, subject to the provisions of Article VI.

(b) 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 such that approximately level Installment Payments prevail following such prepayment, as set forth in a revised schedule of Installment Payments which is provided to the City by the Assignee.

(c) 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 rate of ____% per annum, or, if lower, the maximum rate then permitted by law.

(d) Assignment. The City understands and agrees that all Installment Payments have been assigned by the Authority to the Assignee under the Assignment Agreement, and the City hereby assents to such assignment. The 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 of Net Revenues. 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. The pledge of Net Revenues shall be on a parity with the pledge and lien which secures the Parity Debt.

(b) Deposit of Net Revenues into Water Fund; Transfers to Make Payments. The City has previously established the Water 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 Water Fund immediately on receipt. The City shall apply amounts in the Water Fund as set forth in this Agreement and the Parity Debt Documents. Amounts on deposit in the Water 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 (to the extent not paid from the Refundable Credit Payments) and all payments of principal of and interest on outstanding 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 the Parity Debt Documents; and
- (v) any other purposes authorized under subsection (d) of this Section.

(c) No Preference or Priority. Payment of the Installment Payments and the principal of and interest on any Parity Debt from the Net Revenues shall be made without preference or priority. If the amount of Net Revenues on deposit in the Water Fund are at any time insufficient to enable the City to pay when due the Installment Payments (to the extent not paid from the Refundable Credit Payments) and the principal of and interest on 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 Water 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 Water Fund for (i) the payment of any subordinate obligations or any unsecured obligations, (ii) the acquisition and construction of improvements to the Water System, (iii) the prepayment of any other obligations of the City relating to the Water System, or (iv) any other lawful purposes of the City.

SECTION 4.6. *Pledge and Application of Refundable Credit Payments.* The Installment Payments shall further be secured by a pledge of and lien on the Refundable Credit Payments. The Refundable Credit Payments shall not be used for any purpose other than the payment of the Installment Payments, and shall not be pledged to or otherwise applied to the payment of any outstanding Parity Debt.

Upon the receipt of any Refundable Credit Payments, the City shall deposit the amount thereof in a special fund which shall be held and maintained by the City. The Installment Payment coming due and payable on any Installment Payment Date shall be paid *first*, from the amount of Refundable Credit Payments then held by the City in such special fund and *second*, from Net Revenues as provided in Section 4.5. So long as the Installment Payments remain unpaid, the City shall not apply the Refundable Credit Payments for any purpose other than the payment of the Installment Payments.

SECTION 4.7. *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 and the

Refundable Credit Payments. 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 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.

SECTION 4.8. *Establishment of Rate Stabilization Fund.* The City has the right (but not the obligation) at any time to establish a fund to be held by it and administered in accordance with this Section for the purpose of stabilizing the rates and charges imposed by the City with respect to the Water 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 be required to, withdraw from any amounts on deposit in the Rate Stabilization Fund and deposit such amounts in the Water Fund in any Fiscal Year for the purpose of paying the principal of and interest on the Installment Payments and any Parity Debt coming due and payable in such Fiscal Year. Amounts so transferred from the Rate Stabilization Fund to the Water Fund will constitute Gross Revenues for such Fiscal Year (except as otherwise provided herein), and will be applied for the purposes of the Water Fund. Amounts on deposit in the Rate Stabilization Fund are not pledged to and do not secure the Installment Payments or any Parity Debt. All interest or other earnings on deposits in the Rate Stabilization Fund will be retained therein or, at the option of the City, be applied for any other lawful purposes. The City may at any time 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 4.9. *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 and the Refundable Credit Payments. Under no circumstances is the City required to advance moneys derived from any source of income other than the Net Revenues, the Refundable Credit Payments 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 Authority or the Assignee of any obligation to the City or otherwise with respect to the Water System, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the 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 Water System, the sale of the Water System, the taking by eminent domain of title to or temporary use of any component of the Water System, commercial frustration of purpose, any change in the tax or other laws of the United States of America or the State of California or any political subdivision of either thereof or any failure of the 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 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 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 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 Water 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 Water System or the Project,

- (d) any act or omission of any lessee of the City with respect to the Water System or Project;
- (e) Any loss, claim, damage to the environment relating to the Project or the Water 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 gross negligence under this Agreement by the 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 Water System.* Except as provided herein, the City covenants that the Water 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 the principal of or interest on the Installment Payments and the Parity Debt, or would materially adversely affect its ability to comply with the terms of this Indenture or the Parity Debt Documents. The City may not enter into any agreement which impairs the operation of the Water System or any part of it necessary to secure adequate Net Revenues to pay the Installment Payments and Parity Debt, or which otherwise would impair the rights of the Assignee with respect to the Net Revenues. If any substantial part of the Water System is sold, the payment therefor must either (a) be used for the acquisition or construction of improvements and extensions or replacement facilities or (b) be applied to prepay the Installment Payments or any Parity Debt in accordance with this Agreement and the related Parity Documents.

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

SECTION 5.4. *Insurance.* The City will at all times maintain with responsible insurers all such insurance on the Water System as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to the Water System. If any useful part of the Water System is damaged or destroyed, such part must be restored to usable condition. All amounts collected from insurance against accident to or destruction of any portion of the Water System shall be used to repair or rebuild such damaged or destroyed portion of the Water System, and to the extent not so applied, shall be applied to prepay the Installment Payments or any Parity Debt in accordance with this Agreement and the related Parity Documents. 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 City and the Assignee. The Assignee has no liability to determine whether the City is in compliance with the provisions of this Section.

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

The City shall cause the books and accounts of the Water System to be audited annually by an Independent Accountant not more than 210 days after the close of each Fiscal Year, and shall file a copy of such report with the Authority. Such report may be part of a combined financial audit or report covering all or part of the City's finances. The City shall provide the Assignee copies of such certified annual financial statements within a reasonably prompt period following the preparation of such statements.

SECTION 5.6. *Rates and Charges.* The City shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Water System during each Fiscal Year, which are at least sufficient, after making allowances for contingencies and error in the estimates, to yield Gross Revenues sufficient to pay the following amounts in the following order of priority:

- (a) All Operation and Maintenance Costs estimated by the City to become due and payable in the Fiscal Year.
- (b) All Installment Payments and all payments of principal of and interest on outstanding 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.
- (c) 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.

In addition, the City shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Water System during each Fiscal Year which (together with existing unreserved, unrestricted working capital balances in the Water Fund, and taking into account allowances for contingencies), are sufficient to yield Net Revenues which are at least equal to 110% of the aggregate amount of the Installment Payments and payments on Parity Debt coming due in the Fiscal Year.

In computing the amount of the Installment Payments coming due during any Fiscal Year for purposes of the foregoing provisions of this Section, such amount shall be reduced by the full amount of the Refundable Credit Payments which the City expects to receive during such Fiscal Year.

SECTION 5.7. *Superior and Subordinate Obligations.* The City shall 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 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.

SECTION 5.8. *Issuance of Parity Debt.* The City may issue or incur any Parity Debt the payment of which is secured by a pledge of and lien on the Net Revenues on a parity with the pledge and lien on Net Revenues which secures the Installment Payments, provided that the following conditions precedent are satisfied:

- (a) No Event of Default (or no event with respect to which notice has been given and which, once all notice of grace periods have passed, would constitute an Event of Default) has occurred and is continuing.
- (b) The amount of Net Revenues (excluding amounts derived from the Rate Stabilization Fund, if any) 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, in either case verified by an Independent Accountant or a Financial 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 120% of the amount of Maximum Annual Debt Service.

In computing the maximum amount of annual Debt Service with respect to the Installment Payments for purposes of this subsection (b), the amount of the Installment Payments and principal of and interest on Parity Debt coming due in any Fiscal Year shall be reduced by the full amount of the Refundable Credit Payments which the City expects to receive in such Fiscal Year.

- (c) The issuance of such Parity Debt shall comply with all conditions to the issuance thereof as set forth in the applicable provisions of the Parity Debt Documents.
- (d) The City shall deliver to the Assignee a Certificate of the City certifying, and an opinion of Bond Counsel stating, that the conditions precedent to the issuance of such Parity Debt set forth in the foregoing subsections (a), (b) and (c) of this Section have been satisfied.

Nothing herein is intended or shall be construed to permit the City to issue any notes, bonds or other obligations which are secured by a pledge of and lien on the Refundable Credit Payments.

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

SECTION 5.10. *Compliance with Parity Debt Documents.* The City shall comply with all of the provisions of the Parity Debt Documents and shall not take action which constitutes, or which with the passage of time if not cured would constitute, an event of default under and as defined in the Parity Debt Documents.

SECTION 5.11. *Tax Covenants.*

- (a) Clean Renewable Energy Project. The City shall assure that all of the Available Project Proceeds will be used for a Qualified Purpose or Purposes in accordance with Section 54C(a)(1) of the Tax Code.
- (b) Qualified Issuer. The City shall maintain its status as a governmental body which constitutes a “Qualified Issuer” under and as required by Section 54C(a)(2) and as defined in Section 54C(d)(6) of the Tax Code.
- (c) Designation of Agreement as New Clean Renewable Energy Bond. The City hereby designates this Agreement as a “new clean renewable energy bond” for purposes of Section 54C(a)(3) of the Tax Code. The City also hereby irrevocably elects to apply the provisions of Section 6431(f) of the Tax Code to this Agreement and intends that this Agreement be treated as specified tax credit bonds within the meaning of Section 6431(f)(2) of the Tax Code. It is the intent of the City that this Agreement be eligible for direct payment from the United States Department of Treasury of an amount equal to 70% of the tax credit rate applicable to this Agreement.
- (d) Three Year Expenditure of Proceeds on Project. The City reasonably expects to expend all of the Available Project Proceeds for a Qualified Purpose with respect to the Renewable Energy Projects within the Expenditure Period. To the extent that less than 100% of the Available Project Proceeds are expended for a Qualified Purpose by the end of the Expenditure Period, all nonqualified bonds (as determined under Section 142 of the Tax Code) shall be redeemed within 90 days of the end of the Expenditure Period all in accordance with the requirements of Section 54A(d)(2)(B) of the Tax Code in the time and manner prescribed by the Tax Code.
- (e) Binding Commitment to Spend Available Project Proceeds. The City reasonably expects that, within six months of the date of execution and delivery of this Agreement, it will enter into a binding commitment with a third party to spend at least 10% of the Available Project Proceeds for a Qualified Purpose with respect to the Project.
- (f) Financing Capital Expenditures, No Working Capital. All Available Project Proceeds of this Agreement will be spent on capital expenditures with a reasonably expected economic life of one year or more.

- (g) Limitation on Issuance Costs. No proceeds of this Agreement and investment earnings thereon, in an amount in excess of two percent (2%) of the proceeds of the sale of this Agreement, will be used to pay costs of delivery of this Agreement.
- (h) Allocation of New Clean Renewable Energy Bond Limitation. The City has received an allocation of a portion of the national new clean renewable energy bond limitation in the aggregate amount of \$2,124,216.
- (i) Arbitrage and Rebate Compliance. The City shall not take, or permit or suffer to be taken any action with respect to the proceeds of this Agreement which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of delivery of this Agreement would have caused this Agreement to be "arbitrage bonds" within the meaning of Section 54A(d)(4) of the Tax Code, including the Treasury Regulations with respect thereto. 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. For purposes of this paragraph, investments of Available Project Proceeds during the Expenditure Period are deemed to comply with the requirements and limitations of Section 148 of the Tax Code.
- (j) Limitation on Reserve Funds. No fund the proceeds of which are pledged to, or are reasonably expected to be used directly or indirectly to pay, principal or interest on this Agreement or are reserved or otherwise set aside such that there is a reasonable assurance that such amounts will be available to pay principal or interest on this Agreement will be funded with respect to this Agreement except as follows: (i) the fund is funded at a rate not more rapid than equal annual installments, (ii) such fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue, and (iii) the yield on the fund is not greater than the rate determined under 54A(d)(5)(B) of the Tax Code.
- (k) Acquisition, Disposition and Valuation of Investments. Except as otherwise provided in following sentence, the City covenants that all investments of amounts deposited in any fund or account created by or pursuant to this Agreement or otherwise containing proceeds of this Agreement shall be acquired, disposed of, and valued (as of the date that valuation is required by this Agreement or the Tax Code) at b Market Value. Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code and (unless valuation is undertaken at least annually) and investments in a reserve fund shall be valued at their present value (within the meaning of section 148 of the Tax Code).

- (l) Prohibition on Financial Conflicts of Interest. The City hereby covenants and agrees to comply with all State and local law requirements governing conflicts of interest as such requirements may relate, directly or indirectly, to this Agreement. The City hereby covenants and agrees to comply with any conflict of interest rules prescribed by the IRS or United States Department of Treasury governing the appropriate Member of Congress, Federal, State, and local officials, and their spouses as such rules may apply to this Agreement.
- (m) Davis-Bacon Act Requirements. The City hereby covenants and agrees to comply with the wage rate requirements of Title 40, Subtitle II, Part A, Chapter 31, Subchapter IV of the United States Code as such requirements relate to the proceeds of this Agreement.
- (n) Filing of Forms To Receive Refundable Credit Payment. The City will, within the 45-day period beginning on the date that is 90 days before the next interest payment date with respect to this Agreement, file Form 8038-CP or any successor form designated by the federal government, requesting payment of the Refundable Credit Payment with respect to the next interest payment with respect to this Agreement.
- (o) 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, 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 5.12. *Disclaimer of Warranties.* THE 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 WATER SYSTEM OR ANY ITEM THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROJECT, THE WATER SYSTEM OR ANY ITEM THEREOF. IN NO EVENT SHALL THE 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 WATER SYSTEM.

SECTION 5.13. *Access to the Water System and Records.* To the extent permitted by law, the City agrees that the Authority, any Authorized Representative of the Authority, and the 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 Water System. The City further agrees that the Authority, any Authorized Representative of the Authority, and the Authority's successors or assigns, including the Assignee, shall have such rights of access to the Water System as may be reasonably necessary to cause the proper maintenance of the Water System in the event of failure by the City to perform its obligations hereunder. In addition, the City agrees that the Authority, any Authorized Representative of the Authority, and the 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 Water System, to make copies thereof and to take non-privileged memoranda therefrom or with respect thereto as may be desired.

SECTION 5.14. *Assignment by the Authority.* The rights and interest of the 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 Authority hereunder on behalf of and for all transferees. No further action will be required by the 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.

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

SECTION 6.2. *Remedies on Default.* Whenever any Event of Default has happened and is continuing, the 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 Water 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 Authority or the Assignee in the enforcement of any of the remedies listed above or any other remedy available to the 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 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 Authority to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

SECTION 6.4. *Prosecution and Defense of Suits.* The City shall promptly, upon request of the 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 Water 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 and Refundable Credit Payments.* 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 and Refundable Credit Payments as provided in Article IV. If the Net Revenues and the Refundable Credit Payments 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 and the Refundable Credit Payments.

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

ARTICLE VII

PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 7.1. *Security Deposit.* Notwithstanding any other provision hereof, the City may on any date secure the payment of Installment Payments, in whole or in part, by irrevocably depositing with the Assignee an amount of cash which, together with other available amounts (not including amounts receivable under a forward supply contract, if any), is either (a) sufficient to pay all such Installment Payments, including the principal and interest components thereof, when due under Section 4.4(a), or (b) invested in whole or in part in non-callable Federal Securities in such amount as will, in the report of an Independent Accountant, together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay all such Installment Payments when due under Section 4.4(a) or when due on any optional prepayment date under Section 7.2, as the City instructs at the time of said deposit. If the City makes a security deposit under this Section for the payment of all remaining Installment Payments, all obligations of the City hereunder, and the pledge of Net Revenues and Refundable Credit Payments, and all other security provided by this Agreement for said obligations, will cease and terminate, excepting only the obligation of the City to make, or cause to be made, all Installment Payments from such security deposit. A security deposit constitutes a special fund for the payment of such Installment Payments in accordance with the provisions hereof.

SECTION 7.2. *Optional Prepayment.* The City may exercise its option to prepay the principal components of the Installment Payments in whole or in part on any Business Day on or after June 1, 20___. Such option shall be exercised by payment of a prepayment price equal to the sum of (a) the aggregate principal components of the Installment Payments to be prepaid, plus (b) the interest component of the Installment Payment required to be paid on or accrued to such date. If the City prepays the Installment Payments in part but not in whole, the principal components shall be prepaid among such maturities and in such integral multiples of \$5,000 as the City designates in written notice to the Assignee.

SECTION 7.3. *Mandatory Prepayment from Insurance or Eminent Domain Proceeds.* The Installment Payments are subject to prepayment in whole or in part on any date from the proceeds of eminent domain award or proceeds of sale under Section 5.3, or from the proceeds of any insurance award under Section 5.4, at a prepayment price equal to the sum of (a) the aggregate principal components of the Installment Payments to be prepaid, plus (b) the interest component of the Installment Payment required to be paid on or accrued to such date. If the City prepays the Installment Payments in part but not in whole, the principal components shall be prepaid among

such maturities and in such integral multiples of \$5,000 as the City designates in written notice to the Assignee.

SECTION 7.4. *Extraordinary Prepayment from Unexpended Proceeds.* In the event and to the extent that the City fails to expend all of the proceeds of this Agreement within the Expenditure Period, the Installment Payments shall be subject to extraordinary mandatory prepayment on any date which is not more than 90 days following the Expenditure Period, at a prepayment price equal to 100% of the unpaid principal components of the Installment Payments together with accrued interest thereon to the prepayment date, without premium. Such prepayment price shall derived from the amounts remaining on deposit in the Project Fund at the end of the Expenditure Period, which shall be applied to the extraordinary prepayment of the Installment Payments under Section 3.4.

SECTION 7.5. *No Surrender of Agreement Required.* No surrender of this Agreement shall ever be required as a condition for payment or otherwise. The 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
or the Authority*

City of Yuba City
1201 Civic Center Boulevard
Yuba City, California 95993
Attention: Finance Director

If to the Assignee:

Attention:

The 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 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 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 Authority, free and clear of any expenses, charges or set-offs whatsoever.

SECTION 8.7. *Further Assurances and Corrective Instruments.* The 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. *Authority and City Representatives.* Whenever under the provisions of this Agreement the approval of the Authority or the City is required, or the 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 Authority by an Authorized Representative of the 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. *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.

IN WITNESS WHEREOF, the 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.

**YUBA CITY PUBLIC FINANCING
AUTHORITY, as Seller**

By _____
Chair

ATTEST:

By _____
Secretary

CITY OF YUBA CITY, as Purchaser

By _____
City Manager

ATTEST:

By _____
City Clerk

APPENDIX A

SCHEDULE OF INSTALLMENT PAYMENTS

<u>Installment Payment Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Aggregate Installment Payment</u>
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APPENDIX B
DESCRIPTION OF PROJECT

ASSIGNMENT AGREEMENT

This ASSIGNMENT AGREEMENT (this "Agreement"), dated to be effective April __, 2017, is between the YUBA CITY PUBLIC FINANCING AUTHORITY, a public body corporate and politic duly organized and existing under the laws of the State of California, as assignor (the "Authority"), and _____, a corporation organized and existing under the laws of the State of _____, as assignee (the "Assignee").

BACKGROUND:

1. The City owns and operates facilities and property for the supply, treatment and distribution of water within the service area of the City (the "Water System"), and the City wishes to provide funds for the acquisition, construction and installation of certain improvements to the Water System, consisting generally of energy storage facilities at the water treatment plant (the "Project").

2. In order to provide funds to finance the Project, the City and the Authority have entered into an Installment Sale Agreement dated as of April __, 2017 (the "Installment Sale Agreement"), under which the City has agreed to purchase the Project from the Authority and to pay semiannual installment payments (the "Installment Payments") as the purchase price thereof, and the Authority wishes to assign its rights, title and interest under the Installment Sale Agreement, including the right to receive the Installment Payments, to the Assignee as provided herein.

AGREEMENT:

In consideration of the material covenants contained in this Agreement, the parties hereto hereby formally covenant, agree and bind themselves as follows:

SECTION 1. *Defined Terms.* All capitalized terms not otherwise defined herein have the respective meanings given those terms in the Installment Sale Agreement.

SECTION 2. *Assignment.* The Authority hereby assigns to the Assignee all of the Authority's rights, title and interest under the Installment Sale Agreement (excepting only the Authority's duties, obligations, responsibilities and covenants under Section 5.2 of the Installment Sale Agreement), including but not limited to:

- (a) the right to receive and collect all of the Installment Payments from the City under the Installment Sale Agreement,
- (b) the right to receive and collect any proceeds of any insurance maintained thereunder with respect to the Project, or any eminent domain award (or proceeds of sale under threat of eminent domain) paid with respect to the Project, and

- (c) the right to exercise such rights and remedies conferred on the Authority under the Installment Sale Agreement as may be necessary or convenient (i) to enforce payment of the Installment Payments and any amounts required to be credited to the payment or prepayment thereof, or (ii) otherwise to protect the interests of the Authority in the event of a default by the City under the Installment Sale Agreement.

SECTION 3. *Authority Representations, Warranties and Covenants.* The Authority hereby represents, warrants and covenants to and with the Assignee that:

- (a) The Installment Sale Agreement is free and clear of all claims, liens, security interests, encumbrances of any kind or character created by, through or under the Authority, except the rights of the City thereunder, and except as contemplated in the Installment Sale Agreement. The Installment Sale Agreement is and shall remain free of all claims, liens, security interests and encumbrances arising through any act or omission of the Authority.
- (b) The Authority has complied with and performed all of its obligations under the Installment Sale Agreement and all related documents and instruments.
- (c) The Installment Sale Agreement delivered to the Assignee herewith is an original and constitutes the entire writing, obligation and agreement between the Authority and City respecting the Installment Payments due thereunder.

SECTION 4. *Acceptance.* The Assignee hereby accepts the assignments made herein.

SECTION 5. *Further Assurances.* The Authority shall, from time to time at the request of the Assignee, execute and deliver such further acknowledgments, agreements and instruments of assignment, transfer and assurance, and do all such further acts and things as may be necessary or appropriate in the reasonable opinion of the Assignee to give effect to the provisions hereof and to more perfectly confirm the rights, titles and interests hereby assigned and transferred to the Assignee.

SECTION 6. *Execution in Counterparts.* This Agreement may be executed in any number of counterparts, each of which is an original and all together constitute one and the same agreement. Separate counterparts of this Agreement may be separately executed by the Assignee and the Authority, both with the same force and effect as though the same counterpart had been executed by the Assignee and the Authority.

SECTION 7. *Binding Effect.* This Agreement inures to the benefit of and binds the Authority and the Assignee, and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 8. *Governing Law.* This Agreement is governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers as of the day and year first written above.

**YUBA CITY PUBLIC FINANCING
AUTHORITY, as Assignor**

By _____
Chair

Attest:

Secretary

_____, as
Assignee

By _____
Name
Title