
INSTALLMENT SALE AGREEMENT

Dated as of _____ 1, 2022

by and between

**CLEARLAKE PUBLIC FINANCING AUTHORITY,
as Seller**

and the

**CITY OF CLEARLAKE,
as Purchaser**

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INSTALLMENT SALE AGREEMENT

THIS INSTALLMENT SALE AGREEMENT (this "Agreement"), dated as of _____ 1, 2022, by and between the CLEARLAKE PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California, as seller (the "Authority"), and the CITY OF CLEARLAKE, a municipal corporation organized and existing under the Constitution and laws of the State of California, as purchaser (the "City");

B A C K G R O U N D :

1. On November 8, 2016, the voters of the City approved by at least a 2/3rds majority "Measure V," a one-cent sales and use tax increase (the "Sales Tax Override") as a special tax to be used for road maintenance and improvements and the City desires to finance the acquisition, construction and installation of certain road improvements (collectively, the "Project") contemplated by Measure V.

2. The Authority has been formed for the purpose of assisting the City and other local agencies in the financing of public capital improvements.

3. In order to provide funds to finance the Project, the City has requested the Authority enter into this Agreement under which the Authority agrees to sell the Project to the City in return for semiannual installment payments (the "Installment Payments") to be made by the City as the purchase price of the Project.

4. The Installment Payments are payable from, and are secured by, a pledge of and lien on, the Net Sales Tax Override Revenues.

5. For the purpose of obtaining the moneys required to finance the Project in accordance with the terms hereof, the Authority has assigned and transferred certain of its rights under this Agreement to _____ (the "Assignee") under an Assignment Agreement dated as of _____ 1, 2022, among the Authority, the City, and the Assignee, including the right to receive and enforce payment of the Installment Payments.

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 agree as follows:

ARTICLE I

GENERAL

Section 1.01. Definitions.

“Assignee” means _____, a _____, its successors and assigns.

“Assignment Agreement” means the Assignment Agreement, dated as of _____ 1, 2022, by and among the Authority, the City and the Assignee, and any duly authorized and executed amendment or supplement thereto.

“Authority” means the Clearlake Public Financing Authority.

“Authority Representative” means the Chair, Vice Chair, Executive Director, Treasurer or Secretary of the Authority, or any other person designated as an Authority Representative by a Written Certificate of the Authority signed by its Chair, Vice Chair, Executive Director, Treasurer or Secretary and filed with the City and the Assignee.

“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 any day other than (a) a Saturday or a Sunday or (b) a day on which banking institutions in the state in which the Trust Administrator has its principal trust office are authorized or obligated by law or executive order to be closed.

“Closing Date” means June 20, 2022.

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

“City” means the City of Clearlake, a municipal corporation organized and existing under the Constitution and laws of the State of California.

“City Representative” means the City Manager, Finance Director, or any other person designated as a City Representative by a Written Certificate of the City signed by its City Manager or Finance Director and filed with the Authority and the Assignee.

“Default Rate” means the Interest Rate plus _____%.

“Defeasance Obligations” means (a) cash, or (b) non-callable Federal Securities.

“Delivery Costs” means all items of expense directly or indirectly payable by or reimbursable to the City or the Authority relating to the execution and delivery of this Agreement, including but not limited to filing and recording costs, settlement costs, printing costs, reproduction

and binding, financing discounts, legal fees and charges, financial and other professional consultant fees, and other charges and fees in connection with the foregoing.

“Event of Default” means an event of default under Section 7.01 hereof.

“Federal Securities” means direct general obligations of (including obligations issued or held in book entry form on the books of the Department of the Treasury) the United States of America, or obligations the timely payment of principal of and interest on which are guaranteed by, the United States of America.

“Financial 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 municipal capital improvements; (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; 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 any period of 12 consecutive months established by the City as its fiscal year and shall initially mean the period commencing July 1 of one year and ending on June 30 of the following year.

“Gross Sales Tax Override Revenues” means all the revenue collected and received by the City from the Sales Tax Override.

“Independent Accountant” means any accountant or firm of such 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” means any payment required to be paid by the City to the Authority pursuant to Section 3.05 hereof.

“Installment Payment Date” means June 1 and December 1 of each year, commencing December 1, 2022.

“Interest Rate” means the rate of interest to be paid on the Installment Payments, which is _____% per annum.

“Net Sales Tax Override Revenues” means, for any period, an amount equal to all of the Gross Sales Tax Override Revenues received during such period minus the amount required to pay all costs of the County of Lake and the City for collection and administration of the Gross Sales Tax Revenues during such period.

“Parity Obligations” means the payments made pursuant to any indebtedness or other obligations (including leases and installment sale agreements) hereafter issued or incurred and secured by a pledge of and lien on Net Sales Tax Override Revenues on a parity with the Installment Payments in accordance with this Agreement.

“Parity Obligations Documents” means any indenture of trust, trust agreement, loan agreement, installment sale agreement or other document authorizing the issuance of any Parity Obligations.

“Prepayment” means any payment applied towards the prepayment of the Installment Payments, in whole or in part, pursuant to Article IV hereof.

“Project” means the road improvement projects described in Exhibit A hereto.

“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 the acquisition, construction and installation of the Project or otherwise 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) 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) costs of equipping the Project and costs of taking occupancy of the Project;
- (f) 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;
- (g) all financing costs incurred in connection with the acquisition, construction and installation of the Project; and
- (h) the interest components of Installment Payments coming due during the period of construction of the Project and for not more than six months thereafter.

“Project Fund” means the fund or account by that name established and held by the City under Section 2.02.

“Sales Tax Override” means the one-cent sales and use tax increase approved by voters in the City as Measure V on November 8, 2016 as a special tax to be used for road maintenance and improvements, as provided by the City of Clearlake Improvement Transactions and Use Tax Ordinance, codified as Section 3-7 of the City of Clearlake Municipal Code.

“Sales Tax Override Fund” means the special fund held and maintained by the City for deposit of the Sales Tax Override, known as the _____ Fund.

“Term of the Installment Sale Agreement” means the time during which this Agreement is in effect which begins on the Closing Date and ends on December 1, _____, unless sooner terminated pursuant to the terms hereof.

Section 1.02. Representations, Covenants and Warranties of the City. The City represents, covenants and warrants to the Authority as follows:

- (a) Due Organization and Existence. The City is a public body corporate and politic organized and existing under the Constitution and laws of the State of California, has full legal right, power and authority under said laws to enter into this Agreement and the Assignment Agreement, and to carry out and consummate all transactions contemplated hereby and thereby, and by proper action the City Council of the City has duly authorized the execution and delivery of this Agreement and the Assignment Agreement.
- (b) Due Execution. The representatives of the City executing this Agreement and the Assignment Agreement are fully authorized to execute the same.
- (c) Valid, Binding and Enforceable Obligations. This Agreement and the Assignment Agreement have been duly authorized, executed and delivered by the City and constitute the legal, valid and binding agreements of the City enforceable against the City in accordance with their respective terms; except as the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and except as such enforceability may be subject to the exercise of judicial discretion in accordance with principles of equity.
- (d) No Conflicts. The execution and delivery of this Agreement and the Assignment Agreement, and the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which would have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement or the financial condition, assets, properties or operations of the City, including but not limited to the performance of the City's obligations under this Agreement and the Assignment Agreement.

- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Agreement and the Assignment Agreement or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.
- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Agreement and the Assignment Agreement, or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which might have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement or the Assignment Agreement, or the financial conditions, assets, properties or operations of the City, including but not limited to the payment and performance of the City's obligations under this Agreement or the Assignment Agreement.
- (g) No Senior Indebtedness. The City has not issued or incurred any obligations which are outstanding as of the Closing Date having any priority in payment over the Installment Payments as provided herein.

Section 1.03. Representations, Covenants and Warranties of the Authority. The Authority represents, covenants and warrants to the City as follows:

- (a) Due Organization and Existence. The Authority is a joint powers authority duly organized and existing under the Joint Exercise of Powers Law of the State of California, and has power to enter into this Agreement and the Assignment Agreement and to perform the duties and obligations imposed on it hereunder and thereunder. The Board of Directors of the Authority has duly authorized the execution and delivery of this Agreement and the Assignment Agreement.
- (b) Due Execution. The representatives of the Authority executing this Agreement and the Assignment Agreement are fully authorized to execute the same.
- (c) Valid, Binding and Enforceable Obligations. This Agreement and the Assignment Agreement have been duly authorized, executed and delivered by the Authority and constitute the legal, valid and binding agreements of the Authority, enforceable against the Authority in accordance with their respective terms; except as the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws

affecting creditors' rights heretofore or hereafter enacted and except as such enforceability may be subject to the exercise of judicial discretion in accordance with principles of equity.

- (d) No Conflicts. The execution and delivery of this Agreement and the Assignment Agreement, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Authority is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Authority, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially adversely affect the consummation of the transactions contemplated hereby and by the Assignment Agreement, or the financial condition, assets, properties or operations of the Authority, including but not limited to the performance of the Authority's obligations under this Agreement and the Assignment Agreement.
- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Authority, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Agreement or of the Assignment Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.
- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Authority after reasonable investigation, threatened against or affecting the Authority or the assets, properties or operations of the Authority which, if determined adversely to the Authority or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Agreement or the Assignment Agreement, or upon the financial condition, assets, properties or operations of the Authority, and the Authority is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement or the Assignment Agreement or the financial conditions, assets, properties or operations of the Authority, including but not limited to the performance of the Authority's obligations under this Agreement and under the Assignment Agreement.

Section 1.04. Written Certificates.

(a) Contents. Every certificate provided for in this Agreement with respect to compliance with any provision hereof shall include (a) a statement that the person making or giving such certificate or opinion has read such provision and the definitions herein relating thereto; (b) a brief statement as to the nature and scope of the examination or investigation upon which the certificate is based; (c) a statement that, in the opinion of such person, he or she has made or caused to be made such examination or investigation as is necessary to enable him or her to express an informed opinion with respect to the subject matter referred to in the instrument to which his or her signature is affixed; (d) a statement of the assumptions upon which such certificate is based, and that such assumptions are reasonable; and (e) a statement as to whether, in the opinion of such person, such provision has been complied with.

(b) Reliance. Any such certificate made or given by a City Representative may be based, insofar as it relates to legal or accounting matters, upon a certificate or opinion of or representation by counsel or an accountant, unless such City Representative knows, or in the exercise of reasonable care should have known, that the certificate, opinion or representation with respect to the matters upon which such certificate or statement may be based, as aforesaid, is erroneous. Any such certificate or opinion made or given by counsel or an accountant may be based, insofar as it relates to factual matters (with respect to which information is in the possession of the City, as the case may be) upon a certificate or opinion of or representation by an City Representative, unless such counsel or accountant knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representation with respect to the matters upon which such person's certificate or opinion or representation may be based is erroneous. The same City Representative, or the same counsel or accountant, as the case may be, need not certify to all of the matters required to be certified under any provision of this Agreement, but different officers, counsel or accountants may certify to different matters, respectively.

Section 1.04. Exhibits. The Exhibits attached hereto are, by this reference, made a part of this Agreement.

ARTICLE II

DEPOSITS; CONSTRUCTION OF PROJECT

Section 2.01. Deposit of Moneys. Under the Assignment Agreement, in consideration of the assignment to the Assignee of the Installment Payments and certain other rights of the Authority under this Agreement, the Assignee has provided \$_____ to the Authority, which shall be applied on the Closing Date as follows:

(a) \$_____ shall be applied by the Assignee for the payment of Delivery Costs by direct wire transfer to the parties entitled thereto, as set forth in a written certificate of the City; and

(b) \$_____, constituting the remainder of such funds, shall be transferred by the Assignee to the City for deposit in the Project Fund established under Section 2.02 below.

Section 2.02. Project Fund. The City shall establish, maintain and hold a separate fund designated as the "Project Fund" into which the City shall deposit the amounts received from the Assignee under Section 2.01(b). The City shall disburse amounts in the Project Fund from time to time to pay Project Costs (or to reimburse the City for payment of Project Costs). Except as otherwise provided herein, moneys in the Project Fund shall be used solely for the payment of the 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 2.03. Appointment of City as Agent. 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.

Section 2.04. Construction of Project. The City hereby agrees with due diligence to supervise and provide for, or cause to be supervised and provided for, the acquisition and construction 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 and construction of the Project are subject to all applicable provisions of law relating to the acquisition and construction of public works by the City.

The City expects that the acquisition and construction of the Project will be completed by _____ 20___. The failure of the City to complete the Project by such date will not constitute an Event of Default hereunder or a grounds for termination hereof, nor result in the diminution, abatement or extinguishment of the obligations of the City to pay the Installment Payments when due hereunder.

Section 2.05. 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. Without limiting the generality of the foregoing, the City shall have the right in its sole discretion to modify the description of the Project and any components thereof for the purpose of including road improvements in addition to, or in substitution of, those described in Exhibit A.

Section 2.06. Project Completion; Closing of Project Fund . Following the completion of the Project, the City shall transfer any amounts remaining on deposit in the Project Fund to the Installment Payment Fund established under Section 3.05 below, to be applied as a credit towards the interest component of the Installment Payments next coming due and payable, and the City shall thereupon close the Project Fund.

ARTICLE III

PROJECT SALE AND TITLE; INSTALLMENT PAYMENTS; NET SALES TAX OVERRIDE REVENUES

Section 3.01. Sale. The Authority hereby sells the completed Project to the City, and the City hereby purchases the completed Project from the Authority, upon the terms and conditions set forth in this Agreement.

Section 3.02. Title. The City and the Authority agree that title to the Project, and each component thereof, shall be deemed conveyed by the Authority to and vested in the City. The Authority and the City will execute, deliver and cause to be recorded any and all documents reasonably required to vest in the City all of the Authority's rights in and title to the Project.

Section 3.03. Assignment by the Authority. The Authority's right, title and interest in this Agreement, including the right to receive and enforce payment of the Installment Payments to be made by the City under this Agreement, have been assigned to the Assignee, subject to certain exceptions, pursuant to the Assignment Agreement.

The City understands and agrees that the Authority has assigned its right, title and interest (but not its duties or obligations) in this Agreement to the Assignee pursuant to the Assignment Agreement and the City 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 pursuant to this Agreement.

Section 3.04. Term of the Installment Sale Agreement. The Term of this Agreement shall begin on the Closing Date and the final Installment Payment shall mature on December 1, _____, unless sooner prepaid.

Section 3.05. Installment Payments.

(a) Obligation to Pay. There is hereby created the "Installment Payment Fund" to be held by the City. 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 Exhibit B hereto, provided that amounts previously deposited in the Installment Payment Fund and remaining on deposit therein shall be applied to the payment of Installment Payments next due. The Installment Payments shall be payable solely from Net Sales Tax Override Revenues as hereinafter provided.

(b) Reduction Upon Partial Prepayment. If the City prepays less than all of the remaining principal components of the Installment Payments pursuant to Sections 4.02 hereof, the amount of such prepayment shall be applied (1) first to any interest owing but unpaid at the time of the prepayment, and (2) second to reduce the principal component of the subsequent remaining Installment Payments in any manner as directed by the City in a Written Certificate and the interest component of each subsequent remaining Installment Payment shall be reduced by the aggregate corresponding amount of interest that would otherwise be payable with respect to the Installment Payments as a result of such prepayment.

(c) Rate on Overdue Payments. If the City fails to make any of the payments required in this Section 3.05 so that there are insufficient moneys on hand in the Installment Payment Fund to pay any Installment Payment in full on an Installment Payment Date, the Installment Payment in default shall continue as an obligation of the City until the amount in default is 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 interest payable with respect to the Installment Payments.

(d) Default Rate. Notwithstanding the foregoing, during any period in which an Event of Default has occurred and is continuing, whether or not the Assignee elects to accelerate the maturity hereof because of such Event of Default, all Installment Payments shall bear interest at the Default Rate.

Section 3.06. Special Obligation of the City.

(a) Limitations. The City's obligation to pay the Installment Payments shall be a special obligation limited solely to Net Sales Tax Override Revenues. Under no circumstances shall the City be required to advance any moneys derived from any source of income other than the Net Sales Tax Override Revenues and other sources specifically identified herein for the payment of the Installment Payments, nor shall any other funds or property of the City be liable for the payment of the Installment Payments.

(b) Obligations Unconditional. The obligations of the City to make the Installment Payments from Net Sales Tax Override Revenues and to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach of the City or the Authority of any obligation to the City or otherwise with respect to the Project, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Authority.

(c) Obligations Specified. Until such time as all of the Installment Payments are fully paid or prepaid, the City:

(i) will not suspend, abate, or discontinue any payments provided for in Section 3.05 hereof;

(ii) will perform and observe all other agreements contained in this Agreement; and

(iii) will not terminate the Term of this Agreement for any cause, including, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project, the taking by eminent domain of title to or temporary use of any or all of the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of 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 the Assignment Agreement or this Agreement.

(d) Authority Obligations. Nothing contained in this Section 3.06 shall be construed to release the Authority from the performance of any of the agreements on its

part herein contained, and if the Authority fails to perform any such agreements on its part, the City may institute such action against the Authority as the City may deem necessary to compel performance so long as such action does not abrogate the obligations of the City contained in Section 3.06(b) above. The City may, however, at the City's own cost and expense and in the City's own name or in the name of the Authority prosecute or defend any action or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to secure or protect the City's right of possession, occupancy and use hereunder, and in such event the Authority hereby agrees to cooperate fully with the City and to take such action necessary to effect the substitution of the City for the Authority in such action or proceeding if the City so requests.

Section 3.07. Pledge of Net Sales Tax Override Revenues; Transfer to Pay Installment Payments; Release from Lien.

(a) Pledge of Net Sales Tax Override Revenues. The City hereby agrees that the payment of the Installment Payments shall be secured by a pledge, charge and lien upon Net Sales Tax Override Revenues on a parity with the pledge that secures all outstanding Parity Obligations (if any), and Net Sales Tax Override Revenues sufficient to pay the Installment Payments as they become due and payable are hereby pledged, charged, assigned, transferred and set over by the City to the Authority and its assigns for the purpose of securing payment of the Installment Payments. The Net Sales Tax Override Revenues shall constitute a trust fund for the security and payment of the Installment Payments.

The Installment Payments and all Parity Obligations are equally secured by a pledge, charge and lien upon the Net Sales Tax Override Revenues and such moneys without priority for series, issue, number or date, and the payment of the interest on and principal of the Installment Payments and all Parity Obligations shall be and are secured by an exclusive pledge, charge and lien upon the Net Sales Tax Override Revenues and such moneys.

(b) Transfer to Pay Installment Payments. The City has previously established the Sales Tax Override Fund, which the City shall continue to hold and maintain for the purposes and uses set forth herein. The City shall deposit all Gross Sales Tax Override Revenues in the Sales Tax Override Fund immediately on receipt. In addition to withdrawals required to pay principal of and interest on the Parity Obligations, the City shall, on or before each Installment Payment Date, deposit Net Sales Tax Override Revenues in the Sales Tax Override Fund and transfer to the Installment Payment Fund the amount indicated in Exhibit B attached hereto as required for the next occurring Installment Payment Date. Notwithstanding Exhibit B attached hereto, the City shall be obligated to make Installment Payments sufficient to pay all principal and interest due with respect to the Installment Payments.

Pursuant to California Government Code Section 5451, the pledge of the Net Sales Tax Override Revenues by the City for the repayment of the principal of, premium, if any, and interest components of the Installment Payments constitutes a first lien and security interest which immediately attaches to such Net Sales Tax Override Revenues, and is effective and binding against the City, the Authority, their successors, creditors and all others asserting rights therein irrespective of whether those parties have notice of the

pledge, irrespective of whether such amounts are or may be deemed to be a fixture and without the need for physical delivery, recordation, filing or further act.

(c) No Preference or Priority; Insufficiency of Net Sales Tax Override Revenues. Payment of the Installment Payments and the principal of and interest on Parity Obligations shall be made without preference or priority. If the amount of Net Sales Tax Override Revenues on deposit in the Sales Tax Override Fund are any time insufficient to enable the City to pay when due the Installment Payments, the principal of and interest on Parity Obligations, and amounts required to replenish any reserve fund established for Parity Obligations, such payments will be made on a pro rata basis.

(d) Other Uses Permitted. The City shall manage, conserve and apply the amounts on deposit in the Sales Tax Override 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, so long as no Event of Default has occurred and is continuing, the City may use and apply moneys in the Sales Tax Override Fund for (i) the payment of any subordinate obligations or any unsecured obligations, (ii) the acquisition and construction of improvements to the City's roads on an annual basis after setting aside moneys for payment of the Installment Payments, or (iii) any other lawful purposes of the City relating to the use of the Sales Tax Override.

(e) Budget of Installment Payments. The City shall include the payment of the Installment Payments in its annual budgets for each Fiscal Year. Notwithstanding the failure of the City to include the Installment Payments coming due in any Fiscal Year for the budget for such Fiscal Year, the City's obligation to pay the Installment Payments from Net Sales Tax Override Revenues shall be absolute as provided in Section 3.06.

Section 3.08. Limitations on Future Obligations Secured by Net Sales Tax Override Revenues.

(a) No Obligations Superior to Installment Payments. During the Term of this Agreement, the City shall not issue or incur any additional bonds or other obligations payable from Gross Sales Tax Override Revenues or Net Sales Tax Override Revenues having any priority over the Installment Payments.

(b) Parity Obligations. The City may issue Parity Obligations in such principal amount as it determines, subject to the following conditions precedent:

- (i) 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.
- (ii) the Net Sales Tax Override Revenues, calculated in accordance with sound accounting principles, as shown by the books of the City for the most recent completed Fiscal Year for which audited financial statements of the City are available, or for any more recent consecutive 12-month period selected by the City, in either case verified by an Independent Accountant or a Financial Consultant or shown in the audited financial statements of the City, are at least equal ____% of the maximum amount of debt service on the Installment Payments and all outstanding Parity Obligations for the

current or any future Fiscal Year (taking into account the Parity Obligations then proposed to be issued);

- (iii) the Authority may, but is not required to, establish a debt service reserve fund for Parity Obligations, in accordance with the applicable Parity Obligations Document; and
- (iv) the City shall deliver to the Authority and the Assignee a Written Certificate of the City certifying that the conditions precedent to the issuance of such Parity Obligations set forth in this Section have been satisfied.

The foregoing provisions of this section shall not apply to any Parity Obligations issued for the purpose of refunding any then-outstanding Parity Obligations, if at the time of the incurring of such Parity Obligations, the Authority certifies in writing that the annual debt service with respect to such Parity Obligations will not exceed the annual debt service on the outstanding Parity Obligations to be refunded.

(c) Subordinate and Unsecured Obligations. Nothing herein limits or affects the ability of the City to issue or incur obligations that are either unsecured or secured on a basis junior and subordinate to the pledge of and lien upon the Net Sales Tax Override Revenues established hereunder.

Section 3.09. Additional Payments. In addition to the Installment Payments, the City shall pay, from Net Sales Tax Override Revenues, when due, all costs and expenses incurred by the Authority to comply with the provisions of the Assignment Agreement and this Agreement.

ARTICLE IV

PREPAYMENT OF INSTALLMENT PAYMENTS

Section 4.01. Prepayment. The City shall have the right to prepay the Installment Payments, but only in the manner, at the times and in all respects in accordance with the provisions of this Article IV.

Section 4.02. Optional Prepayment. Subject to the terms and conditions of this Section 4.02, the Authority hereby grants an option to City to prepay the Installment Payments in whole or in part, on any Installment Payment Date, at a prepayment price equal to the principal component of the Installment Payments being prepaid, together with accrued interest to the prepayment date, plus a premium equal to a percentage of the principal component of the Installment Payment being prepaid, as set forth in the table below:

Prepayment Date	Premium
June 1, _____, through December 1, _____	3%
June 1, _____, through December 1, _____	2%
June 1, _____, through December 1, _____	1%
June 1, _____, and any Installment Payment Date thereafter	0%

The City may exercise this option on any date following written notice by the City to the Authority and the Assignee of the exercise of such option at least 30 days prior to the date designated for prepayment.

Section 4.03. Credit for Amounts on Deposit. If the City elects or is required to prepay the Installment Payments in full under this Article IV, all amounts then on deposit in the Installment Payment Fund shall be credited towards the amounts required to be so prepaid.

Section 4.04. Security Deposit. Notwithstanding any other provision of this Agreement, the City may, on any date, secure the payment of Installment Payments by a deposit with the Assignee, of either of the following:

(a) All Installment Payments. In the case of a security deposit relating to all Installment Payments, either (i) an amount which, together with amounts on deposit in the Installment Payment Fund, is sufficient to pay all unpaid Installment Payments, including the principal and interest components thereof, in accordance with the Installment Payment schedule set forth in Exhibit B attached hereto, or (ii) Defeasance Obligations, together with cash, if required, in such amount as will, in the opinion of nationally-recognized bond counsel and of an independent certified public accountant, together with interest to accrue thereon and, if required, all or a portion of moneys or Defeasance Obligations then on deposit in the Installment Payment Fund, be fully sufficient to pay all unpaid Installment Payments on their Installment Payment Date.

(b) Portion of Installment Payments. In the case of a security deposit relating to a portion of the Installment Payments both (i) a certificate executed by an City Representative designating the portion of the Installment Payments to which the deposit pertains, and (ii) cash or Defeasance Obligations, in such amount as will, together with interest to be received thereon, if any, and an allocable portion of amounts on deposit in

the Installment Payment Fund, be fully sufficient in the opinion of an independent certified public accountant, to pay the portion of the Installment Payments designated in such City Representative's certificate.

(c) Effect. In the event of a deposit pursuant to this Section 4.04, all obligations of the City under this Agreement pertaining to the portion of the Project for which the deposit has been made shall cease and terminate, excepting only the obligation of the City to make, or cause to be made, all Installment Payments, or the portion of Installment Payments to which the deposit pertains, from the deposit made by City pursuant to this Section 4.05. Such deposit shall be deemed to be and shall constitute a special fund for the payment of Installment Payments in accordance with the provisions of this Agreement; and further provided that any security deposit relating to the Project shall not affect the rate covenants of the City contained in Section 3.07 hereof if such security deposit is insufficient to pay or prepay all Installment Payments as they become due and payable. Upon such deposit, the Authority will execute or cause to be executed any and all documents as may be necessary to release the security provided hereby to the extent of such deposit.

ARTICLE V

CITY COVENANTS; BOOKS AND ACCOUNTS TAX COVENANTS

Section 5.01 Punctual Payment. The City will punctually pay or cause to be paid the Installment Payments in strict conformity with the terms of this Agreement. The City will faithfully observe and perform all of the conditions, covenants and requirements of this Agreement.

Section 5.02 Sales Tax Override Administration and Collection. The City covenants that, so long as any Installment Payments are owed hereunder, the City shall diligently provide and account for the collection and administration of the Sales Tax Override in each Fiscal Year, and ensure that the Sales Tax Override Revenues are not applied for purposes not permitted by this Agreement.

Section 5.03 Advances. If the City fails to perform any of its obligations under this Article V, the Authority may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and the City shall be obligated to repay all such advances as soon as possible, with interest at the rate of interest with respect to the Installment Payments from the date of the advance to the date of repayment.

Section 5.04 Advances. If the City fails to perform any of its obligations under this Article V, the Authority may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and the City shall be obligated to repay all such advances as soon as possible, with interest at the rate of interest with respect to the Installment Payments from the date of the advance to the date of repayment.

Section 5.05 Books and Accounts. The City shall keep proper books of records and accounts of the Sales Tax Override Revenues, separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the Sales Tax Override Revenues. Said books shall, upon prior request, be subject to the reasonable inspection of the Authority and the Assignee.

The City shall cause its books and accounts of the Sales Tax Override Revenues to be audited annually by an Independent Accountant not more than nine months after the close of each Fiscal Year, and shall file a copy of such report with the Assignee. Such report may be part of a combined financial audit or report covering all or part of the City's finances.

Additionally, the City shall provide the Assignee with a copy of the City's annual budget, as adopted or amended, or post a copy of such report to the internet site of the City (with notice to the Assignee of such posting), within 30 days of adoption or amendment.

The City shall also provide the Assignee such additional information reasonably requested by the Assignee to the extent permitted by law.

Section 5.06 Tax Covenants.

(a) Private Activity Bond Limitation. The City will assure that the proceeds of this Agreement are not so used as to cause the obligations of the City under this Agreement to satisfy the private business tests of section 141(b) of the Code or the private loan financing test of section 141(c) of the Code.

(b) Federal Guarantee Prohibition. The City will not take any action or permit or suffer any action to be taken if the result of such action would be to cause any of the obligations of the City under this Agreement to be “federally guaranteed” within the meaning of section 149(b) of the Code.

(c) Rebate Requirement. The City will take any and all actions necessary to assure compliance with section 148(f) of the 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.

(d) No Arbitrage. The City will not take 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 any of the obligations of the City under this Agreement to be “arbitrage bonds” within the meaning of section 148 of the Code.

(e) Maintenance of Tax-Exemption. The City will take all actions necessary to assure the exclusion of interest with respect to this Agreement from the gross income of the Assignee to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of delivery of this Agreement.

(f) Record Retention. The City will retain its records of all accounting and monitoring it carries out with respect to this Agreement for at least 3 years after Term or earlier prepayment of this Agreement.

(g) Compliance with Tax Certificate. The City will comply with the provisions of the Tax Certificate and the Use of Proceeds Certificate with respect to this Agreement, which are incorporated herein as if fully set forth herein. The covenants of this Section will survive prepayment in full or defeasance of the City’s obligations under this Agreement.

ARTICLE VI

DISCLAIMER OF WARRANTIES; ACCESS; INDEMNITY

Section 6.01. 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 or any item thereof, or any other representation or warranty with respect to the Project 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 or the Assignment Agreement for the existence, furnishing, functioning or City’s use of the Project.

Section 6.02. Access to the Project and Records. To the extent permitted by law, the City agrees that the Authority, any Authority Representative, and the Authority's successors or assigns shall have the right at all reasonable times to enter upon and to examine and inspect the Project. The City further agrees that the Authority, any Authority Representative, and the Authority's successors or assigns shall have such rights of access to the Project as may be reasonably necessary to cause the proper maintenance of the Project in the event of failure by the City to perform its obligations hereunder. In addition, the City agrees that the Authority, any Authority Representative, and the Authority's successors or assigns shall have the right at all reasonable times to inspect and examine all books, papers and records of the Authority and the City pertaining to the Project and the Installment Payments, to make copies thereof and to take non-privileged memoranda therefrom or with respect thereto as may be desired.

Section 6.03. Indemnity. The City shall and hereby agrees to indemnify and save the Authority and its successors and assigns, including the Assignee, harmless from and 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 the Project by the City;
- (b) any breach or default on the part of the City in the performance of any of its obligations under this Agreement;
- (c) any act or negligence of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Project;
- (d) any act or negligence of any assignee or sublessee of the City with respect to the Project; or

No indemnification is made under this Section 6.03, or elsewhere in this Agreement for willful misconduct, negligence, or breach of duty under this Agreement by the Authority, its officers, agents, employees, successors or assigns.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.01. Events of Default Defined. The following shall be “events of default” under this Agreement and the terms “events of default” and “default” shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) Failure by the City to pay any Installment Payment by the Installment Payment Date or failure to make any other payment required to be paid hereunder at the time specified herein; or

(b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed in this Agreement or the Assignment Agreement, other than as referred to in clause (a) of this Section 7.01, 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, if the failure stated in the notice cannot be corrected within the applicable period, the Authority or the Assignee, as applicable, shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected; or

(c) The filing by the City of a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or the approval by a court of competent jurisdiction of a petition filed with or without the consent of the City seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction assumes custody or control of the City or of the whole or any substantial part of its property; or

(d) An event of default occurs and is continuing with respect to any Parity Obligations.

Section 7.02. Remedies on Default. Whenever any event of default referred to in Section 7.01 hereof occurs 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 from the immediately preceding Installment Payment Date on which payment was made, to be immediately due and payable, whereupon the same shall become due and payable; and

(b) take whatever action at law or in equity may appear necessary or desirable to collect the Installment Payments then due or thereafter to become due during the Term of this Agreement, or enforce performance and observance of any obligation, agreement or covenant of the City under this Agreement.

Section 7.03. 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 7.04. Prosecution and Defense of Suits. The City shall promptly, upon request of the Authority or the 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 Project whether now existing or hereafter developing and shall prosecute all such suits, actions and other proceedings as may be appropriate for such purpose and, to the extent permitted by law, shall indemnify or cause to be indemnified the Authority and the Assignee for all loss, cost, damage and expense, including attorneys' fees, which they or any of them may incur by reason of any such defect, cloud, suit, action or proceedings.

To the extent permitted by law, the City shall defend, or cause to be defended, against every suit, action or proceeding at any time brought against the Authority or the Assignee upon any claim arising out of the receipt, application or disbursement of any of the Net Sales Tax Override Revenues or involving the rights or duties of the Authority or the Assignee under this Agreement or the Assignment Agreement; provided, that the Authority and the Assignee at their election may appear in and defend any such suit, action or proceeding. The City shall indemnify or cause to be indemnified the Authority and the Assignee against any and all liability claimed or asserted by any person, arising out of such receipt, application or disbursement. Notwithstanding any contrary provision hereof, this covenant shall remain in full force and effect, even though all Installment Payments have been fully paid and satisfied, until a date which is three years following the payment of the last of the Installment Payments.

Section 7.05. No Additional Waiver Implied by One Waiver. If any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 7.06. Liability Limited to Net Sales Tax Override Revenues. Notwithstanding any provision of this Agreement, the City's liability to pay the Installment Payments and other amounts hereunder shall be limited solely to Net Sales Tax Override Revenues as provided in Sections 3.06 and 3.07 hereof. If Net Sales Tax Override Revenues are insufficient at any time to pay an Installment Payment in full, the City shall not be liable to pay or prepay such Installment Payment other than from Net Sales Tax Override Revenues.

ARTICLE VIII
MISCELLANEOUS

Section 8.01. Assignment, Sale or Lease by the City. This Agreement may not be assigned by the City, and the Sales Tax Override Revenues may not be assigned by the City during the Term of this Agreement except as provided herein.

Section 8.02. Amendment of Installment Sale Agreement. The City will not alter, modify or cancel or agree or consent to alter, modify or cancel this Agreement, except as permitted by Section 5.07, without the written consent of the Assignee and the Authority,

Section 8.03. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Authority and the City and their respective successors and assigns.

Section 8.04. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 8.05. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 8.06. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision, Article or Section of this Agreement.

Section 8.07. 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 8.08. 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 8.09. 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 Authority Representative and for the City by a City Representative, and any party hereto shall be authorized to rely upon any such approval or request.

Section 8.10. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received 48 hours after deposit in the United States mail with postage fully prepaid:

If to the City:	City of Clearlake
	14050 Olympic Drive
	Clearlake, California 95695

Attention: Finance Director
Email: (currently) kyoung@clearlake.ca.us

If to the Authority: Clearlake Public Financing Authority
14050 Olympic Drive
Clearlake, California 95695
Attention: Treasurer
Email: (currently) kyoung@clearlake.ca.us

If to the Assignee: _____

Email: _____

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 8.11. Waiver of Jury Trial; Agreement for Judicial Reference To the fullest extent permitted by law, the City hereby waives its right to trial by jury in any action, proceeding and/or hearing on any matter whatsoever arising out of, or in any way connected with, this Agreement or any related documents, or the enforcement of any remedy under any law, statute, or regulation. To the extent such waiver is not enforceable, the City hereby consents to the adjudication of any and all such matters pursuant to Judicial Reference as provided in Section 638 of the California Code of Civil Procedure, and the judicial referee shall be empowered to hear and determine any and all issues in such Judicial Reference whether fact or law.

To the extent the foregoing waiver of a jury trial is unenforceable under applicable California law, the City agrees to refer, for a complete and final adjudication, any and all issues of fact or law involved in any litigation or proceeding (including all discovery and law and motion matters, pretrial motions, trial matter and post-trial motions up to and including final judgment), brought to resolve any dispute (whether based on contract, tort or otherwise) between the parties hereto arising out of, in connection with or otherwise related or incidental to this Agreement to a judicial referee who shall be appointed under a general reference pursuant to California Code of Civil Procedure Section 638, which referee's decision will stand as the decision of the court. Such judgment will be entered on the referee's statement of judgment in the same manner as if the action had been tried by the court. The City and the Assignee shall select a single neutral referee, who shall be a retired state or federal judge with at least five years of judicial experience in civil matters; provided that the event the City and the Assignee cannot agree upon a referee, the referee will be appointed by the court.

Section 8.12. 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.

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

CLEARLAKE PUBLIC FINANCING AUTHORITY,
as Seller

By _____
Executive Director

Attest:

Secretary

CITY OF CLEARLAKE, as Purchaser

By _____
City Manager

Attest:

City Clerk

:

EXHIBIT A

DESCRIPTION OF THE PROJECT

The Project consists of the following improvements to City roads:

EXHIBIT B

SCHEDULE OF INSTALLMENT PAYMENTS

(Interest Rate is ____% per annum)

Payment Date	Principal	Interest	Total Payment	Annual Total
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