
INSTALLMENT SALE AGREEMENT

Dated as of _____ 1, 2019

between the

**MILPITAS MUNICIPAL FINANCING AUTHORITY,
*as Seller***

and the

**CITY OF MILPITAS,
*as Purchaser***

Relating to

**\$ _____
Milpitas Municipal Financing Authority
2019 Water Revenue Bonds**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I.....	2
Definitions ; Rules of Interpretation	2
SECTION 1.1. Definitions	2
SECTION 1.2. Interpretation	2
ARTICLE II.....	3
Representations, Covenants and Warranties	3
SECTION 2.1. Representations, Covenants and Warranties of the City.....	3
SECTION 2.2. Representations, Covenants and Warranties of Authority.....	4
ARTICLE III.....	6
Issuance of Series 2019 Bonds; Construction of 2019 Water Project	6
SECTION 3.1. The 2019 Bonds.	6
SECTION 3.2. Deposit and Application of Funds.	6
SECTION 3.3. Acquisition and Construction of the 2019 Water Project	6
SECTION 3.4. Appointment of City as Agent	6
SECTION 3.5. Plans and Specifications.....	6
SECTION 3.6. Certificate of Completion	6
ARTICLE IV	8
Sale of Project	8
Installment Payments.....	8
SECTION 4.1. Sale of 2019 Water Project.....	8
SECTION 4.2. Term.....	8
SECTION 4.3. Title	8
SECTION 4.4. Installment Payments	8
SECTION 4.5. Pledge and Application of Net Revenues.....	9
SECTION 4.6. Special Obligation of the City; Obligations Absolute	10
SECTION 4.7. Additional Payments.....	11
ARTICLE V	12
Covenants of the City.....	12
SECTION 5.1. Disclaimer of Warranties; Maintenance, Utilities and Taxes.....	12
SECTION 5.2. Release and Indemnification Covenants.....	12
SECTION 5.3. Sale or Eminent Domain of Water System.....	12
SECTION 5.4. Insurance	13
SECTION 5.5. Records and Accounts	13
SECTION 5.6. Rates and Charges.....	13
SECTION 5.7. Superior and Subordinate Obligations	14
SECTION 5.8. Issuance of Parity Debt	14
SECTION 5.10. Operation of Water System in Efficient and Economical Manner	16
SECTION 5.11. Assignment and Amendment.....	16
SECTION 5.12. Continuing Disclosure.....	16
SECTION 5.13. Rate Stabilization Fund.....	17
ARTICLE VI	18
Events of Default.....	18
SECTION 6.1. Events of Default Defined	18
SECTION 6.2. Remedies on Default	18
SECTION 6.3. No Remedy Exclusive	19
SECTION 6.4. Agreement to Pay Attorneys' Fees and Expenses	19

SECTION 6.5. No Additional Waiver Implied by One Waiver	19
SECTION 6.6. Trustee and Bond Owners to Exercise Rights	19
ARTICLE VII	20
Prepayment of Installment Payments.....	20
SECTION 7.1. Security Deposit	20
SECTION 7.2. Optional Prepayment Relating to the 2019 Bonds.	20
SECTION 7.3. Mandatory Prepayment From Proceeds of Insurance, Sale or Condemnation.....	20
SECTION 7.4. Credit for Amounts on Deposit.....	21
ARTICLE VIII	22
Miscellaneous	22
SECTION 8.1. Further Assurances	22
SECTION 8.2. Notices	22
SECTION 8.3. Governing Law	22
SECTION 8.4. Binding Effect	22
SECTION 8.5. Severability of Invalid Provisions	22
SECTION 8.6. Article and Section Headings and References	23
SECTION 8.7. Payment on Non-Business Days	23
SECTION 8.8. Execution of Counterparts	23
SECTION 8.9. Waiver of Personal Liability	23
SECTION 8.10. Trustee as Third Party Beneficiary.....	23
APPENDIX A Schedule of Installment Payments	
APPENDIX B Description of 2019 Water Project	

INSTALLMENT SALE AGREEMENT

This INSTALLMENT SALE AGREEMENT (this "Agreement"), dated as of _____ 1, 2019, is between the MILPITAS MUNICIPAL FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "Authority"), as seller, and the CITY OF MILPITAS, a municipal corporation duly organized and existing under the laws of the State of California (the "City"), as purchaser.

B A C K G R O U N D :

1. The City presently owns, operates and/or contracts for facilities and property for the supply, treatment and distribution of water within the service area of the City (as further defined herein, the "Water System"), and the City wishes to raise funds to finance additional obligations of the Water System as described in Appendix B hereto (the "2019 Water Project").

2. The Authority has been organized for the purpose of assisting the City in its public purposes, and to that end the Authority is authorized to assist the City in financing the costs of acquisition, construction and installation of the 2019 Water Project.

3. In order to provide funds to finance the acquisition, construction and installation of the 2019 Water Project, the Authority has proposed to sell the 2019 Water Project to the City on an installment basis, and the City has proposed to purchase the 2019 Water Project from the Authority as provided in this Agreement.

4. The Authority will provide the necessary funds for the acquisition, construction and installation of the 2019 Water Project by issuing its Milpitas Municipal Financing Authority 2019 Water Revenue Bonds (the "2019 Bonds"), in the aggregate principal amount of \$_____ under an Indenture of Trust dated as of _____ 1, 2019, by and between the Authority and U.S. Bank National Association, as trustee (the "Indenture"), and under the provisions of Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code (the "Bond Law").

5. The debt service on the 2019 Bonds will be payable from Installment Payments made under this Agreement.

6. Repayment of the Installment Payments by the City shall be secured by a pledge of the Net Revenues of the Water System, on a parity with the pledge in favor of the holders of Parity Debt (as defined herein), if any.

7. The Authority and the City have both duly authorized the execution and delivery of this Agreement.

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; RULES OF INTERPRETATION

SECTION 1.1. Definitions. Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Agreement have the respective meanings given them in Article I of the Indenture.

SECTION 1.2. Interpretation.

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

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

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

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

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

(a) Due Organization and Existence. The City is a municipal corporation duly organized and validly existing under the laws of the State of California, has full legal right, power and authority under said laws to enter into this Agreement and to carry out and consummate all transactions contemplated hereby and thereby, and by proper action the Council has duly authorized the execution and delivery of this Agreement.

(b) Due Execution. The officers of the City executing this Agreement are fully authorized to execute the same.

(c) Valid, Binding and Enforceable Obligations. This Agreement has been duly authorized, executed and delivered by the City and constitutes the legal, valid and binding agreement of the City enforceable against the City in accordance with its 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, the consummation of the transactions herein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement 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.

(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 Indenture, or the consummation of any transaction herein 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 Indenture, or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially adversely affect the consummation of the transactions contemplated by this Indenture, 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 Indenture.

(g) Encumbrances. There are no easements, encumbrances or interests with respect to the Water System or the 2019 Water Project that prohibit or materially impair the execution, delivery and performance of this Installment Sale Agreement or the acquisition or use of the 2019 Water Project or the use of the Water System.

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

(a) Due Organization and Existence. The Authority is a joint exercise of powers authority organized and existing under the laws of the State of California, and has power to enter into this Agreement and the Indenture and to perform the duties and obligations imposed on it hereunder and thereunder. The Board of the Authority has duly authorized the execution and delivery of this Agreement and the Indenture.

(b) Due Execution. The representatives of the Authority executing this Agreement and the Indenture are fully authorized to execute the same.

(c) Valid, Binding and Enforceable Obligations. This Agreement and the Indenture 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 hereof and of the Indenture, 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 Indenture 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 Indenture.

(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 hereof or of the Indenture, 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 Indenture, 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 Indenture or the financial conditions, assets, properties or operations of the Authority, including but not limited to the performance of the Authority's obligations hereunder and under the Indenture.

(g) Encumbrances. To the best knowledge of the Authority, there are no easements, encumbrances or interests with respect to the Water System or the 2019 Water Project that prohibit or materially impair the execution, delivery and performance of this Installment Sale Agreement or the acquisition or use of the 2019 Water Project or the use of the Water System.

ARTICLE III

ISSUANCE OF 2019 BONDS; CONSTRUCTION OF 2019 WATER PROJECT

SECTION 3.1. The 2019 Bonds. The Authority shall cause the 2019 Bonds to be issued under the Indenture in the aggregate principal amount of \$_____. The Trustee shall deposit the proceeds of sale of the 2019 Bonds received by it on the Closing Date in accordance with the Indenture. The City hereby approves the Indenture, the assignment thereunder to the Trustee of certain rights of the Authority, and the issuance of the 2019 Bonds.

SECTION 3.2. Deposit and Application of Funds. The proceeds received by the Trustee from the sale of the Bonds to the Original Purchaser shall be deposited in the respective funds and accounts, and in the respective amounts, as set forth in Section 3.02 of the Indenture.

SECTION 3.3. Acquisition and Construction of the 2019 Water Project. The Authority 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 2019 Water 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 2019 Water Project are subject to all applicable provisions of law relating to the acquisition and construction of public works by the City. The Authority expects that the 2019 Water Project will be completed on or before [[_____, 20__]]. The failure of the Authority to complete the 2019 Water Project by that date does not constitute an Event of Default hereunder or a grounds for termination hereof, nor does any such failure result in the diminution, abatement or extinguishment of the obligations of the City hereunder to pay the Installment Payments when due hereunder.

SECTION 3.4. 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 2019 Water 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 2019 Water Project. As agent of the Authority hereunder, the City shall enter into, administer and enforce all purchase orders or other contracts relating to the 2019 Water Project. Payment of Project Costs shall be made by the City from amounts held by the Trustee in the Project Fund in accordance with the provisions of this Agreement and the provisions of the Indenture.

SECTION 3.5. Plans and Specifications. The City has the right to specify the exact scope, nature and identification of the 2019 Water Project and the respective components thereof. Before any payment is made for the 2019 Water Project or any component thereof from amounts on deposit in the Project Fund, the City must prepare detailed plans and specifications relating thereto. The City may from time to time amend any such plans and specifications, and thereby change or modify the description of the 2019 Water Project or any component thereof.

SECTION 3.6. Certificate of Completion. Upon the completion of the 2019 Water Project, but in any event not later than 30 days following such completion, an Authorized Representative of the City shall execute and deliver to the Authority and the Trustee a Written

Certificate of the City which (a) states that the construction of the 2019 Water Project has been substantially completed, (b) identifies the total Project Costs thereof, and (c) identifies the amounts, if any, to be reserved in the Project Fund for payment of future Project Costs.

ARTICLE IV

SALE OF PROJECTS; INSTALLMENT PAYMENTS

SECTION 4.1. Sale of 2019 Water Project. The Authority hereby sells, bargains and conveys the 2019 Water Project to the City, and the City hereby purchases the 2019 Water Project from the Authority, upon the terms and conditions set forth in this Agreement.

SECTION 4.2. Term. The Term of this Agreement commences on the Closing Date, and ends on [[_____ 1, 20__]], or such later or earlier date on which the Bonds cease to be Outstanding under and within the meaning of the Indenture.

SECTION 4.3. Title. Title to the 2019 Water Project, and each component thereof, shall be deemed conveyed by the Authority to and vested in the City upon the completion of the acquisition, construction and installation thereof. The Authority and the City will execute, deliver and cause to be recorded any and all documents reasonably required by the City to consummate the transfer of title to the Water System and the 2019 Water Project.

SECTION 4.4. Installment Payments.

(a) Obligation to Pay. The City hereby agrees to pay to the Authority, as the purchase price of the 2019 Water Project hereunder, the aggregate principal amount of _____ Dollars (\$_____) together with interest (calculated on the basis of a 360-day year of twelve 30-day months) on the unpaid principal balance thereof, payable in semiannual installment payments in the respective amounts and on the respective Installment Payment Dates specified in Appendix A hereto.

The City shall deposit the Installment Payment coming due and payable on any Interest Payment Date with the Trustee, as assignee of the Authority under the Indenture, on the related Installment Payment Date (as set forth in Exhibit A hereto) in an amount which, together with amounts then held by the Trustee in the Installment Payment Fund, is equal to the full amount of such Installment Payment. The Installment Payments are secured by and payable solely from the sources specified in Section 4.5.

(b) Effect of Prepayment. If the City prepays all remaining Installment Payments in full under Section 7.2 or Section 7.3, or under the relevant provisions of any Supplemental Agreement, the City's obligations under this Agreement shall thereupon cease and terminate, including but not limited to the City's obligation to pay Installment Payments therefor under this Section 4.4; *provided, however*, that the City's obligations to compensate and indemnify the Trustee under Sections 4.7 and 5.2 will survive such prepayment. If the City prepays the Installment Payments in part but not in whole under Section 7.2 or Section 7.3, or under the relevant provisions of any Supplemental Agreement, the principal component of each succeeding Installment Payment will be reduced as provided in such Sections or in such Supplemental Agreement, and the interest component of each remaining Installment Payment will be reduced by the aggregate corresponding amount of interest which would otherwise be payable with respect to the Bonds thereby redeemed under the applicable provisions of the Indenture.

(c) Rate on Overdue Payments. If the City fails to make any of the payments required in this Section 4.4 and Section 4.8, the payment in default will continue as an obligation

of the City until fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment, at the Overdue Rate.

(d) Assignment. The City understands and agrees that certain rights of the Authority, including but not limited to the right of the Authority to receive payment of the Installment Payments, have been assigned by the Authority to the Trustee in trust under the Indenture, for the benefit of the Owners of the Bonds, and the City hereby consents to such assignment. The Authority hereby directs the City, and the City hereby agrees, to pay to the Trustee at its Principal Corporate Trust Office, all payments payable by the City under this Section 4.4 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 and all moneys on deposit in the Water Fund and the funds and accounts established and held by the Trustee under the Indenture (other than the Project Fund and Cost of Issuance Fund) are hereby irrevocably pledged, charged and assigned to the punctual payment of the Installment Payments. Such pledge, charge and assignment constitute a lien on the Net Revenues and such other moneys for the payment of the Installment Payments in accordance with the terms hereof, on a parity with the pledge and lien which secures any Parity Debt.

(b) Deposit of Net Revenues Into Water Fund; Transfers to Make Payments. The City will establish and hold in trust the Water Fund, for the purposes and uses set forth herein. The City shall deposit all of the Gross Revenues in the Water Fund immediately upon receipt. The City shall apply amounts in the Water Fund as set forth in this Agreement and any Parity Debt Instruments. 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 Maintenance and Operation Costs (including amounts reasonably required to be set aside in contingency reserves for Maintenance and Operation Costs) as such Maintenance and Operation Costs become due and payable;

(ii) to the Trustee (or other recipient set forth in a Parity Debt Instrument) the amount needed to pay the Installment Payments and principal of, and interest on, any Parity Debt;

(iii) to the Trustee (or other recipient set forth in a Parity Debt Instrument) the amount of any deficiency in any reserve fund established for any Bonds or Parity Debt, the notice of which deficiency has been given to the City in accordance with the Indenture and the related Parity Debt Instruments, on a pro rata basis; and

(iv) as long as all of the foregoing payments, allocations and transfers are made at the times and in the manner set forth above, any moneys remaining in the Water Fund may at any time be treated as surplus and applied for any lawful purpose.

(c) No Preference or Priority. Payment of the Installment Payments and the principal of and interest on any Parity Debt shall be made without preference or priority among the Installment Payments and such Parity Debt. If the amount of Net Revenues on deposit in

the Water Fund is at any time insufficient to enable the City to pay when due the Installment Payments and the principal of and interest on any Parity Debt, such payments shall be made on a pro rata basis.

(d) Budget and Appropriation of Installment Payments. During the Term of this Agreement, the City shall adopt all necessary budgets and make all necessary appropriations of the Installment Payments from the Net Revenues. If any Installment Payment requires the adoption by the City of any supplemental budget or appropriation, the City shall promptly adopt the same. The covenants on the part of the City contained in this subsection (d) constitute 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 (d).

SECTION 4.6. Special Obligation of the City; Obligations Absolute. The City's obligation to pay the Installment Payments and any other amounts coming due and payable hereunder is a special obligation of the City limited solely to the Net Revenues. Under no circumstances is the City required to advance moneys derived from any source of income other than the Net Revenues and other sources specifically identified herein for the payment of the Installment Payments and such other amounts. No other funds or property of the City are liable for the payment of the Installment Payments and any other amounts coming due and payable hereunder.

The obligations of the City to pay the Installment Payments from the Net Revenues and to perform and observe the other agreements contained herein are absolute and unconditional and are not subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach by the Authority or the Trustee 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 Trustee. Until all of the Installment Payments, all of the Additional Payments and all other amounts coming due and payable hereunder are fully paid or prepaid, the City (a) will not suspend or discontinue payment of any Installment Payments, Additional Payments or such other amounts, (b) will perform and observe all other agreements contained in this Agreement, and (c) will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Water System, failure to complete the acquisition and construction of the 2019 Water Project by the estimated completion date thereof, 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 law 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 or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Indenture or this Agreement.

The foregoing provisions of this Section 4.6 do not release the Authority from the performance of any of the agreements on its part contained herein or in the Indenture, and if the Authority fails to perform any such agreements, the City may institute such action against the Authority as the City deems necessary to compel performance, so long as such action does not abrogate the obligations of the City contained in the preceding paragraph. The City may, however, at its cost and expense and in its 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 rights hereunder, and in such event the Authority shall cooperate fully with the City and shall take such action necessary to effect the substitution of the City for the Authority in such action or proceeding as the City may request.

SECTION 4.7. Additional Payments. In addition to the Installment Payments, the City shall pay when due the following amounts to the following parties:

- (a) to the Authority, all costs and expenses incurred by the Authority to comply with the provisions of this Agreement and the Indenture;
- (b) to the Trustee upon request therefor, all of its fees, costs and expenses payable as a result of the performance of and compliance with its duties hereunder or under the Indenture or any related documents;
- (c) to the Authority and the Trustee, all amounts required to indemnify the Authority and the Trustee under Section 5.2 hereof and Section 8.07 of the Indenture; and
- (d) all costs and expenses of auditors, engineers and accountants for professional services relating to the Water System or the Bonds.

The Additional Payments shall be payable from, but shall not be secured by a pledge or lien upon, the Net Revenues. The rights of the Trustee and the Authority under this Section 4.7, and the obligations of the City under this Section 4.7, shall survive the termination of this Agreement.

ARTICLE V

COVENANTS OF THE CITY

SECTION 5.1. Disclaimer of Warranties; Maintenance, Utilities and Taxes.

(a) The Trustee makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City of the 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 liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Agreement or the Indenture for the existence, furnishing, functioning or use of the Project.

(b) Throughout the Term of this Agreement, all improvement, repair and maintenance of the Water System shall be the responsibility of the City, and the City shall pay for or otherwise arrange for the payment of all utility services supplied to the Water System, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, Water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Water System resulting from ordinary wear and tear.

The City shall also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Authority or the City affecting the Water System or the respective interests or estates therein; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the Term of this Agreement as and when the same become due.

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

SECTION 5.3. Sale or Eminent Domain of Water System.

(a) The City will not sell, lease or otherwise dispose of the Water System or any part thereof essential to the proper operation of the Water System or to the maintenance of the Net Revenues except as herein expressly permitted. The City will not enter into any lease or agreement which impairs the operation of the Water System or any part thereof necessary to secure adequate Net Revenues for the payment of the interest on and principal or redemption price, if any, on the Bonds, or which would otherwise impair the rights of the holders of the Bonds with respect to the Net Revenues or the operation of the Water System. Any real or personal property which has become non-operative or which is not needed for the efficient and

proper operation of the Water System, or any material or equipment which has worn out, may be sold at not less than the market value thereof without the consent of the holders of the Bonds if such sale will not reduce Net Revenues and if all of the Net Proceeds of such sale are deposited in the Water Fund.

(b) If all or any part of the Water System shall be taken by eminent domain proceedings, the Net Proceeds realized by the City therefrom shall be deposited by the City with the Trustee in a special fund in trust and applied by the City (a) to the cost of acquiring or constructing or financing Improvements to the Water System, or (b) to redeem Bonds or any Parity Debt in accordance with the Indenture or the applicable Parity Debt Instruments.

SECTION 5.4. Insurance. The City covenants that it shall at all times maintain 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 such works or properties.

Any such insurance shall be in the form of policies or contracts for insurance with insurers of good standing and shall be payable to the City, or may be in the form of self-insurance by the City. The City shall establish such fund or funds or reserves as it determines, in its sole judgment, are necessary to provide for its share of any such self-insurance.

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 redeem Bonds or any Parity Debt in accordance with the Indenture or the applicable Parity Debt Instruments.

SECTION 5.5. Records and Accounts. The City covenants that it shall keep proper books of record and accounts of the Water System, separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the Water System. Said books shall, upon reasonable request, be subject to the inspection of the Owners of not less than 10% of the Outstanding Bonds or their representatives authorized in writing.

The City covenants that it will cause the books and accounts of the Water System to be audited annually by an Independent Certified Public Accountant and will make available for inspection by the Bond Owners at the Principal Corporate Trust Office of the Trustee, upon reasonable request, a copy of the report of such Independent Certified Public Accountant.

The City covenants that it will cause to be prepared annually, not more than 180 days after the close of each Fiscal Year, as a part of its regular annual financial report, a summary statement showing the amount of Gross Revenues and the amount of all other funds collected which are required to be pledged or otherwise made available as security for payment of principal of and interest on the Bonds, the disbursements from the Gross Revenues and other funds in reasonable detail. The City shall furnish a copy of the statement to the Trustee, and upon written request, to any Bond Owner.

SECTION 5.6. Rates and Charges.

(a) The City shall fix, prescribe, revise and collect Charges for the Water System during each Fiscal Year which are at least sufficient, after making allowances for contingencies and error in the estimates, to produce Gross Revenues (excluding connection fees and

transfers to the Water Fund from the Rate Stabilization Fund) which will be sufficient to pay the following amounts:

- (i) all Maintenance and Operation Costs of the Water System estimated by the City to become due and payable in such Fiscal Year;
- (ii) the Installment Payments and debt service on any Parity Debt;
- (iii) all other payments required for compliance with this Agreement, the Indenture and the Parity Debt Instruments; and
- (iv) all payments required to meet any other obligations of the City that are charges, liens, encumbrances upon or payable from the Gross Revenues of the Water System or the Net Revenues of the Water System.

(b) In addition, the City shall fix, prescribe, revise and collect Charges for the Water System during each Fiscal Year which are sufficient to yield Net Revenues (including, for clarity, connection fees and transfers into the Water Fund from the Rate Stabilization Fund in such Fiscal Year (after deducting amounts transferred into the Rate Stabilization Fund from Gross Revenues received by the City in such Fiscal Year)) at least equal to 115% of the amounts payable under the preceding clause (a)(ii) in such Fiscal Year. For purposes of this paragraph, the amount of Net Revenues for a Fiscal Year will be computed on the basis that any transfers into the Water Fund in such Fiscal Year from the Rate Stabilization Fund are included in the calculation of Net Revenues (except to the extent of amounts transferred into the Rate Stabilization Fund from Gross Revenues received by the City in such Fiscal Year), as provided in this Agreement.

SECTION 5.7. Superior and Subordinate Obligations. The City may not issue or incur any additional bonds or other obligations during the Term of this Agreement having any priority in payment of principal or interest out of the Net Revenues over the Installment Payments. Nothing herein is intended or shall be construed to limit or affect the ability of the City to issue, enter into 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. In addition to the Installment Payments, the City may, by a Parity Debt Instrument, issue or incur other loans, advances or indebtedness payable from Net Revenues to be derived from the Water System, to provide financing for the Water System, in such principal amount as shall be determined by the City. The City may issue or incur any such Parity Debt subject to the following specific conditions that are hereby made conditions precedent to the issuance and delivery of such Parity Debt:

- (a) The City shall be in compliance with all covenants set forth in this Agreement and in the Indenture.
- (b) The Net Revenues of the Water System, calculated on generally accepted accounting principles, as shown by the books of the City for the latest Fiscal Year or any more recent 12-month period selected by the City ending not more than 60 days prior to the adoption of the Parity Debt Instrument pursuant to which such Parity Debt are issued, as shown by the books of the City, plus, at the option of the City, any or all of the items hereinafter in this paragraph designated (i) and (ii), shall at least equal

115% of Maximum Annual Debt Service, with Maximum Annual Debt Service calculated on all bonds and other obligations to be outstanding immediately subsequent to the issuance of such Parity Debt which have a lien on Net Revenues of the Water System. The items any or all of which may be added to such Net Revenues for the purpose of issuing or incurring Parity Debt hereunder are the following:

(i) An allowance for Net Revenues from any additions to or improvements or extensions of the Water System to be made with the proceeds of such Parity Debt, and also for Net Revenues from any such additions, improvements or extensions which have been made from moneys from any source but in any case which, during all or any part of such Fiscal Year or such 12-month period, were not in service, all in an amount equal to 90% of the estimated additional average annual Net Revenues to be derived from such additions, improvements and extensions for the first 36-month period in which each addition, improvement or extension is respectively to be in operation, all as shown in the written report of an Independent Consultant engaged by the City; and

(ii) An allowance for revenues projected to arise from any increase in the Charges which has been approved by the Council prior to the incurring of such additional indebtedness but which, during all or any part of such Fiscal Year or such 12-month period, was not in effect, in an amount equal to the amount by which the Net Revenues would have been increased if such increase in Charges had been in effect during the whole of such Fiscal Year or such 12-month period, all as shown in the written report of an Independent Consultant engaged by the City. For the avoidance of doubt, a Charge shall be considered to have been approved by the Council and may be considered in the calculation of the allowance described in the previous sentence if the Charge is part of a multi-year rate increase that has been approved by the Council, even if the specific Charge will not take effect until a subsequent Fiscal Year.

(c) The Parity Debt Instrument providing for the issuance of such Parity Debt under this Section 5.8 shall:

(i) Provide that the proceeds of such Parity Debt shall be applied to the acquisition, construction, improvement, financing or refinancing of additional facilities, improvements or extensions of existing facilities within the Water System, or otherwise for facilities, improvements or property which the City determines are of benefit to the Water System, or for the purpose of refunding any Parity Debt in whole or in part, including all costs (including costs of issuing such Parity Debt and including capitalized interest on such Parity Debt during any period which the City deems necessary or advisable) relating thereto;

(ii) specify the date on which interest on such Parity Debt will be payable; and

(iii) specify the date on which principal on such Parity Debt will be payable.

(d) Notwithstanding the foregoing, Parity Debt proposed to be issued for the purpose of refunding any Parity Debt may be issued without compliance with subsection

(b) and (c)(i), so long as such refunding results in lower Debt Service in each Fiscal Year after such refunding and the final maturity (or termination) date of the refunding Parity Debt is no later than the final maturity (or termination) date of the refunded Parity Debt.

SECTION 5.10. Maintenance and Operation of Water System in Efficient and Economical Manner. The City covenants and agrees to maintain and operate the Water System in an efficient and economical manner and to operate, maintain and preserve the Water System in good repair and working order.

SECTION 5.11. Assignment and Amendment. The Authority and the City may at any time amend or modify any of the provisions of this Agreement, but only: (a) with the prior written consents of the Owners of a majority in aggregate principal amount of the Outstanding Bonds; or (b) without the consent of the Trustee or any of the Bond Owners, but only if such amendment or modification is for any one or more of the following purposes:

(i) to add to the covenants and agreements of the City contained in this Agreement, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the City;

(ii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained herein, to conform to the original intention of the City and the Authority;

(iii) to modify, amend or supplement this Agreement in such manner as to assure that the interest on the Bonds remains excluded from gross income under the Tax Code (provided that this provision shall not apply to bonds the interest on which is intended to be included in gross income for purposes of federal income taxation);

(iv) in any other respect whatsoever as the Authority and the City deem necessary or desirable, if in the opinion of Bond Counsel such modifications or amendments do not materially adversely affect the interests of the Owners of the Bonds; and

(v) to provide for the issuance of Parity Debt pursuant to Section 5.8 hereof, including the addition of any provisions required with respect to Parity Debt relating to Variable Rate Bonds, and to Swap Agreements.

No such modification or amendment may extend or have the effect of extending any Installment Payment Date or reducing any Installment Payment or any premium payable upon the prepayment thereof, without the express consent of the Owners of the affected Bonds, or modify any of the rights or obligations of the Trustee without its written assent thereto.

SECTION 5.12. Continuing Disclosure. The City hereby covenants and agrees to comply with and carry out all of the provisions of each Continuing Disclosure Certificate, as originally executed as of the date of issuance and delivery of the Bonds, and as it may be amended from time to time in accordance with its terms. The City shall direct the Dissemination Agent to provide all Annual Reports and notices of Listed Events to the Insurer, when and as such documents are provided by the City under the Continuing Disclosure Certificate. Notwithstanding any other provision of this Agreement, failure by the City to comply with the

Continuing Disclosure Certificate shall not constitute a default hereunder or under the Indenture of Trust; *provided, however*, that any Participating Underwriter or any Owner or beneficial owner of the Bonds may take such action as may be necessary and appropriate to compel performance by the City of its obligations under this Section 5.12, including seeking mandamus or specific performance by court order. All capitalized terms used but not defined in this Section 5.12 shall have the meanings given in the Continuing Disclosure Certificate.

SECTION 5.13. Rate Stabilization Fund. The City has the right at any time to establish a rate stabilization fund (the "Rate Stabilization Fund") to be held by it and administered in accordance with this Section 5.13, 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 that are released from the pledge and lien which secures the Installment Payments and any Parity Debt, as the City may determine.

The City may, but is not required to, withdraw from any amounts on deposit in a Rate Stabilization Fund and deposit such amounts in the Water Fund in any Fiscal Year for the purpose of paying Debt Service coming due and payable in such Fiscal Year. Amounts so transferred from a Rate Stabilization Fund to the Water Fund shall constitute Gross Revenues for such Fiscal Year (except to the extent of amounts transferred into the Rate Stabilization Fund from Gross Revenues received by the City in such Fiscal Year), and shall be applied for the purposes of the Water Fund. Amounts on deposit in a Rate Stabilization Fund shall not be pledged to or otherwise secure the Installment Payments or any Parity Debt. All interest or other earnings on deposits in a Rate Stabilization Fund shall be withdrawn therefrom at least annually and accounted for as Gross Revenues in the Water Fund. The City has the right at any time to withdraw any or all amounts on deposit in a Rate Stabilization Fund and apply such amounts for any lawful purposes of the City.

ARTICLE VI

EVENTS OF DEFAULT

SECTION 6.1. Events of Default Defined. The following events 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 60 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority or the Trustee; *provided, however*, that if the City notifies the Authority and the Trustee that in its reasonable opinion the failure stated in the notice can be corrected, but not within such 60-day period, such failure will not constitute an event of default hereunder if the City commences to cure such failure within such 60 day period and thereafter diligently and in good faith cures the failure in a reasonable period of time.

(d) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

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

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

(a) Declare all principal components of the unpaid Installment Payments, together with accrued interest thereon at the Overdue Rate from the immediately preceding Interest Payment Date on which payment was made, to be immediately due and payable, whereupon the same shall immediately become due and payable.

Notwithstanding the foregoing provisions of this subsection (a), the Trustee shall rescind and annul such declaration and its consequences if, before any judgment or decree for the payment of the moneys due has been obtained or entered, (i) the City deposits with the Trustee a sum sufficient to pay all principal components of the Installment Payments coming due prior to such declaration and all matured interest components (if any) of the Installment Payments, with

interest on such overdue principal and interest components calculated at the Overdue Rate, and (ii) the City pays the reasonable expenses of the Trustee (including any fees and expenses of its attorneys), and (iii) any and all other defaults known to the Trustee (other than in the payment of the principal and interest components of the Installment Payments due and payable solely by reason of such declaration) have been made good. No such rescission and annulment will extend to or shall affect any subsequent default, or impair or exhaust any right or power consequent thereon.

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

(c) As a matter of right, in connection with the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and the Bond Owners hereunder, cause the appointment of a receiver or receivers of the Gross Revenues and other amounts pledged hereunder, with such powers as the court making such appointment may confer.

SECTION 6.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive. Every such remedy is cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default impairs any such right or power or operates as 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 VI, it is not necessary to give any notice, other than such notice as may be required in this Article VI or by law.

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

SECTION 6.5. No Additional Waiver Implied by One Waiver. If any agreement 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 does not waive any other breach hereunder.

SECTION 6.6. Trustee and Bond Owners to Exercise Rights. Such rights and remedies as are given to the Authority under this Article VI have been assigned by the Authority to the Trustee under the Indenture, to which assignment the City hereby consents. Such rights and remedies shall be exercised by the Trustee and the Owners of the Bonds as provided in the Indenture.

ARTICLE VII

PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 7.1. Security Deposit. Notwithstanding any other provision hereof, the City may on any date secure the payment of Installment Payments, in whole or in part, by irrevocably depositing with the Trustee an amount of cash which, together with other available amounts, is either:

(a) sufficient to pay all such Installment Payments, including the principal and interest components thereof, when due under Section 4.4(a), or

(b) invested in whole or in part in non-callable Defeasance Obligations in such amount as will, in the opinion of an Independent Certified Public Accountant (which opinion is addressed and delivered to the Trustee), together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay all such Installment Payments when due under Section 4.4(a) or when due on any optional prepayment date under Section 7.2, as the City instructs at the time of said deposit.

If the City 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 all other security provided by this Agreement for said obligations, will thereupon cease and terminate, excepting only the obligation of the City to make, or cause to be made, all Installment Payments from the security deposit. The security deposit will be deemed to be and will constitute a special fund for the payment of the Installment Payments in accordance with the provisions hereof.

SECTION 7.2. Optional Prepayment Relating to the 2019 Bonds. The City may exercise its option to prepay the principal components of the Installment Payments relating to the 2019 Bonds in whole or in part on any date on or after [[____ 1, 20__]]. The City may exercise such option by payment of a prepayment price equal to the sum of (a) the aggregate principal components of the Installment Payments relating to the 2019 Bonds to be prepaid, (b) the interest component of the Installment Payment relating to the 2019 Bonds required to be paid on or accrued to such date, and (c) the premium (if any) then required to be paid upon the corresponding redemption of the 2019 Bonds under Section 4.01(a) of the Indenture. The Trustee shall deposit the prepayment price in the Installment Payment Fund to be applied to the redemption of 2019 Bonds under Section 4.01(a) of the Indenture. If the City prepays the Installment Payments in part but not in whole, the principal components will be prepaid among such maturities and in such integral multiples of \$5,000 as the City designates in written notice to the Trustee.

SECTION 7.3. Mandatory Prepayment From Proceeds of Insurance, Sale or Condemnation. The City shall prepay the Installment Payments on any date, in whole, or in part among maturities on a pro rata basis in any integral multiple of \$5,000, from and to the extent of any proceeds of insurance, sale or condemnation awards with respect to the Water System theretofore paid to the Trustee for such purpose under Sections 5.3 or 5.4. The City and the Authority hereby agree that such proceeds, to the extent remaining after payment of any delinquent Installment Payments, will be deposited in the Installment Payment Fund and credited towards the City's obligations under this Section 7.3.

SECTION 7.4. Credit for Amounts on Deposit. If the City prepays the Installment Payments in full under this Article VII, such that the Indenture is discharged by its terms as a result of the prepayment, and upon payment in full of all Additional Payments and other amounts then due and payable hereunder, all available amounts then on deposit in the funds and accounts established under the Indenture shall be credited towards the amounts then required to be so prepaid.

ARTICLE VIII

MISCELLANEOUS

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

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

If to the City
or the Authority:

City of Milpitas
455 East Calaveras Blvd.
Milpitas, CA 95035
Attention: Finance Director
Telephone: (408) 586-3111
Fax: (408) 586-3110

If to the Trustee:

U.S. Bank National Association
One California Street, Suite 1000
San Francisco, California 94111
Attention: Global Corporate Trust Services
Telephone: (415) _____
Fax: (415) _____

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

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

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

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

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

SECTION 8.8. Execution of Counterparts. This Agreement may be executed in any number of counterparts, each of which will for all purposes be deemed to be an original and all of which together constitute but one and the same instrument.

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

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

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

MILPITAS MUNICIPAL FINANCING AUTHORITY,
as Seller

By _____
Name: _____
Title: _____

CITY OF MILPITAS, as Purchaser

By _____
Name: _____
Title: _____

APPENDIX A

SCHEDULE OF INSTALLMENT PAYMENTS

<u>Interest Payment Date⁽¹⁾</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Payment</u>
--	--------------------------------	-------------------------------	--------------------------

- (1) Installment Payment Dates are the third (3rd) Business Day immediately preceding each Interest Payment Date shown in the table.

APPENDIX B

DESCRIPTION OF 2019 Water Project

The 2019 Water Project will consist of the following improvements, and any other improvements to the Water System approved by the Council:

Capital improvement projects identified in the Water System's capital improvement program, including well upgrades, seismic improvements, supervisory control and data acquisition (SCADA) systems, and pipeline extensions and replacements.