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INSTALLMENT SALE AGREEMENT

by and between

BANC OF AMERICA PUBLIC CAPITAL CORP,  
as Seller

and

MISSION SPRINGS WATER DISTRICT,  
as Purchaser

Dated as of October \_\_, 2023

## TABLE OF CONTENTS

	PAGE
ARTICLE I	DEFINITIONS AND EXHIBITS ..... 1
Section 1.01.	Definitions..... 1
Section 1.02.	Content of Written Certificates ..... 12
Section 1.03.	Conditions to Seller’s Performance ..... 13
ARTICLE II	REPRESENTATIONS, COVENANTS AND WARRANTIES ..... 16
Section 2.01.	Representations, Covenants and Warranties of the District..... 16
Section 2.02.	Representations, Covenants and Warranties of the Seller ..... 22
ARTICLE III	DEPOSIT OF MONEYS IN ESCROW ACCOUNT; AGREEMENT TO PURCHASE EQUIPMENT ON AN INSTALLMENT BASIS; EQUIPMENT COVENANTS ..... 22
Section 3.01.	Deposit of Moneys in Escrow Account ..... 22
Section 3.02.	Acquisition, Delivery, Installation and Acceptance of Equipment..... 23
Section 3.03.	Use and Maintenance of the Equipment ..... 24
Section 3.04.	Personal Property, No Encumbrances..... 24
Section 3.05.	Liens, Taxes, Other Governmental Charges and Utility Charges on Equipment ..... 25
Section 3.06.	Insurance (Equipment)..... 25
Section 3.07.	Risk of Loss ..... 26
Section 3.08.	Surety Bonds; District to Pursue Remedies Against Contractors and Sub-Contractors and Their Sureties ..... 26
Section 3.09.	Advances ..... 27
Section 3.10.	Damage, Destruction and Condemnation of Equipment ..... 27
Section 3.11.	Insufficiency of Equipment Net Proceeds ..... 28
Section 3.12.	Disclaimer of Warranties ..... 28
Section 3.13.	Vendor Agreements; Warranties..... 28
ARTICLE IV	TITLE TO THE EQUIPMENT; SECURITY INTEREST AND COLLATERAL; TERM OF THE INSTALLMENT SALE AGREEMENT; INSTALLMENT PAYMENTS..... 29
Section 4.01.	Title to the Equipment ..... 29
Section 4.02.	Security Interest and Collateral; Pledge of Net Revenues, Revenue Fund and Rate Stabilization Fund..... 29
Section 4.03.	Term of Installment Sale Agreement ..... 30
Section 4.04.	Installment Payments ..... 30
Section 4.05.	Special Revenues of the District ..... 31
Section 4.06.	Pledge of Net Revenues ..... 32
Section 4.07.	Rate Covenant ..... 35
Section 4.08.	Limitations on Future Obligations Secured by Net Revenues ..... 36
Section 4.09.	Notices to Seller ..... 40
Section 4.10.	Liquidity Covenant ..... 41

ARTICLE V	MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS.....	41
Section 5.01.	Discharge Claims .....	41
Section 5.02.	Operate System in Efficient and Economical Manner.....	42
Section 5.03.	Against Sale .....	42
Section 5.04.	Eminent Domain .....	42
Section 5.05.	Insurance .....	43
Section 5.06.	Reconstruction of System; Application of Insurance Proceeds .....	44
Section 5.07.	Records and Accounts.....	44
Section 5.08.	Collection of Charges .....	44
Section 5.09.	Against Competing Utility.....	44
Section 5.10.	Financial Reports .....	44
Section 5.11.	Payment of Installment Payments.....	45
Section 5.12.	Compliance with this Installment Sale Agreement.....	45
Section 5.13.	Observance of Laws and Regulations.....	45
Section 5.14.	Private Activity Bond Limitation.....	46
Section 5.15.	Private Loan Financing Limitation .....	46
Section 5.16.	Federal Guarantee Prohibition .....	46
Section 5.17.	Maintenance of Tax Exemption.....	46
Section 5.18.	Event of Taxability .....	46
Section 5.19.	Evidence of Filing Form 8038-G.....	47
ARTICLE VI	DISCLAIMER OF WARRANTIES; ACCESS .....	47
Section 6.01.	Disclaimer of Warranties .....	47
Section 6.02.	Access to the System and Records.....	48
ARTICLE VII	ASSIGNMENT, SALE AND AMENDMENT.....	48
Section 7.01.	Assignment by the Seller .....	48
Section 7.02.	Assignment, Sale and Disposition by the District .....	49
Section 7.03.	Amendment of Installment Sale Agreement.....	49
ARTICLE VIII	EVENTS OF DEFAULT AND REMEDIES .....	50
Section 8.01.	Events of Default Defined .....	50
Section 8.02.	Remedies on Default.....	51
Section 8.03.	Application of Funds Upon Acceleration or Event of Default .....	52
Section 8.04.	No Remedy Exclusive.....	54
Section 8.05.	Prosecution and Defense of Suits .....	54
Section 8.06.	No Additional Waiver Implied by One Waiver .....	54
ARTICLE IX	PREPAYMENT OF INSTALLMENT PAYMENTS.....	54
Section 9.01.	Prepayment; Payment in Full.....	54
Section 9.02.	Unexpended Proceeds Mandatory Prepayment .....	55
Section 9.03.	Extraordinary Mandatory Prepayment.....	56
ARTICLE X	MISCELLANEOUS .....	56

Section 10.01.	Notices .....	56
Section 10.02.	Binding Effect .....	57
Section 10.03.	Severability .....	57
Section 10.04.	Amendments, Changes and Modifications .....	57
Section 10.05.	Net Contract .....	57
Section 10.06.	Further Assurances and Corrective Instruments .....	57
Section 10.07.	Execution in Counterparts .....	57
Section 10.08.	Applicable Law; Venue; Waiver of Jury Trial .....	58
Section 10.09.	Seller and District Representatives .....	58
Section 10.10.	Captions .....	58
Section 10.11.	No Advisory or Fiduciary Relationship .....	58
Section 10.12.	Entire Agreement .....	58
Section 10.13.	Electronic Signatures .....	59

#### LIST OF EXHIBITS

EXHIBIT A	—	Form of Equipment Schedule
EXHIBIT B	—	Form of Payment Schedule
EXHIBIT C-1	—	Form of Authorizing Resolution
EXHIBIT C-2	—	Form of Incumbency and Authorization Certificate
EXHIBIT D	—	Form of Opinion of District’s Counsel
EXHIBIT E	—	Form of Final Acceptance Certificate
EXHIBIT F	—	Form of Self-Insurance Certificate
EXHIBIT G	—	Existing Parity Debt
EXHIBIT H	—	Form of Notice and Acknowledgement of Assignment
EXHIBIT I	—	Form of Escrow and Account Control Agreement

## INSTALLMENT SALE AGREEMENT

THIS INSTALLMENT SALE AGREEMENT, dated as of October \_\_, 2023, by and between BANC OF AMERICA PUBLIC CAPITAL CORP, a Kansas corporation, as seller (together with its successors, assigns and transferees, and as more particularly defined herein, “*Seller*”), and MISSION SPRINGS WATER DISTRICT, a county water district duly organized and existing under the Constitution and laws of the State of California, as purchaser (the “*District*”);

### WITNESSETH:

WHEREAS, the District desires to acquire and purchase from Seller certain Equipment (as such term is defined herein), subject to the terms and conditions hereof; and,

WHEREAS, the District is authorized under the constitution and laws of the State (as such term is defined herein) to enter into this Installment Sale Agreement for the purposes set forth herein;

WHEREAS, in connection with financing the Equipment, the District formed Assessment the District No. 12 of the Mission Springs Water District (“*AD No. 12*”), the assessments of which are used to repay the obligations of the District to finance the Equipment;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS AND EXHIBITS

*Section 1.01. Definitions.* The following terms will have the meanings indicated below unless the context clearly requires otherwise:

“*Acquisition Amount*” means \$\_\_\_\_\_. The Acquisition Amount is the amount represented by the District to be sufficient, together with other funds of the District (if any) that are legally available, for the purpose of designing, acquiring and installing the Equipment.

“*Acquisition Period*” means the period ending five (5) business days prior to \_\_\_\_\_, 20\_\_ (or such later date as may be mutually agreed upon by the Seller and the District).

“*Business Day*” means a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the state in which the Seller is located are closed or are required to close or a day on which the New York Stock Exchange is closed.

“*Charges*” means fees, assessments, rates and charges prescribed by the District for the services and facilities of the System furnished by the District.

“*Collateral*” has the meaning set forth in Section 4.02.

“*Commencement Date*” means the date when the District’s obligation to pay Installment Payments commences hereunder, which shall be the date on which the Acquisition Amount is deposited with the Escrow Agent.

“*Code*” means the Internal Revenue Code of 1986, as amended. Each reference to a Section of the Code herein shall be deemed to include the relevant United States Treasury Regulations proposed or in effect thereunder.

“*Combined System Parity Obligations*” means Parity Obligations that are payable (in whole or part) from Revenues of both the Water System and the Sewer System.

“*Contract Rate*” means the rate identified as such in the Payment Schedule.

“*Escrow Account*” means the fund by that name established pursuant to this Installment Sale Agreement.

“*Debt Service*” means, during any period of computation, the greater of (a) the amount of debt service for such period for all outstanding Parity Obligations and System Obligations based on the definition of Debt Service for Existing Parity Debt or in any Parity Obligation Instrument, and (b) the amount obtained for such period by totaling the following amounts: (i) the principal amount of all outstanding Parity Obligations and System Obligations payable by their terms in such period and scheduled to be paid or redeemed by operation of mandatory sinking fund installments or amortizations in such period; and (ii) the interest which would be due during such period on the aggregate principal amount of Parity Obligations and System Obligations which would be outstanding in such period if the Parity Obligations and System Obligations are paid or redeemed as scheduled; *provided* that, as to any such Parity Obligation or System Obligation bearing or comprising interest at other than a fixed rate, the rate of interest used to calculate Debt Service shall, for all purposes, be assumed to bear interest at a fixed rate equal to the higher of: (i) the then current variable interest rate borne by such Parity Obligation or System Obligation plus 1%; and (ii) if such Parity Obligation or System Obligation has been outstanding for at least twelve months, the average rate over the twelve months immediately preceding the date of calculation, or if such Parity Obligation or System Obligation has not been outstanding for the twelve prior months, the average rate borne by reference to an index comparable to that to be utilized in determining the interest rate for the Parity Obligation or System Obligation to be issued or executed.

“*Default*” means an event which with the passage of time or the giving of notice or both would constitute an Event of Default.

“*Disbursement Request*” means the disbursement request attached to the Escrow Agreement as Schedule 1 and made a part thereof.

“*District*” means Mission Springs Water District, a county water district duly organized and existing under the Constitution and laws of the State.

“*District Representative*” means the President, General Manager or Director of Finance of the District, or any other person authorized to act on behalf of the District under or with respect to the Installment Sale Agreement and identified as such to the Seller in writing by the General Manager.

“*Equipment*” means the equipment, fixtures and other goods and property listed in the Equipment Schedule and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to the terms of this Installment Sale Agreement. Whenever reference is made in this Installment Sale Agreement to Equipment, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Equipment.

“*Equipment Costs*” means the total cost of the Equipment, including related soft costs such as freight, installation and taxes and other capitalizable costs, and other costs incurred in connection with the acquisition, installation and/or financing of the Equipment.

“*Equipment Schedule*” means the Equipment Schedule attached hereto as *Exhibit A* and made a part hereof, as such Equipment Schedule may be amended in connection with a Vendor Agreement with a Vendor approved by Seller.

“*Escrow Account*” means the account established and held by the Escrow Agent pursuant to the Escrow Agreement.

“*Escrow Agent*” means the Escrow Agent identified in the Escrow Agreement, and its successors and assigns.

“*Escrow Agreement*” means the Escrow and Account Control Agreement in form and substance acceptable to and executed by the District, Seller and the Escrow Agent, pursuant to which the Escrow Account is established and administered.

“*Event of Default*” means an event of default under this Installment Sale Agreement, as defined in Section 8.01 thereof.

“*EMMA*” means the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access System.

“*Existing Parity Debt*” means (a) the Installment Sale Agreement dated February 1, 2001 between the Mission Springs Water District Improvement Corporation, as seller and the District, as purchaser; (b) the Installment Purchase Agreement, by and between the District and Holman Capital Corporation, dated as of June 21, 2013; (c) the Project Finance Agreement State Revolving Fund Project No C-06-4250-310 Agreement No. 12-802-550 dated June 5, 2012 between the District and the California State Water Resources Control Board; (d) the Installment Sale Agreement, dated as of December 1, 2013, by and between Municipal Finance Corporation, as seller, and the District, as purchaser; (e) the Installment Sale Agreement dated as of November 1, 2014 between Compass Bank, as seller and the District, as purchaser; (f) the Loan Agreement #17-017 dated December 22, 2017 between Municipal Finance Corporation, as seller,

and the District, as purchaser, and assigned to City National Bank; and (g) the Installment Purchase Agreement dated as of January 1, 2023 between Wells Fargo Municipal Capital Strategies, LLC and the District; as each of the foregoing has been amended or supplemented.

“*Fiscal Year*” means any period of 12 consecutive months established by the District 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.

“*Generally Accepted Accounting Principles*” or “*GAAP*” means generally accepted accounting principles in effect from time to time in the United States and applicable to public agencies in the United States.

“*Gross Revenues*” means, for any period of calculation, all gross revenues, charges, income and profits of any kind derived from the operation of the System, or received or receivable by the District from the ownership or operation of the System, determined in accordance with GAAP, including all rates, fees, and charges (including connection fees and charges) as received by the District for the services of the System, and all other income and revenue howsoever derived by the District from the ownership or operation of the System or arising from the System, including all income from the deposit or investment of any money in any of the Revenue Fund or any rate stabilization fund of the District or held on the District’s behalf, and any refundable deposits made to establish credit, and advances or contributions in aid of construction, including the proceeds of any connection charges not applied directly to the payment of the cost of improving or extending the System or of making connections thereto, and all interest, profits or other income derived from the investment of any moneys held pursuant to this Installment Sale Agreement and the proceeds of any interest subsidy paid for or for the account of the District by any governmental body or agency; *provided, however*, that Gross Revenues shall be increased by the amounts, if any, transferred during such Fiscal Year or other period from the Rate Stabilization Fund to the Revenue Fund and shall be decreased by the amount of Revenues, if any, transferred during such Fiscal Year or other period from the Revenue Fund to the Rate Stabilization Fund. Gross Revenues shall also include assessments levied in AD No. 12. Gross Revenues shall include all “Revenues”, “Gross Revenues”, “Water Revenues”, “Wastewater Revenues”, “Sewer Revenues” and similar terms as defined or described in any Parity Obligation Instrument. So long any Existing Parity Debt remains outstanding, Gross Revenues shall not include (a) the proceeds of any ad valorem property taxes levied for the purpose of paying general obligation bonds of the District, (b) the proceeds of any special assessments (other than as described herein with respect to AD No. 12) or special taxes levied on real property within any assessment district or community facilities district for the purpose of paying any special assessment or special tax bonds of the District, (c) any proceeds received on insurance resulting from casualty damage to assets of the System that are used to repair or replace the System, or (d) the proceeds of sale of this Installment Sale Agreement, Parity Obligations or other obligations issued for System purposes. Notwithstanding the foregoing, if the Existing Parity Debt is no longer outstanding, “*Gross Revenues*” shall also include, without duplication of the foregoing, all gross charges received for, and all other gross income and revenues derived by the District from, the ownership or operation of the System or otherwise arising from the System during such period, including but not limited to (a) all Charges received by the District for use of the System, (b) all receipts derived from the investment of funds held by the District, (c) transfers from (but exclusive of any transfers to) any rate stabilization



reserve accounts, (d) property tax to the extent permitted by law and (e) all moneys received by the District from other public entities whose inhabitants are served pursuant to contracts with the District; and includes, without limitation, for each Fiscal Year, all gross income and revenue received or receivable by the District from the ownership or operation of the System, determined in accordance with GAAP, including all rates, fees, and charges (including connection and capacity fees and charges) as received by the District for the services and facilities of the System, and all other income and revenue howsoever derived by the District from the ownership or operation of the System or arising from the System, including all income from the deposit or investment of any money in any of the Revenue Fund or any rate stabilization fund of the District or held on the District's behalf, and any refundable deposits made to establish credit, and advances or contributions in aid of construction.

*"Improvement"* means any addition, extension, improvement, equipment, machinery or other facilities to or for the System.

*"Independent Certified Public Accountant"* means any certified public accountant or firm of such accountants appointed and paid by the District, and who, or each of whom: (a) is in fact independent and not under domination of the District; (b) does not have any substantial identity of interest, direct or indirect, with the District; and (c) is not and no member of which is connected with the District as an officer or employee of the District, but who may be regularly retained to make annual or other audits of the books of or reports to the District.

*"Independent Municipal Advisor"* means any financial consultant or firm of such consultants of national reputation generally recognized to be well qualified in financial matters relating to systems similar to the System, appointed and paid by the District, and who, or each of whom: (a) is in fact independent and not under domination of the District; (b) does not have any substantial interest, direct or indirect, with the District; (c) is not connected with the District as a member of the Board of Directors, an officer or an employee thereof, but who may be regularly retained to make reports thereto; and (d) is registered as a "municipal advisor" as defined in Section 15B of the Securities and Exchange Act of 1934, as amended.

*"Installment Payment"* means the Installment Payments payable by the District on the Installment Payment Dates and in the amounts as specified in the Payment Schedule, consisting of a principal component and an interest component, and in all cases sufficient to repay such principal component and interest thereon at the applicable Contract Rate (or Taxable Rate if then in effect).

*"Installment Payment Date"* means each date on which the District is required to make an Installment Payment under this Installment Sale Agreement as specified in the Payment Schedule.

*"Lien"* means any lien (statutory or otherwise), security interest, mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, preference, priority or other security or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

“*Listed Event*” means, so long as the District has outstanding any System Obligation subject to SEC Rule 15c2-12, any of the events required to be reported pursuant to SEC Rule 15c2-12(b)(5).

“*Material Adverse Change*” means any change in the District’s creditworthiness that could have a reasonably foreseeable material adverse effect on (i) the financial condition or operations of the District, or (ii) the District’s ability to perform its obligations under this Installment Sale Agreement.

“*Material Event*” means any event that might cause any of the following: (a) Revenue shortfalls; (b) unscheduled draws on a reserve fund, if any, or the Revenue Fund or the Rate Stabilization Fund; (c) substitution of insurers, or their failure to perform; (d) adverse findings by the Regional Water Quality Control Board, the State Water Board or the United States Environmental Protection Agency; (e) litigation related to the Revenues, the System, or the Equipment, whether pending or anticipated; (f) any false warranty or representation made by the District relevant to this Installment Sale Agreement; (g) loss, theft, damage, or impairment to the Revenues or the System; (h) seizure of, or levy on any collateral securing this Installment Sale Agreement; (i) dissolution or cessation of operations by the District, termination of the District’s existence, insolvency of the District, or filing of a voluntary or involuntary bankruptcy petition by or on behalf of the District; and/or (j) any Material Adverse Change.

“*Maximum Annual Debt Service*” means, as of the date of calculation, the maximum amount of Debt Service for the current or any future Fiscal Year; *provided that* if any System Obligation has twenty-five percent (25%) or more of the aggregate principal amount of such System Obligation due in any one year, for purposes of determining Maximum Annual Debt Service, the principal amount of such System Obligation deemed to be payable by its term for the current or any future Fiscal Year will be derived by dividing (A) the aggregate outstanding principal of such System Obligation by (B) the number of full years in the remaining term of such System Obligation; *provided further* that if the date of calculation is within twelve (12) months of the final maturity date of such System Obligation and a binding commitment by an institutional lender or municipal underwriting firm exists to provide money to refinance the outstanding aggregate principal amount of such System Obligation then outstanding, the payment terms contained in the commitment are to be used for purposes of calculating the maximum amount of Debt Service for such System Obligation for the current and future Fiscal Years, as applicable.

“*Moody’s*” means Moody’s Investors Service, New York, New York, or its successors.

“*Net Proceeds*” means any insurance proceeds or condemnation award paid with respect to the System, if any, remaining after payment therefrom of all expenses incurred in the collection thereof.

“*Net Revenues*” means, for any Fiscal Year (or other period of computation, as the case may be), the amount of the Gross Revenues during such period, less the amount of Operation and Maintenance Expense of the System becoming payable during such period, and includes, without limitation, all Net Sewer Revenues and all Net Water Revenues.

*“Net Sewer Revenues”* means, for any Fiscal Year (or other period of computation, as the case may be), the amount of the Gross Revenues of the Sewer System during such period, less the amount of Operation and Maintenance Expense of the Sewer System becoming payable during such period.

*“Net Water Revenues”* means, for any Fiscal Year (or other period of computation, as the case may be), the amount of the Gross Revenues of the Water System during such period, less the amount of Operation and Maintenance Expense of the Water System becoming payable during such period.

*“Operation and Maintenance Expense”* means, for any period of calculation, all expenses reasonably and necessarily incurred in connection with operating, repairing, maintaining and insuring the System, determined in accordance with GAAP, including ordinary repairs, renewals and replacements, other than capital improvements, necessary to keep the System in efficient operating condition, the cost of audits required by this Installment Sale Agreement, legal fees, architect’s fees, engineering fees, properly allocated charges for insurance and generally all expenses which under general accounting practices are properly chargeable to maintenance and operation, but excluding depreciation; *provided that* the Operation and Maintenance Expense of the Water System means the foregoing definition with Water System substituted for System, plus the costs of purchasing or producing potable water and the Operation and Maintenance Expense of the Sewer System means the foregoing definition with Sewer System substituted for System.

*“Outstanding Balance”* means the amount that is shown for each Installment Payment Date under the column titled “Outstanding Balance” on the Payment Schedule.

*“Parity Interest Payment Date”* means, with respect to any Parity Obligations each date that interest is due and payable thereon as established under the applicable Parity Obligation Instrument, and continuing so long as any Parity Obligations remain outstanding.

*“Parity Principal Installment”* means, with respect to any particular Parity Principal Payment Date, an amount equal to the aggregate principal amount of Parity Obligations payable on such Parity Principal Payment Date as determined by the applicable Parity Obligation Instrument.

*“Parity Principal Payment Date”* means, with respect to any Parity Obligations, any date on which principal thereof is due and payable as established under the applicable Parity Obligation Instrument, and continuing so long as any Parity Obligations remain outstanding.

*“Parity Obligations”* means all bonds, notes or other obligations (including without limitation long-term contracts, loans, sub-leases or other legal financing arrangements) of the District payable from and/or secured by a pledge of and Lien upon the Net Revenues (or any portion thereof) on a basis on parity with this Installment Sale Agreement, including any and all obligations issued or incurred pursuant to any Parity Obligation Instrument and all Existing Parity Debt.

*“Parity Obligation Instrument”* means the resolution, trust indenture or installment sale agreement or other instrument, adopted, entered into or executed and delivered by the District, and under which any Parity Obligations is issued, and includes without limitation, this Installment Sale Agreement, the Existing Parity Debt, as supplemented and amended according to the terms thereof and hereof.

*“Payment Schedule”* means the Schedule of Installment Payments attached hereto as *Exhibit B* and made a part hereof.

*“Permitted Investments”* means any investments, if and to the extent the same are at the time legal for investment of the District’s funds, including the State of California Local Agency Investment Fund and any other investments authorized by California Government Code Section 53601 or successor statute.

*“Person”* means any individual, corporation, company, voluntary association, partnership, joint venture, limited liability company, trust, unincorporated association or government (or any agency, instrumentality or political subdivision thereof).

*“Prepayment Price”* means the amount that is shown for each Installment Payment Date under the column titled “Prepayment Price” on the Payment Schedule.

*“Principal Portion”* means the amount that is shown for each Installment Payment Date under the column titled “Principal Portion” on the Payment Schedule.

*“Qualified Engineer”* means a consulting engineer of recognized skill and experience in the field of engineering matters related to the construction and maintenance of systems similar to the System who is selected by the District and who may be an employee of the District.

*“Rate Stabilization Fund”* means, individually and collectively, as applicable (a) with respect to the Sewer System and Sewer Revenues, the Sewer Rate Stabilization Fund and (b) with respect to the Water System and Water Revenues, the Water Rate Stabilization Fund.

*“Related Documents”* means this Installment Sale Agreement, the Escrow Agreement and each Vendor Agreement, each as may be amended and supplemented.

*“Revenue Fund”* means all enterprise funds of the District in which Gross Revenues are deposited and held in trust (also known as the Enterprise Fund or Revenue Fund under the Existing Parity Debt or any other Parity Obligation Instrument) and includes, without limitation, each of the Water Revenue Fund and the Sewer Revenue Fund.

*“Revenues”* means Gross Revenues and/or Net Revenues.

*“SEC”* means the U.S. Securities and Exchange Commission.

*“Seller”* means (a) the entity referred to as Seller in the first paragraph of this Installment Sale Agreement and its successors or (b) any assignee or transferee of any right, title or interest of

Seller in and to this Installment Sale Agreement pursuant to Section 7.01 hereof, including the right, title and interest of Seller in and to the Equipment, the Installment Payments and other amounts due hereunder, the Escrow Agreement and Escrow Account and other Collateral, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Seller to perform hereunder.

*“Seller Representative”* means any persons authorized to act on behalf of the Seller under or with respect to this Installment Sale Agreement and identified as such to the District in writing.

*“Senior Obligations”* means bonds, notes or other obligations (including without limitation long-term contracts, loans, sub-leases or other legal financing arrangements) of the District payable from or secured by a pledge of and Lien upon the Net Revenues (or any portion thereof) on a basis senior to any Parity Obligations.

*“Sewer Parity Interest Payment Date”* means, with respect to any Combined System Parity Obligation and any Sewer Parity Obligation each date that interest is due and payable thereon as established under the applicable Parity Obligation Instrument, and continuing so long as such Combined System Parity Obligation or such Sewer Parity Obligation remains outstanding.

*“Sewer Parity Obligations”* means Parity Obligations that are payable (in whole or part) from Sewer Revenues but not Water Revenues.

*“Sewer Parity Principal Installment”* means, with respect to any particular Sewer Parity Principal Payment Date, an amount equal to the aggregate principal amount of Combined System Parity Obligations and Sewer Parity Obligations payable on such Sewer Parity Principal Payment Date as determined by the applicable Parity Obligation Instrument.

*“Sewer Parity Principal Payment Date”* means, with respect to any Combined System Parity Obligation and any Sewer Parity Obligation, any date on which principal thereof is due and payable as established under the applicable Parity Obligation Instrument, and continuing so long as such Combined System Parity Obligation or such Sewer Parity Obligation remains outstanding.

*“Sewer Rate Stabilization Fund”* means, with respect to the Sewer System and Sewer Revenues, the District account designated by the District as 301-1060-17407-000 – Reserved for Construction – Sewer, created and designated by action of the Board of Directors as a part of the Rate Stabilization Fund.

*“Sewer Revenues”* means any Revenues derived from the operation or ownership of the Sewer System.

*“Sewer Revenue Fund”* means all enterprise funds of the District in which Gross Revenues relating to the Sewer System are deposited and held in trust and includes without limitation the District accounts designated by the District as Sewer Revenues General Ledger 301-4080-19901-000 – Sewer Service Charge – Residential and 301-4080-19921-000 – Sewer Service Charges – Commercial, together with other current accounts into which Sewer Revenues

are deposited and any accounts created in the future and designated by action of the Board of Directors as a part of the Sewer Revenue Fund.

“*Sewer System*” means (a) all property rights, contractual rights and facilities of the District relating to wastewater, including all facilities for the collection, treatment and disposal of wastewater now owned or operated by the District and all other properties, structures or works for the treatment, collection, treatment and disposal of wastewater hereafter acquired and constructed by or for the District but excluding all property rights, contractual rights and facilities of the District relating to reclaimed or recycled water, (b) all wastewater collection, transport, treatment, storage and disposal facilities, including land and easements thereof, owned or operated by the District, and all other properties, structures or works hereafter acquired and constructed by the District and determined to be a part of the Sewer System, together with all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof hereafter acquired and constructed, (c) the Sewer System as defined or described in any Parity Obligation Instrument, and (d) the system or enterprise described or defined in any Parity Obligation Instrument payable from or secured by Sewer Revenues. For the purposes of all other projects, “*Sewer System*” means all nonpoint source control or estuary enhancement facilities, including land and easements thereof, owned or operated by the District and all other properties, structures or works hereafter acquired and constructed by the District and determined to be a part of the Sewer System, together with all additions, betterments, extensions or improvements to such facilities, properties, structures or works or any part thereof hereafter acquired and constructed.

“*Special Counsel*” means Stradling Yocca Carlson & Rauth, a Professional Corporation.

“*Subordinate Obligations*” means all bonds, notes or other obligations (including without limitation long-term contracts, loans, sub-leases or other legal financing arrangements) of the District payable from and/or secured by a pledge of and Lien upon the Net Revenues (or any portion thereof), subordinate to the pledge of Net Revenues to pay this Installment Sale Agreement and any other Parity Obligations.

“*Subordinate Obligations Instrument*” means the resolution, trust indenture or installment sale agreement adopted, entered into or executed and delivered by the District, and under which Subordinate Obligations are issued.

“*State*” means the State of California.

“*System*” means the complete water, sewer and wastewater system of the District serving the District and its inhabitants, including the Water System and the Sewer System and all improvements, extensions and additions thereto, and including all property, real, personal and mixed, of every nature now or hereafter owned by the District and used in the operations of its waterworks properties, including without limitation, the Equipment which is being sold to the District by the Seller pursuant to this Installment Sale Agreement.

“*System Obligation*” means any long-term obligation of the District payable from and/or secured by (in whole or in part) any of the Revenue Fund (or any portion thereof) or any Revenues

(or any portion thereof), including this Installment Sale Agreement and all other Parity Obligations and Subordinate Obligations.

“*Taxable Rate*” means, for each day that the interest component of Installment Payments is taxable for Federal income tax purposes, an interest rate equal to the Contract Rate plus a rate sufficient such that the total interest to be paid on any Installment Payment Date would, after such interest was reduced by the amount of any Federal, state or local income tax (including any interest, penalties or additions to tax) actually imposed thereon, equal the amount of interest otherwise due to Seller.

“*Term of this Installment Sale Agreement*” means the period from the Commencement Date until all Installment Payments and other amounts payable under this Installment Sale Agreement are paid in full.

“*Vendor*” means the manufacturer, installer or supplier of the Equipment or any other person who assists the District in designing or identifying the Equipment as well as the agents or dealers of the manufacturer, installer or supplier with whom the District arranged the District’s acquisition, installation, maintenance and/or servicing of the Equipment and includes, without limitation, ENGIE.

“*Vendor Agreement*” means any contract entered into by the District and any Vendor for the design, acquisition, construction, installation, maintenance and/or servicing of the Equipment, and includes, without limitation that certain [certain Energy Services Contract dated as of \_\_\_\_\_, 20\_\_, between the District and ENGIE Services U.S. Inc. (“ENGIE”), as modified by that certain Memorandum of Understanding dated as of \_\_\_\_\_, 20\_\_, among the District, Seller and ENGIE] (collectively, and as further supplemented and amended from time to time, the “*ENGIE Contract*”).

“*Water Parity Interest Payment Date*” means, with respect to any Combined System Parity Obligation and any Water Parity Obligation each date that interest is due and payable thereon as established under the applicable Parity Obligation Instrument, and continuing so long as such Combined System Parity Obligation or such Water Parity Obligation remains outstanding.

“*Water Parity Obligations*” means Parity Obligations that are payable (in whole or part) from Water Revenues but not Sewer Revenues.

“*Water Parity Principal Installment*” means, with respect to any particular Water Parity Principal Payment Date, an amount equal to the aggregate principal amount of Combined System Parity Obligations and Water Parity Obligations payable on such Water Parity Principal Payment Date as determined by the applicable Parity Obligation Instrument.

“*Water Parity Principal Payment Date*” means, with respect to any Combined System Parity Obligation and any Water Parity Obligation, any date on which principal thereof is due and payable as established under the applicable Parity Obligation Instrument, and continuing so long as such Combined System Parity Obligation or such Water Parity Obligation remains outstanding.

“*Water Rate Stabilization Fund*” means, if and when established, the District account designated by the District as the rate stabilization fund for the Water System and Water Revenues.

“*Water Revenues*” means any Revenues derived from the operation or ownership of the Water System.

“*Water Revenue Fund*” means all enterprise funds of the District in which Gross Revenues relating to the Water System are deposited and held in trust and includes without limitation the District accounts designated by the District as General Ledger 201-1000-10010-000 - Cash Restricted Water Cash and the following Water Revenue General Ledger Accounts: (i) 201-4040-18601-000 - Water Service Charge Residential, (ii) 201-4040-18621-000 - Water Service Charge Commercial, (iii) 201-4040-18622-000 - Water Service Charge Landscape & Irrigation, (iv) 201-4040-18641-000 - Water Consumption Charge Residential, (v) 201-4040-18661-000 - Water Consumption Charge Commercial and (vi) 201-4040-18662-000 - Water Consumption Charge Landscape & Irrigation, together with other current accounts into which Water Revenues are deposited and any accounts created in the future and designated by action of the Board of Directors as a part of the Water Revenue Fund.

“*Water System*” means (a) the whole and each and every part of the water supply, treatment, and delivery system owned and operated by the District, including all additions, betterments, extensions and improvements to the Water System or any part thereof hereafter acquired or constructed, (b) all properties and assets, real and personal, tangible and intangible, of the District now or hereafter existing, used or pertaining to the production, transmission, distribution and sale of water, and all additions, extensions, expansions, improvements and betterments thereto, and equipments thereof, (c) the Water System as defined or described in any Parity Obligation Instrument, and (d) the system or enterprise described or defined in any Parity Obligation Instrument payable from or secured by Water Revenues.

“*Written Certificate*” of the District means a written certificate signed in the name of the District by a District Representative. Any such certificate or request may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument. If and to the extent required by Section 1.02 of this Installment Sale Agreement, each such certificate shall include the statements provided for in Section 1.02 of this Installment Sale Agreement.

*Section 1.02. Content of Written Certificates.* Every certificate provided for in this Installment Sale 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 has made or caused to be made such examination or investigation as is necessary to enable him to express an informed opinion with respect to the subject matter referred to in the instrument to which his 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.



Any such certificate made or given by a District 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 District 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 District), upon a certificate or opinion of or representation by a District 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, as aforesaid, is erroneous. The same District 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 Installment Sale Agreement, but different officers, counsel or accountants may certify to different matters, respectively.

*Section 1.03. Conditions to Seller's Performance.* (a) As a prerequisite to the performance by Seller of any of its obligations under this Installment Sale Agreement, the District shall deliver to Seller, in form and substance satisfactory to Seller, the following:

(i) An Escrow Agreement substantially in the form attached hereto as *Exhibit I*, satisfactory to Seller and executed by the District and the Escrow Agent and a copy of any existing Vendor Agreement between the District and a Vendor;

(ii) A certified copy of a resolution, ordinance or other official action of the District's governing body, substantially in the form attached hereto as *Exhibit C-1*, authorizing the execution and delivery of this Installment Sale Agreement and the Escrow Agreement and performance by the District of its obligations under this Installment Sale Agreement and the Escrow Agreement;

(iii) A Certificate completed and executed by the Clerk or Secretary or other comparable officer of the District, substantially in the form attached hereto as *Exhibit C-2*, completed to the satisfaction of Seller;

(iv) Opinions of Special Counsel and general counsel to the District, which in the aggregate opine on the matters set forth in the form attached hereto as *Exhibit D* and which are otherwise satisfactory to Seller;

(v) Evidence of insurance as required by Section 3.06 and Section 5.05 hereof;

(vi) Evidence that all the requirements under the Existing Parity Debt and any other existing Parity Obligation Instrument and with respect to the execution and delivery of this Installment Sale Agreement and the Escrow Agreement and the District's acquisition, installation and financing of the Equipment and the transactions contemplated under this Installment Sale Agreement have been satisfied and evidence of compliance with all the additional debt tests and restrictions and other conditions precedent in the Existing

Parity Debt and any existing Parity Obligation Instrument in connection with the incurrence of debt evidenced by this Installment Sale Agreement as a Parity Obligation;

(vii) All documents, including financing statements, affidavits, notices and similar instruments which Seller deems necessary or appropriate at that time pursuant to Section 4.02 hereof;

(viii) A copy of the Form 8038-G, fully completed by Special Counsel as paid preparer and executed by the District;

(ix) In the event that the District is to be reimbursed for expenditures that it has paid more than sixty (60) days prior to the Commencement Date, evidence of the adoption of a reimbursement resolution or other official action covering the reimbursement from tax exempt proceeds of expenditures incurred not more than sixty (60) days prior to the date of such resolution;

(x) Copies of invoices (and proofs of payment of such invoices, if the District seeks reimbursement) and bills of sale (if title to Equipment has passed to the District), to the extent required by Section 3.02(b) hereof;

(xi) Wire instructions for payments to be made to Vendors and Form W-9 from each such Vendor;

(xii) For each Vendor, a certified copy of any Surety Bond satisfying the conditions set forth in Section 3.08 hereof, or, at Seller's sole discretion, such Surety Bonds may be provided after the Commencement Date, *provided however*, that if there is a Vendor Agreement in place, no "Disbursement Request" pursuant to the Escrow Agreement shall be authorized by Seller until such Surety Bonds satisfying the conditions set forth in Section 3.08 have been delivered to Seller;

(xiii) Evidence that each written agreement between the District and each Vendor provides and will provide that: (A) for and in consideration of amounts to be disbursed from the Escrow Account, that automatically and without any further act or action, ownership of and title to the Equipment (or portion thereof, as applicable) paid for by such disbursement shall vest in the District (or its assigns) immediately upon the Escrow Agent's disbursement of moneys from the Escrow Account; and (B) acknowledges the vesting of legal title in the Equipment in the District as provided in Sections 4.01 hereof.

(xiv) (A) a certificate signed by an authorized officer of the District dated the Commencement Date certifying that: (i) the representations and warranties of the District contained herein and in the other Related Documents to which the District is a party are true and correct in all material respects on and as of the Commencement Date; (ii) no Event of Default has occurred and is continuing or would result from the execution, delivery or performance of this Installment Sale Agreement or any other Related Document to which the District is a party; (iii) there has been no event or circumstance since the date of the audited annual financial statements of the District for the Fiscal Year ended June 30, 2022,

that has resulted or could be reasonably expected to result, either individually or in the aggregate, in a Material Adverse Change; (iv) the accuracy and genuineness of the names and signatures of the persons authorized to sign, on behalf of the District, the Related Documents to which the District is a party; (v) attached thereto are copies of the resolution of the governing board of the District substantially in the form attached hereto as Exhibit C-1 approving the execution and delivery of the Related Documents to which the District is a party, and the other matters contemplated hereby, that are true and complete in all material respects and in full force and effect on the Commencement Date; (vi) there is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that challenges the organization or existence of the District, the authority of its governing board or officers, the proper authorization, approval and execution of the Related Documents to which the District is a party, the ability of the District otherwise to perform its obligations under the Related Documents to which the District is a party and the transactions contemplated thereby, the title of the District, as the case may be, in the Equipment or the *pari passu* pledge of the Net Revenues granted to the Seller or its assigns or the security interest granted to the Seller or its assigns in and to the Collateral; and (vii) the correct legal name of the District for purposes of the Uniform Commercial Code in effect in the State is Mission Springs Water District; (B) a certificate signed by an authorized officer of the District dated the Commencement Date in substantially the form attached hereto as Exhibit C-2; and (C) such other closing certificates of the District in form and substance satisfactory to the Seller;

(xv) If requested by Seller, evidence that Seller's sale of the Equipment to the District under this Installment Sale Agreement does not, and will not, result in an obligation of Seller to pay any ad valorem property (whether on real or personal property) or other taxes of any kind under state, State law or federal law and, if any such taxes are so payable during the Term of this Installment Sale Agreement, that the District has expressly provided for payment of such taxes in accordance with Section 3.05 hereof; and

(xvi) Such other items reasonably required by Seller.

(b) In addition to satisfaction of the conditions set forth in subsection (a) of this Section 1.03, the performance by Seller of any of its obligations under the Related Documents shall be subject to: (i) no Material Adverse Change having occurred since the date of this Installment Sale Agreement, and (ii) no Event of Default or Default having occurred and then be continuing.

(c) Subject to satisfaction of the foregoing, Seller will deposit the Acquisition Amount with the Escrow Agent to be held and disbursed pursuant to the Escrow Agreement.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

*Section 2.01. Representations, Covenants and Warranties of the District.* The District represents, covenants and warrants to the Seller as follows:

(a) The District is a county water district, duly organized and existing under the Constitution and laws of the State, and is empowered, among other things, to own, maintain and operate a sewer system for the disposal of wastewater and a water system for the provision of drinking water within its boundaries.

(b) The laws of the State authorize the District to enter into the Related Documents, and to enter into the transactions contemplated by and to carry out its obligations under the Related Documents.

(c) Neither the execution and delivery of this Installment Sale Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a material breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound or constitutes a default under any of the foregoing.

(d) The District has duly authorized, executed and delivered the Related Documents in accordance with the laws of the State by proper action of its governing body at a meeting duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of the Related Documents.

(e) There is no action, claim, dispute, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board, agency or body pending or, to the best knowledge of the District, threatened against or affecting the District or affecting the financial condition or operations of the District, the System, any Revenues, any Vendor Agreement and/or the Equipment or affecting the corporate existence of the District or the titles of its officers to their respective offices or seeking to prohibit, restrain or enjoin the entering into of any Related Document or in any way contesting or affecting the transactions contemplated hereby or the validity or enforceability of any Related Document or contesting the powers of the District or its authority to execute and deliver any Related Document, or in which a final adverse decision could (a) adversely affect the District's financial condition or its operations or impair its ability to perform its obligations under the Related Documents or the consummation of the transactions contemplated by any Related Document, (b) declare any Related Document to be invalid or unenforceable in whole or in material part, or (c) adversely affect the exclusion of the interest paid on the interest component of the Installment Payments from gross income for federal income tax

purposes and the exemption of such interest from California personal income taxation (all such actions, suits, proceedings, hearings or investigations being "*Material Litigation*").

(f) The District will, at its expense, maintain its legal existence and do any further act and execute, acknowledge, deliver, file, register and record any further documents Seller may reasonably request in order to protect Seller's security interest in the Equipment (to the extent permitted by the Parity Obligations and subject to the rights of the holders of the Parity Obligations) and the Escrow Account and Seller's rights and benefits under the Related Documents.

(g) The District has not issued any bonds, notes or other securities, or entered into any leases, installment sale agreements or other obligations, any of which are currently outstanding and are secured in any manner by a pledge of or security interest in or payable from all or any portion of the Net Revenues, except the Existing Parity Debt.

(h) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof. None of the transactions contemplated by this Agreement will be or have been made with an actual intent to hinder, delay, or defraud any present or future creditors of the District. As of the date set forth on the first page hereof, the District is solvent and will not be rendered insolvent by the transactions contemplated by this Agreement. The District is able to pay its debts as they become due.

(i) The District will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a community services district under the laws of the State. the District shall at all times maintain its current legal existence and preserve and keep in full force and effect its legal rights and authority. the District shall maintain its eligibility for funding under this Installment Sale Agreement for the term of this Installment Sale Agreement.

(j) The District has complied and will comply with such procurement and public bidding requirements as may be applicable to this Installment Sale Agreement and the Escrow Agreement. The District will comply with all procurement and public bidding requirements as may be applicable to each Vendor Agreement and the acquisition and installation by the District of the Equipment.

(k) During the Term of this Installment Sale Agreement, the Equipment will be used by the District only for the purpose of performing essential governmental or proprietary functions of the District consistent with the permissible scope of the District's authority. The District does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last Installment Payment scheduled to be paid hereunder.

(l) The District has an immediate need for the Equipment and expects to make immediate use of the Equipment. The District's need for the Equipment is not temporary and the District does not expect the need for any item of the Equipment to diminish during the Term of this Installment Sale Agreement.

(m) The District is the fee owner of the real estate where the Equipment is and will be located (the “*Real Property*”) and has good and marketable title thereto, and there exists no mortgage, pledge, Lien, security interest, charge or other encumbrance of any nature whatsoever on or with respect to such Real Property. In the event any Lien, encumbrance, restriction, asserted encumbrance, claim, dispute or other issue exists or arises with respect to the District’s legal title to or valid and marketable, beneficial use and enjoyment of the Real Property or impairs or adversely impacts Seller’s right, title or interest in the Equipment or any of Seller’s rights or remedies under this Installment Sale Agreement with respect to the Equipment (each of the foregoing referred to as a “*Real Property Issue*”), the District will take all steps necessary to promptly quiet, resolve and/or eliminate such Real Property Issue to the satisfaction of Seller and ensure that the District and Seller have adequate access to and use of (including beneficial use and enjoyment of) the Real Property for all purposes of the Equipment contemplated herein and the District shall ensure that its fee interest in the Real Property and Seller’s right, title or interest in the Equipment and rights or remedies under this Installment Sale Agreement with respect to the Equipment remain free and clear of Real Property Issues.

(n) No lease, rental agreement, installment purchase or sale agreement, lease-purchase agreement, payment agreement or contract for purchase or any other obligation or instrument to which the District has been a party or issued by the District at any time has been terminated by the District as a result of insufficient funds being appropriated or available in any Fiscal Year. No event has occurred which would constitute an event of default under any debt, revenue bond or obligation which the District has issued.

(o) The District represents to Seller that that it has adopted a debt policy in compliance with SB 1029 and Section 8855 of the Government Code of California *et seq.* and covenants that it shall comply with Section 8855 of the Government Code of California *et seq.* as amended (the “*CDIAC Act*”) throughout the Term of this Installment Sale Agreement, including (i) preparing, submitting and filing the report of the proposed debt issuance relating to this Installment Sale Agreement by the method required by the California Debt and Investment Advisory Commission (“*CDIAC*”), (ii) preparing, submitting and filing the report of final sale (and accompanying documents) relating to this Installment Sale Agreement by the method required by CDIAC, (iii) submitting an annual report relating to the report of final sale for this Installment Sale Agreement by the method required by CDIAC, and (iv) paying all fees charged by CDIAC or the CDIAC Act relating to this Installment Sale Agreement, including, but not limited to the fee in an amount equal to one-fortieth of one percent of the Acquisition Amount or as otherwise prescribed by the CDIAC Act.

(p) As of the date of execution and delivery of this Installment Sale Agreement, the District has not granted any Lien on the Collateral (as hereinafter defined) that would be senior in priority to the first priority Lien on the Collateral granted to Seller under Section 4.02 of this Installment Sale Agreement. As of the date of execution and delivery of this Installment Sale Agreement, the District has not granted any Lien on the Collateral that would be *pari passu* with, the first priority Lien on the Collateral granted to Seller

under Section 4.02 of this Installment Sale Agreement, except for the parity lien on Net Revenues in favor of Existing Parity Debt.

(q) Upon consideration of a voter initiative to reduce any Revenues, the District shall make a finding regarding the effect of such a reduction on the District's ability to satisfy the rate covenant set forth in Section 4.07 of this Installment Sale Agreement. The District agrees to make its findings available to the public and if such voter initiative has the potential to adversely impact the District's ability to comply with its covenants and obligations set forth in Section 4.07 hereof, the District shall use its best efforts to educate the voters and to request, if necessary, the authorization of the District's decision-maker or decision-making body to file litigation to challenge any such initiative that it finds will render it unable to satisfy the rate covenant set forth in Section 4.07 hereof and its obligation to operate and maintain the Equipment and the System for its useful life. The District shall diligently pursue and bear any and all costs related to such challenge. The District shall notify and regularly update the Seller regarding any such challenge.

(r) All financial statements and other information delivered to Seller by the District is correct as of the date thereof, present fairly the financial condition of the District; and have been prepared in accordance with GAAP. Since June 30, 2022 no Material Adverse Change has occurred in the District's financial condition that would adversely affect the District's ability to perform its obligations hereunder. Since the date(s) of such financial statements, there has been no Material Adverse Change in the financial condition of the District, nor have any material assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged, pledged or encumbered, except as previously disclosed in writing by the District and approved in writing by the Seller.

(s) As of the Commencement Date the only Parity Obligations outstanding relate to Existing Parity Debt and this Installment Sale Agreement. True, correct and complete copies of each Parity Obligation Instrument relating to Existing Parity Debt is attached hereto as Exhibit G. As of the Commencement Date the only Combined System Parity Obligations outstanding are: \_\_\_\_\_ . As of the Commencement Date the only Sewer Parity Obligations outstanding are: \_\_\_\_\_ . As of the Commencement Date the only Water Parity Obligations outstanding are: \_\_\_\_\_ . As of the Commencement Date, no Subordinate Obligations or other System Obligations (besides the Existing Parity Debt and this Installment Sale Agreement), are outstanding. There exists as of the Commencement Date no Lien on Revenues other than those in favor of the Existing Parity Debt on a *pari passu* basis. The execution, delivery and performance by the District of this Installment Sale Agreement complies in all respects with the terms of all Existing Parity Debt and all additional debt tests in all Parity Obligation Instruments. All payments under this Installment Sale Agreement are secured by a pledge of Net Revenues on a *pari passu* basis with all Combined System Parity Obligations. All payments under this Installment Sale Agreement are secured by a pledge of Net Water Revenues on a *pari passu* basis with all Water Parity Obligations. All payments under this Installment Sale Agreement are secured by a pledge of Net Sewer Revenues on a *pari passu* basis with all Sewer Parity Obligations. As of the Commencement Date, no Senior Obligations or Subordinate Obligations are outstanding.

(t) The District shall punctually pay or cause to be paid the interest and principal to become due with respect to all of the Parity Obligations in strict conformity with the terms of this Installment Sale Agreement and the other Parity Obligation Instruments, and will faithfully observe and perform all of the conditions, covenants and requirements of this Installment Sale Agreement and the other Parity Obligation Instruments.

(u) Except for the grant of the security interest in the Equipment to the Seller hereunder (which is subject to the terms of the Existing Parity Debt and the rights of the holders of the Parity Obligations under the Existing Parity Debt), the District will not mortgage or otherwise encumber, pledge or place any charge upon the System or any part thereof, or upon the Net Revenues or any portion thereof, except as provided in this Installment Sale Agreement.

(v) The District will acquire, construct, or finance any Improvements to the System to be financed with the proceeds of any Parity Obligations with all practicable dispatch, and such Improvements will be made in an expeditious manner and in conformity with laws so as to complete the same as soon as reasonably feasible.

(w) The District has complied with all applicable law pertaining to the authorization of this Installment Sale Agreement and the Escrow Agreement and the financing by the District of the Equipment. The District has complied and/or will comply with all applicable law pertaining to the acquisition by the District of the Equipment and the authorization thereof.

(x) To the extent applicable, as determined by the District in its sole discretion, the District has complied with the requirements of California Government Code Section 5852.1 *et seq.* in connection with this Installment Sale Agreement and the Equipment.

(y) In connection with the District's compliance with any continuing disclosure undertakings (each, a "*Continuing Disclosure Agreement*") entered into by the District pursuant to SEC Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the "*Rule*"), the District may be required to file with EMMA notice of its incurrence of its obligations under the Related Documents and notice of any accommodation, waiver, amendment, modification of terms or other similar events reflecting financial difficulties in connection with the Related Documents, in each case including posting a full copy thereof or a description of the material terms thereof (each such posting, an "*EMMA Posting*"). Except to the extent required by applicable law, including the Rule, the District shall not file or submit or permit the filing or submission of any EMMA Posting that includes the following unredacted confidential information about the Seller or its affiliates and the Escrow Agent in any portion of such EMMA Posting: address, account information and logos of the Seller or its affiliates and the Escrow Agent; e-mail addresses, telephone numbers, fax numbers, logos, names and signatures of officers, employees and signatories of the Seller or its affiliates and the



Escrow Agent; and the form of Disbursement Request that is attached to the Escrow Agreement.

The District acknowledges and agrees that the Seller and its affiliates are not responsible for the District's or any other entity's (including, but not limited to, any broker-dealer's) compliance or noncompliance (or any claims, losses or liabilities arising therefrom) with the Rule, any Continuing Disclosure Agreement or any applicable securities or other laws, including but not limited to those relating to the Rule.

(z) The District agrees that it will perform and comply with each and every covenant and agreement required to be performed or observed by it in the Existing Parity Debt and each other Parity Obligation Instrument. All events of default and remedies contained in each Existing Parity Debt and each other Parity Obligation Instrument, as well as related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety (amended to also take into account this Installment Sale Agreement and all of the obligations of the District and Installment Payments and other amounts payable under this Installment Sale Agreement) all of which shall be deemed to be made for the benefit of the Seller and shall be enforceable against the District (the "*Incorporated Provisions*"). To the extent that any such Incorporated Provision permits the District or any other party to waive compliance with such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to the District or any other party, for purposes of this Installment Sale Agreement, such provision shall be complied with unless it is specifically waived by the Seller in writing in its sole and absolute discretion and such document, opinion or other instrument and such event or condition shall be acceptable or satisfactory only if it is acceptable or satisfactory to the Seller which shall only be evidenced by the written approval by the Seller of the same in its sole and absolute discretion. No termination or amendment to any Incorporated Provision or release of the District made pursuant to any Existing Parity Debt or any other Parity Obligation Instrument, shall be effective to terminate or amend such Incorporated Provisions or release the District with respect thereto in each case as incorporated by reference herein without the prior written consent of the Seller in its sole and absolute discretion. The District shall continue to observe the Incorporated Provisions for the benefit of the Seller until the termination of such Parity Obligation Instrument or payment in full of the applicable Existing Parity Debt. All such Incorporated Provisions shall be in addition to the express covenants contained herein and shall not be limited by the express covenants contained herein nor shall such Incorporated Provisions be a limitation on the express covenants contained herein.

(aa) In the event that the District shall, directly or indirectly, enter into or otherwise consent to any instrument which such instrument provides any Person with different or more restrictive covenants, different or additional events of default and/or greater rights and remedies with respect to any System Obligation or all or any portion of the Revenues or all or any portion of the System than are provided to the Seller in this Installment Sale Agreement, the District shall provide the Seller with a copy of each such instrument and such different or more restrictive covenants, different or additional events

of default and/or greater rights and remedies shall automatically be deemed to be incorporated into this Installment Sale Agreement and the Seller shall have the benefits of such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies as if specifically set forth herein. The District shall promptly enter into an amendment to this Installment Sale Agreement to include different or more restrictive covenants, different or additional events of default and/or greater rights and remedies; *provided* that the Seller shall have and maintain the benefit of such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies even if the District fails to provide such amendment.

*Section 2.02. Representations, Covenants and Warranties of the Seller.* The Seller represents, covenants and warrants to the District as follows:

(a) The Seller is a Kansas corporation, duly organized and existing under Kansas state law, and in good standing under and by virtue of the laws of the State; has all requisite corporate power and authority to enter into this Installment Sale Agreement; is possessed of full corporate power and authority to own and hold real and personal property, and to sell the same; and has duly authorized the execution and delivery of this Installment Sale Agreement.

(b) Neither the execution and delivery of this Installment Sale Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a material breach of the terms, conditions or provisions of any restriction or any agreement, instrument, regulation or law to which the Seller is now a party or by which the Seller is bound, or constitutes a default under any of the foregoing.

### ARTICLE III

#### **DEPOSIT OF MONEYS IN ESCROW ACCOUNT; AGREEMENT TO PURCHASE EQUIPMENT ON AN INSTALLMENT BASIS; EQUIPMENT COVENANTS**

*Section 3.01. Deposit of Moneys in Escrow Account.* Subject to the terms and conditions of this Installment Sale Agreement, Seller agrees to provide the Acquisition Amount to acquire and install the Equipment. The District hereby agrees to acquire and purchase all the Equipment under a Vendor Agreement with a Vendor approved by the Seller, and by depositing the Acquisition Amount in the Escrow Account Seller hereby agrees to facilitate the sale and transfer of title of the Equipment to the District from an approved Vendor, all on the terms and conditions set forth in this Installment Sale Agreement and the Escrow Agreement. All right, title, and interest in the Equipment shall immediately vest in the District upon the acquisition of the Equipment under the Vendor Agreement without further action on the part of the District or the Seller, subject to the Seller's security interest therein. The Seller's approval of disbursement of funds under the Escrow Agreement is contingent on the District's compliance with the terms and conditions of this Installment Sale Agreement.

*Section 3.02. Acquisition, Delivery, Installation and Acceptance of Equipment.* (a) the District shall order the Equipment to be acquired and financed hereunder, cause the Equipment to be delivered and installed at the location specified in the Equipment Schedule and pay any and all delivery and installation costs and other Equipment Costs in connection therewith. the District shall conduct such inspection and testing of the Equipment as it deems necessary and appropriate in order to determine the Equipment's capability and functionality in order to accept such Equipment. When progress payments are due to the Vendor, the District shall promptly execute and deliver Disbursement Requests to the Seller and thereby accept such Equipment and evidence said acceptance with such Disbursement Request pursuant to the Escrow Agreement for the purpose of effecting disbursements from the Escrow Account to pay (or reimburse) Equipment Costs for the Equipment so acquired and installed. In connection with the execution and delivery by the District to Seller of the final Disbursement Request, the District shall deliver to Seller a "Final Acceptance Certificate" in the form attached hereto as *Exhibit E*.

(b) The District shall deliver to Seller together with each Disbursement Request copies of invoices (and proof of payment of such invoices if the District seeks reimbursement for prior expenditures) and bills of sale or other evidence of title transfer to the District relating to each item of Equipment accepted by the District as evidenced by such Disbursement Request. Once approved, Seller shall deliver such Disbursement Request to the Escrow Agent for disbursement from the Escrow Account in accordance with the Escrow Agreement.

(c) Once installed, no item of the Equipment will be moved or relocated from the location specified for it in the Equipment Schedule without Seller's prior written consent, which consent shall not be unreasonably withheld. Seller shall have the right at all reasonable times during regular business hours to enter into and upon the property where the Equipment is located for the purpose of inspecting the Equipment.

(d) Notwithstanding anything in this Installment Sale Agreement to the contrary, it is expressly understood and agreed that the Seller shall be under no liability of any kind or character whatsoever for the payment of any costs or expenses incurred by the District (whether as agent for the Seller or otherwise) for the acquisition, design, construction, improvement or installation of the Equipment and that all such costs and expenses shall be paid by the District, regardless of whether funds deposited in the Escrow Account or any other funds held for such purpose are sufficient to cover such costs and expenses.

(e) The District agrees to expeditiously proceed with and complete acquisition, installation and construction of the Equipment in accordance with each Vendor Agreement. The District will pay all Equipment Costs and costs of issuance in excess of the Acquisition Amount available therefor out of its own funds. Seller shall not have any responsibility to pay amounts for any Equipment Costs or costs of issuance with respect to the Related Documents or the Equipment that individually or collectively exceed the Acquisition Amount.

(f) So long as no Event of Default exists hereunder, neither Seller nor any entity claiming by, through or under Seller, shall interfere with the District's quiet use and enjoyment of the Equipment during the Term of this Installment Sale Agreement.

*Section 3.03. Use and Maintenance of the Equipment.* The District shall not install, use, operate or maintain the Equipment (or cause the Equipment to be installed, used, operated or maintained) improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated hereby. The District shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, the District agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative, or judicial body, including, without limitation, all anti-money laundering laws and regulations; *provided* that the District may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Seller, adversely affect the interest of Seller in and to the Equipment or its interest or rights hereunder.

The District agrees that it shall (a) maintain, preserve, and keep the Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer; (b) proceed promptly, at its expense, to protect its rights and exercise its remedies under any warranty then in effect with respect to the Equipment; and (c) replace or rebuild any component of the Equipment that becomes permanently unfit for normal use or inoperable during the Term of this Installment Sale Agreement (herein, the "*Inoperable Component*") in order to keep the Equipment as a whole in good repair and working order during the Term of this Installment Sale Agreement. The District shall promptly notify Seller in writing when any component of the Equipment is reasonably expected within forty-five (45) days to become an Inoperable Component. The District shall promptly replace or rebuild the Inoperable Component with a similar component of comparable or improved make and model that has at least the equivalent value and utility of the Inoperable Component, a remaining useful life of no less than the remaining Term of this Installment Sale Agreement and such replacement or rebuilt component shall be in good operating condition. Seller shall have no responsibility to maintain, repair or make improvements or additions to the Equipment. In all cases, the District agrees to pay any costs necessary for the manufacturer to re-certify the Equipment as eligible for manufacturer's maintenance upon the return of the Equipment to Seller as provided for in Section 8.02 of this Installment Sale Agreement.

The District shall not alter any item of Equipment or install any accessory, equipment or device on an item of Equipment if that would impair any applicable warranty, the originally intended function or the value of that Equipment. All repairs, parts, accessories, equipment and devices furnished, affixed to or installed on any Equipment, excluding temporary replacements, shall thereupon become subject to the security interest of Seller (to the extent permitted by the Existing Parity Debt and subject to the rights of the holders of the Parity Obligations).

*Section 3.04. Personal Property, No Encumbrances.* The District agrees that the Equipment is deemed to be and will remain personal property, and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. The District shall not create, incur, assume or permit to exist any mortgage, pledge, Lien, security interest, charge or other encumbrance of any nature whatsoever on any of the real estate where the Equipment is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate without the prior written consent of Seller; *provided*, that if Seller or its assigns is furnished with a waiver of interest

in the Equipment acceptable to Seller or its assigns in their respective discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not be unreasonably withheld.

*Section 3.05. Liens, Taxes, Other Governmental Charges and Utility Charges on Equipment.* The District shall keep the Equipment free of all levies, Liens, and encumbrances except those created by this Installment Sale Agreement. The parties to this Installment Sale Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of the District and that the Equipment will therefore be exempt from all property taxes. If the lease, sale, purchase, operation, use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, the District shall pay when due all sales and other taxes, special assessments, governmental and other charges of any kind that are at any time lawfully assessed or levied against or with respect to the Equipment, the Installment Payments or any part of either thereof, or which become due during the Term of this Installment Sale Agreement, whether assessed against the District or Seller. The District shall pay all utility and other charges incurred in the operation, use and maintenance of the Equipment. The District shall pay such taxes, assessments or charges as the same may become due; *provided* that, with respect to any such taxes, assessments or charges that may lawfully be paid in installments over a period of years, the District shall be obligated to pay only such installments as accrue during the Term of this Installment Sale Agreement. Seller will not claim ownership of the Equipment under this Installment Sale Agreement for the purposes of any tax credits, benefits or deductions with respect to such Equipment. The District shall pay the fee charged by the California Debt and Investment Advisory Commission with respect to this Installment Sale Agreement pursuant to Section 8856 (or any successor provision) of the California Government Code.

*Section 3.06. Insurance (Equipment).* The District shall during the Term of this Installment Sale Agreement, maintain or cause to be maintained (a) casualty insurance naming Seller and its assigns as loss payee and insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Seller, in an amount at least equal to the greater of (i) the then applicable Prepayment Price of the Equipment or (ii) the replacement cost of the Equipment; (b) liability insurance naming Seller and its assigns as additional insured that protects Seller from liability with limits of at least \$5,000,000 per occurrence for bodily injury and property damage coverage (such liability insurance coverage may be in a combination of primary general liability and/or excess liability umbrella coverage), and in all events under clauses (a) and (b) above issued in form and amount satisfactory to Seller and by an insurance company that is authorized to do business in the State and having a financial strength rating by A.M. Best Company of "A-" or better; and (c) worker's compensation coverage as required by the laws of the State. Notwithstanding the foregoing, the District may self-insure against the risks described in clauses (a) and/or (b) through a government pooling arrangement, self-funded loss reserves, risk retention program or other self-insurance program, in each case with Seller's prior written consent (which Seller may grant, withhold or deny in its sole discretion) and *provided* that the District has delivered to Seller such information as Seller may request with respect to the adequacy of such self-insurance to cover the risks proposed to be self-insured and otherwise in form and substance acceptable to Seller. In the event the District is permitted, at Seller's sole discretion, to self-insure as provided in this Section 3.06, the District shall provide to Seller a self-insurance letter in

substantially the form attached hereto as *Exhibit F*. The District shall furnish to Seller evidence of such insurance or self-insurance coverage throughout the Term of this Installment Sale Agreement, beginning on the date the District executes and delivers to Seller of the final Disbursement Request under the Escrow Agreement. The District shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of Seller without first giving written notice thereof to Seller at least thirty (30) days in advance of such cancellation or modification.

*Section 3.07. Risk of Loss.* Whether or not covered by insurance or self-insurance, the District hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Equipment shall relieve the District of the obligation to make the Installment Payments or to perform any other obligation under this Installment Sale Agreement. Whether or not covered by insurance or self-insurance, the District hereby agrees to reimburse Seller (to the fullest extent permitted by applicable law, but only from legally available funds) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Seller, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into this Installment Sale Agreement or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Equipment, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant of the District under or in connection with this Installment Sale Agreement or any material misrepresentation provided by the District under or in connection with this Installment Sale Agreement. The provisions of this Section 3.07 shall continue in full force and effect notwithstanding the full payment of all obligations under this Installment Sale Agreement or the termination of the Term of this Installment Sale Agreement for any reason.

*Section 3.08. Surety Bonds; the District to Pursue Remedies Against Contractors and Sub-Contractors and Their Sureties.* The District shall secure from each Vendor directly employed by the District in connection with the acquisition, construction, installation, improvement or equipping of the Equipment, a payment and performance bond ("*Surety Bond*") executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of "A-" or better, and otherwise satisfactory to Seller and naming Seller as a co-obligee in a sum equal to the entire amount to become payable under each Vendor Agreement. Each bond shall be conditioned on the completion of the work in accordance with the plans and specifications for the Equipment and upon payment of all claims of subcontractors and suppliers. The District shall cause the surety company to add Seller as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to Seller promptly upon receipt thereof by the District. Any proceeds from a Surety Bond shall be applied in accordance with such Surety Bond to the payment and performance of the Vendor's obligations in accordance with the related Vendor Agreement and, if for whatever reason such proceeds are not so applied, first to amounts due Seller under this Installment Sale Agreement, and any remaining amounts shall be payable to the District.

In the event of a material default by any Vendor under any Vendor Agreement in connection with the acquisition, construction, maintenance and/or servicing of the Equipment or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to the Equipment, the District will promptly proceed to exhaust its remedies against the Vendor in default. the District shall advise Seller of the steps it intends to take in connection with any such default. Any amounts received by the District in respect of damages, refunds, adjustments or otherwise in connection with the foregoing shall be paid to Seller and applied against the District's obligations hereunder.

*Section 3.09. Advances.* In the event the District shall fail to keep the Equipment in good repair and working order or shall fail to maintain any insurance required by Section 3.06 hereof, Seller may, but shall be under no obligation to, maintain and repair the Equipment or obtain and maintain any such insurance coverages, as the case may be, and pay the cost thereof. All amounts so advanced by Seller shall constitute additional payments owing to Seller and the District covenants and agrees to pay such amounts so advanced by Seller with interest thereon from the due date until paid at a rate equal to the Contract Rate (or the Taxable Rate if then in effect) *plus* five percent (5%) per annum or the maximum amount permitted by law, whichever is less.

*Section 3.10. Damage, Destruction and Condemnation of Equipment.* If, prior to the termination of the Term of this Installment Sale Agreement, (a) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, (i) the District and Seller will cause the Equipment Net Proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment or such part thereof and any balance of the Equipment Net Proceeds remaining after such work has been completed shall be paid to the District or (ii) the District shall exercise its option to prepay the obligations hereunder in accordance with Section 9.01(a)(ii) hereof.

If the District elects to replace any item of the Equipment (the "*Replaced Equipment*") pursuant to this Section 3.10, the replacement equipment (the "*Replacement Equipment*") shall be new or of a quality, type, utility and condition at least as good as the Replaced Equipment, shall be of equal or greater value than the Replaced Equipment and shall provide at least the same level of energy and/or operational savings expected in the aggregate from the Replaced Equipment prior to such casualty, destruction or condemnation. The District shall grant to Seller a security interest in any such Replacement Equipment (to the extent permitted by the Existing Parity Debt and subject to the rights of the holders of the Parity Obligations). The District shall represent, warrant and covenant to Seller that each item of Replacement Equipment is free and clear of all claims, Liens, security interests and encumbrances, excepting only those Liens created by or through Seller, and shall provide to Seller any and all documents as Seller may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Seller evidencing Seller's security interest in the Replacement Equipment. Seller and the District hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this paragraph shall constitute "Equipment" for purposes of this Installment Sale Agreement. The District shall complete the documentation of Replacement

Equipment on or before the next Installment Payment Date after the occurrence of a casualty event, or be required to exercise its option to prepay the obligations hereunder with respect to the damaged Equipment in accordance with Section 9.01(a)(ii) hereof.

For purposes of this Article III, the term “*Equipment Net Proceeds*” shall mean with respect to the Equipment the amount remaining from the gross proceeds of any insurance claim or condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys’ fees, incurred in the collection thereof.

*Section 3.11. Insufficiency of Equipment Net Proceeds.* If the Equipment Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 3.10, the District shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Equipment Net Proceeds, or (b) pay or cause to be paid to Seller the amount of the then applicable Prepayment Price *plus* all other amounts then owing hereunder, and, upon such payment, the Term of this Installment Sale Agreement shall terminate and Seller’s security interest in the Equipment shall terminate as provided in Section 4.01 hereof. The amount of the Equipment Net Proceeds remaining, if any, after completing such repair, restoration, modification or improvement or after paying such Prepayment Price *plus* all other amounts then owing hereunder shall be retained by the District. If the District shall make any payments pursuant to this Section 3.11, the District shall not be entitled to any reimbursement therefor from Seller nor shall the District be entitled to any diminution of the amounts payable under this Installment Sale Agreement to the extent any such amounts remain outstanding after the application of Equipment Net Proceeds.

*Section 3.12. Disclaimer of Warranties.* Seller makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for use of any of the Equipment, or any other warranty or representation, express or implied, with respect thereto and, as to Seller, the District’s acquisition of the Equipment shall be on an “as is” basis. In no event shall Seller be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Installment Sale Agreement, the Equipment or the existence, furnishing, functioning or the District’s use of any item, product or service provided for in this Installment Sale Agreement.

*Section 3.13. Vendor Agreements; Warranties.* The District covenants that it shall not in any material respect amend, modify, rescind or alter any Vendor Agreement without the prior written consent of Seller. Seller hereby irrevocably appoints the District its agent and attorney-in-fact during the Term of this Installment Sale Agreement, so long as the District shall not be in default under this Installment Sale Agreement, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Equipment that Seller may have against a Vendor. The District’s sole remedy for the breach of such warranty, indemnification or representation shall be against the applicable Vendor of the Equipment, and not against Seller. Any such matter shall not have any effect whatsoever on the rights and obligations of Seller under this Installment Sale Agreement, including the right to receive full and timely Installment Payments and other payments hereunder. The District expressly acknowledges that Seller makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties relating to any of the Equipment.



## ARTICLE IV

### **TITLE TO THE EQUIPMENT; SECURITY INTEREST AND COLLATERAL; TERM OF THE INSTALLMENT SALE AGREEMENT; INSTALLMENT PAYMENTS**

*Section 4.01. Title to the Equipment.* During the Term of this Installment Sale Agreement, so long as the District is not in default under Article VIII hereof, all right, title and interest in and to each item of the Equipment shall be vested in the District immediately upon its acceptance of each item of Equipment, subject to the terms and conditions hereof. The Seller shall take all actions necessary to vest in the District all rights and title to the Equipment. Such title shall be held by the District in trust pending satisfaction of the payment obligations under this Installment Sale Agreement. The District shall at all times protect and defend, at its own cost and expense, its title, and Seller's security interest, in and to the Equipment (to the extent permitted by the Existing Parity Debt and subject to the rights of the holders of the Parity Obligations) and Seller's other Collateral as defined in Section 4.02 hereof, from and against all claims, Liens and legal processes of its creditors, and keep all Equipment (and such other Collateral) free and clear of all such claims, Liens and processes. The District will, at its expense, do any further act and execute, acknowledge, deliver, file, register and record any further documents the Seller may reasonably request in order to protect Seller's security interest in the Collateral. Upon the occurrence of an Event of Default, full and unencumbered legal title to the Equipment shall, subject to the limitations set forth in the last sentence of Section 4.02 hereof, at Seller's option, pass to Seller, and the District shall have no further interest therein. In addition, upon the occurrence of such an Event of Default or such termination, the District shall execute and deliver to Seller such documents as Seller may request to evidence the passage of such legal title to Seller and the termination of the District's interest therein, and upon request by Seller shall deliver possession of the Equipment to Seller in accordance with Section 8.02 of this Installment Sale Agreement, as applicable. Upon payment of all amounts due and owing hereunder by the District in accordance with Section 9.01 hereof, Seller's security interest or other interest in the Equipment shall terminate, and Seller shall execute and deliver to the District such documents as the District may reasonably request to evidence the termination of Seller's security interest in the Equipment.

*Section 4.02. Security Interest and Collateral; Pledge of Net Revenues, Revenue Fund and Rate Stabilization Fund.* As additional security for the payment and performance of all of the District's obligations hereunder, the District hereby irrevocably pledges and grants to Seller (a) to the extent permitted by the Existing Parity Debt, a security interest in the Equipment, together with all replacements, repairs, restorations, modifications and improvements thereof or thereto and all accessories, equipment, parts and appurtenances appertaining or attached to any of the Equipment, and all substitutions, renewals, or replacements of and additions, improvements, accessions and accumulations to any and all of such Equipment, together with all the rents, issues, income, profits, proceeds and avails therefrom (subject to the rights of the holders of the Parity Obligations), (b) a first priority security interest constituting a first Lien on moneys and investments held from time to time in the Escrow Account, (c) a first priority senior Lien on and pledge of (i) the Revenue Fund, the Rate Stabilization Fund and Net Revenues to the punctual payment of the Installment Payments and all other obligations of the District hereunder on parity with the Combined System Parity Obligations, (ii) the Water Revenue Fund, the Water Rate Stabilization Fund (if and when established), and Net Water Revenues to the punctual payment of the Installment Payments and

all other obligations of the District hereunder on parity with the Water Parity Obligations, and (iii) the Sewer Revenue Fund, the Sewer Rate Stabilization Fund and Net Sewer Revenues to the punctual payment of the Installment Payments and all other obligations of the District hereunder on parity with the Sewer Parity Obligations, (d) a first priority security interest constituting a first Lien on all accounts, chattel paper, deposit accounts, documents, instruments, general intangibles and investment property (including any securities accounts and security entitlements relating thereto) evidenced by or arising out of or otherwise relating to the foregoing collateral described in clauses (b) and (c) above, as such terms are defined in Article 9 of the California Commercial Code, and (e) any and all proceeds of any and all of the foregoing, including, without limitation, insurance proceeds (collectively, the “*Collateral*”). The Net Revenues, the Revenue Fund, the Rate Stabilization Fund, the Net Water Revenues, the Water Revenue Fund, the Water Rate Stabilization Fund (if and when established), the Net Sewer Revenues, the Sewer Revenue Fund and the Sewer Rate Stabilization Fund shall be subject to the Lien of such pledge without any physical delivery thereof or further act, and the Lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the District. The District authorizes Seller to file (and the District agrees to execute, if applicable) such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Seller, which Seller deems necessary or appropriate to establish and maintain Seller’s security interest in the Collateral, including, without limitation, such financing statements with respect to personal property and fixtures under Article 9 of the California Commercial Code and treating such Article 9 as applicable to entities such as the District. **Notwithstanding the foregoing or anything herein to the contrary, Seller acknowledges and agrees that its security interest in the Equipment is subject in all respects to the terms of the Existing Parity Debt and all rights of the holders of the Parity Obligations, and it shall not exercise any remedies with respect to its security interest in the Equipment if doing so would impair the operation of the System or any part thereof necessary to secure adequate Net Revenues for the payment of the interest on and principal of the Parity Obligations, or which would otherwise impair the rights of the holders of Parity Obligations with respect to the Net Revenues or the operation of the System.**

*Section 4.03. Term of Installment Sale Agreement.* The Term of this Installment Sale Agreement shall commence as of the Commencement Date and shall end on the date all Installment Payments and other amounts payable under this Installment Sale Agreement are paid in full.

*Section 4.04. Installment Payments.*

(a) *Obligation to Pay.* From and after the Commencement Date, the District shall commence making Installment Payments as indicated on the Payment Schedule. The District agrees to pay to the Seller, or any assignee of Seller designated in writing by Seller to the District, in lawful money of the United States, as the purchase price of the Equipment, the Installment Payments, consisting of components of principal and interest, on the Installment Payment Dates and in the amounts specified in the Payment Schedule. Interest on Installment Payments shall begin to accrue as of the Commencement Date. The District’s obligation to pay Installment Payments and other amounts under this Installment Sale Agreement is an unconditional obligation of the District that is payable from (i) Net Revenues of the District on a parity with all other Combined System Parity Obligations, Net Water Revenues of the District on a parity with all other

Water Parity Obligations, and Net Sewer Revenues of the District on a parity with all other Sewer Parity Obligations, and (ii) all other legally available funds of the District to pay Installment Payments and other amounts under this Installment Sale Agreement. If any date on which an Installment Payment is due is not a Business Day, then the Installment Payment shall be due on the next succeeding Business Day, and such payment on such date shall have the same force and effect as if made on the original date such payment was due. The interest component of the Installment Payments has been calculated based on the basis of a 360-day year of twelve 30-day months.

(b) *Rate on Overdue Payments.* In the event that the District should fail to make any of the payments required in this Section 4.04 on or before the due date therefor, the Installment Payment in default shall continue as an obligation of the District until the amount in default shall have been fully paid and the District agrees to pay the same with interest thereon, to the extent permitted by law, from such due date at the rate of interest equal to the lesser of twelve percent (12%) per annum or the maximum rate permitted by law, calculated on the same accrual basis applicable to the Installment Payments as set forth in Section 4.04(a). If any Installment Payment or other amount payable hereunder is not paid within ten (10) days of its due date, the District shall pay an administrative late charge of five percent (5%) of the amount not timely paid or the maximum amount permitted by law, whichever is less.

*Section 4.05. Special Revenues of the District.* The Net Revenues constitute a trust fund for the security and payment of principal of and interest on the Combined System Parity Obligations. The Net Water Revenues constitute a trust fund for the security and payment of principal of and interest on the Combined System Parity Obligations and the Water Parity Obligations. The Net Sewer Revenues constitute a trust fund for the security and payment of principal of and interest on the Combined System Parity Obligations and the Sewer Parity Obligations. The general fund of the District is not liable and the credit or taxing power of the District is not pledged for the payment of the principal of and interest on the Parity Obligations. The owners of the Parity Obligations shall not compel the exercise of the taxing power by the District or the forfeiture of its property. The principal of and interest on the Parity Obligations are not a debt of the District, nor a legal or equitable pledge, charge, Lien or encumbrance, upon any of its property, or upon any of its income, receipts, or revenues except the Net Revenues of the System. The parties intend that (i) for purposes of 11 U.S.C. §902(2)(A), the Revenues constitute “receipts derived from the ownership, operation, or disposition of projects or systems” of the District “that are primarily used or intended to be used primarily to provide transportation, utility, or other services, including the proceeds of borrowings to finance the projects or systems” and (ii) the pledge of the Net Revenues constitutes a pledge of “special revenues” for purposes of 11 U.S.C. §§901 *et seq.*, and that a petition filed by the District under 11 U.S.C. §§901 *et seq.*, will not operate as a stay under 11 U.S.C. §362 of the application of such Net Revenues to payment when due of the Installment Payments on each Installment Payment Date in accordance with Section 9 hereof, subject to 11 U.S.C. §928, if and to the extent applicable. The District acknowledges and agrees that it is a material inducement for the Seller to enter into this Installment Sale Agreement and make the loan to the District hereby that the treatment of the pledge of the Net Revenues is treated as a pledge of “special revenues” for purposes of 11 U.S.C. §§901 *et seq.*, and that a petition filed by the District under 11 U.S.C. §§901 *et seq.*, will not operate as a stay under 11 U.S.C. §362 of the application of such Net Revenues to payment when due of the Installment Payments on each

Installment Payment Date in accordance with this Installment Sale Agreement. The District will not take any action inconsistent with its agreement and statement of intention hereunder, and will not deny that the pledge of the Net Revenues constitutes a pledge of special revenues for purposes of 11 U.S.C. §§901 *et seq.*

The obligations of the District to make Installment Payments and to perform and observe the other covenants and agreements contained in this Installment Sale Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment, the System, disputes with the Seller or the Vendor of any Equipment, any defects, malfunctions, breakdowns or infirmities in the Equipment or any accident, condemnation or unforeseen circumstances, or failure of any Vendor to deliver any Equipment or otherwise perform any of its obligations for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to any Vendor or under any Vendor Agreement, or the failure or inability (for whatever reason) of the District to receive (or delay in receipt of) all or any portion of any refundable tax credit under Section 6417 of the Internal Revenue Code of 1986, as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), or any substantially similar provision of federal, state, local or foreign tax or other law (including regulations or other guidance from any taxing or other authority).

Until such time as all of the Installment Payments shall have been fully paid or prepaid, the District (a) will not suspend, abate or discontinue any payments provided for in Section 4.04 hereof, (b) will perform and observe all other agreements contained in this Installment Sale Agreement and (c) will not terminate the Term of this Installment Sale 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 Equipment or the System, the taking by eminent domain of title to or temporary use of any or all of the Equipment or the System, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision thereof or any failure of the Seller to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Installment Sale Agreement.

*Section 4.06. Pledge of Net Revenues. (a) Establishment of Revenue Fund and Rate Stabilization Fund.* In order to secure the repayment in full of this Installment Sale Agreement and the other Parity Obligations, the District agrees and covenants that it shall establish and maintain or shall have established and maintained the Revenue Fund and the Rate Stabilization Fund. The District covenants and agrees that all Gross Revenues, when and as received, will be received and held by the District in trust under the Revenue Fund and will be deposited by the District in the Revenue Fund (which has heretofore been created and now exists in the District Treasury) and will be accounted for through and held in trust in the Revenue Fund, and the District shall only have such beneficial right or interest in any of such money as in this Installment Sale Agreement and the other Parity Obligation Instruments provided. All such Gross Revenues shall be transferred, disbursed, allocated and applied solely to the uses and purposes provided in the Parity Obligation Instruments, and shall be accounted for separately and apart from all other money, funds, accounts or other resources of the District.

(b) *Pledge of Net Revenues, Revenue Fund and Rate Stabilization Fund.* The District has transferred, placed a charge upon, assigned and set over to the holders of the Parity Obligations that portion of the Net Revenues which is necessary to pay the principal of and interest on the Parity Obligations in any Fiscal Year and such portion of the Net Revenues has been irrevocably pledged to the punctual payment of the principal of and interest on the Parity Obligations. The Net Revenues shall not be used for any other purpose while any of the Parity Obligations remain outstanding, except that out of Net Revenues there may be apportioned and paid such sums for such purposes, as are expressly permitted by this Installment Sale Agreement and the other Parity Obligation Instruments. Said pledge shall constitute a first, direct and exclusive charge and Lien on the Net Revenues for the payment of the principal of and interest on the Parity Obligations in accordance with the terms hereof. In accordance with Section 5451 of Title 1, Chapter 5.5 of the California Government Code, the pledge of the Net Revenues, the Revenue Fund, the Rate Stabilization Fund, the Net Water Revenues, the Water Revenue Fund, the Water Rate Stabilization Fund (if and when established), the Net Sewer Revenues, the Sewer Revenue Fund and the Sewer Rate Stabilization Fund in this Installment Sale Agreement shall constitute a first and prior Lien on and security interest thereon for the payment of Installment Payments and Combined System Parity Obligations (and a first and prior Lien on and security interest in all of the Net Water Revenues for the payment of Installment Payments and Water Parity Obligations and a first and prior Lien on and security interest in all of the Net Sewer Revenues for the payment of Installment Payments and Sewer Parity Obligations), which shall immediately attach to the Net Revenues, the Revenue Fund, the Rate Stabilization Fund, the Net Water Revenues, the Water Revenue Fund, the Water Rate Stabilization Fund (if and when established), the Net Sewer Revenues, the Sewer Revenue Fund and the Sewer Rate Stabilization Fund and be effective, binding and enforceable against the District, its successors, purchasers of the System or the Net Revenues, creditors and all others asserting rights therein, to the extent set forth in this Installment Sale Agreement, irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing or further act.

(c) *Application and Purpose of the Revenue Fund.*<sup>1</sup> Money on deposit in the Revenue Fund shall be applied, transferred, used and withdrawn only as follows:

(i) *First*, the District shall first pay (A) from the moneys in the Water Revenue Fund, the budgeted Operation and Maintenance Expense for the Water System as such costs become due and payable and (B) from the moneys in the Sewer Revenue Fund, the budgeted Operation and Maintenance Expense for the Sewer System as such costs become due and payable.

(ii) *Second*, the (A) the District shall transfer from the Water Revenue Fund to the respective holders for the Combined System Parity Obligations and the Water Parity Obligations (or their designated trustee, if applicable) (A) on or before each Water Parity Interest Payment Date, an amount equal to the aggregate amount of interest to become due and payable on all outstanding Combined System Parity Obligations and the Water Parity Obligations on the next succeeding Water Parity Interest Payment Date, plus (B) on or

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<sup>1</sup> If there are separate revenue funds for Water versus Sewer/Wastewater, this should

before each Water Parity Principal Payment Date an amount equal to the aggregate amount of Parity Principal Installments becoming due and payable on all outstanding Combined System Parity Obligations and the Water Parity Obligations on the next succeeding Water Parity Principal Payment Date (collectively, the “*Water Parity Debt Service*”). If there are insufficient moneys in the Water Revenue Fund to pay all Water Parity Debt Service on the Combined System Parity Obligations and the Water Parity Obligations at any time, the District shall apply funds in the Water Revenue Fund to pay Water Parity Debt Service on a *pro-rata* and *pari passu* basis.

(iii) *Third*, the (A) the District shall transfer from the Sewer Revenue Fund to the respective holders for the Combined System Parity Obligations and the Sewer Parity Obligations (or their designated trustee, if applicable) (A) on or before each Sewer Parity Interest Payment Date, an amount equal to the aggregate amount of interest to become due and payable on all outstanding Combined System Parity Obligations and the Sewer Parity Obligations on the next succeeding Sewer Parity Interest Payment Date, plus (B) on or before each Sewer Parity Principal Payment Date an amount equal to the aggregate amount of Parity Principal Installments becoming due and payable on all outstanding Combined System Parity Obligations and the Sewer Parity Obligations on the next succeeding Sewer Parity Principal Payment Date (collectively, the “*Sewer Parity Debt Service*”). If there are insufficient moneys in the Sewer Revenue Fund to pay all Sewer Parity Debt Service on the Combined System Parity Obligations and the Sewer Parity Obligations at any time, the District shall apply funds in the Sewer Revenue Fund to pay Sewer Parity Debt Service on a *pro-rata* and *pari passu* basis.

(iv) After making all payments hereinabove required to be made in each Fiscal Year, so long as no Default or Event of Default has occurred and is continuing, the District may expend in such Fiscal Year any remaining money in the Revenue Fund for any lawful purpose of the District, including payment of Subordinate Obligations on a basis subordinate in all respects to all applicable Parity Obligations.

(d) *Rate Stabilization Fund.*

(i) The District has created the Sewer Rate Stabilization Fund, which funds the District agrees and covenants to maintain and to hold separate and apart from other funds so long as any Installment Payments remain unpaid. If and when the District creates the Water Stabilization Fund, the District agrees and covenants to maintain and to hold it separate and apart from other funds so long as any Installment Payments remain unpaid. Money transferred by the District from the Revenue Fund to the respective Rate Stabilization Fund in accordance with this section shall be held in such Rate Stabilization Fund and applied in accordance with this Installment Purchase Agreement.

(ii) The District may withdraw all or any portion of the amounts on deposit in the Rate Stabilization Fund and transfer such amounts to the related Revenue Fund for application in accordance with clause (iii) below. Amounts transferred from the Rate Stabilization Fund to the related Revenue Fund pursuant to this section during or within

270 days after a Fiscal Year may be taken into account as Revenues for purposes of the calculations in Sections 4.07 and 4.08 in such Fiscal Year.

(iii) All Revenues not required to be withdrawn pursuant to the provisions 4.06(c) above shall be used for expenditure for any lawful purpose of the District. From time to time the District may deposit in the related Rate Stabilization Fund, from remaining Net Revenues described in this subsection (d) or other available funds of the District, such amounts as the District shall determine. The District may withdraw amounts from the Rate Stabilization Fund: (i) for transfer to the related Revenue Fund for inclusion in related Revenues for any Fiscal Year; or (ii) for any other lawful use of the District. All interest or other earnings upon deposits in the Rate Stabilization Fund shall be withdrawn therefrom and accounted for as related Revenues.

(e) The District will preserve and protect the security of the Parity Obligations and the rights of the Seller and the other owners of the Parity Obligations, and will warrant and defend their rights against all claims and demands of all persons. From and after the execution and delivery of this Installment Sale Agreement, this Installment Sale Agreement shall be incontestable by the District.

*Section 4.07. Rate Covenant.* (a) *Covenant Regarding Net Revenues.* The District hereby covenants that it shall fix, prescribe and collect rates and charges for the System which are sufficient to yield during each Fiscal Year Net Revenues equal to one hundred twenty-five percent (125%) of Debt Service on all Parity Obligations for such Fiscal Year (including, but not limited to all amounts due under this Installment Sale Agreement during such Fiscal Year). The District may make adjustments from time to time in such rates and charges and may make such classifications thereof as it deems necessary, but shall not reduce the rates and charges then in effect unless the Net Revenues from such reduced rates and charges are reasonably expected to be sufficient to meet the requirements of this Section.

(b) *Covenant Regarding Gross Revenues.* The District shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the System during each Fiscal Year which (together with existing unencumbered cash and cash-equivalent balances which are lawfully available to the District for payment of any of the following amounts during such Fiscal Year) are at least sufficient, after making allowances for contingencies and error in the estimates, to pay the following amounts in the following order: (i) All Operation and Maintenance Expense estimated by the District to become due and payable with respect to such Fiscal Year; (ii) all Installment Payments and all principal of and interest and premium (if any) on any Parity Obligations as they become due and payable with respect to such Fiscal Year, without preference or priority; (iii) all payments coming due and payable with respect to such Fiscal Year and required for compliance with this Installment Sale Agreement and the instruments authorizing any Parity Obligations and all other System Obligations; and (iv) all payments required to meet any other obligations of the District which are charges, liens, encumbrances upon or payable from the Gross Revenues with respect to such Fiscal Year.

*Section 4.08. Limitations on Future Obligations Secured by Net Revenues.*

(a) *No Obligations Superior to Installment Payments.* In order to protect further the availability of the Net Revenues and the security for the Installment Payments and any Parity Obligations, the District hereby agrees that the District shall not, so long as any Parity Obligations or any Installment Payments remain unpaid and outstanding, issue, incur or allow to exist any obligations payable from any Gross Revenues or any Net Revenues (or portion thereof) superior to the Installment Payments or such Parity Obligations.

(b) *Parity Obligations.* In addition to the Existing Parity Debt and this Installment Sale Agreement, the District may, by Parity Obligation Instrument, issue Parity Obligations (including any Water Parity Obligations or Sewer Parity Obligations) to provide financing for the System, subject to satisfaction of the following specific conditions precedent to the issuance and delivery of such Parity Obligations:

(1) The District provides the Seller at least 30 days prior written notice and the District is in full compliance with all of the covenants and undertakings in connection with all debt and other obligations of the District then outstanding and payable from Revenues, including but not limited to all covenants set forth in this Installment Sale Agreement and each other Parity Obligation Instrument (including, but not limited to, covenants relating to the issuance of Parity Obligations taking into account such proposed Parity Obligations).

(2) The issuance of the Parity Obligations shall have been duly authorized including, but only to the extent required by law, at an election held pursuant to applicable law.

(3) (A) *Combined System Parity Obligations.* For the issuance of Combined System Parity Obligations, the District obtains or provides a certificate prepared by an Independent Certified Public Accountant or Independent Municipal Advisor showing that the Net Revenues for the last Fiscal Year for which audited financial statements are available (excluding connection fees and connection charges received during such Fiscal Year) shall have amounted to at least 125% of the Maximum Annual Debt Service for all Parity Obligations to be outstanding immediately after incurring such additional Parity Obligations, including Maximum Annual Debt Service which would have been payable on any Parity Obligations incurred since the end of such 12 month period, assuming that such Parity Obligations had been incurred at the beginning of such twelve month period, and Maximum Annual Debt Service which would have been payable had the proposed additional Parity Obligations being incurred been incurred at the beginning of such 12 month period. For purposes of demonstrating compliance with the foregoing, Net Revenues may be adjusted (at the option of the District) to include the Additional Revenues.

The term “Additional Revenues” means, with respect to the issuance of any Parity Obligations, an allowance for Net Revenues: (i) arising from any increase in the charges made for service from the System adopted prior to the incurring of such Parity Obligations and effective within eighteen (18) months following the date of incurring such Parity



Obligations, in an amount equal to the total amount by which the Net Revenues would have been increased if such increase in charges had been in effect during the whole of the most recent completed Fiscal Year or during any more recent twelve (12) month period selected by the District; and (ii) arising from any increase in service connections to the System prior to the incurring of such Parity Obligations, in an amount equal to the total amount by which the Net Revenues would have been increased if such connections had been in existence during the whole of the most recent completed Fiscal Year or during any more recent twelve (12) month period selected by the District.

The certificate described in this subsection (3)(A) shall not be required if: (1) the Parity Obligations being incurred are for the exclusive purpose of refunding then outstanding Parity Obligations; (2) at the time of the incurring of such Parity Obligations, a certificate of a District Representative shall be delivered showing that Debt Service on the refunding Parity Obligations will not exceed by more than 10% Debt Service on the refunded Parity Obligations in each Fiscal Year; and (3) the final maturity of the refunding Parity Obligations is not later than the final maturity of the refunded Parity Obligations.

(B) *Sewer Parity Obligations.* For the issuance of Sewer Parity Obligations, the District obtains or provides a certificate prepared by an Independent Certified Public Accountant or Independent Municipal Advisor showing that the Net Sewer Revenues for the last Fiscal Year for which audited financial statements are available (excluding connection fees and connection charges received during such Fiscal Year) shall have amounted to at least 125% of the Maximum Annual Debt Service for all Sewer Parity Obligations to be outstanding immediately after incurring such additional Sewer Parity Obligations, including Maximum Annual Debt Service which would have been payable on any Sewer Parity Obligations incurred since the end of such 12 month period, assuming that such Sewer Parity Obligations had been incurred at the beginning of such twelve month period, and Maximum Annual Debt Service for all Sewer Parity Obligations which would have been payable had the proposed additional Sewer Parity Obligations being incurred been incurred at the beginning of such 12 month period. For purposes of demonstrating compliance with the foregoing, Net Sewer Revenues may be adjusted (at the option of the District) to include the Additional Sewer Revenues.

The term “Additional Sewer Revenues” means, with respect to the issuance of any Sewer Parity Obligations, an allowance for Net Sewer Revenues: (i) arising from any increase in the charges made for service from the Sewer System adopted prior to the incurring of such Sewer Parity Obligations and effective within eighteen (18) months following the date of incurring such Sewer Parity Obligations, in an amount equal to the total amount by which the Net Sewer Revenues would have been increased if such increase in charges had been in effect during the whole of the most recent completed Fiscal Year or during any more recent twelve (12) month period selected by the District; and (ii) arising from any increase in service connections to the Sewer System prior to the incurring of such Sewer Parity Obligations, in an amount equal to the total amount by which the Net Sewer Revenues would have been increased if such connections had been in existence during the whole of the most recent completed Fiscal Year or during any more recent twelve (12) month period selected by the District.

The certificate described in this subsection (3)(B) shall not be required if: (1) the Sewer Parity Obligations being incurred are for the exclusive purpose of refunding then outstanding Sewer Parity Obligations; (2) at the time of the incurring of such Sewer Parity Obligations, a certificate of a District Representative shall be delivered showing that Debt Service on the refunding Sewer Parity Obligations will not exceed by more than 10% Debt Service on the refunded Sewer Parity Obligations in each Fiscal Year; and (3) the final maturity of the refunding Sewer Parity Obligations is not later than the final maturity of the refunded Sewer Parity Obligations.

(C) *Water Parity Obligations.* For the issuance of Water Parity Obligations, the District obtains or provides a certificate prepared by an Independent Certified Public Accountant or Independent Municipal Advisor showing that the Net Water Revenues for the last Fiscal Year for which audited financial statements are available (excluding connection fees and connection charges received during such Fiscal Year) shall have amounted to at least 125% of the Maximum Annual Debt Service for all Water Parity Obligations to be outstanding immediately after incurring such additional Water Parity Obligations, including Maximum Annual Debt Service which would have been payable on any Water Parity Obligations incurred since the end of such 12 month period, assuming that such Water Parity Obligations had been incurred at the beginning of such twelve month period, and Maximum Annual Debt Service for all Water Parity Obligations which would have been payable had the proposed additional Water Parity Obligations being incurred been incurred at the beginning of such 12 month period. For purposes of demonstrating compliance with the foregoing, Net Water Revenues may be adjusted (at the option of the District) to include the Additional Water Revenues.

The term “Additional Water Revenues” means, with respect to the issuance of any Water Parity Obligations, an allowance for Net Water Revenues: (i) arising from any increase in the charges made for service from the Water System adopted prior to the incurring of such Water Parity Obligations and effective within eighteen (18) months following the date of incurring such Water Parity Obligations, in an amount equal to the total amount by which the Net Water Revenues would have been increased if such increase in charges had been in effect during the whole of the most recent completed Fiscal Year or during any more recent twelve (12) month period selected by the District; and (ii) arising from any increase in service connections to the Water System prior to the incurring of such Water Parity Obligations, in an amount equal to the total amount by which the Net Water Revenues would have been increased if such connections had been in existence during the whole of the most recent completed Fiscal Year or during any more recent twelve (12) month period selected by the District.

The certificate described in this subsection (3)(C) shall not be required if: (1) the Water Parity Obligations being incurred are for the exclusive purpose of refunding then outstanding Water Parity Obligations; (2) at the time of the incurring of such Water Parity Obligations, a certificate of a District Representative shall be delivered showing that Debt Service on the refunding Water Parity Obligations will not exceed by more than 10% Debt Service on the refunded Water Parity Obligations in each Fiscal Year; and (3) the final

maturity of the refunding Water Parity Obligations is not later than the final maturity of the refunded Water Parity Obligations.

(4) The Parity Obligation Instrument providing for the issuance of such Parity Obligations under this provision shall provide that:

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

(B) Interest on such Parity Obligations shall be payable on a Parity Interest Payment Date;

(C) The principal of such Parity Obligations shall be payable on \_\_\_\_\_ 1 and/or \_\_\_\_\_ 1 in any year in which principal is payable; and

(D) Money or a surety bond may be, but shall not be required to be, deposited in a reserve account for such Parity Obligations from the proceeds of the sale of such Parity Obligations in an amount as may be determined by the District.

(5) No Default or Event of Default shall have occurred and be continuing.

(6) A Written Certificate and a certificate evidencing compliance with the foregoing requirements of this Section 4.08 signed by District Representative shall be delivered to the Seller, prior to the issuance of any Parity Obligation.

(c) *Subordinate Obligations.* Nothing herein prohibits or impairs the authority of the District to issue bonds or other obligations payable from or secured by a Lien on Net Revenues (or portion thereof) which is subordinate to the Lien established under this Installment Sale Agreement or other Parity Obligations upon such terms and in such principal amounts as the District may determine; provided, that the District may issue or incur any such Subordinate Obligations subject to the following specific conditions:

(i) The District must be in compliance with all covenants set forth in this Installment Sale Agreement and each other Parity Obligation Instrument (including, but not limited to, covenants relating to the issuance of Subordinate Obligations taking into account such proposed Subordinate Obligations) and no Default or Event of Default shall have occurred or be continuing.

(ii) The Net Revenues of the System, calculated on sound accounting principles, as shown by the books of the District for the latest Fiscal Year or any more

recent 12 month period selected by the District ending not more than 60 days prior to the adoption of the Subordinate Obligations Instrument pursuant to which such proposed Subordinate Obligations are issued, as shown by the books of the District, must at least equal 100% of Maximum Annual Debt Service, with Maximum Annual Debt Service calculated on this Installment Sale Agreement and all other Parity Obligations and all other System Obligations to be outstanding immediately subsequent to the issuance of such Subordinate Obligations which are payable from or have a Lien on Net Revenues of the System.

(iii) The Subordinate Obligations Instrument providing for the issuance of Subordinate Obligations must provide that:

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

(B) Interest on such Subordinate Obligations must be payable on a Parity Interest Payment Date and no more frequently; and

(C) The principal of such Subordinate Obligations must be payable on \_\_\_\_\_ 1 and/or \_\_\_\_\_ 1 in any year in which principal is payable.

*Section 4.09. Notices to Seller.* (a) The District hereby agrees that it shall provide timely notice to the Seller of any and all of the following occurrences: (i) an event of default under any debt, revenue bond or obligation of the District that is outstanding as of the date hereof or that is issued by the District hereafter, (ii) any Material Litigation, or governmental proceeding having the effect of Material Litigation, is brought against or to include the District, and (iii) any Material Adverse Change in the District's financial condition.

(b) The District agrees to notify the Seller in writing within five (5) working days of the occurrence of any Material Events or Listed Events, to the extent that such information is not otherwise available on EMMA.

(c) The District agrees to notify the Seller within 10 business days of the following:

(1) Material defaults on System Obligations, other than this Installment Sale Agreement;

(2) Unscheduled draws on debt service reserves held for System Obligations, other than this Installment Sale Agreement, if any, reflecting financial difficulties;

(3) Unscheduled draws on credit enhancements on System Obligations, if any, reflecting financial difficulties;

(4) Substitution of credit or liquidity providers, if any, or their failure to perform;

(5) Any litigation pending or threatened against the District regarding its water capacity or its continued existence, circulation of a petition to challenge rates, consideration of dissolution, or disincorporation, or any other material threat to the District's Revenues;

(6) Adverse tax opinions, the issuance by the Internal Revenue Service or proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of any tax-exempt bonds;

(7) Rating changes on outstanding System Obligations, if any; and

(8) Issuance of additional System Obligations.

*Section 4.10. Liquidity Covenant.* The District shall at all times maintain not less than \$500,000 in cash and cash equivalents, determined as of the end of each Fiscal Year. A certificate of compliance with the foregoing covenant shall be made by the District to the Seller within 270 days of the end of each Fiscal Year.

## ARTICLE V

### MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

*Section 5.01. Discharge Claims.* The District covenants that in order fully to preserve and protect the priority and security of the Installment Payments, the District shall pay and discharge all lawful claims for labor, materials or supplies which, if unpaid, might become a Lien or charge upon the Revenues or any part thereof or on any funds in the hands of the District equal or superior to the Lien of the Installment Payments or which might impair the security of the Installment Payments. The District shall also pay from Net Revenues, any taxes and assessments or other governmental charges lawfully levied or assessed upon or in respect of the System or upon any part thereof or upon any of the Revenues therefrom, and duly observe and conform to all valid requirements of any governmental authority relative to any such properties. The District will pay and discharge all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the System or any part thereof or upon any Revenues when the same shall become due. The District will duly observe and conform with all valid requirements of any

governmental authority relative to the System or any part thereof, and will comply with all requirements with respect to any state or federal grants received to assist in paying for the costs of the acquisition, construction or financing of any Improvements to the System.

*Section 5.02. Operate System in Efficient and Economical Manner.* The District covenants and agrees to operate or cause to be operated the System in an efficient and economical manner and to operate, maintain and preserve, or cause to be operated, maintained and preserved, the System in good repair and working order and will pay all Operation and Maintenance Expenses as they become due and payable.

*Section 5.03. Against Sale.* The District covenants that neither the System as a whole or substantially as a whole nor any property that is a part thereof which is essential to its proper operation or to the maintenance of the Revenues shall be mortgaged or otherwise encumbered, sold, leased, pledged or disposed of. The Revenues shall not be mortgaged, encumbered, sold, leased, pledged or disposed of or used or have any charge placed thereon except as authorized by the terms of this Installment Sale Agreement. The District further covenants that it will not enter into any agreement or transaction, including one leasing, selling or otherwise disposing of nonessential property included as part of the System, which impairs the operation of the System or any part of the System necessary to secure adequate Net Revenues (or any portion thereof) to pay all Debt Service with respect to the Installment Payments and all Parity Obligations and any other System Obligations, or which otherwise would materially impair the rights of the District with respect to the Net Revenues (or any portion thereof) or the operation of the System (or any portion thereof).

*Section 5.04. Eminent Domain.* If all or any part of the System shall be taken by eminent domain proceedings or conveyance in lieu thereof, the Net Proceeds realized by the District therefrom shall be deposited in a special separate segregated fund, held in trust by the District, and be applied and disbursed by the District subject to the following conditions:

(a) If such funds are sufficient to provide for the payment of the entire principal component of the Installment Payments due or to become due, together with all of the interest due or to become due thereon and prepayment premium thereon, so as to enable the District to prepay and retire the Installment Payments in accordance with Section 9.03 hereof, the District may apply such moneys to such prepayment and to the payment of such interest. Pending the application of such proceeds for such purpose, such moneys may be invested by the District at the direction of the Seller in Permitted Investments. The balance of such moneys, if any, may be retained by the District and used for any lawful purpose.

(b) If the District desires not to apply such proceeds to prepay and retire the Installment Payments, or if such proceeds are insufficient to provide the moneys required for the purpose set forth in subsection (a) of this Section 5.04, the District may send to the Seller by registered mail a written notice of the District advising the Seller of the District's intent to apply such proceeds for one of the following purposes:

(i) If such written notice sets forth the District's intent that the proceeds be applied to the cost of additions, betterments, extensions or improvements to the

System, the District shall also send to the Seller a certificate of a Qualified Engineer showing the loss in annual Revenues, if any, suffered, or to be suffered, by the District by reason of such eminent domain proceedings, together with a general description of the additions, betterments, extensions or improvements to the System then proposed to be acquired or constructed by the District from such proceeds. If, in the opinion of the District (evidenced by a Written Certificate of a District Representative), which shall be final, the additional Revenues to be derived from such additions, betterments, extensions or improvements will sufficiently offset the loss of Revenues resulting from such eminent domain proceedings so that the ability of the District to meet its obligations hereunder will not be substantially impaired, such proceeds shall be applied as set forth in the request. The District, in reaching such determination, may rely upon the certificate of a Qualified Engineer. The District shall hold such proceeds in trust and apply them to the acquisition or construction of the additions, betterments, extensions or improvements substantially in accordance with such Qualified Engineer's certificate. Any balance of such proceeds not required by the District for the purposes aforesaid shall be deposited into a separate segregated fund for Operation and Maintenance Expenses.

(ii) If such written notice sets forth the District's intent that such proceeds be transferred into a separate segregated fund for Operation and Maintenance Expenses upon the ground that such eminent domain proceedings have had no effect, or at the most a relatively immaterial effect, upon the security of the Installment Payments, the District shall also send to the Seller a certificate of a Qualified Engineer stating that such eminent domain proceedings have not substantially impaired or affected the operation of the System or the ability of the District to meet all of its obligations hereunder with respect to the payment of the Installment Payments. Upon receipt of such written notice and such Qualified Engineer's certificate, such proceeds shall be deposited into a separate segregated fund for the Operation and Maintenance Expenses.

(c) If such proceeds are not applied to the prepayment and retirement of the Installment Payments in accordance with subsection (a) of this Section 5.04, and the District does not send to the Seller a notice pursuant to subsection (b) of this Section 5.04 within 30 days of its receipt of such proceeds, then the District shall promptly pay such proceeds to the Seller for application as provided for in Section 9.03 hereof.

*Section 5.05. Insurance.* The District will procure and maintain or cause to be procured and maintained, at all times while the Installment Payments shall be outstanding, insurance on the System and public liability insurance in such amounts and against such risks as are usually insurable in connection with similar systems and are usually carried by public agencies operating similar systems. The District covenants that it shall at all times maintain such insurance on the 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. Such insurance shall be adequate in amount and as to the risks insured against, shall be maintained with responsible insurers, shall name the Seller as an additional insured and shall not terminate or expire prior to 30 days after the

Seller has been notified of such termination or expiration. Any such insurance shall be in the form of policies or contracts for insurance with insurers of good standing.

*Section 5.06. Reconstruction of System; Application of Insurance Proceeds.* If any useful portion of the System shall be damaged or destroyed, the District shall, as expeditiously as possible, continuously and diligently pursue or cause to be pursued the reconstruction or replacement thereof, unless the District shall file with the Seller a certificate of a Qualified Engineer to the effect that such reconstruction or replacement is not in the interests of the District and the Seller. The proceeds of any insurance paid on account of such damage or destruction, other than business interruption loss insurance or public liability insurance, shall be deposited by the District in a special account, held in trust by the District, and made available for, and to the extent necessary applied to, the cost of such reconstruction or replacement, if any. Pending such application, such proceeds may be invested by the District in Permitted Investments which mature not later than such times as shall be necessary to provide moneys when needed to pay such cost of reconstruction or replacement. Any balance of such proceeds of insurance not required by the District for the purposes aforesaid shall be deposited into a separate segregated fund for Operation and Maintenance Expenses.

*Section 5.07. Records and Accounts.* The District covenants that it shall keep proper books of records and accounts of the System, separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the System, the Revenues and the Net Revenues. Said books shall at all reasonable times be subject to the inspection of the Seller or its representatives authorized in writing. The District covenants that it will cause the books and accounts of the System to be audited annually by an Independent Certified Public Accountant and will make available for inspection by the Seller at the office of the District, upon reasonable request, a copy of the report of such Independent Certified Public Accountant.

*Section 5.08. Collection of Charges.* The District covenants that, except to the extent that the District is required under agreements and/or contracts existing on the effective date of this Installment Sale Agreement that have been disclosed to the Seller in writing, no water, sewer or other service from the System may be furnished or rendered to the United States of America, the State, or any private corporation or person free of charge, or for consideration lower than that charged other persons for similar service, if in the reasonable determination of the District the provision of such free or discounted service would materially impair the District's ability to make Installment Payments and all Debt Service on Parity Obligations and other System Obligations. The District covenants that it shall maintain and enforce valid regulations for the payment of bills for sewer and water service.

*Section 5.09. Against Competing Utility.* The District will not acquire, construct, operate or maintain or permit the acquisition, construction, operation or existence of any utility or enterprise within the service area of the District that would be competitive with the System.

*Section 5.10. Financial Reports.* Promptly upon receipt by the District and in no event later than 270 days after the close of each Fiscal Year of the District (unless otherwise agreed in writing by the Seller), the District will furnish, or cause to be furnished, to the Seller (w) detailed certified reports of audit, based on an examination sufficiently complete, prepared by an



independent certified public accountant, covering the operations of the System for said Fiscal Year which shall be accompanied by an unqualified opinion of such independent certified public accountant. Such audit report shall include (1) a balance sheet, (2) statement of revenues, expenses and changes in fund balances for budget and actual, (3) statement of cash flows, and (4) footnotes, schedules and attachments to the financial statements, and statements of the status of each account pertaining to the System, showing the amount and source of all deposits therein, the amount and purpose of the withdrawals therefrom and the balance therein at the beginning and end of said Fiscal Year. Each such audit, in addition to whatever matters may be thought proper by the accountant to be included therein, shall include a statement as to whether or not the Net Revenues for such Fiscal Year were equal to at least 1.25 times the Debt Service for such Fiscal Year calculated as provided in Section 4.07 hereof, (x) 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 Parity Obligations, the disbursements from the Gross Revenues and other funds in reasonable detail, (y) a general statement of the financial and physical condition of the System and (z) a compliance certificate signed by an authorized officer of the District (i) stating that no Event of Default or Default has occurred, or if such Event of Default or Default has occurred, specifying the nature of such Event of Default or Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Event of Default or Default and (ii) demonstrating compliance with the covenants set forth in Section 4.07 hereof. The District shall also provide the Seller with the District's approved operating budget for each Fiscal Year within 30 days of the end of the District's previous Fiscal Year. Any reports required to be delivered to the Seller may be provided through EMMA. The District shall also furnish to the Seller by not later than 270 days after the close of each Fiscal Year of the District an annual report showing total assessments levied with respect to each assessment district within the District and the percentage of assessments collected. The District further agrees to provide such additional information to the Seller as Seller may from time to time reasonably request. Credit information relating to the District may be disseminated among Seller and any of its affiliates and any of their respective successors and assigns.

*Section 5.11. Payment of Installment Payments.* The District shall not directly or indirectly extend or assent to the extension of the Installment Payment Dates for any Installment Payments without the prior written consent of the Seller.

*Section 5.12. Compliance with this Installment Sale Agreement.* The District will faithfully observe and perform or cause to be faithfully observed and performed all the covenants, conditions and requirements of this Installment Sale Agreement, and will not suffer or permit any default to occur hereunder. The District will not do or permit anything to be done, or omit or refrain from doing anything, in any case when any such act done or permitted to be done, or any such omission of or refraining from action, would constitute an Event of Default hereunder.

*Section 5.13. Observance of Laws and Regulations.* The District will well and truly keep, observe and perform or cause to be kept, observed and performed all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or

hereafter acquired and enjoyed by the District, including the District's right to exist and carry on business as a county water district, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

*Section 5.14. Private Activity Bond Limitation.* The District shall assure that moneys deposited in the Escrow Account are not so used as to cause this Installment Sale Agreement to satisfy the private business test of Section 141(b) of the Code or the private loan financing test of Section 141(c) of the Code. The payment of the Installment Payments or any portion thereof is not (under the terms of this Installment Sale Agreement or any underlying arrangement) directly or indirectly (x) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (y) on a present value basis, derived from payments (whether or not to the District) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. The Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Acquisition Amount will be used, directly or indirectly, to make or finance loans to any person other than the District. The District has not entered into any management or other service contract with respect to the use and operation of the Equipment.

*Section 5.15. Private Loan Financing Limitation.* The District shall assure that proceeds of this Installment Sale Agreement are not so used as to cause this Installment Sale Agreement to satisfy the private loan financing test of Section 141(c) of the Code.

*Section 5.16. Federal Guarantee Prohibition.* The District shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause this Installment Sale Agreement to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

*Section 5.17. Maintenance of Tax Exemption.* The District shall take all actions necessary to assure the exclusion of the interest component of the Installment Payments from the gross income of the Seller under the Code. The District agrees that it will not take any action that would cause the interest component of Installment Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for Federal income tax purposes, nor will it omit to take or cause to be taken, in a timely manner, any action, which omission would cause the interest component of Installment Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for Federal income tax purposes. In connection with the foregoing, the District hereby agrees that (a) so long as any Installment Payments remain unpaid, moneys on deposit in the Escrow Account shall not be used in a manner that will cause this Installment Sale Agreement to be classified as an "arbitrage bond" within the meaning of Section 148(a) of the Code; and (b) the District shall rebate, from funds legally available for the purpose, an amount equal to excess earnings on the Escrow Account to the Federal Government if required by, and in accordance with, Section 148(f) of the Code, and make the determinations and maintain the records required by the Code.

*Section 5.18. Event of Taxability.* Upon the occurrence of an Event of Taxability, the interest component of Installment Payments and any charge on Installment Payments or other amounts payable based on the Contract Rate shall have accrued and be payable at the Taxable Rate

retroactive to the date as of which the interest component is determined by the Internal Revenue Service to be includible in the gross income of the owner or owners thereof for Federal income tax purposes (which retroactive date shall be the earliest date as of which the interest component of any Installment Payment is deemed includable in the gross income of the owner or owners thereof for Federal income tax purposes, which may be earlier than the date of delivery of such determination by the Internal Revenue Service), and the District will pay such additional amount as will result in the owner receiving the interest component at the Taxable Rate.

For purposes of this Section, “*Event of Taxability*” means the circumstance of the interest component of any Installment Payment paid or payable pursuant to this Installment Sale Agreement becoming includible for Federal income tax purposes in an owner’s gross income as a consequence of any act, omission or event whatsoever, including but not limited to the matters described in the immediately succeeding sentence, and regardless of whether the same was within or beyond the control of the District. An Event of Taxability shall be presumed to have occurred upon (a) the receipt by Seller or the District of an original or a copy of an Internal Revenue Service Technical Advice Memorandum or Statutory Notice of Deficiency or other written correspondence which legally holds that the interest component of any Installment Payment is includable in the gross income of the owner thereof; (b) the issuance of any public or private ruling of the Internal Revenue Service that the interest component of any Installment Payment is includable in the gross income of the owner thereof; or (c) receipt by Seller or the District of a written opinion of a nationally recognized firm of attorneys experienced in matters pertaining to the tax-exempt status of interest on obligations issued by states and their political subdivisions, selected by Seller and acceptable to the District, to the effect that the interest component of any Installment Payment has become includable in the gross income of the owner thereof for Federal income tax purposes. For all purposes of this definition, an Event of Taxability shall be deemed to occur on the date as of which the interest component of any Installment Payment is deemed includable in the gross income of the owner thereof for Federal income tax purposes.

*Section 5.19. Evidence of Filing Form 8038-G.* As soon as it is available, the District shall provide to Seller evidence that it, or its paid preparer, has filed the Form 8038-G for this Installment Sale Agreement with the Internal Revenue Service by delivering to Seller proof of mailing such Form 8038-G. Notwithstanding anything to the contrary in this Installment Sale Agreement, it shall not be an Event of Default hereunder if the District does not provide to Seller evidence that it (or its paid preparer) filed the Form 8038-G for this Installment Sale Agreement with the Internal Revenue Service.

## ARTICLE VI

### DISCLAIMER OF WARRANTIES; ACCESS

*Section 6.01. Disclaimer of Warranties.* THE SELLER 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 DISTRICT FOR THE EQUIPMENT, THE SYSTEM OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT, THE SYSTEM

OR ANY COMPONENT THEREOF. IN NO EVENT SHALL THE SELLER BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS INSTALLMENT SALE AGREEMENT FOR THE EXISTENCE, FURNISHING, FUNCTIONING OR THE DISTRICT'S USE OF THE EQUIPMENT OR THE SYSTEM.

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

## ARTICLE VII

### ASSIGNMENT, SALE AND AMENDMENT

*Section 7.01. Assignment by the Seller.* (a) Seller's right, title and interest in and to this Installment Sale Agreement, the Installment Payments and any other amounts payable by the District hereunder, the Escrow Agreement, its security interest in the Collateral (collectively, the "Assigned Rights"), may be assigned and reassigned by Seller at any time, in whole or in part, to one or more assignees or sub-assignees without the necessity of obtaining the consent of the District; *provided*, that any such assignment, transfer or conveyance (i) shall be made only to investors each of whom certifies in writing is a "qualified institutional buyer" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, or an "accredited investor" as defined in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended, and in either case is purchasing the Assigned Rights (or any interest therein) for its own account with no present intention to resell or distribute such Assigned Rights (or interest therein), subject to each investor's right at any time to dispose of the Assigned Rights (or any interest therein) as it determines to be in its best interests, (ii) shall not result in more than 35 owners of the Assigned Rights or the creation of any interest in the Assigned Rights in an aggregate principal component that is less than \$100,000 and (iii) shall not require the District to make Installment Payments, to send notices or otherwise to deal with respect to matters arising hereunder or under the Escrow Agreement with or to more than one Servicer (as such term is defined below), and any trust agreement, participation agreement or custodial agreement under which multiple ownership interests in the Assigned Rights are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single entity, trustee, owner, servicer or other fiduciary or agent acting on behalf of all of the assignees (herein referred to as the "Servicer") to act on their behalf with respect to the Assigned Rights, including with respect to the exercise of rights and remedies of Seller on behalf of such owners upon the occurrence of an Event of Default under this Installment Sale Agreement. Seller and the District hereby acknowledge and agree that the restrictions and limitations on transfer as provided in this

Section 7.01 shall apply to the first and subsequent assignees and sub-assignees of any of the Assigned Rights (or any interest therein).

(b) Unless to an affiliate controlling, controlled by or under common control with Seller, no assignment, transfer or conveyance permitted by this Section 7.01 shall be effective as against the District until the District shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, participation interests, trust certificates or partnership interests with respect to the Installment Payments payable under this Installment Sale Agreement, it shall thereafter be sufficient that the District receives notice of the name and address of the bank, trust company or other entity that acts as the Servicer. Notices of assignment provided pursuant to this Section 7.01(b) shall contain a confirmation of compliance with the transfer requirements imposed by Section 7.01(a) hereof. During the Term of this Installment Sale Agreement, the District shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. The District shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees or Servicer last designated in such register. The District shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right the District may have against Seller or the Vendor. Assignments in part may include without limitation assignment of all of Seller's security interest in and to the Equipment and all rights in, to and under this Installment Sale Agreement related to such Equipment, and all of Seller's security interest in and to the Collateral, or all rights in, to and under the Escrow Agreement.

(c) If Seller notifies the District of its intent to assign this Installment Sale Agreement, the District agrees that it shall execute and deliver to Seller a Notice and Acknowledgement of Assignment substantially in the form of *Exhibit H* attached hereto within five (5) business days after its receipt of such request.

*Section 7.02. Assignment, Sale and Disposition by the District.* **None of the District's right, title, and interest in, to and under this Installment Sale Agreement or any portion of the Equipment, the Escrow Agreement, the Escrow Account or the other Collateral may be assigned, encumbered or subleased by the District for any reason, and any purported assignment, encumbrance or sublease without Seller's prior written consent shall be null and void.**

*Section 7.03. Amendment of Installment Sale Agreement.* Each party hereto understands and agrees that it cannot alter, modify or cancel or agree or consent to alter, modify or cancel this Installment Sale Agreement without the prior written consent of the other party hereto. Any such amendment shall be in writing.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

*Section 8.01. Events of Default Defined.* The following shall be “events of default” under this Installment Sale Agreement and the terms “events of default” and “default” shall mean, whenever they are used in this Installment Sale Agreement, any one or more of the following events:

(a) Failure by the District to (i) 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; (ii) maintain insurance required under Section 3.06 or Section 5.05 hereof, or (iii) observe and perform any covenant, condition or agreement on its part to be observed or performed under Section 2.01(m), 2.01(z), 2.01(aa), 4.02, 4.04, 4.06, 4.07, 4.08 [or 4.10] hereof;

(b) Failure by the District to observe and perform any covenant, condition or agreement contained in this Installment Sale Agreement or any Parity Obligations Instrument on its part to be observed or performed, other than as referred to in another subsection of this Section 8.01, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the District by Seller, unless Seller shall agree in writing to an extension of such time prior to its expiration; *provided* that, if the failure stated in the notice cannot be corrected within the applicable period, Seller will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected;

(c) Any material statement, representation or warranty made by the District in or pursuant to this Installment Sale Agreement or its execution, delivery or performance shall prove to have been false, incorrect, misleading, or breached in any material respect on the date when made;

(d) Any default occurs (i) under any Parity Obligations Instrument or with respect to any System Obligation; or (ii) any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which the District is an obligor, if such default (A) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by Seller or any affiliate of Seller, or (B) arises under any obligation under which there is outstanding, owing or committed an aggregated amount in excess of \$500,000.00;

(e) The District shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of the District, or of all or a substantial part of the assets of the District, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable Federal bankruptcy law, (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an

arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against the District in any bankruptcy, liquidation, readjustment, reorganization, moratorium or insolvency proceeding or (vi) the filing by the District of a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the District, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the District or of the whole or any substantial part of its property;

(f) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator for the District or of all or a substantial part of the assets of the District, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of thirty (30) consecutive days; or

(g) An event of default shall have occurred and be continuing with respect to any Parity Obligation, any Subordinate Obligation or any other System Obligation which requires or permits the immediate acceleration thereof.

*Section 8.02. Remedies on Default.* Whenever any event of default referred to in Section 8.01 hereof shall have occurred and be continuing, the Seller shall have the right, at its option and without any further demand or notice, to:

(a) declare all principal components of the unpaid Installment Payments, together with accrued interest thereon to be immediately due and payable, whereupon the same shall become due and payable;

(b) apply to and obtain from any court of competent jurisdiction such decree or order as may be necessary to require officials of the District to charge and collect rates for services provided by the District and the System (or any portion thereof) sufficient to meet all requirements of this Installment Sale Agreement;

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

(d) with or without terminating the Term of this Installment Sale Agreement, Seller may enter the premises where the Equipment is located and, subject to the limitations in the last sentence of Section 4.02 hereof, retake possession of such Equipment or require the District at the District's expense to promptly return any or all of such Equipment to the possession of Seller at such place within the United States as Seller shall specify, and sell or lease such Equipment or, for the account of the District, sublease such Equipment,

continuing to hold the District liable, but solely from legally available funds, for the difference between (i) the Installment Payments payable by the District and other amounts hereunder that are payable by the District to the end of the Term of this Installment Sale Agreement, as the case may be, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Seller in exercising its remedies hereunder, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Equipment and all brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of Section 4.02 of this Installment Sale Agreement. The exercise of any such remedies respecting any such Event of Default shall not relieve the District of any other liabilities hereunder or with respect to the Equipment;

(e) Seller may terminate the Escrow Agreement and apply any proceeds in the Escrow Account to the Installment Payments scheduled to be paid hereunder;

(f) Seller may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under the Escrow Agreement or as a secured party in any or all of the Equipment or the Escrow Account; and/or

(g) Seller may exercise any and all rights and remedies conferred under any Parity Obligations Instrument, including any Incorporated Provision.

In addition, the District shall be liable for, and hereby agrees to pay, all legal costs and expenses, including court costs, incurred by the Seller in the enforcement of any of the remedies listed above or any other remedy available to the Seller.

*Section 8.03. Application of Funds Upon Acceleration or Event of Default.* Following an Event of Default, the District shall cause all Net Revenues to be applied to the payment of the principal of and interest then due on the Parity Obligations (upon presentation of the Parity Obligations to be paid, and stamping thereon of the payment if only partially paid, or surrender thereof if fully paid) as follows:

(a)(1) Unless the principal of all of the Combined System Parity Obligations and Water Parity Obligations shall have become or have been declared due and payable, Net Water Revenues shall be applied as follows:

FIRST: To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and

SECOND: To the payment to the persons entitled thereto of the unpaid principal of any the Combined System Parity Obligations and Water Parity Obligations which shall have become due, whether at maturity or by call for redemption, with interest on the overdue principal at the rate borne by such Parity Obligations, and, if the



amount available shall not be sufficient to pay in full all such Parity Obligations, together with such interest, then to the payment thereof ratably, according to the amounts of principal due on such date to the persons entitled thereto, without any discrimination or preference; and

(2) If the principal of all of the Combined System Parity Obligations and Water Parity Obligations shall have become or have been declared due and payable, Net Water Revenues shall be applied to the payment of the principal and interest then due and unpaid upon such Parity Obligations, with interest on the overdue principal at the rate borne by such Parity Obligations, and, if the amount available shall not be sufficient to pay in full the whole amount so due and unpaid, then to the payment thereof ratably, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, or of any Combined System Parity Obligation or Water Parity Obligation over any other Combined System Parity Obligation or Water Parity Obligation, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference.

(b)(1) Unless the principal of all of the Combined System Parity Obligations and Sewer Parity Obligations shall have become or have been declared due and payable, Net Sewer Revenues shall be applied as follows:

FIRST: To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and

SECOND: To the payment to the persons entitled thereto of the unpaid principal of any the Combined System Parity Obligations and Sewer Parity Obligations which shall have become due, whether at maturity or by call for redemption, with interest on the overdue principal at the rate borne by such Parity Obligations, and, if the amount available shall not be sufficient to pay in full all such Parity Obligations, together with such interest, then to the payment thereof ratably, according to the amounts of principal due on such date to the persons entitled thereto, without any discrimination or preference; and

(2) If the principal of all of the Combined System Parity Obligations and Sewer Parity Obligations shall have become or have been declared due and payable, Net Sewer Revenues shall be applied to the payment of the principal and interest then due and unpaid upon such Parity Obligations, with interest on the overdue principal at the rate borne by such Parity Obligations, and, if the amount available shall not be sufficient to pay in full the whole amount so due and unpaid, then to the payment thereof ratably, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, or of any Combined System

Parity Obligation or Sewer Parity Obligation over any other Combined System Parity Obligation or Sewer Parity Obligation, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference.

Notwithstanding anything in any other instrument to the contrary, following an Event of Default, (x) no portion of any Net Water Revenues shall pay any amounts on any Subordinate Obligations or other System Obligations other than Combined System Parity Obligations and Water Parity Obligations until all Combined System Parity Obligations and Water Parity Obligations have been paid current and all Events of Default have been fully cured and (y) no portion of any Net Sewer Revenues shall pay any amounts on any Subordinate Obligations or other System Obligations other than Combined System Parity Obligations and Sewer Parity Obligations until all Combined System Parity Obligations and Sewer Parity Obligations have been paid current and all Events of Default have been fully cured.

*Section 8.04. No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Seller is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Installment Sale 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 Seller to exercise any remedy reserved to it in this Article VIII it shall not be necessary to give any notice, other than such notice as may be required in this Article VIII or by law.

*Section 8.05. Prosecution and Defense of Suits.* The District shall promptly, upon request of the Seller, 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 System whether now existing or hereafter developing and shall prosecute all such suits, actions and other proceedings as may be appropriate for such purpose.

*Section 8.06. No Additional Waiver Implied by One Waiver.* In the event any agreement contained in this Installment Sale 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.

## ARTICLE IX

### PREPAYMENT OF INSTALLMENT PAYMENTS

*Section 9.01. Prepayment; Payment in Full.*

(a) *Prepayment.* The District shall have the option to prepay or satisfy all, but not less than all, of its obligations hereunder, at the following times and upon the following terms:

(i) *Optional Prepayment.* From and after the date specified (if any) in the Payment Schedule (the "*Prepayment Option Commencement Date*"), on the Installment Payment Dates specified in the Payment Schedule, upon not less than forty-five (45) days prior written notice, and upon payment in full of the sum of all Installment Payments then due *plus* the then applicable Prepayment Price, which shall include a prepayment premium on the unpaid Outstanding Balance as set forth in the Payment Schedule *plus* all other amounts then owing hereunder; or

(ii) *Casualty or Condemnation Prepayment.* In the event of substantial damage to or destruction or condemnation of substantially all of the Equipment, on the day specified in the District's notice to Seller of its exercise of the prepayment option (which shall be the earlier of the next Installment Payment Date or sixty (60) days after the casualty event) upon payment in full to Seller of (A) in the event such prepayment occurs on an Installment Payment Date, the sum of (i) all Installment Payments then due *plus* (ii) the then applicable Prepayment Price *plus* (iii) all other amounts then owing hereunder OR, (B) in the event such prepayment occurs on a date other than an Installment Payment Date, the sum of (i) the applicable Prepayment Price shown on the Payment Schedule for the Installment Payment Date immediately preceding the applicable date of such prepayment (or if the date of such prepayment occurs prior to the first Installment Payment Date, the earliest Prepayment Price shown on the Payment Schedule) *plus* (ii) accrued interest at the Contract Rate (or the Taxable Rate if then in effect) on the Outstanding Balance as of the Installment Payment Date immediately preceding the applicable date of such prepayment from such Installment Payment Date (or if the date of such prepayment occurs prior to the first Installment Payment Date, the Commencement Date) to the date of such prepayment *plus* (iii) all other amounts then owing hereunder.

(b) *Payment in Full.* Upon the expiration of the Term of this Installment Sale Agreement, and upon payment in full of all Installment Payments then due and all other amounts then owing hereunder to Seller, Seller's security interests in and to the Equipment will be terminated and the District will own such Equipment free and clear of Seller's security interest in such Equipment.

(c) After payment of the applicable Prepayment Price and all other amounts then owing hereunder in accordance with either Section 9.01(a)(i) or Section 9.01(a)(ii) of this Installment Sale Agreement, Seller's security interests in and to the Equipment will be terminated and the District will own such Equipment free and clear of Seller's security interest in such Equipment.

*Section 9.02. Unexpended Proceeds Mandatory Prepayment.* (a) Any funds not applied to Equipment Costs and remaining in the Escrow Account on the earliest of (i) the expiration of the Acquisition Period, (ii) the date on which the District delivers to the Seller the executed Disbursement Request to effect the final disbursement to pay (or reimburse) Equipment Costs from the Escrow Account or (iii) a termination of the Escrow Account as provided in the Escrow Agreement shall be applied by Seller on each successive Installment Payment Date thereafter to pay all or a portion of the Installment Payment due and owing in the succeeding twelve (12) months

and any remaining amounts shall be applied by Seller as prepayment to the applicable unpaid Principal Portion of Installment Payments owing hereunder in the inverse order of the Installment Payment Dates at a price of 100% of such prepaid Principal Portion plus accrued interest thereon to the prepayment date.

(b) In connection with any partial prepayment of Installment Payments, Seller shall prepare a new Payment Schedule reflecting the application of such prepayments in the inverse order of the Installment Payment Dates and deliver the same to the District, which shall be binding, absent manifest error.

*Section 9.03. Extraordinary Mandatory Prepayment.* (a) In the event that all or any part of the System shall be taken by eminent domain proceedings or conveyance in lieu thereof and the Net Proceeds are to be applied to the full or partial prepayment of the Installment Payments as required by Section 5.04(a) or Section 5.04(c) hereof, within 30 days after the occurrence of such event the District shall send written notice thereof to the Seller. Thereafter, the Installment Payments shall be subject to full or partial prepayment as provided below.

(b) In the case of full prepayment in accordance with Section 5.04(a) hereof, the Installment Payments shall be prepaid on the first day of the first calendar month that is at least 45 days after the occurrence of such event at the Prepayment Price as of the date of prepayment, plus any accrued but unpaid interest.

(c) In the case of partial prepayment or retirement in accordance with Section 5.04(c) hereof, all proceeds paid to the Seller shall be applied pro rata against the outstanding installments of the principal component of the Installment Payments, in inverse order of the stated Installment Payment Date with respect to the affected Equipment.

(d) Upon payment of the full prepayment price to the Seller pursuant to subsection (b) above, or provision for such payment satisfactory to it, the Seller shall surrender its originally executed copy of this Installment Sale Agreement to the District.

## ARTICLE X

### MISCELLANEOUS

*Section 10.01. Notices.* All notices, certificates or other communications hereunder shall be in writing and shall be deemed to have been properly given on the earlier of (i) when delivered in person, (ii) the third Business Day following deposit in the United States Mail, with adequate postage, and sent by registered or certified mail, with return receipt requested to the appropriate party at the address set forth below, or (iii) the first Business Day following deposit with Federal Express, Express Mail or other overnight delivery service for next day delivery, addressed to the appropriate party at the address set out below.

If to the District:           Mission Springs Water District  
66575 Second Street

Desert Hot Springs, California 92240  
Attention: General Manager

If to the Seller: Banc of America Public Capital Corp  
11333 McCormick Road  
Hunt Valley II  
M/C MD5-031-06-05  
Hunt Valley, MD 21031  
Attention: Contract Administration  
Fax No.: (443) 541 3057

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

*Section 10.02. Binding Effect.* This Installment Sale Agreement shall inure to the benefit of and shall be binding upon the Seller and the District and their respective successors and assigns.

*Section 10.03. Severability.* In the event any provision of this Installment Sale Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

*Section 10.04. Amendments, Changes and Modifications.* Subject to the provisions of Section 7.03 hereof, this Installment Sale Agreement may be amended or any of its terms modified with the written consent of the District and the Seller.

*Section 10.05. Net Contract.* This Installment Sale Agreement shall be deemed and construed to be a “net contract” and the District hereby agrees that the Installment Payments shall be an absolute net return to the Seller, free and clear of any expenses, charges or set-offs whatsoever.

*Section 10.06. Further Assurances and Corrective Instruments.* The Seller and the District 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 Equipment hereby sold or intended so to be or for carrying out the expressed intention of this Installment Sale Agreement. The District will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Installment Sale Agreement, and for the better assuring and confirming unto the owners of the Parity Obligations the rights and benefits provided in the Parity Obligation Instruments.

*Section 10.07. Execution in Counterparts.* This Installment Sale Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; *provided*, that only Counterpart No. 1 of this Installment Sale Agreement shall constitute chattel paper for purposes of the applicable Uniform Commercial Code.

*Section 10.08. Applicable Law; Venue Waiver of Jury Trial.* This Installment Sale Agreement shall be governed by and construed in accordance with the laws of the State. The parties hereto consent and submit to the jurisdiction of the State and venue in any state or Federal court of such State for the purposes of any suit, action or other proceeding arising in connection with this Installment Sale Agreement, and each party expressly waives any objections that it may have to the venue of such courts. The parties hereto expressly waive any right to trial by jury in any action brought on or with respect to this Installment Sale Agreement. If the waiver of jury trial contained herein is unenforceable for any reason, then the parties hereto agree that the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision.

*Section 10.09. Seller and District Representatives.* Whenever under the provisions of this Installment Sale Agreement the approval of the Seller or the District is required, or the Seller or the District is required to take some action at the request of the other, such approval or such request shall be given for the Seller by a Seller Representative and for the District by a District Representative, and any party hereto shall be authorized to rely upon any such approval or request.

*Section 10.10. Captions.* The captions or headings in this Installment Sale 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 Installment Sale Agreement.

*Section 10.11. No Advisory or Fiduciary Relationship.* In connection with all aspects of each transaction contemplated by this Installment Sale Agreement (including in connection with any amendment, waiver or other modification hereof or of any other related document), the District acknowledges and agrees that: (a) (i) the transactions regarding this Installment Sale Agreement provided by the Seller and any affiliate thereof are arm's-length commercial transactions between the District, on the one hand, and the Seller and its affiliates, on the other hand, (ii) the District has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the District is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Installment Sale Agreement and by the other related documents; (b) (i) the Seller and its affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the District, or any other person and (ii) neither the Seller nor any of its affiliates has any obligation to the District with respect to the transactions contemplated by this Installment Sale Agreement except those obligations expressly set forth herein and in the other related documents; and (c) the Seller and its affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the District, and neither the Seller nor any of its affiliates has any obligation to disclose any of such interests to the District. To the fullest extent permitted by law, the District hereby waives and releases any claims that it may have against the Seller or any of its affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated by this Installment Sale Agreement.

*Section 10.12. Entire Agreement.* The parties agree that this Installment Sale Agreement constitutes the final and entire agreement between the parties relating to the subject matter hereof

and supersedes all conflicting terms or provisions of any prior proposals, term sheets, solicitation documents, requests for proposals, award notices, approval letters or any other agreements or understandings between the parties.

*Section 10.13. Electronic Signatures.* The Related Documents may be executed and delivered by facsimile signature or other electronic or digital means (including, without limitation, Adobe's Portable Document Format ("PDF")). Any such signature shall be of the same force and effect as an original signature, it being the express intent of the parties to create a valid and legally enforceable contract between them. The exchange and delivery of the Related Documents and the related signature pages via facsimile or as an attachment to electronic mail (including in PDF) shall constitute effective execution and delivery by the parties and may be used by the parties for all purposes. Notwithstanding the foregoing, at the request of either party, the parties hereto agree to exchange inked original replacement signature pages as soon thereafter as reasonably practicable.

IN WITNESS WHEREOF, the Seller has caused this Installment Sale Agreement to be executed in its name by its duly authorized officer; and the District has caused this Installment Sale Agreement to be executed in its name by its duly authorized officer, effective as of the date first written above.

BANC OF AMERICA PUBLIC CAPITAL CORP, as  
Seller

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

MISSION SPRINGS WATER DISTRICT

By: \_\_\_\_\_  
Name: Russ Martin  
Title: President of the Board of Directors

Counterpart No. \_\_\_\_\_ of \_\_\_\_\_ manually executed and serially numbered counterparts. To the extent that this Installment Sale Agreement constitutes chattel paper (as defined in the applicable Uniform Commercial Code), no security interest or ownership herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.



**EXHIBIT A**

**EQUIPMENT SCHEDULE**

Location of Equipment:

Equipment Description (Scope of Work):

**EXHIBIT B**

**PAYMENT SCHEDULE**

INSTALLMENT PAYMENT DATE	INSTALLMENT PAYMENT AMOUNT	INTEREST PORTION	PRINCIPAL PORTION	OUTSTANDING BALANCE	PREPAYMENT PRICE (including prepayment premium, if applicable)

*Contract Rate.* The Contract Rate is \_\_\_\_\_% per annum.

*Prepayment Option Commencement Date.* For purposes of Section 9.01 of the Installment Sale Agreement, the Prepayment Option Commencement Date is \_\_\_\_\_.

SELLER:

BANC OF AMERICA PUBLIC CAPITAL CORP

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DISTRICT:

MISSION SPRINGS WATER DISTRICT

By: \_\_\_\_\_

Name: Russ Martin

Title: President of the Board of Directors

**EXHIBIT C-1**

**FORM OF AUTHORIZING RESOLUTION**

**See Item #3(a) in Transcript**

**EXHIBIT C-2**

**FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE**

The undersigned, the duly appointed and acting Interim General Manager of the Mission Springs Water District (“*District*”) certifies as follows:

A. The following listed persons are duly elected or appointed and acting officials of the District in the capacity set forth opposite their respective names below and the facsimile signatures below are true and correct as of the date hereof;

B. The President of the Board of Directors is duly authorized, on behalf of the District, to negotiate, execute, in writing or electronically, and deliver the Installment Sale Agreement dated as of October \_\_, 2023 by and between the District and Banc of America Public Capital Corp (“*Seller*”), the Escrow and Account Control Agreement dated as of October \_\_, 2023 by and among Seller, the District and Wilmington Trust, National Association, as Escrow Agent, all documents related thereto and delivered in connection therewith, and any future modification(s) or amendments thereof (collectively, the “*Operative Agreements*”); and.

C. The President of the Board of Directors is duly authorized, on behalf of the District, to countersign all Operative Agreements that have been signed by the Board President.

NAME OF OFFICIAL	TITLE	SIGNATURE
Russ Martin	President of the Board of Directors	_____

Dated: October \_\_, 2023

By: \_\_\_\_\_  
Name: Brian Macy  
Title: Interim General Manager

(The signer of this Certificate cannot be listed above as authorized to execute the Operative Agreements.)



2. The District has the requisite power and authority to purchase and acquire the Equipment and to execute and deliver the Transaction Documents and to perform its obligations under the Transaction Documents. The entering into and performance of the Transaction Documents by the District and the execution and delivery of the Agreement and the incurrence of debt thereunder complies in all respects with the limitations and restrictions set forth in all of the Parity Obligation Instruments relating to all Existing Parity Debt. The entering into and performance of the Transaction Documents by the District does not and will not contravene or violate any judgment or order or law or regulation applicable to the District (including, without limitation, the Existing Parity Deb) or violate or constitute a default under any covenant, indenture or agreement of or affecting the District or any of its property.

3. The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of the District and the Transaction Documents are legal, valid and binding obligations of the District, enforceable against the District in accordance with their respective terms, except to the extent limited by state and federal law affecting creditor's remedies and by bankruptcy, reorganization, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights.

4. The Agreement establishes a first lien on and pledge of the Net Revenues (as such term is defined in the Agreement) and other funds pledged thereby for the security of the Installment Payments and other amounts payable under the Agreement, on a parity with the Combined System Parity Obligations and any future Combined System Parity Obligations issued in accordance with the terms of the Agreement. The Agreement establishes a first lien on and pledge of the Net Water Revenues (as such term is defined in the Agreement) and other funds pledged thereby for the security of the Installment Payments and other amounts payable under the Agreement, on a parity with the Combined System Parity Obligations and Water Parity Obligations and any future Combined System Parity Obligations and future Water Parity Obligations issued in accordance with the terms of the Agreement. The Agreement establishes a first lien on and pledge of the Net Sewer Revenues (as such term is defined in the Agreement) and other funds pledged thereby for the security of the Installment Payments and other amounts payable under the Agreement, on a parity with the Combined System Parity Obligations and Sewer Parity Obligations and any future Combined System Parity Obligations and future Sewer Parity Obligations issued in accordance with the terms of the Agreement.

5. The authorization, approval, execution and delivery of the Transaction Documents and all other proceedings of the District relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, procurement and public bidding laws and all other applicable State or Federal laws.

6. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Transaction Documents or the pledge of Net Revenues to repay Installment Payments and other amounts payable under the Agreement on a *pari passu* basis with the Existing Parity Obligations and future Parity

Obligations or the security interest of Seller or its assigns, as the case may be, in the Equipment, the Escrow Account or other Collateral thereunder.

7. The portion of Installment Payments designated as interest is excluded from gross income for Federal income tax purposes under Section 103 of the Code and is exempt from State of California personal income taxes; and such interest is not a specific item of tax preference for purposes of the federal alternative minimum tax.

8. The District has duly and validly adopted Resolution No. \_\_\_ on \_\_\_\_\_, 2023 (“*Resolution*”) at a meeting of the District’s Board of Directors that was duly noticed and held and at which a quorum was present and acting throughout in accordance with the law of the State of California that are applicable to the District, and such Resolution is in full force and effect and has not been modified, amended or rescinded.

All capitalized terms herein shall have the same meanings as in the Transaction Documents unless otherwise provided herein. Seller and its successors and assigns are entitled to rely on this opinion.

Sincerely,





Date: \_\_\_\_\_

DISTRICT:

MISSION SPRINGS WATER DISTRICT

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



\_\_\_\_\_. Amounts payable for claims from such sources are limited as follows: \_\_\_\_\_

4. Attached hereto are copies of certificates of insurance with respect to policies maintained by the District.

DISTRICT:

MISSION SPRINGS WATER DISTRICT

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT G**

**EXISTING PARITY OBLIGATIONS**

As of the Commencement Date, the only Existing Parity Obligations outstanding are:

	See Item # ___ in Transcript
	See Item # ___ in Transcript
	See Item # ___ in Transcript
	See Item # ___ in Transcript
	See Item # ___ in Transcript

**EXHIBIT H**

**FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT**

Dated \_\_\_\_\_

Banc of America Public Capital Corp (“*Assignor*”) hereby gives notice that it has assigned and sold to \_\_\_\_\_ (“*Assignee*”) all of the Assignor’s right, title and interest in, to and under the Installment Sale Agreement dated as of October \_\_, 2023 (the “*Agreement*”), by and between the Assignor and the Mission Springs Water District (“*District*”), together with all exhibits, schedules, addenda and attachments related thereto, and all certifications and other documents delivered in connection therewith, all of the Assignor’s right, title and interest in Installment Payments and other amounts due under the Agreement, all of the Assignor’s right, title and interest in the Equipment (as defined in the Agreement), and all of the Assignor’s right, title and interest in, to and under the Escrow and Account Control Agreement dated as of October \_\_, 2023 (the “*Escrow Agreement*”) by and among the District, the Assignor and Wilmington Trust, National Association, as Escrow Agent, together with the Escrow Account and other Collateral (collectively, the “*Assigned Property*”). Each capitalized term used but not defined herein has the meaning set forth in the Agreement.

1. The District hereby acknowledges the effect of the assignment of the Assigned Property and absolutely and unconditionally agrees to deliver to Assignee all Installment Payments and other amounts coming due under the Agreement in accordance with the terms thereof on and after the date of this Acknowledgment.

2. The District hereby agrees that: (i) Assignee shall have all the rights of Seller under the Agreement and all related documents, including, but not limited to, the rights to issue or receive all notices and reports, to give all consents or agreements to modifications thereto, to receive title to the Equipment in accordance with the terms of the Agreement, to declare a default and to exercise all rights and remedies thereunder in connection with the occurrence of an Event of Default; and (ii) the obligations of the District to make Installment Payments are payable from Net Revenues and the obligations of the District to perform and observe the other covenants and agreements contained in the Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense.

3. The District agrees that, as of the date of this Notice and Acknowledgment of Assignment (this “*Acknowledgement*”), the following information about the Agreement is true, accurate and complete:

Number of Installment Payments Remaining	_____
Amount of Each Installment Payment	\$ _____
Total Amount of Installment Payments	_____
Remaining	\$ _____
Frequency of Installment Payments	_____
Next Installment Payment Due	_____
Funds Remaining in Escrow Account	\$ _____

4. The Agreement remains in full force and effect, has not been amended, no Event of Default (or event which with the passage of time or the giving of notice or both would constitute an Event of Default) has occurred thereunder.

5. Assignor hereby acknowledges the transfer restrictions imposed by Section 7.01 of the Agreement and confirms that the assignment to Assignee has been made in accordance with the provisions of that Section.

6. Any inquiries of the District related to the Agreement and any requests for disbursements from the Escrow Account, if applicable, and all Installment Payments and other amounts coming due pursuant to the Agreement on and after the date of this Acknowledgment should be remitted to Assignee at the following address (or such other address as provided to the District in writing from time to time by Assignee):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ACKNOWLEDGED AND AGREED:

DISTRICT: MISSION SPRINGS WATER DISTRICT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ASSIGNOR: BANC OF AMERICA PUBLIC CAPITAL CORP

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT I**

**ESCROW AND ACCOUNT CONTROL AGREEMENT**

See Item #4 in Transcript